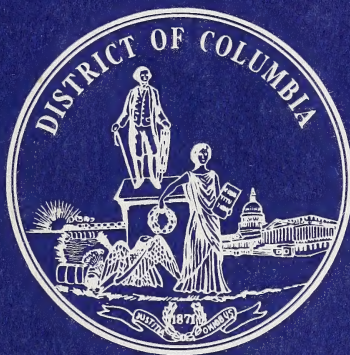


District of Columbia Code

1973 EDITION ☆ SUPPLEMENT V

1978



TITLES 1-49

TABLES AND INDEX

DISTRICT OF COLUMBIA CODE

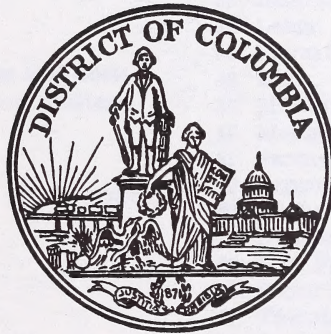
1973 EDITION

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LAWS—January 3, 1973, to January 18, 1978

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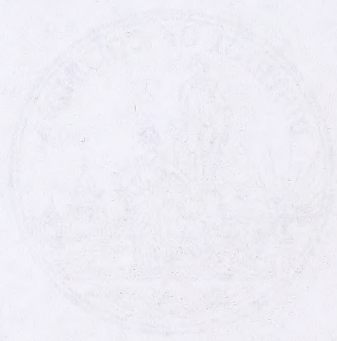
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LAWS 1978-1979 VOLUME 2

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TITLES OF DISTRICT OF COLUMBIA CODE

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PREFACE

This fifth supplement to the 1973 edition of the District of Columbia Code has been prepared and published under the provisions of section 285b(6) of title 2, United States Code, as amended by Public Law 94-386, approved August 14, 1976. This supplement contains the additions to and changes in the general and permanent laws relating to or in force in the District of Columbia, enacted during the Ninety-third, Ninety-fourth, and the first session of the Ninety-fifth Congresses by Congress and by the Council of the District of Columbia (except laws applicable in the District of Columbia by reason of being general and permanent laws of the United States).

On completion of the second supplement to the 1973 edition of the District of Columbia Code, the Law Revision Counsel of the House of Representatives fulfilled his statutory responsibility to prepare and publish until January 2, 1975 (the effective date of the District of Columbia Self-Government and Governmental Reorganization Act), new editions of the District of Columbia Code and annual cumulative supplements thereto.

On January 27, 1976, the Council of the District of Columbia adopted Resolution 1-182, containing a request to Congress that the Law Revision Counsel continue the preparation and publication of the supplements to the District of Columbia Code until the current cycle of supplements is completed. Subsequent to transmittal of the resolution to Congress by the Chairman of the Council of the District of Columbia (see Cong. Rec., vol. 122, p. H871, Daily Issue; Exec. Comm. 2487), legislation was enacted (Public Law 94-386, approved August 14, 1976) directing the Law Revision Counsel to prepare and publish annual cumulative supplements to the District of Columbia Code through publication of the fifth annual supplement to the 1973 edition. Thereafter, new editions of the Code, and annual cumulative supplements thereto, are to be prepared and published under the direction of the Council of the District of Columbia.

This supplement, together with the 1973 edition, establishes *prima facie* those laws in effect on January 18, 1978, except that titles 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, and 28, having been enacted into law establish legal evidence of the law contained in those titles.

The 1973 edition of the Code was completely annotated with notes to decisions of the courts affecting the respective sections of the Code. These notes have been brought up to the indicated pages in the following reports:

98 S. Ct. 786; 567 F.2d 1391; 442 F. Supp. 918; 381 A.2d 1391

This supplement continues the practice of setting out notes captioned "Reference in text", "Codification", "Section referred to in other sections", and "Cross references". These notes have proved to be useful to Congress, the bench and bar, and the public.

Acts of the Council of the District of Columbia enacted on an emergency basis pursuant to section 1-146(a) of the Code are not reflected in the text of the Code because of their limited duration. However, notes captioned "Emergency act amendment" have been set out under various sections to provide a reference to emergency acts that amend or relate to the subject matter of the section.

This supplement has been prepared and published under the supervision of Edward F. Willett, Jr., Law Revision Counsel of the House of Representatives. Grateful acknowledgment is made of the cooperation by all who have helped in this work, particularly by the staff of the Office of the Law Revision Counsel and by the Government Printing Office.

Thomas P. O'Neill, Jr.

Speaker of the House of Representatives

Washington, D.C.

January 18, 1978.

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ACTS RELATING TO THE ESTABLISHMENT OF
THE DISTRICT OF COLUMBIA AND ITS VARIOUS
FORMS OF GOVERNMENTAL ORGANIZATION

DISTRICT OF COLUMBIA SELF-GOVERNMENT AND GOVERNMENTAL REORGANIZATION ACT

AN ACT To reorganize the governmental structure of the District of Columbia, to provide a charter for local government in the District of Columbia subject to acceptance by a majority of the registered qualified electors in the District of Columbia, to delegate certain legislative powers to the local government, to implement certain recommendations of the Commission on the Organization of the Government of the District of Columbia, and for other purposes

[Passed December 24, 1973]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE I—SHORT TITLE, PURPOSES, AND DEFINITIONS

SHORT TITLE

SEC. 101. This Act may be cited as the "District of Columbia Self-Government and Governmental Reorganization Act".

STATEMENT OF PURPOSES

SEC. 102. (a) Subject to the retention by Congress of the ultimate legislative authority over the Nation's Capital granted by article I, section 8, of the Constitution, the intent of Congress is to delegate certain legislative powers to the government of the District of Columbia; authorize the election of certain local officials by the registered qualified electors in the District of Columbia; grant to the inhabitants of the District of Columbia powers of local self-government; to modernize, reorganize, and otherwise improve the governmental structure of the District of Columbia; and, to the greatest extent possible, consistent with the constitutional mandate, relieve Congress of the burden of legislating upon essentially local District matters.

(b) Congress further intends to implement certain recommendations of the Commission on the Organization of the Government of the District of Columbia and take certain other actions irrespective of whether the charter for greater self-government provided for in title IV of this

Act is accepted or rejected by the registered qualified electors of the District of Columbia.

DEFINITIONS

SEC. 103. For the purposes of this Act—

- (1) The term "District" means the District of Columbia.
- (2) The term "Council" means the Council of the District of Columbia provided for by part A of title IV.
- (3) The term "Commissioner" means the Commissioner of the District of Columbia established under Reorganization Plan Numbered 3 of 1967.
- (4) The term "District of Columbia Council" means the Council of the District of Columbia established under Reorganization Plan Numbered 3 of 1967.
- (5) The term "Chairman" means, unless otherwise provided in this Act, the Chairman of the Council provided for by part A of title IV.
- (6) The term "Mayor" means the Mayor provided for by part B of title IV.
- (7) The term "act" includes any legislation passed by the Council, except where the term "Act" is used to refer to this Act or other Acts of Congress herein specified.
- (8) The term "capital project" means (A) any physical public betterment or improvement and any preliminary studies and surveys relative thereto; (B) the acquisition of property of a permanent nature; or (C) the purchase of equipment for any public betterment or improvement when first erected or acquired.
- (9) The term "pending", when applied to any capital project, means authorized but not yet completed.
- (10) The term "District revenues" means all funds derived from taxes, fees, charges, and miscellaneous receipts, including all annual Federal payments to the District authorized by law, and from the sale of bonds.
- (11) The term "election", unless the context otherwise provides, means an election held pursuant to the provisions of this Act.
- (12) The terms "publish" and "publication", unless otherwise specifically provided herein, mean publication in a newspaper of general circulation in the District.
- (13) The term "District of Columbia courts" means the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.
- (14) The term "resources" means revenues, balances, revolving funds, funds realized from borrowing, and the District share of Federal grant programs.
- (15) The term "budget" means the entire request for appropriations and loan or spending authority for all activities of all agencies of the District financed from all existing or proposed resources and shall include both operating and capital expenditures.

TITLE II—GOVERNMENTAL REORGANIZATION

REDEVELOPMENT LAND AGENCY

SEC. 201. The District of Columbia Redevelopment Act of 1945 (D.C. Code, secs. 5-701—5-719) is amended as follows:

(a) Subsection (a) of section 4 of such Act (D.C. Code, sec. 5-703(a)) is amended to read as follows:

"(a) The District of Columbia Redevelopment Land Agency is hereby established as an instrumentality of the District of Columbia government, and shall be composed of five members appointed by the Commissioner of the District of Columbia (hereinafter referred to as the 'Commissioner'), with the advice and consent of the Council of the District of Columbia (hereinafter referred to as the 'Council'). The Commissioner shall name one member as chairman. No more than two members may be officers of the District of Columbia government. Each member shall serve for a term of five years except that of the members first appointed under this section, one shall serve for a term of one year, one shall serve for a term of two years, one shall serve for a term of three years, one shall serve for a term of four years, and one shall serve for a term of five years, as designated by the Commissioner. The terms of the members first appointed under this section shall begin on or after January 2, 1975. Should any member who is an officer of the District of Columbia government cease to be such an officer, then his term as a member shall end on the day he ceases to be such an officer. Any person appointed to fill a vacancy in the Agency shall be appointed to serve for the re-

¹ Item 724 was added by Act Apr. 17, 1974, Pub. L. 93-268, § 3(b), 88 Stat. 87.

² Item 738 amended by Act Oct. 30, 1975, D.C. Law 1-27, § 2(b), 22 DCR 2471.

³ Section 741 was repealed by Act Apr. 17, 1974, Pub. L. 93-268, § 4(c), 88 Stat. 87.

mainder of the term during which such vacancy arose. Any member who holds no other salaried public position shall receive compensation at the rate of \$100 for each day such member is engaged in the actual performance of duties vested in the agency."

(b) Subsection (b) of section 4 of such Act (D.C. Code, sec. 5-703(b)) is amended—

(1) by inserting after "forth" at the end of the first sentence of such section " , except that nothing in this section shall prohibit the District of Columbia government from dissolving the corporation, eliminating the board of directors, or taking such other action with respect to the powers and duties of such Agency, including those actions specified in subsection (c), as is deemed necessary and appropriate", and

(2) by striking out in the second sentence "including the selection of its chairman and other officers," and inserting in lieu thereof "including the selection of officers other than its chairman,".

(c) Section 4 of such Act is amended by adding at the end thereof the following new subsection:

"(c) The Council is authorized, by act, to adopt legislation—

"(1) establishing, for the purpose of assuring uniform procedures relating to the disposition of complaints and other claims involving the Redevelopment Land Agency (or its successor) and other administrative units of the District of Columbia government, a factfinding board to receive, hear, and act on such complaints and claims arising out of or in connection with administrative and other actions of such Agency or units in carrying out their powers and functions;

"(2) providing that all planning, designing, construction, and supervision of public facilities which are to be contributed to any redevelopment area as the local non-cash grant-in-aid to the project under title I of the Housing Act of 1949, shall, to the extent practicable, be carried out by an appropriate District of Columbia department or agency on the basis of a contractual or other arrangement with the Redevelopment Land Agency or its successor;

"(3) providing that any occupied rental property owned by the Agency shall be maintained by such Agency (or its successor) in a safe and sanitary condition; or

"(4) providing that the Commissioner shall have authority to waive all or any part of any special assessments levied against abutting property owners for the cost of sewers, streets, curbs, gutters, sidewalks, utilities, and other supporting facilities or project improvements where the costs therefor to the District of Columbia can be applied as a non-cash local grant-in-aid, as defined by the Secretary of the Department of Housing and Urban Development."

(d) The first sentence of subsection (b) of section 5 of such Act (D.C. Code, sec. 5-704(b)) is amended to read as follows "Condemnation proceedings for the acquisition of real property for said purposes shall be conducted in accordance with subchapter II of chapter 13 of title 16 of the District of Columbia Code."

(e) None of the amendments contained in this section shall be construed to affect the eligibility of the District of Columbia Redevelopment Land Agency to continue participation in the small business procurement programs under section 8(a) of the Small Business Act (67 Stat. 547).

(f) For the purposes of subsection 713(d), employees in the District of Columbia Redevelopment Land Agency shall be deemed to be transferred to the District of Columbia as of the effective date of this title without a break in service.

NATIONAL CAPITAL HOUSING AUTHORITY

Sec. 202. (a) The National Capital Housing Authority (hereinafter referred to as the "Authority") established under the District of Columbia Alley Dwelling Act (D.C. Code, secs. 5-103—5-116) shall be an agency of the District of Columbia government subject to the organizational and reorganizational powers specified in sections 404(b) and 422(12) of this Act.

(b) All functions, powers, and duties of the President under the District of Columbia Alley Dwelling Act shall be vested in and exercised by the Commissioner. All employees, property (real and personal), and unexpended

balances (available or to be made available) of appropriations, allocations, and all other funds, and assets and liabilities of the Authority are authorized to be transferred to the District of Columbia government.

NATIONAL CAPITAL PLANNING COMMISSION AND MUNICIPAL PLANNING

SEC. 203. (a) Subsections (a) and (b) of section 2 of the Act entitled "An Act providing for a comprehensive development of the park and playground system of the National Capital", approved June 6, 1924 (D.C. Code, sec. 1-1002), are amended to read as follows:

"(a) (1) The National Capital Planning Commission (hereinafter referred to as the 'Commission') is created as the central Federal planning agency for the Federal Government in the National Capital, and to preserve the important historical and natural features thereof, except with respect to the United States Capitol buildings and grounds as defined in sections 1 and 16 of the Act of July 31, 1946 (40 U.S.C. 193a, 193m) [D.C. Code, secs. 9-118, 9-132], and to any extension thereof or additions thereto, or to buildings and grounds under the care of the Architect of the Capitol.

"(2) The Commissioner of the District of Columbia (hereinafter referred to as the 'Commissioner') shall be the central planning agency for the government of the District of Columbia (hereinafter referred to as the 'District') in the National Capital. The Commissioner shall be responsible for coordinating the planning activities of the District government and for preparing and implementing the District elements of the comprehensive plan for the National Capital, which may include land use elements, urban renewal and redevelopment elements, a multiyear program of public works for the District, and physical, social, economic, transportation, and population elements. The Commissioner's planning responsibility shall not extend to Federal or international projects and developments in the District, as determined by the Commission, or to the United States Capitol buildings and grounds as defined in sections 1 and 16 of the Act of July 31, 1946 (40 U.S.C. 193a, 193m) [D.C. Code, secs. 9-118, 9-132], or to any extension thereof or additions thereto, or to buildings and grounds under the care of the Architect of the Capitol. In carrying out his responsibility under this section, the Commissioner shall establish procedures for citizen participation in the planning process, and for appropriate meaningful consultation with any State or local government or planning agency in the National Capital region affected by any aspect of a comprehensive plan (including amendments thereto) affecting or relating to the District.

"(3) The Commissioner shall submit each District element of the comprehensive plan and any amendment thereto, to the Council for revision or modification, and adoption, by act, following public hearings. Following adoption and prior to implementation, the Council shall submit each such element or amendment to the Commission for review and comment with regard to the impact of such element or amendment on the interests or functions of the Federal Establishment in the National Capital.

"(4) (A) The Commission shall, within sixty days after receipt of such a District element of the comprehensive plan, or amendment thereto, from the Council, certify to the Council whether such element or amendment has a negative impact on the interests or functions of the Federal Establishment in the National Capital. If within such sixty days the Commission takes no action with respect to such element or amendment, such element or amendment shall be deemed to have no such negative impact, and such element or amendment shall be incorporated into the comprehensive plan for the National Capital and shall be implemented.

"(B) If the Commission finds, within such sixty days, such negative impact, it shall certify its findings and recommendations with respect to such negative impact to the Council. Upon receipt of the Commission's findings and recommendations, the Council may—

"(1) reject such findings and recommendations and resubmit such element or amendment, in a modified form, to the Commission for reconsideration; or

"(11) accept such findings and recommendations and modify such element or amendment accordingly.

If the Council accepts such findings and recommendations and modifies such element or amendment under clause (ii), the Council shall submit such element or amendment to the Commission for it to determine whether such modification has been made in accordance with the Commission's findings and recommendations. If, within thirty days after receipt of the modified element or amendment, the Commission takes no action with respect to such element or amendment, it shall be deemed to have been modified in accordance with such findings or recommendations, and shall be incorporated into the comprehensive plan for the National Capital and shall be implemented. If within such thirty days, the Commission again determines such element or amendment to have a negative impact on the functions or interests of the Federal Establishment in the National Capital such element or amendment shall not be implemented.

"(C) If the Council rejects the findings and recommendations of the Commission and resubmits a modified element or amendment to it under clause (i), the Commission shall, within sixty days after receipt of such modified element or amendment from the Council, determine whether such modified element or amendment has a negative impact on the interests or functions of the Federal Establishment within the National Capital. If the Commission finds such negative impact it shall certify its findings (in sufficient detail that the Council can understand the basis of the objection of the Commission) and recommendations to the Council, and such element or amendment shall not be implemented. If the Commission takes no action with respect to such modified element or amendment within such sixty days, such modified element or amendment shall be deemed to have no such negative impact and shall be incorporated into the comprehensive plan and it shall be implemented. Any element or amendment which the Commission has determined to have a negative impact on the Federal Establishment in the National Capital, and which is submitted again in a modified form not less than one year from the day it was last rejected by the Commission shall be deemed to be a new element or amendment for purposes of the review procedure specified in this section.

"(D) The Commission and the Commissioner shall jointly publish from time to time as appropriate, a comprehensive plan for the National Capital, consisting of the elements of the comprehensive plan for the Federal activities in the National Capital developed by the Commission, and the District elements developed by the Commissioner and the Council in accordance with the provisions of this section.

"(E) The Council may grant, upon request made to it by the Commission, an extension of any time limitation contained in this section.

"(F) The Commission and the Commissioner shall jointly establish procedures for appropriate meaningful continuing consultation throughout the planning process for the National Capital.

"(b) The National Capital Planning Commission shall be composed of—

"(1) ex officio, the Secretary of the Interior, the Secretary of Defense, the Administrator of the General Services Administration, the Commissioner, the Chairman of the District of Columbia Council, and the chairmen of the Committees on the District of Columbia of the Senate and the House of Representatives, or such alternates as each such person may from time to time designate to serve in his stead, and in addition,

"(2) five citizens with experience in city or regional planning, three of whom shall be appointed by the President and two of whom shall be appointed by the Commissioner. The citizen members appointed by the Commissioner shall be bona fide residents of the District of Columbia and of the three appointed by the President at least one shall be a bona fide resident of Virginia and at least one shall be a bona fide resident of Maryland. The terms of office of members appointed by the President shall be for six years, except that of the members first appointed, the President shall designate one to serve two years and one to serve four years. Members appointed by the Commissioner shall serve for four years. The members first appointed under this section shall assume their

office on January 2, 1975. Any person appointed to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The citizen members shall each receive compensation at the rate of \$100 for each day such member is engaged in the actual performance of duties vested in the Commission in addition to reimbursement for necessary expenses incurred by them in the performance of such duties."

(b) Subsection (e) of section 2 of such Act of June 6, 1924 (D.C. Code, sec. 1-1002(e)), is amended by (1) inserting "Federal activities in the" immediately before "National Capital" in clause (1); and (2) striking out "and District Governments," and inserting in lieu thereof "government" in clause (2).

(c) Section 4 of such Act of June 6, 1924 (D.C. Code, sec. 1-1004), is amended as follows:

(1) The first sentence of subsection (a) of such section is amended to read as follows: "The Commission is hereby charged with the duty of preparing and adopting a comprehensive, consistent, and coordinated plan for the National Capital, which plan shall include the Commission's recommendations or proposals for Federal developments or projects in the environs, and those District elements, or amendments thereto, of the comprehensive plan adopted by the Council and with respect to which the Commission has not determined a negative impact to exist, which elements or amendments shall be incorporated into such comprehensive plan without change."

(2) The third sentence of subsection (a) of such section is amended by striking out "within the District of Columbia" and "or District".

(3) Subsections (b) and (c) of such section are repealed.

(d) Section 5 of such Act of June 6, 1924 (D.C. Code, sec. 1-1005), is amended as follows:

(1) Subsection (c) of such section is amended to read as follows:

"(c) The provisions of section 16 of the Act approved June 20, 1938 (D.C. Code, sec. 5-428), are extended to include public buildings erected by any agency of the Government of the District of Columbia within the boundaries of the central area of the District, as such central area may be defined and from time to time redefined by concurrent action of the Commission and the Council, except that the Commission shall transmit its approval or disapproval respecting any such building within thirty days after the day it was submitted to the Commission."

(2) The first and second sentences of subsection (e) of such section are amended to read as follows: "It is the intent of this section to obtain cooperation and correlation of effort between the various agencies of the Federal Government which are responsible for public developments and projects, including the acquisition of lands. These agencies, therefore, shall look to the Commission and utilize it as the central planning agency for the Federal activities in the National Capital region."

(e) Section 6 of such Act (D.C. Code, sec. 1-1006) is repealed.

(f) Section 7 of such Act (D.C. Code, sec. 1-1007) is amended to read as follows:

"SEC. 7. (a) The Commission shall recommend a five-year program of public works projects for the Federal Government which it shall review annually with the agencies concerned. To this end, each Federal agency shall submit to the Commission in the first quarter of each fiscal year a copy of its advance program of capital improvements within the National Capital and its environs.

"(b) The Commissioner shall submit to the Commission, by February 1 of each year, a copy of the multiyear capital improvements plan for the District developed by him under section 444 of the District of Columbia Self-Government and Governmental Reorganization Act. The Commission shall have thirty days within which to comment upon such plan but shall have no authority to change or disapprove of such plan."

(g) The first sentence of subsection (a) of section 8 of such Act of June 6, 1924 (D.C. Code, sec. 1-1008(a)), is amended to read as follows: "The Commission may make a report and recommendation to the Zoning Commission of the District of Columbia, as provided in section 5 of the Act of March 1, 1920 (D.C. Code, sec. 5-417), on pro-

posed amendments of the zoning regulations and maps as to the relation, conformity, or consistency of such amendments with the comprehensive plan for the National Capital."

DISTRICT OF COLUMBIA MANPOWER ADMINISTRATION

SEC. 204. (a) All functions of the Secretary of Labor (hereafter in this section referred to as the "Secretary") under section 3 of the Act entitled "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes", approved June 6, 1933 (29 U.S.C. 49-49k), with respect to the maintenance of a public employment service for the District, are transferred to the Commissioner. After the effective date of this transfer, the Secretary shall maintain with the District the same relationship with respect to a public employment service in the District, including the financing of such service, as he has with the States (with respect to a public employment service in the States) generally.

(b) The Commissioner is authorized and directed to establish and administer a public employment service in the District and to that end he shall have all necessary powers to cooperate with the Secretary in the same manner as a State under the Act of June 6, 1933, specified in subsection (a).

(c) (1) Section 3(a) of the Act entitled "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes", approved June 6, 1933 (29 U.S.C. 49b(a)), is amended by striking out "to maintain a public employment service for the District of Columbia".

(2) Section 3(b) of such Act (29 U.S.C. 49b(b)) is amended by inserting "the District of Columbia," immediately after "Guam,".

(d) All functions of the Secretary and of the Director of Apprenticeship under the Act entitled "An Act to provide for voluntary apprenticeship in the District of Columbia", approved May 20, 1946 (D.C. Code, secs. 36-121-36-133), are transferred to and shall be exercised by the Commissioner. The office of Director of Apprenticeship provided for in section 3 of such Act (D.C. Code, sec. 36-123) is abolished.

(e) All functions of the Secretary under chapter 81 of title 5 of the United States Code, with respect to the processing of claims filed by employees of the Government of the District for compensation for work injuries, are transferred to and shall be exercised by the Commissioner, effective the day after the day on which the District establishes an independent personnel system or systems.

(f) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, available, or to be made available in connection with functions transferred to the Commissioner by the provisions of this section, as the Director of the Federal Office of Management and Budget shall determine, are authorized to be transferred from the Secretary to the Commissioner.

(g) Any employee in the competitive service of the United States transferred to the government of the District under the provisions of this section shall retain all the rights, benefits, and privileges pertaining thereto held prior to such transfer.

(h) The first section of the Act of August 16, 1937 (29 U.S.C. 50 et seq.) (relating to the welfare of apprentices), is amended by inserting at the end thereof "For the purposes of this Act the term 'State' shall include the District of Columbia." (Amended Aug. 29, 1974, Pub. L. 93-395, § 1(1), 88 Stat. 793.)

TITLE III—DISTRICT CHARTER PREAMBLE LEGISLATIVE POWER, AND CHARTER AMENDING PROCEDURE

DISTRICT CHARTER PREAMBLE

SEC. 301. The charter for the District of Columbia set forth in title IV shall establish the means of governance of the District following its acceptance by a majority of the registered qualified electors of the District voting thereon in the charter referendum held with respect thereto.

LEGISLATIVE POWER

SEC. 302. Except as provided in sections 601, 602, and 603, the legislative power of the District shall extend to all rightful subjects of legislation within the District consistent with the Constitution of the United States and the provisions of this Act subject to all the restrictions and limitations imposed upon the States by the tenth section of the first article of the Constitution of the United States.

CHARTER AMENDING PROCEDURE

SEC. 303. (a) The charter set forth in title IV (including any provision of law amended by such title), except sections 401(a) and 421(a), and part C of such title, may be amended by an act passed by the Council and ratified by a majority of the registered qualified electors of the District voting in the referendum held for such ratification. The Chairman of the Council shall submit all such acts to the Speaker of the House of Representatives and the President of the Senate on the day the Board of Elections and Ethics certifies that such act was ratified by a majority of the registered qualified electors voting thereon in such referendum.

(b) An amendment to the charter ratified by the registered qualified electors shall take effect only if within thirty-five calendar days (excluding Saturdays, Sundays, holidays, and days on which either House of Congress is not in session) of the date such amendment was submitted to the Congress both Houses of Congress adopt a concurrent resolution, according to the procedures specified in section 604 of this Act, approving such amendment.

(c) The Board of Elections and Ethics shall prescribe such rules as are necessary with respect to the distribution and signing of petitions and the holding of elections for ratifying amendments to title IV of this Act according to the procedures specified in subsection (a).

(d) The amending procedure provided in this section may not be used to enact any law or affect any law with respect to which the Council may not enact any act, resolution, or rule under the limitations specified in sections 601, 602, and 603. (Amended Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458.)

TITLE IV—THE DISTRICT CHARTER

PART A—THE COUNCIL

Subpart 1—Creation of the Council

CREATION AND MEMBERSHIP

SEC. 401. (a) There is established a Council of the District of Columbia; and the members of the Council shall be elected by the registered qualified electors of the District.

(b) (1) The Council established under subsection (a) shall consist of thirteen members elected on a partisan basis. The Chairman and four members shall be elected at large in the District, and eight members shall be elected one each from the eight election wards established, from time to time, under the District of Columbia Election Act. The term of office of the members of the Council shall be four years, except as provided in paragraph (3), and shall begin at noon on January 2 of the year following their election.

(2) In the case of the first election held for the office of member of the Council after the effective date of this title, not more than two of the at-large members (excluding the Chairman) shall be nominated by the same political party. Thereafter, a political party may nominate a number of candidates for the office of at-large member of the Council equal to one less than the total number of at-large members (excluding the Chairman) to be elected in such election.

(3) To fill a vacancy in the Office of Chairman, the Board of Elections and Ethics shall hold a special election in the District on the first Tuesday occurring more than one hundred and fourteen days after the date on which such vacancy occurs, unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within sixty days of the date on which a special election would otherwise have been held under the provisions of this paragraph. The person elected Chairman to fill a vacancy in the Office of Chairman shall take office

on the day in which the Board of Elections and Ethics certifies his election, and shall serve as Chairman only for the remainder of the term during which such vacancy occurred. When the Office of Chairman becomes vacant, the Council shall select one of the elected at-large members of the Council to serve as Chairman and one to serve as Chairman pro tempore until the election of a new Chairman.

(4) Of the members first elected after the effective date of this title, the Chairman and two members elected at-large and four of the members elected from election wards shall serve for four-year terms; and two of the at-large members and four of the members elected from election wards shall serve for two-year terms. The members to serve the four-year terms and the members to serve the two-year terms shall be determined by the Board of Elections and Ethics by lot, except that not more than one of the at-large members nominated by any political party shall serve for any such four-year term.

(c) The Council may establish and select such other officers and employees as it deems necessary and appropriate to carry out the functions of the Council.

(d) (1) In the event of a vacancy in the Council of a member elected from a ward, the Board of Elections and Ethics shall hold a special election in such ward to fill such vacancy on the first Tuesday occurring more than one hundred and fourteen days after the date on which such vacancy occurs, unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within sixty days of the date on which a special election would otherwise have been held under the provisions of this subsection. The person elected as a member to fill a vacancy on the Council shall take office on the day on which the Board of Elections and Ethics certifies his election, and shall serve as a member of the Council only for the remainder of the term during which such vacancy occurred.

(2) In the event of a vacancy in the office of Mayor, and if the Chairman becomes a candidate for the office of Mayor to fill such vacancy, the office of Chairman shall be deemed vacant as of the date of the filing of his candidacy. In the event of a vacancy in the Council of a member elected at large, other than a vacancy in the office of Chairman, who is affiliated with a political party, the central committee of such political party shall appoint a person to fill such vacancy, until the Board of Elections and Ethics can hold a special election to fill such vacancy, and such special election shall be held on the first Tuesday occurring more than one hundred and fourteen days after the date on which such vacancy occurs unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within sixty days of the date on which a special election would otherwise be held under the provision of this subsection. The person appointed to fill such vacancy shall take office on the date of his appointment and shall serve as a member of the Council until the day on which the Board certifies the election of the member elected to fill such vacancy in either a special election or a general election. The person elected as a member to fill such a vacancy on the Council shall take office on the day on which the Board of Elections and Ethics certifies his election, and shall serve as a member of the Council only for the remainder of the term during which such vacancy occurred. With respect to a vacancy on the Council of a member elected at large who is not affiliated with any political party, the Council shall appoint a similarly nonaffiliated person to fill such vacancy until such vacancy can be filled in a special election in the manner prescribed in this paragraph. Such person appointed by the Council shall take office and serve as a member at the same time and for the same term as a member appointed by a central committee of a political party.

(3) Notwithstanding any other provision of this section, at no time shall there be more than three members (including the Chairman) serving at large on the Council who are affiliated with the same political party. (Amended Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458; Aug. 29, 1974, Pub. L. 93-395, § 1(2), 88 Stat. 793.)

QUALIFICATIONS FOR HOLDING OFFICE

SEC. 402. No person shall hold the office of member of the Council, including the office of Chairman, unless he (a) is a qualified elector, (b) is domiciled in the District and if he is nominated for election from a particular ward, resides in the ward from which he is nominated, (c) has resided and been domiciled in the District for one year immediately preceding the day on which the general or special election for such office is to be held, and (d) holds no public office (other than his employment in and position as a member of the Council), for which he is compensated in an amount in excess of his actual expenses in connection therewith, except that nothing in this clause shall prohibit any such person, while a member of the Council, from serving as a delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice President of the United States, or from holding an appointment in a Reserve component of an armed force of the United States other than a member serving on active duty under a call for more than thirty days. A member of the Council shall forfeit his office upon failure to maintain the qualifications required by this section, and, in the case of the Chairman, section 403(c).

COMPENSATION

SEC. 403. (a) Each member of the Council shall receive compensation, payable in periodic installments, at a rate equal to the maximum rate as may be established from time to time for grade 12 of the General Schedule under section 5332 of title 5 of the United States Code. On and after the end of the two-year period beginning on the day the members of the Council first elected under this Act take office, the Council may, by act, increase or decrease such rate of compensation. Such change in compensation, upon enactment by the Council in accordance with the provisions of this Act, shall apply with respect to the term of members of the Council beginning after the date of enactment of such change.

(b) All members of the Council shall receive additional allowances for actual and necessary expenses incurred in the performance of their duties of office as may be approved by the Council.

(c) The Chairman shall receive, in addition to the compensation to which he is entitled as a member of the Council, \$10,000 per annum, payable in equal installments, for each year he serves as Chairman, but the Chairman shall not engage in any employment (whether as an employee or as a self-employed individual) or hold any position (other than his position as Chairman), for which he is compensated in an amount in excess of his actual expenses in connection therewith.

POWERS OF THE COUNCIL

SEC. 404. (a) Subject to the limitations specified in title VI of this Act, the legislative power granted to the District by this Act is vested in and shall be exercised by the Council in accordance with this Act. In addition, except as otherwise provided in this Act, all functions granted to or imposed upon, or vested in or transferred to the District of Columbia Council, as established by Reorganization Plan Numbered 3 of 1967, shall be carried out by the Council in accordance with the provisions of this Act.

(b) The Council shall have authority to create, abolish, or organize any office, agency, department, or instrumentality of the government of the District and to define the powers, duties, and responsibilities of any such office, agency, department, or instrumentality.

(c) The Council shall adopt and publish rules of procedures which shall include provisions for adequate public notification of intended actions of the Council.

(d) Every act shall be published and codified upon becoming law as the Council may direct.

(e) An act passed by the Council shall be presented by the Chairman of the Council to the Mayor, who shall, within ten calendar days (excluding Saturdays, Sundays, and holidays) after the act is presented to him, either approve or disapprove such act. If the Mayor shall approve such act, he shall indicate the same by affixing his signature thereto, and such act shall become law subject to

the provisions of section 602(c). If the Mayor shall disapprove such act, he shall, within ten calendar days (excluding Saturdays, Sundays, and holidays) after it is presented to him, return such act to the Council setting forth in writing his reasons for such disapproval. If any act so passed shall not be returned to the Council by the Mayor within ten calendar days after it shall have been presented to him, the Mayor shall be deemed to have approved it, and such act shall become law subject to the provisions of section 602(c). If, within thirty calendar days after an act has been timely returned by the Mayor to the Council with his disapproval, two-thirds of the members of the Council present and voting vote to reenact such act, the act so reenacted shall be transmitted by the Chairman to the President of the United States. Subject to the provisions of section 602(c), such act, except any act of the Council submitted to the President in accordance with the Budget and Accounting Act, 1921 [31 U.S.C. 1 et seq.], shall become law at the end of the thirty day period beginning on the date of such transmission, unless during such period the President disapproves such act.

(f) In the case of any budget act adopted by the Council pursuant to section 446 of this Act and submitted to the Mayor in accordance with subsection (e) of this section, the Mayor shall have power to disapprove any items or provisions, or both, of such act and approve the remainder. In any case in which the Mayor so disapproves of any item or provision, he shall append to the act when he signs it a statement of the item or provision which he disapproves, and shall, within such ten-day period, return a copy of the act and statement with his objections to the Council. If, within thirty calendar days after any such item or provision so disapproved has been timely returned by the Mayor to the Council, two-thirds of the members of the Council present and voting vote to reenact any such item or provision, such item or provision so reenacted shall be transmitted by the Chairman to the President of the United States. In any case in which the Mayor fails to timely return any such item or provision so disapproved to the Council, the Mayor shall be deemed to have approved such item or provision not returned, and such item or provision not returned shall be transmitted by the Chairman to the President of the United States.

Subpart 2—Organization and Procedure of the Council

THE CHAIRMAN

SEC. 411. (a) The Chairman shall be the presiding officer of the Council.

(b) When the Office of Mayor is vacant, the Chairman shall act in his stead. While the Chairman is Acting Mayor he shall not exercise any of his authority as Chairman or member of the Council.

ACTS, RESOLUTIONS, AND REQUIREMENTS FOR QUORUM

SEC. 412. (a) The Council, to discharge the powers and duties imposed herein, shall pass acts and adopt resolutions, upon a vote of a majority of the members of the Council present and voting, unless otherwise provided in this Act or by the Council. The Council shall use acts for all legislative purposes. Each proposed act shall be read twice in substantially the same form, with at least thirteen days intervening between each reading. Upon final adoption by the Council each act shall be made immediately available to the public in a manner which the Council shall determine. If the Council determines, by a vote of two-thirds of the members, that emergency circumstances make it necessary that an act be passed after a single reading, or that it take effect immediately upon enactment, such act shall be effective for a period of not to exceed ninety days. Resolutions shall be used to express simple determinations, decisions, or directions of the Council of a special or temporary character.

(b) A special election may be called by resolution of the Council to present for an advisory referendum vote of the people any proposition upon which the Council desires to take action.

(c) A majority of the Council shall constitute a quorum for the lawful convening of any meeting and for the transaction of business of the Council, except a lesser number may hold hearings.

INVESTIGATIONS BY THE COUNCIL

SEC. 413. (a) The Council, or any committee or person authorized by it, shall have power to investigate any matter relating to the affairs of the District, and for that purpose may require the attendance and testimony of witnesses and the production of books, papers, and other evidence. For such purpose any member of the Council (if the Council is conducting the inquiry) or any member of the committee may issue subpoenas and administer oaths upon resolution adopted by the Council or committee, as appropriate.

(b) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Council by resolution may refer the matter to the Superior Court of the District of Columbia, which may by order require such person to appear and give or produce testimony or books, papers, or other evidence, bearing upon the matter under investigation. Any failure to obey such order may be punished by such Court as a contempt thereof as in the case of failure to obey a subpoena issued, or to testify, in a case pending before such Court.

PART B—THE MAYOR

ELECTION, QUALIFICATIONS, VACANCY, AND COMPENSATION

SEC. 421. (a) There is established the Office of Mayor of the District of Columbia; and the Mayor shall be elected by the registered qualified electors of the District.

(b) The Mayor established by subsection (a) shall be elected, on a partisan basis, for a term of four years beginning at noon on January 2 of the year following his election.

(c) (1) No person shall hold the Office of Mayor unless he (A) is a qualified elector, (B) has resided and been domiciled in the District for one year immediately preceding the day on which the general or special election for Mayor is to be held, and (C) is not engaged in any employment (whether as an employee or as a self-employed individual) and holds no public office or position (other than his employment in and position as Mayor), for which he is compensated in an amount in excess of his actual expenses in connection therewith, except that nothing in this clause shall be construed as prohibiting such person, while holding the Office of Mayor, from serving as a delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice President of the United States, or from holding an appointment in a reserve component of an armed force of the United States other than a member serving on active duty under a call for more than thirty days. The Mayor shall forfeit his office upon failure to maintain the qualifications required by this paragraph.

(2) To fill a vacancy in the Office of Mayor, the Board of Elections and Ethics shall hold a special election in the District on the first Tuesday occurring more than one hundred and fourteen days after the date on which such vacancy occurs, unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within sixty days of the date on which a special election would otherwise have been held under the provisions of this paragraph. The person elected Mayor to fill a vacancy in the Office of Mayor shall take office on the day on which the Board of Elections and Ethics certifies his election, and shall serve as Mayor only for the remainder of the term during which such vacancy occurred. When the Office of Mayor becomes vacant the Chairman shall become Acting Mayor and shall serve from the date such vacancy occurs until the date on which the Board of Elections and Ethics certifies the election of the new Mayor at which time he shall again become Chairman. While the Chairman is Acting Mayor, the Chairman shall receive the compensation regularly paid the Mayor, and shall receive no compensation as Chairman or member of the Council. While the Chairman is Acting Mayor, the Council shall select one of the elected at-large members of the Council to serve as Chairman and one to serve as chairman pro tempore, until the return of the regularly elected Chairman.

(d) The Mayor shall receive compensation payable in equal installments, at a rate equal to the maximum rate, as may be established from time to time, for level

III of the Executive Schedule in section 5314 of title 5 of the United States Code. Such rate of compensation may be increased or decreased by act of the Council. Such change in such compensation, upon enactment by the Council in accordance with the provisions of this Act, shall apply with respect to the term of Mayor next beginning after the date of such change. In addition, the Mayor may receive an allowance, in such amount as the Council may from time to time establish, for official, reception, and representation expenses, which he shall certify in reasonable detail to the Council. (Amended Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458.)

POWERS AND DUTIES

SEC. 422. The executive power of the District shall be vested in the Mayor who shall be the chief executive officer of the District government. In addition, except as otherwise provided in this Act, all functions granted to or vested in the Commissioner of the District of Columbia, as established under Reorganization Plan Numbered 3 of 1967, shall be carried out by the Mayor in accordance with this Act. The Mayor shall be responsible for the proper execution of all laws relating to the District, and for the proper administration of the affairs of the District coming under his jurisdiction or control, including but not limited to the following powers, duties, and functions:

(1) The Mayor may designate the officer or officers of the executive department of the District who may, during periods of disability or absence from the District of the Mayor execute and perform the powers and duties of the Mayor.

(2) The Mayor shall administer all laws relating to the appointment, promotion, discipline, separation, and other conditions of employment of personnel in the office of the Mayor, personnel in executive departments of the District, and members of boards, commissions, and other agencies, who, under laws in effect on the date immediately preceding the effective date of section 711(a) of this Act, were subject to appointment and removal by the Commissioner of the District of Columbia. All actions affecting such personnel and such members shall, until such time as legislation is enacted by the Council superseding such laws and establishing a permanent District government merit system, pursuant to paragraph (3), continue to be subject to the provisions of Acts of Congress relating to the appointment, promotion, discipline, separation, and other conditions of employment applicable to officers and employees of the District government, to section 713(d) of this Act, and where applicable, to the provisions of the joint agreement between the Commissioners and the Civil Service Commission authorized by Executive Order Numbered 5491 of November 18, 1930, relating to the appointment of District personnel. He shall appoint or assign persons to positions formerly occupied, ex-officio, by the Commissioner of the District of Columbia or by the Assistant to the Commissioner and shall have power to remove such persons from such positions. The officers and employees of each agency with respect to which legislative power is delegated by this Act and which immediately prior to the effective date of section 711(a) of this Act, was not subject to the administrative control of the Commissioner of the District, shall continue to be appointed and removed in accordance with applicable laws until such time as such laws may be superseded by legislation passed by the Council establishing a permanent District government merit system pursuant to paragraph (3).

(3) The Mayor shall administer the personnel functions of the District covering employees of all District departments, boards, commissions, offices and agencies, except as otherwise provided by this Act. Personnel legislation enacted by Congress prior to or after the effective date of this section, including, without limitation, legislation relating to appointments, promotions, discipline, separations, pay, unemployment compensation, health, disability and death benefits, leave, retirement, insurance, and veterans' preference applicable to employees of the District government as set forth in section 714(c), shall continue to be applicable until such time as the Council shall, pursuant to this section, provide for coverage under a District government merit system. The District govern-

ment merit system shall be established by act of the Council. The system may provide for continued participation in all or part of the Federal Civil Service System and shall provide for persons employed by the District government immediately preceding the effective date of such system personnel benefits, including but not limited to pay tenure, leave, residence, retirement, health and life insurance, and employee disability and death benefits, all at least equal to those provided by legislation enacted by Congress, or regulation adopted pursuant thereto, and applicable to such officers and employees immediately prior to the effective date of the system established pursuant to this Act. The District government merit system shall take effect not earlier than one year nor later than five years after the effective date of this section.

(4) The Mayor shall, through the heads of administrative boards, offices, and agencies, supervise and direct the activities of such boards, offices, and agencies.

(5) The Mayor may submit drafts of acts to the Council.

(6) The Mayor may delegate any of his functions (other than the function of approving or disapproving acts passed by the Council or the function of approving contracts between the District and the Federal Government under section 731) to any officer, employee, or agency of the executive office of the Mayor, or to any director of an executive department who may, with the approval of the Mayor, make a further delegation of all or a part of such functions to subordinates under his jurisdiction.

(7) The Mayor shall appoint a City Administrator, who shall serve at the pleasure of the Mayor. The City Administrator shall be the chief administrative officer of the Mayor, and he shall assist the Mayor in carrying out his functions under this Act, and shall perform such other duties as may be assigned to him by the Mayor. The City Administrator shall be paid at a rate established by the Mayor, not to exceed level IV of the Executive Schedule established under section 5315 of title 5 of the United States Code.

(8) The Mayor may propose to the executive or legislative branch of the United States Government legislation or other action dealing with any subject whether or not falling within the authority of the District government, as defined in this Act.

(9) The Mayor, as custodian thereof, shall use and authenticate the corporate seal of the District in accordance with law.

(10) The Mayor shall have the right, under rules to be adopted by the Council, to be heard by the Council or any of its committees.

(11) The Mayor is authorized to issue and enforce administrative orders, not inconsistent with this or any other Act of the Congress or any act of the Council, as are necessary to carry out his functions and duties.

(12) The Mayor may reorganize the offices, agencies, and other entities within the executive branch of the government of the District by submitting to the Council a detailed plan of such reorganization. Such a reorganization plan shall be valid only if the Council does not adopt, within sixty days (excluding Saturdays, Sundays, and holidays) after such reorganization plan is submitted to it by the Mayor, a resolution disapproving such reorganization.

MUNICIPAL PLANNING

SEC. 423. (a) The Mayor shall be the central planning agency for the District. He shall be responsible for the coordination of planning activities of the municipal government and the preparation and implementation of the District's elements of the comprehensive plan for the National Capital which may include land use elements, urban renewal and redevelopment elements, a multi-year program of municipal public works for the District, and physical, social, economic, transportation, and population elements. The Mayor's planning responsibility shall not extend to Federal and international projects and developments in the District, as determined by the National Capital Planning Commission, or to the United States Capitol buildings and grounds as defined in sections 1 and 16 of the Act of July 31, 1946 (40 U.S.C. 193a, 193m) [D.C. Code, secs. 9-118, 9-132], or to any extension thereof or addition thereto, or to buildings and grounds under the care of the Architect of the Capitol. In carrying out

his responsibilities under this section, the Mayor shall establish procedures for citizen involvement in the planning process and for appropriate meaningful consultation with any State or local government or planning agency in the National Capital region affected by an aspect of a proposed District element of the comprehensive plan (including amendments thereto) affecting or relating to the District.

(b) The Mayor shall submit the District's elements and amendments thereto, to the Council for revision or modification, and adoption by act, following public hearings. Following adoption and prior to implementation, the Council shall submit such elements and amendments thereto, to the National Capital Planning Commission for review and comment with regard to the impact of such elements or amendments on the interests and functions of the Federal Establishment, as determined by the Commission.

(c) Such elements and amendments thereto shall be subject to and limited by determinations with respect to the interests and functions of the Federal Establishment as determined in the manner provided by Act of Congress.

PART C—THE JUDICIARY

JUDICIAL POWERS

SEC. 431. (a) The judicial power of the District is vested in the District of Columbia Court of Appeals and the Superior Court of the District of Columbia. The Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District and of any criminal case under any law applicable exclusively to the District. The Superior Court has no jurisdiction over any civil or criminal matter over which a United States court has exclusive jurisdiction pursuant to an Act of Congress. The Court of Appeals has jurisdiction of appeals from the Superior Court and, to the extent provided by law, to review orders and decisions of the Mayor, the Council, or any agency of the District. The District of Columbia courts shall also have jurisdiction over any other matters granted to the District of Columbia courts by other provisions of law.

(b) The chief judge of a District of Columbia court shall be designated by the District of Columbia Judicial Nominating Commission established by section 434 from among the judges of the court in regular active service, and shall serve as chief judge for a term of four years or until his successor is designated, except that his term as chief judge shall not extend beyond the chief judge's term as a judge of a District of Columbia court. He shall be eligible for redesignation as chief judge.

(c) A judge of a District of Columbia court appointed on or after the date of enactment of the District of Columbia Court Reorganization Act of 1970 [July 29, 1970] shall be appointed for a term of fifteen years subject to mandatory retirement at age seventy or removal, suspension, or involuntary retirement pursuant to section 432 and upon completion of such term, such judge shall continue to serve until reappointed or his successor is appointed and qualifies. A judge may be reappointed as provided in subsection (c) of section 433.

(d) (1) There is established a District of Columbia Commission on Judicial Disabilities and Tenure (hereinafter referred to as the "Tenure Commission"). The Tenure Commission shall consist of seven members selected in accordance with the provisions of subsection (e). Such members shall serve for terms of six years, except that the member selected in accordance with subsection (e) (3) (A) shall serve for five years; of the members first selected in accordance with subsection (e) (3) (B), one member shall serve for three years and one member shall serve for six years; of the members first selected in accordance with subsection (e) (3) (C), one member shall serve for a term of three years and one member shall serve for five years; the member first selected in accordance with subsection (e) (3) (D) shall serve for six years; and the member first appointed in accordance with subsection (e) (3) (E) shall serve for six years. In making the respective first appointments according to subsections (e) (3) (B) and (e) (3) (C), the Mayor and the Board of Governors of the unified District of Columbia Bar shall designate, at the time of such appointments, which member shall serve for the shorter term and which member shall serve for the longer term.

(2) The Tenure Commission shall act only at meetings called by the Chairman or a majority of the Tenure Commission held after notice has been given of such meeting to all Tenure Commission members.

(3) The Tenure Commission shall choose annually, from among its members, a Chairman and such other officers as it may deem necessary. The Tenure Commission may adopt such rules of procedures not inconsistent with this Act as may be necessary to govern the business of the Tenure Commission.

(4) The District government shall furnish to the Tenure Commission, upon the request of the Tenure Commission, such records, information, services, and such other assistance and facilities as may be necessary to enable the Tenure Commission properly to perform its functions. Information so furnished shall be treated by the Tenure Commission as privileged and confidential.

(e) (1) No person may be appointed to the Tenure Commission unless he—

(A) is a citizen of the United States;

(B) is a bona fide resident of the District and has maintained an actual place of abode in the District for at least ninety days immediately prior to his appointment; and

(C) is not an officer or employee of the legislative branch or of an executive or military department or agency of the United States (listed in sections 101 and 102 of title 5 of the United States Code); and (except with respect to the person appointed or designated according to paragraph (3)(E)) is not an officer or employee of the judicial branch of the United States, or an officer or employee of the District government (including its judicial branch).

(2) Any vacancy on the Tenure Commission shall be filled in the same manner in which the original appointment was made. Any person so appointed to fill a vacancy occurring other than upon the expiration of a prior term shall serve only for the remainder of the unexpired term of his predecessor.

(3) In addition to all other qualifications listed in this section, lawyer members of the Tenure Commission shall have the qualifications prescribed for persons appointed as judges of the District of Columbia courts. Members of the Tenure Commission shall be appointed as follows:

(A) One member shall be appointed by the President of the United States.

(B) Two members shall be appointed by the Board of Governors of the unified District of Columbia Bar, both or whom shall have been engaged in the practice of law in the District for at least five successive years preceding their appointment.

(C) Two members shall be appointed by the Mayor, one of whom shall not be a lawyer.

(D) One member shall be appointed by the Council, and shall not be a lawyer.

(E) One member shall be appointed by the chief judge of the United States District Court for the District of Columbia, and such member shall be an active or retired Federal judge serving in the District.

No person may serve at the same time on both the District of Columbia Judicial Nomination Commission and on the District of Columbia Commission on Judicial Disabilities and Tenure.

(f) Any member of the Tenure Commission who is an active or retired Federal judge shall serve without additional compensation. Other members shall receive the daily equivalent at the rate provided by grade 18 of the General Schedule, established under section 5332 of title 5 of the United States Code, while actually engaged in service for the Commission.

(g) The Tenure Commission shall have the power to suspend, retire, or remove a judge of a District of Columbia court as provided in section 432. (Amended Oct. 13, 1977, Pub. L. 95-131, § 3(a), 91 Stat. 1155.)

REMOVAL, SUSPENSION, AND INVOLUNTARY RETIREMENT

SEC. 432. (a) (1) A judge of a District of Columbia court shall be removed from office upon the filing in the District of Columbia Court of Appeals by the Tenure Commission of an order of removal certifying the entry, in any court within the United States, of a final judgment of conviction.

¹ So in original. Probably should be "in".

tion of a crime which is punishable as a felony under Federal law or which would be a felony in the District.

(2) A judge of a District of Columbia court shall also be removed from office upon affirmance of an appeal from an order of removal filed in the District of Columbia Court of Appeals by the Tenure Commission (or upon expiration of the time within which such an appeal may be taken) after a determination by the Tenure Commission of—

(A) willful misconduct in office,

(B) willful and persistent failure to perform judicial duties, or

(C) any other conduct which is prejudicial to the administration of justice or which brings the judicial office into disrepute.

(b) A judge of a District of Columbia court shall be involuntarily retired from office when (1) the Tenure Commission determines that the judge suffers from a mental or physical disability (including habitual intemperance) which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of his judicial duties, and (2) the Tenure Commission files in the District of Columbia Court of Appeals an order of involuntary retirement and the order is affirmed on appeal or the time within which an appeal may be taken from the order has expired.

(c) (1) A judge of a District of Columbia court shall be suspended, without salary—

(A) upon—

(i) proof of his conviction of a crime referred to in subsection (a) (1) which has not become final, or

(ii) the filing of an order of removal under subsection

(a) (2) which has not become final; and

(B) upon the filing by the Tenure Commission of an order of suspension in the District of Columbia Court of Appeals.

Suspension under this paragraph shall continue until termination of all appeals. If the conviction is reversed or the order of removal is set aside, the judge shall be reinstated and shall recover his salary and all rights and privileges of his office.

(2) A judge of a District of Columbia court shall be suspended from all judicial duties, with such retirement salary as he may be entitled, upon the filing by the Tenure Commission of an order of involuntary retirement under subsection (b) in the District of Columbia Court of Appeals. Suspension shall continue until termination of all appeals. If the order of involuntary retirement is set aside, the judge shall be reinstated and shall recover his judicial salary less any retirement salary received and shall be entitled to all the rights and privileges of his office.

(3) A judge of a District of Columbia court shall be suspended from all or part of his judicial duties, with salary, if the Tenure Commission, upon concurrence of five members, (A) orders a hearing for the removal or retirement of the judge pursuant to this subchapter and determines that his suspension is in the interest of the administration of justice, and (B) files an order of suspension in the District of Columbia Court of Appeals. The suspension shall terminate as specified in the order (which may be modified, as appropriate, by the Tenure Commission) but in no event later than the termination of all appeals.

NOMINATION AND APPOINTMENT OF JUDGES

SEC. 433. (a) Except as provided in section 434(d) (1), the President shall nominate, from the list of persons recommended to him by the District of Columbia Judicial Nomination Commission established under section 434, and, by and with the advice and consent of the Senate, appoint all judges of the District of Columbia courts.

(b) No person may be nominated or appointed a judge of a District of Columbia court unless he—

(1) is a citizen of the United States;

(2) is an active member of the unified District of Columbia Bar and has been engaged in the active practice of law in the District for the five years immediately preceding his nomination or for such five years has been on the faculty of a law school in the District, or has been employed as a lawyer by the United States or the District of Columbia government;

(3) is a bona fide resident of the District of Columbia and has maintained an actual place of abode in the District for at least ninety days immediately prior to his nomination, and shall retain such residency as long as he serves as such judge, except judges appointed prior to the effective date of this part who retain residency as required by section 1501(a) of title 11 of the District of Columbia Code shall not be required to be residents of the District to be eligible for reappointment or to serve any term to which reappointed;

(4) is recommended to the President, for such nomination and appointment, by the District of Columbia Judicial Nomination Commission; and

(5) has not served, within a period of two years prior to his nomination, as a member of the Tenure Commission or of the District of Columbia Judicial Nomination Commission.

(c) Not less than three months prior to the expiration of his term of office, any judge of the District of Columbia courts may file with the Tenure Commission a declaration of candidacy for reappointment. If a declaration is not so filed by any judge, a vacancy shall result from the expiration of his term of office and shall be filled by appointment as provided in subsections (a) and (b). If a declaration is so filed, the Tenure Commission shall, not less than thirty days prior to the expiration of the declaring candidate's term of office, prepare and submit to the President a written evaluation of the declaring candidate's performance during his present term of office and his fitness for reappointment to another term. If the Tenure Commission determines the declaring candidate to be exceptionally well qualified or well qualified for reappointment to another term, then the term of such declaring candidate shall be automatically extended for another full term, subject to mandatory retirement, suspension, or removal. If the Tenure Commission determines the declaring candidate to be qualified for reappointment to another term, then the President may nominate such candidate, in which case the President shall submit to the Senate for advice and consent the re-nomination of the declaring candidate as judge. If the President determines not to so nominate such declaring candidate, he shall nominate another candidate for such position only in accordance with the provisions of subsections (a) and (b). If the Tenure Commission determines the declaring candidate to be unqualified for reappointment to another term, then the President shall not submit to the Senate for advice and consent the re-nomination of the declaring candidate as judge and such judge shall not be eligible for reappointment or appointment as a judge of a District of Columbia court.

DISTRICT OF COLUMBIA JUDICIAL NOMINATION COMMISSION

SEC. 434. (a) There is established for the District of Columbia the District of Columbia Judicial Nomination Commission (hereafter in this section referred to as the "Commission"). The Commission shall consist of seven members selected in accordance with the provisions of subsection (b). Such member shall serve for terms of six years, except that the member selected in accordance with subsection (b) (4) (A) shall serve for five years; of the members first selected in accordance with subsection (b) (4) (B), one member shall serve for three years and one member shall serve for six years; of the members first selected in accordance with subsection (b) (4) (C), one member shall serve for a term of three years and one member shall serve for five years; the member first selected in accordance with subsection (b) (4) (D) shall serve for six years; and the member first appointed in accordance with subsection (b) (4) (E) shall serve for six years. In making the respective first appointments according to subsections (b) (4) (B) and (b) (4) (C), the Mayor and the Board of Governors of the unified District of Columbia Bar shall designate, at the time of such appointments, which member shall serve for the shorter term and which member shall serve for the longer term.

(b) (1) No person may be appointed to the Commission unless he—

(A) is a citizen of the United States;

(B) is a bona fide resident of the District and has maintained an actual place of abode in the District for at least 90 days immediately prior to his appointment; and

(C) is not a member, officer, or employee of the legislative branch or of an executive or military department or agency of the United States (listed in sections 101 and 102 of title 5 of the United States Code); and (except with respect to the person appointed or designated according to paragraph (4)(E)) is not an officer or employee of the judicial branch of the United States, or an officer or employee of the District government (including its judicial branch).

(2) Any vacancy on the Commission shall be filled in the same manner in which the original appointment was made. Any person so appointed to fill a vacancy occurring other than upon the expiration of a prior term shall serve only for the remainder of the unexpired term of his predecessor.

(3) It shall be the function of the Commission to submit nominees for appointment to positions as judges of the District of Columbia courts in accordance with section 433 of this Act.

(4) In addition to all other qualifications listed in this section, lawyer members of the Commission shall have the qualifications prescribed for persons appointed as judges for the District of Columbia courts. Members of the Commission shall be appointed as follows:

(A) One member shall be appointed by the President of the United States.

(B) Two members shall be appointed by the Board of Governors of the unified District of Columbia Bar, both of whom shall have been engaged in the practice of law in the District for at least five successive years preceding their appointment.

(C) Two members shall be appointed by the Mayor, one of whom shall not be a lawyer.

(D) One member shall be appointed by the Council, and shall not be a lawyer.

(E) One member shall be appointed by the chief judge of the United States District Court for the District of Columbia, and such member shall be an active or retired Federal judge serving in the District.

(5) Any member of the Commission who is an active or retired Federal judge shall serve without additional compensation. Other members shall receive the daily equivalent at the rate provided by grade 18 of the General Schedule, established under section 5332 of title 5 of the United States Code, while actually engaged in service for the Commission.

(c) (1) The Commission shall act only at meetings called by the Chairman or a majority of the Commission held after notice has been given of such meeting to all Commission members.

(2) The Commission shall choose annually, from among its members, a Chairman, and such other officers as it may deem necessary. The Commission may adopt such rules of procedures not inconsistent with this Act as may be necessary to govern the business of the Commission.

(3) The District government shall furnish to the Commission, upon the request of the Commission, such records, information, services, and such other assistance and facilities as may be necessary to enable the Commission properly to perform its function. Information so furnished shall be treated by the Commission as privileged and confidential.

(d) (1) In the event of a vacancy in any position of the judge of a District of Columbia court, the Commission shall, within thirty days following the occurrence of such vacancy, submit to the President, for possible nomination and appointment, a list of three persons for each vacancy. If more than one vacancy exists at one given time, the Commission must submit lists in which no person is named more than once and the President may select more than one nominee from one list. Whenever a vacancy will occur by reason of the expiration of such a judge's term of office, the Commission's list of nominees shall be submitted to the President not less than thirty days prior to the occurrence of such vacancy. In the event the President fails to nominate, for Senate confirmation, one of the persons on the list submitted to him under this section within sixty days after receiving such list, the Commission shall nominate, and with the advice and consent of the Senate, appoint one of those persons to fill the vacancy for which such list was originally submitted to the President.

(2) In the event any person recommended by the Commission to the President requests that his recommendation be withdrawn, dies, or in any other way becomes disqualified to serve as a judge of the District of Columbia courts, the Commission shall promptly recommend to the President one person to replace the person originally recommended.

(3) In no instance shall the Commission recommend any person, who in the event of timely nomination following a recommendation by the Commission, does not meet, upon such nomination, the qualifications specified in section 433. (Amended Oct. 13, 1977, Pub. L. 95-131, § 3(b), 91 Stat. 1155.)

PART D—DISTRICT BUDGET AND FINANCIAL MANAGEMENT

Subpart 1—Budget and Financial Management

FISCAL YEAR

SEC. 441. The fiscal year of the District shall, beginning on October 1, 1976, commence on the first day of October of each year and shall end on the thirtieth day of September of the succeeding calendar year. Such fiscal year shall also constitute the budget and accounting year. However, the fiscal year for the Armory Board shall begin on the first day of January and shall end on the thirty-first day of December of each calendar year. (Amended Aug. 29, 1974, Pub. L. 93-395, § 1(3), 88 Stat. 793; Nov. 15, 1977, Pub. L. 95-185, § 1, 91 Stat. 1383.)

SUBMISSION OF ANNUAL BUDGET

SEC. 442. (a) At such time as the Council may direct, the Mayor shall prepare and submit to the Council each year, and make available to the public, an annual budget for the District of Columbia government which shall include—

(1) the budget for the forthcoming fiscal year in such detail as the Mayor determines necessary to reflect the actual financial condition of the District government for such fiscal year, and specify the agencies and purposes for which funds are being requested; and which shall be prepared on the assumption that proposed expenditures resulting from financial transactions undertaken on either an obligation or cash-outlay basis, for such fiscal year shall not exceed estimated resources from existing sources and proposed resources;

(2) an annual budget message which shall include supporting financial and statistical information on the budget for the forthcoming fiscal year and information on the approved budgets and expenditures for the immediately preceding three fiscal years;

(3) a multiyear plan for all agencies of the District government as required under section 443;

(4) a multiyear capital improvements plan for all agencies of the District government as required under section 444;

(5) a program performance report comparing actual performance of as many programs as is practicable for the last completed fiscal year against proposed goals for such programs for such year, and, in addition, presenting as many qualitative or quantitative measures of program effectiveness as possible (including results of statistical sampling or other special analyses), and indicating the status of efforts to comply with the reports of the District of Columbia Auditor and the Comptroller General of the United States;

(6) an issue analysis statement consisting of a reasonable number of issues, identified by the Council in its action on the budget in the preceding fiscal year, having significant revenue or budgetary implications, and other similar issues selected by the Mayor, which shall consider the cost and benefits of alternatives and the rationale behind action recommended or adopted; and

(7) a summary of the budget for the forthcoming fiscal year designed for distribution to the general public.

(b) The budget prepared and submitted by the Mayor shall include, but not be limited to, recommended expenditures at a reasonable level for the forthcoming fiscal year for the Council, the District of Columbia Auditor, the District of Columbia Board of Elections and Ethics, the District of Columbia Judicial Nomination Commission, the Zoning Commission of the District of Columbia, the Public Service Commission, the Armory Board, and the Commission on Judicial Disabilities and Tenure.

(c) The Mayor from time to time may prepare and submit to the Council such proposed supplemental or deficiency budget recommendations as in his judgment are necessary on account of laws enacted after transmission of the budget or are otherwise in the public interest. The Mayor shall submit with such proposals a statement of justifications, including reasons for their omission from the annual budget. Whenever such proposed supplemental or deficiency budget recommendations are in an amount which would result in expenditures in excess of estimated resources, the Mayor shall make such recommendations as are necessary to increase resources to meet such increased expenditures. (Amended Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458.)

MULTIYEAR PLAN

SEC. 443. The Mayor shall prepare and include in the annual budget a multiyear plan for all agencies included in the District budget, for all sources of funding, and for such program categories as the Mayor identifies. Such plan shall be based on the actual experience of the immediately preceding three fiscal years, on the approved current fiscal year budget, and on estimates for at least the four succeeding fiscal years. The plan shall include, but not be limited to, provisions identifying—

(1) future cost implications of maintaining programs at currently authorized levels, including anticipated changes in wage, salary, and benefit levels;

(2) future cost implications of all capital projects for which funds have already been authorized, including identification of the amount of already appropriated but unexpended capital project funds;

(3) future cost implications of new, improved, or expanded programs and capital project commitments proposed for each of the succeeding four fiscal years;

(4) the effects of current and proposed capital projects on future operating budget requirements;

(5) revenues and funds likely to be available from existing revenue sources at current rates or levels;

(6) the specific revenue and tax measures recommended for the forthcoming fiscal year and for the next following fiscal year necessary to balance revenues and expenditures;

(7) the actuarial status and anticipated costs and revenues of retirement systems covering District employees; and

(8) total debt service payments in each fiscal year in which debt service payments must be made for all bonds which have been or will be issued, and all loans from the United States Treasury which have been or will be received, to finance the total cost on a full funding basis of all projects listed in the capital improvements plan prepared under section 444; and for each such fiscal year, the percentage relationship of the total debt service payments (with payments for issued and proposed bonds and loans from the United States Treasury, received or proposed, separately identified) to the bonding limitation for the current and forthcoming fiscal year as specified in section 603(b).

MULTIYEAR CAPITAL IMPROVEMENTS PLAN

SEC. 444. The Mayor shall prepare and include in the annual budget a multiyear capital improvements plan for all agencies of the District which shall be based upon the approved current fiscal year budget and shall include—

(1) the status, estimated period of usefulness, and total cost of each capital project on a full funding basis for which any appropriation is requested or any expenditure will be made in the forthcoming fiscal year and at least four fiscal years thereafter, including an explanation of change in total cost in excess of 5 per centum for any capital project included in the plan of the previous fiscal year;

(2) an analysis of the plan, including its relationship to other programs, proposals, or elements developed by the Mayor as the central planning agency for the District pursuant to section 423 of this Act;

(3) identification of the years and amounts in which bonds would have to be issued, loans made, and costs actually incurred on each capital project identified; and

(4) appropriate maps or other graphics.

DISTRICT OF COLUMBIA COURTS' BUDGET

SEC. 445. The District of Columbia courts shall prepare and annually submit to the Mayor, for inclusion in the annual budget, annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the District of Columbia court system. All such estimates shall be forwarded by the Mayor to the Council, for its action pursuant to sections 446 and 603(c), without revision but subject to his recommendations. Notwithstanding any other provision of this Act, the Council may comment or make recommendations concerning such annual estimates involving the expenditures and appropriations necessary for the maintenance and operation of the District of Columbia court system submitted by such courts but shall have no authority under this Act to revise such estimates. The courts shall submit as part of their budgets both a multiyear plan and a multi-year capital improvements plan and shall submit a statement presenting qualitative and quantitative descriptions of court activities and the status of efforts to comply with reports of the District of Columbia Auditor and the Comptroller General of the United States.

ENACTMENT OF APPROPRIATIONS BY CONGRESS

SEC. 446. The Council, within fifty calendar days after receipt of the budget proposal from the Mayor, and after public hearing, shall by act adopt the annual budget for the District of Columbia government. Any supplements thereto shall also be adopted by act by the Council after public hearing. Such budget so adopted shall be submitted by the Mayor to the President for transmission by him to the Congress. No amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act. Notwithstanding any other provision of this Act, the Mayor shall not transmit any annual budget or amendments or supplements thereto, to the President of the United States until the completion of the budget procedures contained in this Act.

CONSISTENCY OF BUDGET, ACCOUNTING, AND PERSONNEL SYSTEMS

SEC. 447. The Mayor shall implement appropriate procedures to insure that budget, accounting, and personnel control systems and structures are synchronized for budgeting and control purposes on a continuing basis. No employee shall be hired on a full-time or part-time basis unless such position is authorized by Act of Congress. Employees shall be assigned in accordance with the program, organization, and fund categories specified in the Act of Congress authorizing such position. Hiring of temporary employees and temporary employee transfers among programs shall be consistent with applicable Acts of Congress and reprogramming procedures to insure that costs are accurately associated with programs and sources of funding.

FINANCIAL DUTIES OF THE MAYOR

SEC. 448. Subject to the limitations in section 603, the Mayor shall have charge of the administration of the financial affairs of the District and to that end he shall—

(1) supervise and be responsible for all financial transactions to insure adequate control of revenues and resources and to insure that appropriations are not exceeded;

(2) maintain systems of accounting and internal control designed to provide—

(A) full disclosure of the financial results of the District government's activities,

(B) adequate financial information needed by the District government for management purposes,

(C) effective control over and accountability for all funds, property, and other assets,

(D) reliable accounting results to serve as the basis for preparing and supporting agency budget requests and controlling the execution of the budget;

(3) submit to the Council a financial statement in any detail and at such times as the Council may specify;

(4) submit to the Council, by February 1 of each fiscal year, a complete financial statement and report for the preceding fiscal year;

(5) supervise and be responsible for the assessment of all property subject to assessment and special assessments within the corporate limits of the District for taxation, prepare tax maps, and give such notice of taxes and special assessments, as may be required by law;

(6) supervise and be responsible for the levying and collection of all taxes, special assessments, license fees, and other revenues of the District, as required by law, and receive all moneys receivable by the District from the Federal Government or from any court, agency, or instrumentality of the District;

(7) have custody of all public funds belonging to or under the control of the District, or any agency of the District government, and deposit all funds coming into his hands, in such depositories as may be designated and under such terms and conditions as may be prescribed by act of the Council;

(8) have custody of all investments and invested funds of the District government, or in possession of such government in a fiduciary capacity, and have the safekeeping of all bonds and notes of the District and the receipt and delivery of District bonds and notes for transfer, registration or exchange; and

(9) apportion the total of all appropriations and funds made available during the fiscal year for obligation so as to prevent obligation or expenditure thereof in a manner which would indicate a necessity for deficiency or supplemental appropriations for such fiscal year, and with respect to all appropriations or funds not limited to a definite period, and all authorizations to create obligations by contract in advance of appropriations, apportion the total of such appropriations or funds or authorizations so as to achieve the most effective and economical use thereof. (Amended Oct. 13, 1977, Pub. L. 95-131, § 2, 91 Stat. 1155.)

ACCOUNTING SUPERVISION AND CONTROL

SEC. 449. The Mayor shall—

(a) prescribe the forms or receipts, vouchers, bills and claims to be used by all the agencies, offices, and instrumentalities of the District government;

(b) examine and approve all contracts, orders, and other documents by which the District government incurs financial obligations, having previously ascertained that money has been appropriated and allotted and will be available when the obligations shall become due and payable;

(c) audit and approve before payment all bills, invoices, payrolls, and other evidences of claims, demands, or charges against the District government and with the advice of the legal officials of the District determine the regularity, legality, and correctness of such claims, demands, or charges; and

(d) perform internal audits of accounts and operations and agency records of the District government, including the examination of any accounts or records of financial transactions, giving due consideration to the effectiveness of accounting systems, internal control, and related administrative practices of the respective agencies.

GENERAL AND SPECIAL FUNDS

SEC. 450. The general fund of the District shall be composed of those District revenues which on the effective date of this title are paid into the Treasury of the United States and credited either to the general fund of the District or its miscellaneous receipts, but shall not include any revenues which are applied by law to any special fund existing on the date of enactment of this title. The Council may from time to time establish such additional special funds as may be necessary for the efficient operation of the government of the District. All money received by any agency, officer, or employee of the District in its or his official capacity shall belong to the District government and shall be paid promptly to the Mayor for deposit in the appropriate fund.

CONTRACTS EXTENDING BEYOND ONE YEAR

SEC. 451. No contract involving expenditures out of an appropriation which is available for more than one year shall be made for a period of more than five years unless, with respect to a particular contract, the Council, by a two-thirds vote of its members present and voting, authorizes the extension of such period for such contract.

Such contracts shall be made pursuant to criteria established by act of the Council.

ANNUAL BUDGET FOR THE BOARD OF EDUCATION

SEC. 452. With respect to the annual budget for the Board of Education in the District of Columbia, the Mayor and the Council may establish the maximum amount of funds which will be allocated to the Board, but may not specify the purposes for which such funds may be expended or the amount of such funds which may be expended for the various programs under the jurisdiction of the Board of Education.

Subpart 2—Audit

DISTRICT OF COLUMBIA AUDITOR

SEC. 455. (a) There is established for the District of Columbia the Office of District of Columbia Auditor who shall be appointed by the Chairman, subject to the approval of a majority of the Council. The District of Columbia Auditor shall serve for a term of six years and shall be paid at a rate of compensation as may be established from time to time by the Council.

(b) The District of Columbia Auditor shall each year conduct a thorough audit of the accounts and operations of the government of the District in accordance with such principles and procedures and under such rules and regulations as he may prescribe. In the determination of the auditing procedures to be followed and the extent of the examination of vouchers and other documents and records, the District of Columbia Auditor shall give due regard to generally accepted principles of auditing including the effectiveness of the accounting organizations and systems, internal audit and control, and related administrative practices.

(c) The District of Columbia Auditor shall have access to all books, accounts, records, reports, findings and all other papers, things, or property belonging to or in use by any department, agency, or other instrumentality of the District government and necessary to facilitate the audit.

(d) The District of Columbia Auditor shall submit his audit reports to the Congress, the Mayor, and the Council. Such reports shall set forth the scope of the audits conducted by him and shall include such comments and information as the District of Columbia Auditor may deem necessary to keep the Congress, the Mayor, and the Council informed of the operations to which the reports relate, together with such recommendations with respect thereto as he may deem advisable.

(e) The Council shall make such report, together with such other material as it deems pertinent thereto, available for public inspection.

(f) The Mayor shall state in writing to the Council, within an appropriate time, what action he has taken to effectuate the recommendations made by the District of Columbia Auditor in his reports.

PART E—BORROWING

Subpart 1—Borrowing

DISTRICT'S AUTHORITY TO ISSUE AND REDEEM GENERAL OBLIGATION BONDS FOR CAPITAL PROJECTS

SEC. 461. (a) Subject to the limitations in section 603 (b), the District may incur indebtedness by issuing general obligation bonds to refund indebtedness of the District at any time outstanding and to provide for the payment of the cost of acquiring or undertaking its various capital projects. Such bonds shall bear interest, payable annually or semi-annually, at such rate and at such maturities as the Mayor, subject to the provisions of section 462 of this Act, may from time to time determine to be necessary to make such bonds marketable.

(b) The District may reserve the right to redeem any or all of its obligations before maturity in such manner and at such price as may be fixed by the Mayor prior to the issuance of such obligations.

CONTENTS OF BORROWING LEGISLATION

SEC. 462. The Council may by act authorize the issuance of general obligation bonds for the purposes specified in section 461. Such an act shall contain, at least, provisions—

- (1) briefly describing each project to be financed by the act;
- (2) identifying the Act authorizing each such project;
- (3) setting forth the maximum amount of the principal of the indebtedness which may be incurred for each such project;
- (4) setting forth the maximum rate of interest to be paid on such indebtedness;
- (5) setting forth the maximum allowable maturity for the issue and the maximum debt service payable in any year; and
- (6) setting forth, in the event that the Council determines in its discretion, to submit the question of issuing such bonds to a vote of the qualified voters of the District, the manner of holding such election, the manner of voting for or against the incurring of such indebtedness, and the form of ballot to be used at such election. (Amended Aug. 29, 1974, Pub. L. 93-395, § 1(4), 88 Stat. 793.)

PUBLICATION OF BORROWING LEGISLATION

SEC. 463. The Mayor shall publish any act authorizing the issuance of general obligation bonds at least once within five days after the enactment thereof, together with a notice of the enactment thereof in substantially the following form:

"NOTICE

"The following act (published herewith) authorizing the issuance of general obligation bonds, has become effective. The time within which a suit, action, or proceeding questioning the validity of such bonds can be commenced, will expire twenty days from the date of the first publication of this notice, as provided in the District of Columbia Self-Government and Governmental Reorganization Act.

"_____,
"Mayor."

SHORT PERIOD OF LIMITATION

SEC. 464. At the end of the twenty-day period beginning on the date of publication of the notice of the enactment of an act authorizing the issuance of general obligation bonds without the submission of the proposition for the issuance thereof to the qualified voters, or upon the expiration of twenty days from the date of publication of the promulgation of the results of an election upon the proposition of issuing bonds, as the case may be—

(1) any recitals or statements of fact contained in such act or in the preambles or the titles thereof or in the results of the election of any proceedings in connection with the calling, holding, or conducting of election upon the issuance of such bonds shall be deemed to be true for the purpose of determining the validity of the bonds thereby authorized, and the District and all others interested shall thereafter be estopped from denying same;

(2) such act and all proceedings in connection with the authorization of the issuance of such bonds shall be conclusively presumed to have been duly and regularly taken, passed, and done by the District and the Board of Elections and Ethics in full compliance with the provisions of this Act and of all laws applicable thereto; and

(3) the validity of such act and said proceedings shall not thereafter be questioned by either a party plaintiff or a party defendant, and no court shall have jurisdiction in any suit, action, or proceeding questioning the validity of same, except in a suit, action, or proceeding commenced prior to the expiration of such twenty-day period. (Amended Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458.)

ACTS FOR ISSUANCE OF GENERAL OBLIGATION BONDS

SEC. 465. At the end of the twenty-day period specified in section 464, the Mayor may issue general obligation bonds as authorized pursuant to the provisions of sections 461 to 465. An issue of general obligation bonds is hereby defined to be all or any part of an aggregate principal amount of bonds authorized pursuant to such sections, but no indebtedness shall be deemed to have been incurred within the meaning of this Act until such bonds have been sold, delivered, and paid for, and then only to the extent of the principal amount of such bonds so sold and delivered. The bonds of each issue shall be payable in annual installments beginning not more than three years after the date of such bonds and ending not more than

thirty years from such date. The amount of said issues to be payable in each year shall be so fixed that when the annual interest is added to the principal amount payable in each year, the total amount payable either serially or to a sinking fund shall be substantially equal. It shall be an immaterial variance if the difference between the largest and smallest amounts of principal and interest so payable during each fiscal year during the term of the general obligation bonds does not exceed 3 per centum of the total authorized amount of such series. Such bonds and coupons may be executed by the facsimile signatures of the officer designated by the act authorizing such bonds, to sign the bonds, within the exception that at least one signature shall be manual. Such bonds may be issued in coupon form in the denomination of \$1,000, or \$1,000 and \$5,000, registerable as to principal only or as to both principal and interest, and if registered as to both principal and interest may be issuable in denominations of multiples of \$1,000. Such bonds and the interest thereon may be payable at such place or places within or without the District as the Council may determine. (Amended Aug. 29, 1974, Pub. L. 93-395, § 1(5), 88 Stat. 793.)

PUBLIC SALE

SEC. 466. All general obligation bonds issued under this part shall be sold at public sale upon sealed proposals after publication of a notice of such sale at least once not less than ten days prior to the date fixed for sale in a daily newspaper carrying municipal bond notices and devoted primarily to financial news or to the subject of State and municipal bonds published in the city of New York, New York, and in one or more newspapers of general circulation published in the District. Such notice shall state, among other things, that no proposal shall be considered unless there is deposited with the District as a downpayment a certified check or cashier's check for an amount equal to at least 2 per centum of the par amount of general obligation bonds bid for, and the Mayor shall reserve the right to reject any and all bids. (Amended Aug. 29, 1974, Pub. L. 93-395, § 1(6), 88 Stat. 793.)

Subpart 2—Short-Term Borrowing

BORROWING TO MEET APPROPRIATIONS

SEC. 471. In the absence of unappropriated available revenues to meet appropriations made pursuant to section 446, the Council may by act authorize the issuance of negotiable notes, in a total amount not to exceed 2 per centum of the total appropriations for the current fiscal year, each of which may be renewed from time to time, but all such notes and renewals thereof shall be paid not later than the close of the fiscal year following that in which such act becomes effective.

BORROWING IN ANTICIPATION OF REVENUES

SEC. 472. For any fiscal year, in anticipation of the collection or receipt of revenues of that fiscal year, the Council may by act authorize the borrowing of money by the execution of negotiable notes of the District, not to exceed in the aggregate at any time outstanding 20 per centum of the total anticipated revenue, each of which shall be designated "Revenue Note for the Fiscal Year 19____". Such notes may be renewed from time to time, but all such notes, together with the renewals, shall mature and be paid not later than the end of the fiscal year for which the original notes have been issued.

NOTES REDEEMABLE PRIOR TO MATURITY

SEC. 473. No notes issued pursuant to this part shall be made payable on demand, but any note may be made subject to redemption prior to maturity on such notice and at such time as may be stated in the note.

SALES OF NOTES

SEC. 474. All notes issued pursuant to this part may be sold at not less than par and accrued interest at private sale without previous advertising.

Subpart 3—Payment of Bonds and Notes

SPECIAL TAX

SEC. 481. (a) The act of the Council authorizing the issuance of general obligation bonds pursuant to this title, shall, where necessary, provide for the levy annually of a special tax or charge without limitation as to rate

or amount in amounts which, together with other revenues of the District available and applicable for said purposes, will be sufficient to pay the principal of and interest on such bonds and the premium, if any, upon the redemption thereof, as the same respectively become due and payable, which tax shall be levied and collected at the same time and in the same manner as other District taxes are levied and collected, and when collected shall be set aside in a sinking fund and irrevocably dedicated to the payment of such principal, interest, and premium.

(b) The full faith and credit of the District shall be and is hereby pledged for the payment of the principal of and the interest on all general obligation bonds and notes of the District hereafter issued pursuant to subparts 1, 2, and 3 of part E of this title whether or not such pledge be stated in such bonds or notes or in the act authorizing the issuance thereof.

(c) (1) As soon as practicable following the beginning of each fiscal year, the Mayor shall review the amounts of District revenues which have been set aside and deposited in a sinking fund as provided in subsection (a). Such review shall be carried out with a view to determining whether the amounts so set aside and deposited are sufficient to pay the principal of and interest on general obligation bonds issued pursuant to this title, and the premium (if any) upon the redemption thereof, as the same respectively become due and payable. To the extent that the Mayor determines that sufficient District revenues have not been so set aside and deposited, the Federal payment made for the fiscal year within which such review is conducted shall be first utilized to make up any deficit in such sinking fund.

(2) The Comptroller General of the United States shall make annual audits of the amounts set aside and deposited in the sinking fund.

Subpart 4—Tax Exemption; Legal Investment; Water Pollution; Reservoirs; Metro Contributions; and Revenue Bonds

TAX EXEMPTION

SEC. 485. Bonds and notes issued by the Council pursuant to this title and the interest thereon shall be exempt from all Federal and District taxation except estate, inheritance, and gift taxes.

LEGAL INVESTMENT

SEC. 486. Notwithstanding any restriction on the investment of funds by fiduciaries contained in any other law, all domestic insurance companies, domestic insurance associations, executors, administrators, guardians, trustees, and other fiduciaries within the District may legally invest any sinking funds, moneys, trust funds, or other funds belonging to them or under or within their control in any bonds issued pursuant to this title, it being the purpose of this section to authorize the investment in such bonds or notes of all sinking, insurance, retirement, compensation, pension, and trust funds. National banking associations are authorized to deal in, underwrite, purchase and sell, for their own accounts or for the accounts of customers, bonds and notes issued by the Council to the same extent as national banking associations are authorized by paragraph seven of section 5136 of the Revised Statutes (12 U.S.C. 24), to deal in, underwrite, purchase and sell obligations of the United States, States, or political subdivisions thereof. All Federal building and loan associations and Federal savings and loan associations; and banks, trust companies, building and loan associations, and savings and loan associations, domiciled in the District, may purchase, sell, underwrite, and deal in, for their own account or for the account of others, all bonds or notes issued pursuant to this title. Nothing contained in this section shall be construed as relieving any person, firm, association, or corporation from any duty of exercising due and reasonable care in selecting securities for purchase or investment.

WATER POLLUTION

SEC. 487. (a) The Mayor shall annually estimate the amount of the District's principal and interest expense which is required to service District obligations attributable to the Maryland and Virginia pro rata share of District sanitary sewage water works and other water

pollution projects which provide service to the local jurisdictions in those States. Such amounts as determined by the Mayor pursuant to the agreements described in subsection (b) shall be used to exclude the Maryland and Virginia share of pollution projects cost from the limitation on the District's capital project obligations as provided in section 603(b).

(b) The Mayor shall enter into agreements with the States and local jurisdictions concerned for annual payments to the District of rates and charges for waste treatment services in accordance with the use and benefits made and derived from the operation of the said waste treatment facilities. Each such agreement shall require that the estimated amount of such rates and charges will be paid in advance, subject to adjustment after each year. Such rates and charges shall be sufficient to cover the cost of construction, interest on capital, operation and maintenance, and the necessary replacement of equipment during the useful life of the facility.

COST OF RESERVOIRS ON POTOMAC RIVER

SEC. 488. (a) The Mayor is authorized to contract with the United States, any State in the Potomac River Basin, any agency or political subdivision thereof, and any other competent State or local authority, with respect to the payment by the District to the United States, either directly or indirectly, of the District's equitable share of any part or parts of the non-Federal portion of the costs of any reservoirs authorized by the Congress for construction on the Potomac River or any of its tributaries. Every such contract may contain such provisions as the Mayor may deem necessary or appropriate.

(b) Unless hereafter otherwise provided by legislation enacted by the Council, all payments made by the District and all moneys received by the District pursuant to any contract made under the authority of this Act shall be paid from, or be deposited in, a fund designated by the Mayor. Charges for water delivered from the District water system for use outside the District may be adjusted to reflect the portions of any payments made by the District under contracts authorized by this Act which are equitably attributable to such use outside the District.

DISTRICT'S CONTRIBUTIONS TO THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SEC. 489. Notwithstanding any provision of law to the contrary, beginning with fiscal year 1976 the District share of the cost of the Adopted Regional System described in the National Capital Transportation Act of 1969 (83 Stat. 320) [D.C. Code, sec. 1-1441 et seq.], may be payable from the proceeds of the sale of District general obligation bonds issued pursuant to this title.

REVENUE BONDS AND OTHER OBLIGATIONS

SEC. 490. (a) The Council may by act issue revenue bonds, notes, or other obligations (including refunding bonds, notes, or other obligations) to borrow money to finance or assist in the financing of undertakings in the areas of housing, health facilities, transit and utility facilities, recreational facilities, college and university facilities, and industrial and commercial development. Such bonds, notes, or other obligations shall be fully negotiable and payable, as to both principal and interest, solely from and secured solely by a pledge of the revenues realized from the property, facilities, developments, and improvements whose financing is undertaken by the issuance of such bonds, notes, or other obligations, including existing facilities to which such new facilities and improvements are related, which financing may be effected through loans made directly or indirectly (including the purchase of mortgages, in those cases described in subsection (b) of this section, notes, or other securities) to any public, quasi-public, or private corporation, partnership, association, person, or other legal entity.

(b) Except in the case of housing, recreation, commercial and industrial development, the property, facilities, developments, and improvements being financed may not be mortgaged as additional security for bonds, notes, or other obligations, but in no event shall any property owned by the District of Columbia or the United States be mortgaged for the purpose of this section.

(c) Any and all such bonds, notes, or other obligations shall not be general obligations of the District and shall not be a pledge of or involve the faith and credit or the

taxing power of the District, shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as contained in section 602(a) (2).

(d) Any and all such bonds, notes, or other obligations shall be issued pursuant to an act of the Council without the necessity of submitting the question of such issuance to the registered qualified electors of the District for approval or disapproval.

(e) Any such act may contain provisions—

(1) briefly describing the purpose for which such bond, note, or other obligation is to be issued;

(2) identifying the Act authorizing such purpose;

(3) prescribing the form, terms, provisions, manner or method of issuing and selling (including negotiated as well as competitive bid sale), and the time of issuance, of such bonds, notes, or other obligations; and

(4) prescribing any and all other details with respect to any such bonds, notes, or other obligations and the Act may authorize and empower the Mayor to do any and all things necessary, proper, or expedient in connection with the issuance and sale of such notes, bonds, or other obligations authorized to be issued under the provisions of this section.

(f) The fourth sentence of section 446 shall not apply to (1) the transfer to a private college or university of funds derived from the sale of any revenue bond, note, or other obligation issued pursuant to an act under this section solely to finance, or assist in the financing of, facilities for such college or university, or (2) the payment (as to either principal or interest or both) of any such bond, note, or other obligation. (Amended Dec. 28, 1977, Pub. L. 95-218, 91 Stat. 1612.)

PART F—INDEPENDENT AGENCIES

BOARD OF ELECTIONS

SEC. 491. Section 3 of the District of Columbia Elections Act (D.C. Code, sec. 1-1103) is amended to read as follows:

"SEC. 3. (a) There is created a District of Columbia Board of Elections (hereafter in this section referred to as the 'Board'), to be composed of three members, no more than two of whom shall be of the same political party, appointed by the Mayor, with the advice and consent of the Council. Members shall be appointed to serve for terms of three years, except of the members first appointed under this Act. One member shall be appointed to serve for a one-year term, one member shall be appointed to serve for a two-year term, and one member shall be appointed to serve for a three-year term, as designated by the Mayor.

"(b) Any person appointed to fill a vacancy on the Board shall be appointed only for the unexpired term of the member whose vacancy he is filling.

"(c) A member may be reappointed, and, if not reappointed, the member shall serve until his successor has been appointed and qualifies.

"(d) The Mayor shall, from time to time, designate the Chairman of the Board."

ZONING COMMISSION

SEC. 492. (a) The first sentence of the Act of March 1, 1920 (D.C. Code, sec. 5-412) is amended to read as follows: "That (a) to protect the public health, secure the public safety, and to protect property in the District of Columbia there is created a Zoning Commission for the District of Columbia, which shall consist of the Architect of the Capitol, the Director of the National Park Service, and three members appointed by the Mayor, by and with the advice and consent of the Council. Each member appointed by the Mayor shall serve for a term of four years, except of the members first appointed under this section—

"(1) one member shall serve for a term of two years, as determined by the Mayor;

"(2) one member shall serve for a term of three years, as determined by the Mayor; and

"(3) one member shall serve for a term of four years, as determined by the Mayor.

"(b) Members of the Zoning Commission appointed by the Mayor shall be entitled to receive compensation as determined by the Mayor, with the approval of a majority

of the Council. The remaining members shall serve without additional compensation.

"(c) Members of the Zoning Commission appointed by the Mayor may be reappointed. Each member shall serve until his successor has been appointed and qualifies.

"(d) The Chairman of the Zoning Commission shall be selected by the members.

"(e) The Zoning Commission shall exercise all the powers and perform all the duties with respect to zoning in the District as provided by law."

(b) The Act of June 20, 1938 (D.C. Code, sec. 5-413, et seq.) is amended as follows:

(1) The first sentence of section 2 of such Act (D.C. Code, sec. 5-414) is amended by striking out "Such regulations shall be made in accordance with a comprehensive plan and" and inserting in lieu thereof "Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the National Capital, and zoning regulations shall be".

(2) Section 5 of such Act (D.C. Code, sec. 5-417) is amended to read as follows:

"SEC. 5. (a) No zoning regulation or map, or any amendment thereto, may be adopted by the Zoning Commission until the Zoning Commission—

"(1) has held a public hearing, after notice, on such proposed regulation, map, or amendment; and

"(2) after such public hearing, submitted such proposed regulation, map, or amendment to the National Capital Planning Commission for comment and review.

If the National Capital Planning Commission fails to submit its comments regarding any such regulation, map, or amendment within thirty days after submission of such regulation, map, or amendment to it, then the Zoning Commission may proceed to act upon the proposed regulation, map, or amendment without further comment from the National Capital Planning Commission.

"(b) The notice required by clause (1) of subsection (a) shall be published at least thirty days prior to such public hearing and shall include a statement as to the time and place of the hearing and a summary of all changes in existing zoning regulations which would be made by adoption of the proposed regulation, map, or amendment. The Zoning Commission shall give such additional notice as it deems expedient and practicable. All interested persons shall be given a reasonable opportunity to be heard at such public hearing. If the hearing is adjourned from time to time, the time and place of reconvening shall be publicly announced prior to adjournment.

"(c) The Zoning Commission shall deposit with the National Capital Planning Commission all zoning regulations, maps, or amendments thereto, adopted by it."

PUBLIC SERVICE COMMISSION

SEC. 493. (a) There shall be a Public Service Commission whose function shall be to insure that every public utility doing business within the District of Columbia is required to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable. The charge made by any such public utility for any facility or services furnished, or rendered, or to be furnished or rendered, shall be reasonable, just, and nondiscriminatory. Every unjust or unreasonable or discriminating charge for such facility or service is prohibited and is hereby declared unlawful.

(b) Paragraph 97(a) of section 8 of the Act of March 4, 1913 (making appropriations for the government of the District of Columbia) (D.C. Code, sec. 43-201), is amended as follows:

(1) The first sentence of such paragraph is amended to read as follows: "The Public Service Commission of the District of Columbia shall be composed of three commissioners appointed by the Mayor, by and with the advice and consent of the Council, except that the members (other than the Commissioner of the District of Columbia) serving as commissioners of such Commission on January 1, 1975, by virtue of their appointment by the President, by and with the advice and consent of the Senate, shall continue to serve until the expiration of the terms for which they were so appointed. The member first appointed by the Mayor, by and with the advice and consent of the

Council, on or after January 2, 1975, shall serve until June 30, 1978."

(2) The third sentence of such paragraph is repealed.

(3) The sixth sentence of such paragraph is amended to read as follows: "No Commissioner shall, during his term of office, hold any other public office."

(4) The seventh sentence of such paragraph is amended by deleting "The Commissioners of the District of Columbia" and inserting in lieu thereof "The Mayor".

(5) The eighth sentence of such paragraph is amended to read as follows: "No person shall be eligible to the office of Commissioner of the Public Service Commission of the District of Columbia who has not been a bona fide resident of the District of Columbia for a period of at least three years next preceding his appointment or who has voted or claimed residence elsewhere during such period."

(Amended Jan. 3, 1975, Pub. L. 93-635, § 17, 88 Stat. 2178.)

ARMORY BOARD

SEC. 494. The first sentence of section 2 of the Act of June 4, 1948 (D.C. Code, sec. 2-1702), is amended to read as follows: "There is established an Armory Board, to be composed of the commanding general of the District of Columbia Militia, and two other members appointed by the Mayor of the District of Columbia by and with the advice and consent of the Council of the District of Columbia. The members appointed by the Mayor shall each serve for a term of four years beginning on the date such member qualifies."

BOARD OF EDUCATION

SEC. 495. The control of the public schools in the District of Columbia is vested in a Board of Education to consist of eleven elected members, three of whom are to be elected at large, and one to be elected from each of the eight school election wards established under the District of Columbia Election Act. The election of the members of the Board of Education shall be conducted on a non-partisan basis and in accordance with such Act.

TITLE V—FEDERAL PAYMENT

DUTIES OF THE MAYOR, COUNCIL, AND FEDERAL OFFICE OF MANAGEMENT AND BUDGET

SEC. 501. (a) It shall be the duty of the Mayor in preparing an annual budget for the government of the District to develop meaningful intercity expenditure and revenue comparisons based on data supplied by the Bureau of the Census, and to identify elements of cost and benefits to the District which result from the unusual role of the District as the Nation's Capital. The results of the studies conducted by the Mayor under this subsection shall be made available to the Council and to the Federal Office of Management and Budget for their use in reviewing and revising the Mayor's request with respect to the level of the appropriation for the annual Federal payment to the District. Such Federal payment should operate to encourage efforts on the part of the government of the District to maintain and increase its level of revenues and to seek such efficiencies and economies in the management of its programs as are possible.

(b) The Mayor, in studying and identifying the costs and benefits to the District brought about by its role as the Nation's Capital, should to the extent feasible, among other elements, consider—

(1) revenues unobtainable because of the relative lack of taxable commercial and industrial property;

(2) revenues unobtainable because of the relative lack of taxable business income;

(3) potential revenues that would be realized if exemptions from District taxes were eliminated;

(4) net costs, if any, after considering other compensation for tax base deficiencies and direct and indirect taxes paid, of providing services to tax-exempt nonprofit organizations and corporate offices doing business only with the Federal Government;

(5) recurring and nonrecurring costs of unreimbursed services to the Federal Government;

(6) other expenditure requirements placed on the District by the Federal Government which are unique to the District;

(7) benefits of Federal grants-in-aid relative to aid given other States and local governments;

(8) recurring and nonrecurring costs of unreimbursed services rendered the District by the Federal Government; and

(9) relative tax burden on District residents compared to that of residents in other jurisdictions in the Washington, District of Columbia, metropolitan area and in other cities of comparable size.

(c) The Mayor shall submit his request, with respect to the amount of an annual Federal payment, to the Council. The Council shall by act approve, disapprove, or modify the Mayor's request. After the action of the Council, the Mayor shall, by December 1 of each calendar year, in accordance with the provisions in the Budget and Accounting Act, 1921 (31 U.S.C. 2), submit such request to the President for submission to the Congress. Each request regarding an annual Federal payment shall be submitted to the President seven months prior to the beginning of the fiscal year for which such request is made and shall include a request for an annual Federal payment for the next following fiscal year.

AUTHORIZATION OF APPROPRIATIONS

SEC. 502. Notwithstanding any other provision of law, there is authorized to be appropriated as the annual Federal payment to the District of Columbia for the fiscal year ending June 30, 1975, the sum of \$230,000,000; for the fiscal year ending June 30, 1976, the sum of \$254,000,000; for the fiscal year ending September 30, 1977, the sum of \$280,000,000; for the fiscal year ending September 30, 1978, and for each fiscal year thereafter, the sum of \$300,000,000. For the period July 1, 1976, through September 30, 1976, there is authorized to be appropriated a Federal payment of \$70,000,000. (Amended Aug. 29, 1974, Pub. L. 93-395, § 1(7), 88 Stat. 793.)

TITLE VI—RESERVATION OF CONGRESSIONAL AUTHORITY

RETENTION OF CONSTITUTIONAL AUTHORITY

SEC. 601. Notwithstanding any other provision of this Act, the Congress of the United States reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council by this Act, including legislation to amend or repeal any law in force in the District prior to or after enactment of this Act and any act passed by the Council.

LIMITATIONS ON THE COUNCIL

SEC. 602. (a) The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to—

(1) impose any tax on property of the United States or any of the several States;

(2) lend the public credit for support of any private undertaking;

(3) enact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District;

(4) enact any act, resolution, or rule with respect to any provision of title 11 of the District of Columbia Code (relating to organization and jurisdiction of the District of Columbia courts);

(5) impose any tax on the whole or any portion of the personal income, either directly or at the source thereof, of any individual not a resident of the District (the terms "individual" and "resident" to be understood for the purposes of this paragraph as they are defined in section 4 of title I of the District of Columbia Income and Franchise Tax Act of 1947) [D.C. Code, sec. 47-1551c];

(6) enact any act, resolution, or rule which permits the building of any structure within the District of Columbia in excess of the height limitations contained in section 5 of the Act of June 1, 1910 (D.C. Code, sec. 5-405), and in effect on the date of enactment of this Act;

(7) enact any act, resolution, or regulation with respect to the Commission on Mental Health;

(8) enact any act or regulation relating to the United States District Court for the District of Columbia or any

other court of the United States in the District other than the District courts, or relating to the duties or powers of the United States attorney or the United States Marshal for the District of Columbia; or

(9) enact any act, resolution, or rule with respect to any provision of title 23 of the District of Columbia Code (relating to criminal procedure), or with respect to any provision of any law codified in title 22 or 24 of the District of Columbia Code (relating to crimes and treatment of prisoners), or with respect to any criminal offense pertaining to articles subject to regulation under chapter 32 of title 22 during the forty-eight full calendar months immediately following the day on which the members of the Council first elected pursuant to this Act take office.

(b) Nothing in this Act shall be construed as vesting in the District government any greater authority over the National Zoological Park, the National Guard of the District of Columbia, the Washington Aqueduct, the National Capital Planning Commission, or, except as otherwise specifically provided in this Act, over any Federal agency, than was vested in the Commissioner prior to the effective date of title IV of this Act.

(c) (1) Except acts of the Council which are submitted to the President in accordance with the Budget and Accounting Act, 1921 [31 U.S.C. 1 et seq.], any act which the Council determines according to section 412(a), should take effect immediately because of emergency circumstances, and acts proposing amendments to title IV of this Act, the Chairman of the Council shall transmit to the Speaker of the House of Representatives, and the President of the Senate a copy of each act passed by the Council and signed by the Mayor, or vetoed by the Mayor and repassed by two-thirds of the Council present and voting (and with respect to which the President has not sustained the Mayor's veto), and every act passed by the Council and allowed to become effective by the Mayor without his signature. Except as provided in paragraph (2), no such act shall take effect until the end of the 30-day period (excluding Saturdays, Sundays, and holidays, and any day on which either House is not in session) beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate and then only if during such 30-day period both Houses of Congress do not adopt a concurrent resolution disapproving such act. The provisions of section 604, except subsections (d), (e), and (f) of such section, shall apply with respect to any concurrent resolution disapproving any act pursuant to this paragraph.

(2) In the case of any such act transmitted by the Chairman with respect to any Act codified in title 22, 23, or 24 of the District of Columbia Code, such act shall take effect at the end of the 30-day period beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate only if during such 30-day period one House of Congress does not adopt a resolution disapproving such act. The provisions of section 604, relating to an expedited procedure for consideration of resolutions, shall apply to a simple resolution disapproving such act as specified in this paragraph. (Amended Sept. 7, 1976, Pub. L. 94-402, 90 Stat. 1220.)

BUDGET PROCESS; LIMITATIONS ON BORROWING AND SPENDING

SEC. 603. (a) Nothing in this Act shall be construed as making any change in existing law, regulation, or basic procedure and practice relating to the respective roles of the Congress, the President, the Federal Office of Management and Budget, and the Comptroller General of the United States in the preparation, review, submission, examination, authorization, and appropriation of the total budget of the District of Columbia government.

(b) (1) No general obligation bonds (other than bonds to refund outstanding indebtedness) or Treasury capital project loans shall be issued during any fiscal year in an amount which would cause the amount of principal and interest required to be paid both serially and into a sinking fund in any fiscal year on the aggregate amounts of all outstanding general obligation bonds and such Treasury loans, to exceed 14 per centum of the District revenues (less court fees, any fees or revenues directed to servicing revenue bonds, retirement contributions, reve-

nues from retirement systems, and revenues derived from such Treasury loans and the sale of general obligation or revenue bonds) which the Mayor estimates, and the District of Columbia Auditor certifies, will be credited to the District during the fiscal year in which the bonds will be issued. Treasury capital project loans include all borrowings from the United States Treasury, except those funds advanced to the District by the Secretary of the Treasury under the provisions of section 2501, title 47 of the District of Columbia Code, as amended.

(2) Obligations incurred pursuant to the authority contained in the District of Columbia Stadium Act of 1957 (71 Stat. 619; D.C. Code title 2, chapter 17, subchapter II), and obligations incurred by the agencies transferred or established by sections 201 and 202, whether incurred before or after such transfer or establishment, shall not be included in determining the aggregate amount of all outstanding obligations subject to the limitation specified in the preceding subsection.

(3) The 14 per centum limitation specified in paragraph (1) shall be calculated in the following manner:

(A) Determine the dollar amount equivalent to 14 per cent of the District revenues (less court fees, any fees or revenues directed to servicing revenue bonds, retirement contributions, revenues from retirement systems, and revenues derived from such Treasury loans and the sale of general obligation or revenue bonds) which the Mayor estimates, and the District of Columbia Auditor certifies, will be credited to the District during the fiscal year for which the bonds will be issued.

(B) Determine the actual total amount of principal and interest to be paid in each fiscal year for all outstanding general obligation bonds and such Treasury loans.

(C) Determine the amount of principal and interest to be paid during each fiscal year over the term of the proposed general obligation bond or such Treasury loan to be issued.

(D) If in any one fiscal year the sum arrived at by adding subparagraphs (B) and (C) exceeds the amount determined under subparagraph (A), then the proposed general obligation bond or such Treasury loan in subparagraph (C) cannot be issued.

(c) The Council shall not approve any budget which would result in expenditures being made by the District Government, during any fiscal year, in excess of all resources which the Mayor estimates will be available from all funds available to the District for such fiscal year. The budget shall identify any tax increases which shall be required in order to balance the budget as submitted. The Council shall be required to adopt such tax increases to the extent its budget is approved. For the purposes of this section, the Council shall use a Federal payment amount not to exceed the amount authorized by Congress. In determining whether any such budget would result in expenditures so being made in excess of such resources, amounts included in the budget estimates of the District of Columbia courts in excess of the recommendations of the Council shall not be applicable.

(d) The Mayor shall not forward to the President for submission to Congress a budget which is not balanced according to the provision of subsection 603(c).

(e) Nothing in this Act shall be construed as affecting the applicability to the District government of the provisions of section 3679 of the Revised Statutes of the United States (31 U.S.C. 665), the so-called Anti-Deficiency Act.

CONGRESSIONAL ACTION ON CERTAIN DISTRICT MATTERS

SEC. 604. (a) This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such these provisions are deemed a part of the rule of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by this section; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rule (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(b) For the purpose of this section, "resolution" means only a concurrent resolution, the matter after the resolv-

ing clause of which is as follows: "That the _____ approves/disapproves of the action of the District of Columbia Council described as follows: _____," the blank spaces therein being appropriately filled, and either approval or disapproval being appropriately indicated; but does not include a resolution which specifies more than one action.

(c) A resolution with respect to Council action shall be referred to the Committee on the District of Columbia of the House of Representatives, or the Committee on the District of Columbia of the Senate, by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(d) If the committee to which a resolution has been referred has not reported it at the end of twenty calendar days after its introduction, it is in order to move to discharge the committee from further consideration of any other resolution with respect to the same Council action which has been referred to the committee.

(e) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same action), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(f) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same action.

(g) When the committee has reported, or has been discharged from further consideration of, a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(h) Debate on the resolution shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(i) Motions to postpone made with respect to the discharge from committee or the consideration of a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(j) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

TITLE VII—REFERENDUM; SUCCESSION IN GOVERNMENT; TEMPORARY PROVISIONS; MISCELLANEOUS; AMENDMENTS TO DISTRICT OF COLUMBIA ELECTION ACT; RULES OF CONSTRUCTION; AND EFFECTIVE DATES

PART A—CHARTER REFERENDUM REFERENDUM

SEC. 701. On a date to be fixed by the Board of Elections,¹ not more than five months after the date of enactment of this Act, a referendum (in this part referred to as the "charter referendum") shall be conducted to determine whether the registered qualified electors of the District accept the charter set forth as title IV of this Act.

BOARD OF ELECTIONS AUTHORITY

SEC. 702. (a) The Board of Elections shall conduct the charter referendum and certify the results thereof as provided in this part.

(b) Notwithstanding the fact that such section does not otherwise take effect unless the charter is accepted under this title, the applicable provisions of part E of

title VII of this Act shall govern the Board of Elections in the performance of its duties under this Act.

REFERENDUM BALLOT AND NOTICE OF VOTING

SEC. 703. (a) The charter referendum ballot shall contain the following, with a blank space appropriately filled: "The District of Columbia Self-Government and Governmental Reorganization Act, enacted _____ [Dec. 24, 1973], proposes to establish a charter for the governance of the District of Columbia, but provides that the charter shall take effect only if it is accepted by a majority of the registered qualified voters of the District voting on this issue.

"Indicate in one of the squares provided below whether you are for or against the charter.

☐ For the charter

☐ Against the charter.

"In addition, the Act referred to above authorizes the establishment of advisory neighborhood councils if a majority of the registered qualified voters of the District voting on this issue in this referendum vote for the establishment of such councils.

"Indicate in one of the squares provided below whether you are for or against the establishment of Advisory Neighborhood Councils.

☐ For Advisory Neighborhood Councils

☐ Against Advisory Neighborhood Councils."

(b) Voting may be by paper ballot or by voting machine. The Board of Elections may make such changes in the second and fourth paragraphs of the charter referendum ballot as it determines to be necessary to permit the use of voting machines if such machines are used.

(c) Not less than five days before the date of the charter referendum, the Board of Elections shall mail to each registered qualified elector (1) a sample of the charter referendum ballot, and (2) information showing the polling place of such elector and the date and hours of voting.

(d) Not less than one day before the charter referendum, the Board of Elections shall publish, in one or more newspapers of general circulation published in the District, a list of the polling places and the date and hours of voting. (Amended Apr. 24, 1974, Pub. L. 93-272, § 1, 88 Stat. 93.)

ACCEPTANCE OR NONACCEPTANCE OF CHARTER

SEC. 704. (a) If a majority of the registered qualified electors voting in the charter referendum vote for the charter, the charter shall be considered accepted as of the time the Board of Elections certifies the result of the charter referendum to the President of the United States, as provided in subsection (b).

(b) The Board of Elections shall, within a reasonable time, but in no event more than thirty days after the date of the charter referendum, certify the results of the charter referendum to the President of the United States and to the Secretary of the Senate and the Clerk of the House of Representatives.

PART B—SUCCESSION IN GOVERNMENT

ABOLISHMENT OF EXISTING GOVERNMENT AND TRANSFER OF FUNCTIONS

SEC. 711. The District of Columbia Council, the offices of Chairman of the District of Columbia Council, Vice Chairman of the District of Columbia Council, and the seven other members of the District of Columbia Council, and the offices of the Commissioner of the District of Columbia and Assistant to the Commissioner of the District of Columbia, as established by Reorganization Plan Numbered 3 of 1967, are abolished as of noon January 2, 1975. This subsection¹ shall not be construed to reinstate any governmental body or office in the District abolished in said plan or otherwise heretofore.

CERTAIN DELEGATED FUNCTIONS AND FUNCTIONS OF CERTAIN AGENCIES

SEC. 712. No function of the District of Columbia Council (established under Reorganization Plan Numbered 3 of 1967) or of the Commissioner of the District of Columbia which such District of Columbia Council or Commissioner has delegated to an officer, employee, or agency (including any body of or under such agency) of the

¹ May 7, 1974, see 20 D.C. Register 964, Apr. 15, 1974.

¹ So in original. Probably should be "section".

District, nor any function now vested pursuant to section 501 of Reorganization Plan Numbered 3 of 1967 in the District Public Service Commission, Zoning Advisory Council, Board of Zoning Adjustment, Office of the Recorder of Deeds, or Armory Board, or in any officer, employee, or body of or under such agency, shall be considered as a function transferred to the Council pursuant to section 404(a) of this Act. Each such function is hereby transferred to the officer, employee, or agency (including any body of or under such agency), to whom or to which it was delegated, or in whom or in which it has remained vested, until the Mayor or Council established under this Act, or both, pursuant to the powers herein granted, shall revoke, modify, or transfer such delegation or vesting.

TRANSFER OF PERSONNEL, PROPERTY, AND FUNDS

SEC. 713. (a) In each case of the transfer, by any provision of this Act, of functions to the Council, to the Mayor, or to any agency or officer, there are hereby authorized to be transferred (as of the time of such transfer of functions) to the Council, to the Mayor, to such agency, or to the agency of which such officer is the head, for use in the administration of the functions of the Council or such agency or officer, the personnel (except the Commissioner of the District of Columbia, the Assistant to the Commissioner, the Chairman of the District of Columbia Council, the Vice Chairman of the District of Columbia Council, the other members thereof, all of whose offices are abolished by this Act), property, records, and unexpended balances of appropriations and other funds which relate primarily to the functions so transferred.

(b) If any question arises in connection with the carrying out of subsection (a), such questions shall be decided—

(1) in the case of functions transferred from a Federal officer or agency, by the Director of the Office of Management and Budget; and

(2) in the case of other functions (A) by the Council, or in such manner as the Council shall provide, if such functions are transferred to the Council, and (B) by the Mayor if such functions are transferred to him or to any other officer or agency.

(c) Any of the personnel authorized to be transferred to the Council, the Mayor, or any agency by this section which the Council or the head of such agency shall find to be in excess of the personnel necessary for the administration of its or his function shall, in accordance with law, be retransferred to other positions in the District or Federal Government or be separated from the service.

(d) No officer or employee shall, by reason of his transfer to the District government under this Act or his separation from service under this Act, be deprived of any civil service rights, benefits, and privileges held by him prior to such transfer or any right of appeal or review he may have by reason of his separation from service.

EXISTING STATUTES, REGULATIONS, AND OTHER ACTIONS

SEC. 714. (a) Any statute, regulation, or other action in respect of (and any regulation or other action issued, made, taken, or granted by) any officer or agency from which any function is transferred by this Act shall, except to the extent modified or made inapplicable by or under authority of law, continue in effect as if such transfer had not been made; but after such transfer, references in such statute, regulation, or other action to an officer or agency from which a transfer is made by this Act shall be held and considered to refer to the officer or agency to which the transfer is made.

(b) As used in subsection (a), the term "other action" includes without limitation, any rule, order, contract, compact, policy, determination, directive, grant, authorization, permit, requirement, or designation.

(c) Unless otherwise specifically provided in this Act, nothing contained in this Act shall be construed as affecting the applicability to the District government of personnel legislation relating to the District government until such time as the Council may otherwise elect to provide equal or equivalent coverage.

PENDING ACTIONS AND PROCEEDINGS

SEC. 715. (a) No suit, action, or other judicial proceeding lawfully commenced by or against any officer or agency in his or its official capacity or in relation to the exercise of his or its official functions, shall abate by reason

of the taking effect of any provision of this Act; but the court, unless it determines that the survival of such suit, action, or other proceedings is not necessary for purposes of settlement of the questions involved, shall allow the same to be maintained, with such substitutions as to parties as are appropriate.

(b) No administrative action or proceeding lawfully commenced shall abate solely by reason of the taking effect of any provision of this Act, but such action or proceeding shall be continued with such substitutions as to parties and officers or agencies as are appropriate.

VACANCIES RESULTING FROM ABOLISHMENT OF OFFICERS OF COMMISSIONER AND ASSISTANT TO THE COMMISSIONER

SEC. 716. Until the 1st day of July next after the first Mayor takes office under this Act no vacancy occurring in any District agency by reason of section 711, abolishing the offices of Commissioner of the District of Columbia and Assistant to the Commissioner, shall affect the power of the remaining members of such agency to exercise its functions; but such agency may take action only if a majority of the members holding office vote in favor of it.

STATUS OF THE DISTRICT

SEC. 717. (a) All of the territory constituting the permanent seat of the Government of the United States shall continue to be designated as the District of Columbia. The District of Columbia shall remain and continue a body corporate, as provided in section 2 of the Revised Statutes relating to the District (D.C. Code, sec. 1-102). Said Corporation shall continue to be charged with all the duties, obligations, responsibilities, and liabilities, and to be vested with all of the powers, rights, privileges, immunities, and assets, respectively, imposed upon and vested in said Corporation or the Commissioner.

(b) No law or regulation which is in force on the effective date of title IV of this Act shall be deemed amended or repealed by this Act except to the extent specifically provided herein or to the extent that such law or regulation is inconsistent with this Act, but any such law or regulation may be amended or repealed by act or resolution as authorized in this Act, or by Act of Congress, except that, notwithstanding the provisions of section 752 of this Act, such authority to repeal shall not be construed as authorizing the Council to repeal or otherwise alter, by amendment or otherwise, any provision of subchapter III of chapter 73 of title 5, United States Code, in whole or in part.

(c) Nothing contained in this section shall affect the boundary line between the District of Columbia and the Commonwealth of Virginia as the same was established or may be subsequently established under the provisions of title I of the Act of October 31, 1945 (59 Stat. 552) [D.C. Code, sec. 101 note].

CONTINUATION OF THE DISTRICT OF COLUMBIA COURT SYSTEM

SEC. 718. (a) The District of Columbia Court of Appeals, the Superior Court of the District of Columbia, and the District of Columbia Commission on Judicial Disabilities and Tenure shall continue as provided under the District of Columbia Court Reorganization Act of 1970 subject to the provisions of part C of title IV of this Act and section 602(a) (4).

(b) The term and qualifications of any judge of any District of Columbia court, and the term and qualifications of any member of the District of Columbia Commission on Judicial Disabilities and Tenure appointed prior to the effective date of title IV of this Act shall not be affected by the provisions of part C of title IV of this Act. No provision of this Act shall be construed to extend the term of any such judge or member of such Commission. Judges of the District of Columbia courts and members of the District of Columbia Commission on Judicial Disabilities and Tenure appointed after the effective date of title IV of this Act shall be appointed according to part C of such title IV.

(c) Nothing in this Act shall be construed to amend, repeal, or diminish the duties, rights, privileges, or benefits accruing under sections 1561 through 1571 of title 11 of the District of Columbia Code, and sections 703 and 904 of such title, dealing with the retirement and compensation of the judges of the District of Columbia courts.

CONTINUATION OF THE BOARD OF EDUCATION

SEC. 719. The term of any member elected to the District of Columbia Board of Education, and the powers and duties of the Board of Education shall not be affected by the provisions of section 495. No provision of such section shall be construed to extend the term of any such member or to terminate the term of any such member.

PART C—TEMPORARY PROVISIONS

POWERS OF THE PRESIDENT DURING TRANSITIONAL PERIOD

SEC. 721. The President of the United States is hereby authorized and requested to take such action during the period following the date of the enactment of this Act and ending on the date of the first meeting of the Council, by Executive order or otherwise, with respect to the administration of the functions of the District government, as he deems necessary to enable the Board of Elections properly to perform its functions under this Act.

REIMBURSABLE APPROPRIATIONS FOR THE DISTRICT

SEC. 722. (a) The Secretary of the Treasury is authorized to advance to the District of Columbia the sum of \$750,000, out of any money in the Treasury not otherwise appropriated, for use (1) in paying the expenses of the Board of Elections (including compensation of the members thereof), and (2) in otherwise carrying into effect the provisions of this Act.

(b) The full amount expended out of the money advanced pursuant to this section shall be reimbursed to the United States, without interest, during the second fiscal year which begins after the effective date of title IV, from the general fund of the District.

INTERIM LOAN AUTHORITY

SEC. 723. (a) The Mayor is authorized to accept loans for the District from the Treasury of the United States, and the Secretary is authorized to lend to the Mayor, such sums as the Mayor may determine are required to complete capital projects for which construction and construction services funds have been authorized or appropriated, as the case may be, by Congress prior to October 1, 1979. In addition, such loans may include funds to pay the District's share of the cost of the adopted regional system specified in the National Capital Transportation Act of 1969 [D.C. Code, sec. 1-1441 et seq.].

(b) Loans advanced pursuant to this section during any six-month period shall be at a rate of interest determined by the Secretary as of the beginning of such period, which, in his judgment, would reflect the cost of money to the Treasury for borrowing at a maturity approximately equal to the period of time the loan is outstanding.

(c) Subject to the limitations contained in section 603(b), there are authorized to be appropriated such sums as may be necessary to make loans under this section.

(d) The authority contained in this section to make loans shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts. (Amended Oct. 13, 1977, Pub. L. 95-131, § 1, 91 Stat. 1155.)

POLITICAL PARTICIPATION IN CERTAIN ELECTIONS FIRST HELD UNDER THIS ACT

SEC. 724. (a) In order to provide continuity in the government of the District of Columbia during the transition from the appointed government to the elected government provided for under this Act, no person employed by the United States or by the government of the District of Columbia shall be prohibited by reason of such employment—

(1) from being a candidate in the first primary election and general election held under this Act for the office of Mayor or Chairman or member of the Council of the District of Columbia provided for under title IV of this Act, and

(2) if such a candidate, from taking an active part in political management or political campaigns in any election referred to in paragraph (1) of this subsection.

(b) Such candidacy shall be deemed to have commenced on the day such person obtains from the Board of Elections an official nominating petition with his name stamped thereon, and shall terminate—

(1) in the case of such candidate who ceases to be eligible as a nominee for the office with respect to which such petition was obtained by reason of his inability or failure to qualify as a bona fide nominee prior to the expiration of the final date for filing such petition under the election laws of the District of Columbia, on the day following such expiration date;

(2) in the case of such candidate who is elected to any such office with respect to which such nominating petition was obtained, on the day such candidate takes office following the election held with respect thereto;

(3) in the case of such candidate who is defeated in a primary election held to nominate candidates for the office with respect to which such nominating petition was obtained, on the expiration of the thirty day period following the date of such primary election; and

(4) in the case of such candidate who fails to be elected in a general election to any such office with respect to which such nominating petition was obtained, on the expiration of the thirty day period following the date of such election.

(c) The provisions of this section shall terminate as of January 2, 1975. (Added Apr. 17, 1974, Pub. L. 93-268, § 3(a), 88 Stat. 86.)

PART D—MISCELLANEOUS

AGREEMENTS WITH UNITED STATES

SEC. 731. (a) For the purpose of preventing duplication of effort or for the purpose of otherwise promoting efficiency and economy, any Federal officer or agency may furnish services to the District government and any District officer or agency may furnish services to the Federal Government. Except where the terms and conditions governing the furnishing of such services are prescribed by other provisions of law, such services shall be furnished pursuant to an agreement (1) negotiated by the Federal and District authorities concerned, and (2) approved by the Director of the Federal Office of Management and Budget and by the Mayor. Each such agreement shall provide that the cost of furnishing such services shall be borne in the manner provided in subsection (c) by the government to which such services are furnished at rates or charges based on the actual cost of furnishing such services.

(b) For the purpose of carrying out any agreement negotiated and approved pursuant to subsection (a), any District officer or agency may in the agreement delegate any of his or its functions to any Federal officer or agency, and any Federal officer or agency may in the agreement delegate any of his or its functions to any District officer or agency. Any function so delegated may be exercised in accordance with the terms of the delegation.

(c) The cost to each Federal officer and agency in furnishing services to the District pursuant to any such agreement are authorized to be paid, in accordance with the terms of the agreement, out of appropriations available to the District officers and agencies to which such services are furnished. The costs to each District officer and agency in furnishing services to the Federal Government pursuant to any such agreement are authorized to be paid, in accordance with the terms of the agreement, out of appropriations made by the Congress or other funds available to the Federal officers and agencies to which such services are furnished, except that the Chief of the Metropolitan Police shall on a nonreimbursable basis when requested by the Director of the United States Secret Service assist the Secret Service and the Executive Protection Service in the performance of their respective protective duties under section 3056 of title 18 of the United States Code and section 302 of title 3 of the United States Code.

PERSONAL INTEREST IN CONTRACTS OR TRANSACTIONS

SEC. 732. Any officer or employee of the District who is convicted of a violation of section 208 of title 18, United States Code, shall forfeit his office or position.

COMPENSATION FROM MORE THAN ONE SOURCE

SEC. 733. (a) Except as provided in this Act, no person shall be ineligible to serve or to receive compensation as a member of the Board of Elections and Ethics because he occupies another office or position or because he re-

ceives compensation (including retirement compensation) from another source.

(b) The right to another office or position or to compensation from another source otherwise secured to such a person under the laws of the United States shall not be abridged by the fact of his service or receipt of compensation as a member of such Board, if such service does not interfere with the discharge of his duties in such other office or position. (Amended Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458.)

ASSISTANCE OF THE UNITED STATES CIVIL SERVICE COMMISSION IN DEVELOPMENT OF DISTRICT MERIT SYSTEM

SEC. 734. The United States Civil Service Commission is hereby authorized to advise and assist the Mayor and the Council in the further development of the merit system or systems required by section 422(3) and the said Commission is authorized to enter into agreements with the District government to make available its registers of eligibles as a recruiting source to fill District positions as needed. The costs of any specific services furnished by the Civil Service Commission may be compensated for under the provisions of section 731 of this Act.

REVENUE SHARING RESTRICTIONS

SEC. 735. Section 141(c) of the State and Local Fiscal Assistance Act of 1972 (86 Stat. 919) [31 U.S.C. 1261] is amended to read as follows:

"(c) DISTRICT OF COLUMBIA.—For purposes of this title, the District of Columbia shall be treated both—

"(1) as a State (and any reference to the Governor of a State shall, in the case of the District of Columbia, be treated as a reference to the Mayor of the District of Columbia), and

"(2) as a county area which has no units of local government (other than itself) within its geographic area."

INDEPENDENT AUDIT

SEC. 736. (a) In addition to the audit carried out under section 455, the accounts and operations of the District government shall be audited annually by the General Accounting Office in accordance with such principles and procedures, and in such detail, and under such rules and regulations as may be prescribed by the Comptroller General of the United States. In the determination of the auditing procedures to be followed and the extent of the examination of vouchers and other documents, the Comptroller General shall give due regard to generally accepted principles of auditing, including consideration of the effectiveness of the accounting organizations and systems, internal audit and control, and related administrative practices. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files, and all other papers, things, or property belonging to or in use by the District and necessary to facilitate the audit, and such representatives shall be afforded full facilities for auditing the accounts and operations of the District government.

(b) (1) The Comptroller General shall submit his audit reports to the Congress, the Mayor, and the Council. The reports shall set forth the scope of the audits and shall include such comments and information as the Comptroller General may deem necessary to keep the Congress, the Mayor, and the Council informed of the operations to which the reports relate, together with such recommendations with respect thereto as the Comptroller General may deem advisable.

(2) After the Mayor has had an opportunity to be heard, the Council may make such report, together with such other material as it deems pertinent thereto, available for public inspection.

(3) The Mayor, within ninety days after receipt of the audit from the Comptroller General, shall state in writing to the Council, with a copy to the Congress, what has been done to comply with the recommendations made by the Comptroller General in the report.

ADJUSTMENTS

SEC. 737. (a) Subject to section 731, the Mayor, with the approval of the Council, and the Director of the Office of Management and Budget, is authorized and empowered to enter into an agreement or agreements concerning the manner and method by which amounts owed

by the District to the United States, or by the United States to the District, shall be ascertained and paid.

(b) The United States shall reimburse the District for necessary expenses incurred by the District in connection with assemblages, marches, and other demonstrations in the District which relate primarily to the Federal Government. The manner and method of ascertaining and paying the amounts needed to so reimburse the District shall be determined by agreement entered into in accordance with subsection (a) of this section.

(c) Each officer and employee of the District required to do so by the Council shall provide a bond which such surety and in such amount as the Council may require. The premiums for all such bonds shall be paid out of appropriations for the District.

ADVISORY NEIGHBORHOOD COMMISSIONS

SEC. 738. (a) The Council shall by act divide the District into neighborhood commission areas and, upon receiving a petition signed by at least 5 per centum of the registered qualified electors of a neighborhood commission area, shall establish for that neighborhood an elected advisory neighborhood commission. In designating such neighborhoods, the Council shall consider natural geographic boundaries, election districts, and divisions of the District made for the purpose of administration of services.

(b) Elections for members of each advisory neighborhood commission shall be nonpartisan, shall be scheduled to coincide with the elections of members of the Board of Education held in the District, and shall be administered by the Board of Elections and Ethics. Advisory neighborhood commission members shall be elected from single member districts within each neighborhood commission area by the registered qualified electors thereof.

(c) Each advisory neighborhood commission—

(1) may advise the District government on matters of public policy including decisions regarding planning, streets, recreation, social services programs, health, safety, and sanitation in that neighborhood commission area;

(2) may employ staff and expend, for public purposes within its neighborhood commission area, public funds and other funds donated to it; and

(3) shall have such other powers and duties as may be provided by act of the Council.

(d) In the manner provided by act of the Council, in addition to any other notice required by law, timely notice shall be given to each advisory neighborhood commission of requested or proposed zoning changes, variances, public improvements, licenses or permits of significance to neighborhood planning and development within its neighborhood commission area for its review, comment, and recommendation.

(e) In order to pay the expenses of the advisory neighborhood commissions, enable them to employ such staff as may be necessary, and to conduct programs for the welfare of the people in a neighborhood commission area, the District government shall apportion to each advisory neighborhood commission, out of the revenue of the District received from the tax on real property in the District including improvements thereon, a sum not less than that part of such revenue raised by levying 1 cent per \$100 of assessed valuation which bears the same ratio to the full sum raised thereby as the population of the neighborhood bears to the population of the District. The Council may authorize additional methods of financing advisory neighborhood commissions.

(f) The Council shall by act make provisions for the handling of funds and accounts by each advisory neighborhood commission and shall establish guidelines with respect to the employment of persons by each advisory neighborhood commission which shall include fixing the status of such employees with respect to the District government, but all such provisions and guidelines shall be uniform for all advisory neighborhood commissions and shall provide that decisions to employ and discharge employees shall be made by the advisory neighborhood commission. These provisions shall conform to the extent practicable to the regular budgetary, expenditure and auditing procedures and the personnel merit system of the District.

(g) The Council shall have authority in accordance with the provisions of this Act, to legislate with respect

to the advisory neighborhood commissions established in this section.

(h) The foregoing provisions of this section shall take effect only if agreed to in accordance with the provisions of section 703(a) of this Act. (Amended Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458; Oct. 30, 1975, D.C. Law 1-27, § 2(a), 22 DCR 2470.)

NATIONAL CAPITAL SERVICE AREA

Sec. 739. (a) There is established within the District of Columbia the National Capital Service Area which shall include, subject to the following provisions of this section, the principal Federal monuments, the White House, the Capitol Building, the United States Supreme Court Building, and the Federal executive, legislative, and judicial office buildings located adjacent to the Mall and the Capitol Building, and is more particularly described in subsection (f).

(b) There is established in the Executive Office of the President the National Capital Service Director who shall be appointed by the President. The President, through the National Capital Service Director, shall assure that there is provided, utilizing District of Columbia governmental services to the extent practicable, within the area specified in subsection (a) and particularly described in subsection (f), adequate fire protection and sanitation services. Except with respect to that portion of the National Capital Service Area comprising the United States Capitol Buildings and Grounds as defined in sections 1 and 16 of the Act of July 31, 1946, as amended (40 U.S.C. 193a and 193m) [D.C. Code, secs. 9-118, 9-132], the United States Supreme Court Building and Grounds as defined in section 11 of the Act of August 18, 1949, as amended (40 U.S.C. 13p), and the Library of Congress Buildings and Grounds as defined in section 11 of the Act of August 4, 1950, as amended (2 U.S.C. 167j), the National Capital Service Director shall assure that there is provided within the remainder of such area specified in subsection (a) and subsection (f), adequate police protection and maintenance of streets and highways.

(c) The National Capital Service Director shall be entitled to receive compensation at the maximum rate as may be established from time to time for level IV of the Executive Schedule of section 5314 of title 5 of the United States Code. The Director may appoint, subject to the provisions of title 5 of the United States Code governing appointments in the competitive service, and fix the pay of, in accordance with the provisions of chapter 51 and subchapter 3 of chapter 53 of such title relating to classification and General Schedule pay rates, such personnel as may be necessary.

(d) Section 45 of the Act entitled "An Act to provide for the organization of the militia of the District of Columbia", approved March 1, 1889 (D.C. Code, sec. 39-603), is amended by inserting after "United States Marshal for the District of Columbia," the following: "or for the National Capital Service Director,".

(e) (1) Within one year after the effective date of this section, the President is authorized and directed to submit to the Congress a report on the feasibility and advisability of combining the Executive Protective Service and the United States Park Police within the National Capital Service Area, and placing them under the National Capital Service Director.

(2) Such report shall include such recommendations, including recommendations for legislative and executive action, as the President deems necessary in carrying out the provisions of paragraph (1) of this subsection.

(f) (1) (A) The National Capital Service Area referred to in subsection (a) is more particularly described as follows:

Beginning at that point on the present Virginia-District of Columbia boundary due west of the northernmost point of Theodore Roosevelt Island and running due east to the eastern shore of the Potomac River;

thence generally south along the shore at the mean high water mark to the northwest corner of the Kennedy Center;

thence east along the north side of the Kennedy Center to a point where it reaches the E Street Expressway;

thence east on the expressway to E Street Northwest and thence east on E Street Northwest to Eighteenth Street Northwest;

thence south on Eighteenth Street Northwest to Constitution Avenue Northwest;

thence east on Constitution Avenue to Seventeenth Street Northwest;

thence north on Seventeenth Street Northwest to Pennsylvania Avenue Northwest;

thence east on Pennsylvania Avenue to Jackson Place Northwest;

thence north on Jackson Place to H Street Northwest;

thence east on H Street Northwest to Madison Place Northwest;

thence south on Madison Place Northwest to Pennsylvania Avenue Northwest;

thence east on Pennsylvania Avenue Northwest to Fifteenth Street Northwest;

thence south on Fifteenth Street Northwest to Pennsylvania Avenue Northwest;

thence southeast on Pennsylvania Avenue Northwest to John Marshall Place Northwest;

thence north on John Marshall Place Northwest to C Street Northwest;

thence east on C Street Northwest to Third Street Northwest;

thence north on Third Street Northwest to D Street Northwest;

thence east on D Street Northwest to Second Street Northwest;

thence south on Second Street Northwest to the intersection of Constitution Avenue Northwest and Louisiana Avenue Northwest;

thence northeast on Louisiana Avenue Northwest to North Capitol Street;

thence north on North Capitol Street to Massachusetts Avenue Northwest;

thence southeast on Massachusetts Avenue Northwest so as to encompass Union Square;

thence following Union Square to F Street Northeast;

thence east on F Street Northeast to Second Street Northeast;

thence south on Second Street Northeast to D Street Northeast;

thence west on D Street Northeast to First Street Northeast;

thence south on First Street Northeast to Maryland Avenue Northeast;

thence generally north and east on Maryland Avenue to Second Street Northeast;

thence south on Second Street Northeast to C Street Southeast;

thence west on C Street Southeast to New Jersey Avenue Southeast;

thence south on New Jersey Avenue Southeast to D Street Southeast;

thence west on D Street Southeast to Canal Street Parkway;

thence southeast on Canal Street Parkway to E Street Southeast;

thence west on E Street Southeast to the intersection of Canal Street Southwest and South Capitol Street;

thence northwest on Canal Street Southwest to Second Street Southwest;

thence south on Second Street Southwest to Virginia Avenue Southwest;

thence generally west on Virginia Avenue to Third Street Southwest;

thence north on Third Street Southwest to C Street Southwest;

thence west on C Street Southwest to Sixth Street Southwest;

thence north on Sixth Street Southwest to Independence Avenue;

thence west on Independence Avenue to Twelfth Street Southwest;

thence south on Twelfth Street Southwest to D Street Southwest;

thence west on D Street Southwest to Fourteenth Street Southwest;

thence south on Fourteenth Street Southwest to the middle of the Washington Channel;

thence generally south and east along the midchannel of the Washington Channel to a point due west of the northern boundary line of Fort Lesley McNair;

thence due east to the side of the Washington Channel;

thence following generally south and east along the side of the Washington Channel at the mean high water mark, to the point of confluence with the Anacostia River, and along the northern shore at the mean high water mark to the northern most point of the Eleventh Street Bridge;

thence generally south and east along the northern side of the Eleventh Street Bridge to the eastern shore of the Anacostia River;

thence generally south and west along such shore at the mean high water mark to the point of confluence of the Anacostia and Potomac Rivers;

thence generally south along the eastern shore at the mean high water mark of the Potomac River to the point where it meets the present southeastern boundary line of the District of Columbia;

thence south and west along such southeastern boundary line to the point where it meets the present Virginia-District of Columbia boundary;

thence generally north and west up the Potomac River along the Virginia-District of Columbia boundary to the point of beginning.

(B) Where the area in paragraph (1) is bounded by any street, such street, and any sidewalk thereof, shall be included within such area.

(2) Any Federal real property affronting or abutting, as of the date of the enactment of this Act [Dec. 24, 1973], the area described in paragraph (1) shall be deemed to be within such area.

(3) For the purposes of paragraph (2), Federal real property affronting or abutting such area described in paragraph (1) shall—

(A) be deemed to include, but not limited to, Fort Lesley McNair, the Washington Navy Yard, the Anacostia Naval Annex, the United States Naval Station, Bolling Air Force Base, and the Naval Research Laboratory; and

(B) not be construed to include any area situated outside of the District of Columbia boundary as it existed immediately prior to the date of the enactment of this Act, nor be construed to include any portion of the Anacostia Park situated east of the northern side of the Eleventh Street Bridge, or any portion of the Rock Creek Park.

(g) (1) Subject to the provisions of paragraph (2) of this subsection, the President is authorized and directed to conduct a survey of the area described in this section in order to establish the proper metes and bounds of such area, and to file, in such manner and at such place as he may designate, a map and a legal description of such area, and such description and map shall have the same force and effect as if included in this Act, except that corrections of clerical, typographical and other errors in any such legal descriptions and map may be made. In conducting such survey, the President shall make such adjustments as may be necessary in order to exclude from the National Capital Service Area any privately owned properties, and buildings and adjacent parking facilities owned by the District of Columbia government.

(2) In carrying out the provisions of paragraph (1) of this subsection, the President shall, to the extent that such survey, legal description, and map involves areas comprising the United States Capitol Buildings and Grounds as defined in sections 1 and 16 of the Act of July 31, 1946, as amended (40 U.S.C. 193a and 193m) [D.C. Code, secs. 9-118, 9-132], and other buildings and grounds under the care of the Architect of the Capitol, consult with the Architect of the Capitol.

(3) Section 1 of the Act of July 31, 1946, as amended by the Act of October 20, 1967 (60 Stat. 718; 81 Stat. 275; 40 U.S.C. 193a) [D.C. Code, sec. 9-118], is hereby amended to include within the definition of the United States Capitol Grounds, the following streets: "Independence Avenue from the west curb of First Street S.E. to the east curb of First Street S.W., New Jersey Avenue S.E. from the south curb of Independence Avenue to the north curb of D Street S.E., South Capitol Street from the south curb of Independence Avenue to the north curb of D Street; Delaware Avenue S.W. from the south curb of C Street S.W. to the north curb of D Street S.W., C Street, from the west curb of First Street S.E. to the intersection of First and Canal Streets, S.W., D Street from the west curb of First Street S.E. to the intersection of Canal Street and Delaware Avenue S.W., that part of First Street

lying west of the outer face of the curb of the sidewalk on the east side thereof from D Street, N.E. to D Street S.E., that part of First Street within the east and west curblines thereof extending from the north side of Pennsylvania Avenue N.W. to the intersection of C Street and Canal Street S.W., including the two circles within such area. Nothing in this section shall be construed as repealing, or otherwise altering, modifying, affecting, or superseding those provisions of law in effect on the date immediately preceding the effective date of title IV of this Act vesting authority in the United States Supreme Court police and Library of Congress police to make arrests in adjacent streets, including First Street N.E. and First Street S.E.."

(4) Section 9 of the Act of July 31, 1946, as amended (40 U.S.C. 212a) [D.C. Code, sec. 9-126], is amended by deleting "or of any State," and inserting in lieu thereof a comma and the following: "of the District of Columbia, or of any State,".

(5) Section 9 of such Act is further amended by deleting the following: " , with the exception of the streets and roadways shown on the map referred to in section 1 of this Act as being under the jurisdiction and control of the Commissioners of the District of Columbia."

(6) Section 14(a) of the Act of July 31, 1946, as amended (40 U.S.C. 212b) [D.C. Code, sec. 9-131], is amended by deleting: " , except on those streets and roadways shown on the map referred to in section 1 of this Act as being under the jurisdiction and control of the Commissioners of the District of Columbia".

(7) Section 1 of the Act of July 31, 1946, as amended (40 U.S.C. 193a) [D.C. Code, sec. 9-118], is amended by deleting " : *Provided*, That those streets and roadways in said United States Capitol Grounds shown on said map as being under the jurisdiction and control of the Commissioners of the District of Columbia shall continue under such jurisdiction and control, and said Commissioners shall be responsible for the maintenance and improvement thereof: *Provided further*," and inserting in lieu thereof a comma and the following: "including those streets and roadways in said United States Capitol Grounds as shown on said map as being under the jurisdiction and control of the Commissioners of the District of Columbia, except that the Commissioner of the District of Columbia shall be responsible for the maintenance and improvement of those portions of the following streets which are situated between the curblines thereof: Constitution Avenue from First Street N.E. to Second Street N.W., First Street from D Street N.E. to D Street S.E., D Street from First Street S.E. to Canal Street S.W., and First Street from the north side of Louisiana Avenue to the intersection of C Street and Canal Street S.W.: *Provided*,".

(8) Section 9 of the Act of August 18, 1949, as amended (40 U.S.C. 13n), is amended by deleting "or of any State" and inserting in lieu thereof a comma and the following: "any law of the District of Columbia, or of any State,".

(9) Section 9 of the Act of August 4, 1950, as amended (2 U.S.C. 167h), is amended by deleting "or of any State" and inserting in lieu thereof a comma and the following: "any law of the District of Columbia or of any State,".

(h) (1) Except to the extent specifically provided by the provisions of this section, and amendments made by this section, nothing in this section shall be applicable to the United States Capitol Buildings and Grounds as defined in sections 1 and 16 of the Act of July 31, 1946, as amended (40 U.S.C. 193a, 193m) [D.C. Code, secs. 9-118, 9-132], or to any other buildings and grounds under the care of the Architect of the Capitol, the United States Supreme Court Building and Grounds as defined in section 11 of the Act of August 18, 1949, as amended (40 U.S.C. 13p), and the Library of Congress Buildings and Grounds as defined in section 11 of the Act of August 4, 1950, as amended (2 U.S.C. 167j), and except to the extent herein specifically provided, including amendments made by this section, nothing in this section shall be construed to repeal, amend, alter, modify, or supersede any provision of the Act of July 31, 1946, as amended (40 U.S.C. 193a et seq.) [D.C. Code, sec. 9-118 et seq.], or any other of the general laws of the United States or any of the laws enacted by the Congress and applicable exclusively to the District of Columbia, or any rule or regulation promulgated pursuant thereto, in effect on the date immediately

preceding the effective date of title IV of this Act pertaining to said buildings and grounds, or any existing authority, with respect to such buildings and grounds, vested by law, or otherwise, on such date immediately preceding such effective date, in the Senate, the House of Representatives, the Congress, or any committee or commission or board thereof, the Architect of the Capitol, or any other officer of the legislative branch, the Chief Justice of the United States, the Marshal of the Supreme Court of the United States, or the Librarian of Congress.

(2) Notwithstanding the foregoing provision of this section, any of the services and facilities authorized by this Act to be rendered or furnished (including maintenance of streets and highways, and services under section 731 of this Act) shall, as far as practicable, be made available to the Senate, the House of Representatives, the Congress, or any committee or commission or board thereof, the Architect of the Capitol, or any other officer of the legislative branch vested by law or otherwise on such date immediately preceding the effective date of title IV of this Act with authority over such buildings and grounds, the Chief Justice of the United States, the Marshal of the Supreme Court of the United States, and the Librarian of Congress, upon their request, and, if payment would be required for the rendition or furnishing of a similar service or facility to any other Federal agency, payment therefor shall be made by the recipient thereof, upon presentation of proper vouchers, in advance or by reimbursement (as may be agreed upon by the parties rendering and receiving such services).

(i) Except to the extent otherwise specifically provided in the provisions of this section, and amendments made by this section, all general laws of the United States and all laws enacted by the Congress and applicable exclusively to the District of Columbia, including regulations and rules promulgated pursuant thereto, in effect on the date immediately preceding the effective date of title IV of this Act and which, on such date immediately preceding the effective date of such title, are applicable to and within the areas included within the National Capital Service Area pursuant to this section shall, on and after such effective date, continue to be applicable to and within such National Capital Service Area in the same manner and to the same extent as if this section had not been enacted, and shall remain so applicable until such time as they are repealed, amended, altered, modified, or superseded, and such laws, regulations and rules shall thereafter be applicable to and within such area in the manner and to the extent so provided by any such amendment, alteration, or modification.

(j) In no case shall any person be denied the right to vote or otherwise participate in any manner in any election in the District of Columbia solely because such person resides within the National Capital Service Area.

EMERGENCY CONTROL OF POLICE

SEC. 740. (a) Notwithstanding any other provision of law, whenever the President of the United States determines that special conditions of an emergency nature exist which require the use of the Metropolitan Police force for Federal purposes, he may direct the Mayor to provide him, and the Mayor shall provide, such services of the Metropolitan Police force as the President may deem necessary and appropriate. In no case, however, shall such services made available pursuant to any such direction under this subsection extend for a period in excess of forty-eight hours unless the President has, prior to the expiration of such period, notified the Chairman and ranking minority Members of the Committees on the District of Columbia of the Senate and the House of Representatives, in writing, as to the reason for such direction and the period of time during which the need for such services is likely to continue.

(b) Subject to the provisions of subsection (c) of this section, such services made available in accordance with subsection (a) of this section shall terminate upon the end of such emergency, the expiration of a period of thirty days following the date on which such services are first made available, or the adoption of a resolution by either the Senate or the House of Representatives providing for such termination, whichever first occurs.

(c) Notwithstanding the foregoing provisions of this section, in any case in which such services are made

available in accordance with the provisions of subsection (a) of this section during any period of an adjournment of the Congress sine die, such services shall terminate upon the end of the emergency, the expiration of the thirty-day period following the date on which Congress first convenes following such adjournment, or the adoption of a resolution by either the Senate or the House of Representatives providing for such termination, whichever first occurs.

(d) Except to the extent provided for in subsection (c) of this section, no such services made available pursuant to the direction of the President pursuant to subsection (a) of this section shall extend for any period in excess of thirty days, unless the Senate and the House of Representatives approve a concurrent resolution authorizing such an extension.

HOLDING OFFICE IN THE DISTRICT

SEC. 741. [Repealed. Apr. 17, 1974, Pub. L. 93-268, § 4(c), 88 Stat. 87.]

OPEN MEETINGS

SEC. 742. (a) All meetings (including hearings) of any department, agency, board, or commission of the District government, including meetings of the District Council, at which official action of any kind is taken shall be open to the public. No resolution, rule, act, regulation or other official action shall be effective unless taken, made, or enacted at such meeting.

(b) A written transcript or a transcription shall be kept for all such meetings and shall be made available to the public during normal business hours of the District government. Copies of such written transcripts or copies of such transcriptions shall be available upon request to the public at reasonable cost.

TERMINATION OF THE DISTRICT'S AUTHORITY TO BORROW FROM THE TREASURY

SEC. 743. (a) The first section of the Act entitled "An Act to authorize the Commissioners of the District of Columbia to borrow funds for capital improvement programs and to amend provisions of law relating to Federal Government participation in meeting costs of maintaining the Nation's Capital City", approved June 6, 1958 (72 Stat. 183; D.C. Code, sec. 9-220), is amended by striking out subsections (b), (c), (d), and (e).

(b) The Act entitled "An Act authorizing loans from the United States Treasury for the expansion of the District of Columbia water system", approved June 2, 1950 (64 Stat. 195; D.C. Code, sec. 43-1540), is repealed.

(c) Title II of the Act entitled "An Act to authorize the financing of a program of public works construction for the District of Columbia, and for other purposes", approved May 18, 1954 (68 Stat. 108), is amended by striking out sections 213, 214, 216, 217, and 218 (D.C. Code, sections 43-1612, 43-1613, 43-1615, 43-1616, and 43-1617), authorizing loans from the United States Treasury for sanitary and combined sewer systems of the District.

(d) Section 402 of title IV of such Act approved May 18, 1954 (68 Stat. 110; D.C. Code, sec. 7-133), authorizing loans from the United States Treasury for the District of Columbia highway construction program, is repealed.

(e) Section 4 of the Act entitled "An Act to authorize the Commissioners of the District of Columbia to plan, construct, operate, and maintain a sanitary sewer to connect the Dulles International Airport with the District of Columbia system", approved June 12, 1960 (74 Stat. 211; D.C. Code, sec. 43-1623), is repealed.

(f) Nothing contained in this section shall be deemed to relieve the District of its obligation to repay any loan made to it under the authority of the Acts specified in the preceding subsections, nor to preclude the District from using the unexpended balance of any such loan appropriated to the District prior to the effective date of this provision, nor to prevent the District from fulfilling the provisions of section 722. (Amended Oct. 13, 1977, Pub. L. 95-131, § 4, 91 Stat. 1156.)

PART E—AMENDMENTS TO THE DISTRICT OF COLUMBIA ELECTION ACT

AMENDMENTS

SEC. 751. The District of Columbia Election Act (D.C. Code, secs. 1-1101—1-1115) is amended as follows:

(1) The first section of such Act (D.C. Code, sec. 1-1101) is amended by inserting immediately after "Board of Education," the following: "the members of the Council of the District of Columbia, the Mayor".

(2) Section 2 of such Act (D.C. Code, sec. 1-1102) is amended by adding at the end thereof the following new paragraphs:

"(8) The term 'Council' or 'Council of the District of Columbia' means the Council of the District of Columbia established pursuant to the District of Columbia Self-Government and Governmental Reorganization Act.

"(9) The term 'Mayor' means the office of Mayor of the District of Columbia established pursuant to the District of Columbia Self-Government and Governmental Reorganization Act."

(3) Subsections (h), (i), (j), and (k) of section 8 of such Act (D.C. Code, sec. 1-1108) are amended to read as follows:

"(h) (1) (A) The Delegate, Mayor, Chairman of the District Council and the four at-large members of the Council shall be elected by the registered qualified electors of the District of Columbia in a general election. Each candidate for the office of Delegate, Mayor, Chairman of the District Council, and at-large members of the Council in any general election shall, except as otherwise provided in subsection (j) of this section and section 10(d), have been elected by the registered qualified electors of the District as such candidate by the next preceding primary election.

"(B) (i) A member of the office of Council (other than the Chairman and any member elected at large) shall be elected in a general election by the registered qualified electors of the respective ward of the District from which the individual seeking such office was elected as a candidate for such office as provided in clause (ii) of this paragraph.

"(ii) Each candidate for the office of member of the Council (other than Chairman and at-large members) shall, except as otherwise provided in subsection (j) of this section and section 10(d), have been elected as such a candidate, by the registered qualified electors of the ward of the District from which such individual was nominated, at the next preceding primary election to fill such office within that ward.

"(2) The nomination and election of any individual to the office of Delegate, Mayor, Chairman of the Council and member of the Council shall be governed by the provisions of this Act. No political party shall be qualified to hold a primary election to select candidates for election to any such office in a general election unless, in the next preceding election year, at least seven thousand five hundred votes were cast in the general election for a candidate of such party for any such office or for its candidates for electors of President and Vice President.

"(i) (1) Each individual in a primary election for candidate for the office of Delegate, Mayor, Chairman of the Council, or at-large member of the Council shall be nominated for any such office by a petition (A) filed with the Board not later than sixty days before the date of such primary election, and (B) signed by at least two thousand registered qualified electors of the same political party as the nominee, or by 1 per centum of the duly registered members of such political party, whichever is less, as shown by the records of the Board of Elections as of the one hundred fourteenth day before the date of such election.

"(2) Each individual in a primary election for candidate for the office of member of the Council (other than the Chairman and at-large members) shall be nominated for such office by a petition (A) filed with the Board not later than sixty days before the date of such primary election, and (B) signed by at least two hundred and fifty persons in the ward from which such individual seeks election who are duly registered in such ward under section 7 of this Act, and who are of the same political party as the nominee.

"(3) A nominating petition for a candidate in a primary election for any such office may not be circulated for signature before the one hundred fourteenth day preceding the date of such election and may not be filed with the Board before the eighty-fifth day preceding such date. The Board may prescribe rules with respect to the

preparation and presentation of nominating petitions. The Board shall arrange the ballot of each political party in each such primary election as to enable a voter of such party to vote for nominated candidates of that party.

"(j) (1) A duly qualified candidate for the office of Delegate, Mayor, Chairman of the Council, or member of the Council may, subject to the provisions of this subsection, be nominated directly as such a candidate for election for such office (including any such election to be held to fill a vacancy). Such person shall be nominated by petition (A) filed with the Board not less than sixty days before the date of such general election, and (B) in the case of a person who is a candidate for the office of member of the Council (other than the Chairman or an at-large member), signed by five hundred voters who are duly registered under section 7 in the ward from which the candidate seeks election; and in the case of a person who is a candidate for the office of Delegate, Mayor, Chairman of the Council, or at-large member of the Council, signed by duly registered voters equal in number to 1½ per centum of the total number of registered voters in the District, as shown by the records of the Board as of one hundred fourteen days before the date of such election, or by three thousand persons duly registered under section 7, whichever is less. No signatures on such a petition may be counted which have been made on such petition more than one hundred fourteen days before the date of such election.

"(2) Nominations under this subsection for candidates for election in a general election to any office referred to in paragraph (1) shall be of no force and effect with respect to any person whose name has appeared on the ballot of a primary election for that office held within eight months before the date of such general election.

"(k) (1) In each general election for the office of member of the Council (other than the office of the Chairman or an at-large member) the Board shall arrange the ballots in each ward to enable a voter registered in that ward to vote for any one candidate who (A) has been duly elected by any political party in the next preceding primary election for such office from such ward, (B) has been duly nominated to fill a vacancy in such office in such ward pursuant to section 10(d), or (C) has been nominated directly as a candidate for such office in such ward under subsection (j) of this section.

"(2) In each general election for the office of Chairman and member of the Council at large, the Board shall arrange the ballots to enable a registered qualified elector to vote for as many candidates for election as members at large as there are members at large to be elected in such election, including the Chairman. Such candidates shall be only those persons who (A) have been duly elected by any political party in the next preceding primary election for such office, (B) have been duly nominated to fill vacancies in such office pursuant to section 10(d), or (C) have been nominated directly as a candidate under subsection (j) of this section.

"(3) In each general election for the office of Delegate and Mayor, the Board shall arrange the ballots to enable a registered qualified elector to vote for any one of the candidates for any such office who (A) has been duly elected by any political party in the next preceding primary election for such office, (B) has been duly nominated to fill a vacancy in such office pursuant to section 10(d), or (C) has been nominated directly as a candidate under subsection (j) of this section."

(4) Paragraph (3) of section 10(a) of such Act (D.C. Code, sec. 1-1110) is amended (1) by inserting "(A)" immediately before the word "Except", and (2) by adding at the end thereof the following:

"(B) Except as otherwise provided in the case of special elections under this Act, primary elections of each political party for the office of member of the Council shall be held on the first Tuesday after the second Monday in September in 1974, and every second year thereafter, and general election for such offices shall be held on the first Tuesday after the first Monday in November in 1974 and every second year thereafter.

"(C) Except as otherwise provided in the case of a special election under this Act, primary elections of each political party for the office of Mayor and Chairman shall be held on the first Tuesday after the second Monday in

September of every fourth year, commencing with calendar year 1974, and the general election for such office shall be held on the first Tuesday after the first Monday in November in 1974 and every fourth year thereafter."

(5) Paragraphs (6), (7), (8), and (9) of section 10(a) of such Act (D.C. Code, sec. 1-1110) are repealed, and paragraphs (4) and (5) of such section 10(a) are amended to read as follows:

"(4) With respect to special elections required or authorized by this Act, the Board may establish the dates on which such special elections are to be held and prescribe such other terms and conditions as may, in the Board's opinion, be necessary or appropriate for the conduct of such elections in a manner comparable to that prescribed for other elections held pursuant to this Act.

"(5) General elections for members of the Board of Education shall be held on the first Tuesday after the first Monday in November of each odd-numbered calendar year."

(6) Section 10(b) of such Act (D.C. Code, sec. 1-1110) is amended by striking out "other than general elections for the Office of Delegate and for members of the Board of Education."

(7) Section 10(c) of such Act (D.C. Code, sec. 1-1110) is amended by striking out the words "other than an election for members of the Board of Education".

(8) Section 10(d) of such Act (D.C. Code, sec. 1-1110) is amended to read as follows:

"(d) In the event that any official, other than the Delegate, Mayor, member of the Council, member of the Board of Education, or a winner of a primary election for the office of Delegate, Mayor, or member of the Council, elected pursuant to this Act dies, resigns, or becomes unable to serve during his or her term of office leaving no person elected pursuant to this Act to serve the remainder of the unexpired term of office, the successor or successors to serve the remainder of such term shall be chosen pursuant to the rules of the duly authorized party committee, except that such successor shall have the qualifications required by this Act for such office. In the event that such a vacancy occurs in the office of a candidate for the office of Delegate, Mayor, or member of the Council who has been declared the winner in the preceding primary election of such office, the vacancy may be filled not later than fifteen days prior to the next general election for such office, by nomination by the party committee of the party which nominated his predecessor. In the event that such a vacancy occurs in the office of Delegate more than eight months before the expiration of its term of office, the Board shall call special elections to fill such vacancy for the remainder of its term of office."

(9) The first sentence of section 15 of such Act (D.C. Code, sec. 1-1115) is amended to read as follows: "No person shall be a candidate for more than one office on the Board of Education or the Council in any election for members of the Board of Education or Council, and no

person shall be a candidate for more than one office on the Council in any primary election."

(10) Section 15 of such Act (D.C. Code, sec. 1-1115) is further amended (1) by designating the existing text of such section as subsection (a), and (2) by adding at the end thereof the following new subsection:

"(b) No person who is holding the office of Mayor, Delegate, Chairman or member of the Council, or member of the School Board shall, while holding such office, be eligible as a candidate for any other of such offices in any primary or general election, unless the term of the office which he so holds expires on or prior to the date on which he would be eligible, if elected in such primary or general election, to take the office with respect to which such election is held."

DISTRICT COUNCIL AUTHORITY OVER ELECTIONS

SEC. 752. Notwithstanding any other provision of this Act or of any other law, the Council shall have authority to enact any act or resolution with respect to matters involving or relating to elections in the District.

PART F—RULES OF CONSTRUCTION

CONSTRUCTION

SEC. 761. To the extent that any provisions of this Act are inconsistent with the provisions of any other laws the provisions of this Act shall prevail and shall be deemed to supersede the provisions of such laws.

PART G—EFFECTIVE DATES

EFFECTIVE DATES

SEC. 771. (a) Titles I and V, and parts A and G, and section 722 of title VII shall take effect on the date of enactment of this Act.

(b) Sections 712, 713, 714, and 715 of title VII, and section 401(b) of title IV, and title II shall take effect July 1, 1974, except that any provision thereof which in effect transfers authority to appoint any citizen member of the National Capital Planning Commission or the District of Columbia Redevelopment Land Agency shall take effect January 2, 1975.

(c) Titles III and IV, except section 401(b) of title IV, shall take effect January 2, 1975, if title IV is accepted by a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum.

(d) Title VI and parts D and F and sections 711, 716, 717, 718, 719, 721, and 723 of title VII shall take effect only if and upon the date that title IV becomes effective.

(e) Part E of title VII shall take effect on the date on which title IV is accepted by a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum. (Amended Apr. 17, 1974, Pub. L. 93-268, § 3(c), 88 Stat. 87; Aug. 29, 1974, Pub. L. 93-395, § 1(8), 88 Stat. 793.)

Approved December 24, 1973 (Pub. L. 93-198, 87 Stat. 774).

CONSTITUTION OF THE UNITED STATES OF AMERICA

ARTICLE [XXIV]

SECTION 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

The 24th amendment to the Constitution was proposed by the Congress on August 27, 1962. It was declared in a certificate of the Administrator of General Services, dated February 4, 1964, ratified by the legislatures of 38 of the 50 States. The dates of ratification were: Illinois, November 14, 1962; New Jersey, December 3, 1962; Oregon, January 25, 1963; Montana, January 28, 1963; West Virginia, February 1, 1963; New York, February 4, 1963; Maryland, February 6, 1963; California, February 7, 1963; Alaska, February 11, 1963; Rhode Island, February 14, 1963; Indiana, February 19, 1963; Utah, February 20, 1963; Michigan, February 20, 1963; Colorado, February 21, 1963; Ohio, February 27, 1963; Minnesota, February 27, 1963; New Mexico, March 5, 1963; Hawaii, March 6, 1963; North Dakota, March 7, 1963; Idaho, March 8, 1963; Washington, March 14, 1963; Vermont, March 15, 1963; Nevada, March 19, 1963; Connecticut, March 20, 1963; Tennessee, March 21, 1963; Pennsylvania, March 25, 1963; Wisconsin, March 26, 1963; Kansas, March 28, 1963; Massachusetts, March 28, 1963; Nebraska, April 4, 1963; Florida, April 18, 1963; Iowa, April 24, 1963; Delaware, May 1, 1963; Missouri, May 13, 1963; New Hampshire, June 12, 1963; Kentucky, June 27, 1963; Maine, January 16, 1964; South Dakota, January 23, 1964.

Ratification was completed on January 23, 1964.

The amendment was subsequently ratified by Virginia on February 25, 1977.

The amendment was rejected by Mississippi on December 20, 1962.

ARTICLE [XIX]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

PROPOSED AMENDMENT

[EQUAL RIGHTS FOR MEN AND WOMEN]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE—

"SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

The 19th amendment to the Constitution was proposed by the Congress on June 4, 1919. It was declared, in a certificate by the Secretary of State, dated August 26, 1920, to have been ratified by the legislatures of 36 of the 48 States. The dates of ratification were: Illinois, June 10, 1919 (and that State readopted its resolution of ratification June 17, 1919); Michigan, June 10, 1919; Wisconsin, June 10, 1919; Kansas, June 16, 1919; New York, June 16, 1919; Ohio, June 16, 1919; Pennsylvania, June 24, 1919; Massachusetts, June 25, 1919; Texas, June 28, 1919; Iowa, July 2, 1919; Missouri, July 3, 1919; Arkansas, July 28, 1919; Montana, August 2, 1919; Nebraska, August 2, 1919; Minnesota, September 8, 1919; New Hampshire, September 10, 1919; Utah, October 2, 1919; California, November 1, 1919; Maine, November 5, 1919; North Dakota, December 1, 1919; South Dakota, December 4, 1919; Colorado, December 15, 1919; Kentucky, January 6, 1920; Rhode Island, January 6, 1920; Oregon, January 13, 1920; Indiana, January 16, 1920; Wyoming, January 27, 1920; Nevada, February 7, 1920; New Jersey, February 9, 1920; Idaho, February 11, 1920; Arizona, February 12, 1920; New Mexico, February 21, 1920; Oklahoma, February 28, 1920; West Virginia, March 10, 1920; Washington, March 22, 1920; Tennessee, August 18, 1920.

Ratification was completed on August 18, 1920.

The amendment was subsequently ratified by Connecticut on September 14, 1920 (and that State reaffirmed on September 21, 1920); Vermont, February 8, 1921; Maryland, March 29, 1941 (after having rejected it on February 24, 1920; ratification certified on February 25, 1958); Virginia, February 21, 1952 (after rejecting it on February 12, 1920); Alabama, September 8, 1953 (after rejecting it on September 22, 1919); Florida, May 13, 1969; South Carolina, July 1, 1969 (after rejecting it on January 28, 1920; ratification certified on August 22, 1973); Georgia, February 20, 1970 (after rejecting it on July 24, 1919); Louisiana, June 11, 1970 (after rejecting it on July 1, 1920); North Carolina, May 6, 1971.

The amendment was rejected by Mississippi, March 29, 1920; Delaware, June 2, 1920.

HISTORICAL NOTE

Proposed by the Ninety-second Congress. Passed House Oct. 12, 1971. Passed Senate Mar. 22, 1972. Received by the Office of the Federal Register, General Services Administration, Mar. 23, 1972.

This article shall be valid to all intents and purposes as part of the Constitution of the United States when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress.

RATIFICATION BY THE STATES

Hawaii -----	Mar. 22, 1972	Maryland -----	May 26, 1972
Delaware -----	Mar. 23, 1972	Massachusetts -----	June 21, 1972
New Hampshire -----	Mar. 23, 1972	Kentucky -----	June 27, 1972
Idaho -----	Mar. 24, 1972	Pennsylvania -----	Sept. 26, 1972
Iowa -----	Mar. 24, 1972	California -----	Nov. 13, 1972
Kansas -----	Mar. 28, 1972	Wyoming -----	Jan. 26, 1973
Nebraska -----	Mar. 29, 1972	South Dakota -----	Feb. 5, 1973
Texas -----	Mar. 30, 1972	Minnesota -----	Feb. 8, 1973
Tennessee -----	Apr. 4, 1972	Oregon -----	Feb. 8, 1973
Alaska -----	Apr. 5, 1972	New Mexico -----	Feb. 28, 1973
Rhode Island -----	Apr. 14, 1972	Vermont -----	Mar. 1, 1973
New Jersey -----	Apr. 17, 1972	Connecticut -----	Mar. 15, 1973
Colorado -----	Apr. 21, 1972	Washington -----	Mar. 22, 1973
West Virginia -----	Apr. 22, 1972	Maine -----	Jan. 18, 1974
Wisconsin -----	Apr. 26, 1972	Montana -----	Jan. 25, 1974
New York -----	May 18, 1972	Ohio -----	Feb. 7, 1974
Michigan -----	May 22, 1972	North Dakota -----	Mar. 19, 1975
		Indiana -----	Jan. 24, 1977

DISTRICT OF COLUMBIA CODE
1973 Edition

SUPPLEMENT V

LAWS—January 3, 1973, to January 18, 1978

NOTES TO DECISIONS—January 1, 1973, to December 31, 1977

THE CODE OF THE DISTRICT OF COLUMBIA

PART I GOVERNMENT OF DISTRICT

TITLE 1—ADMINISTRATION.	TITLE 6—HEALTH AND SAFETY.
TITLE 2—DISTRICT BOARDS AND COMMISSIONS.	TITLE 7—HIGHWAYS, STREETS, BRIDGES.
TITLE 3—BOARD OF PUBLIC WELFARE.	TITLE 8—PARKS AND PLAYGROUNDS.
TITLE 4—POLICE AND FIRE DEPARTMENTS.	TITLE 9—PUBLIC BUILDINGS AND GROUNDS.
TITLE 5—BUILDING RESTRICTIONS AND REGULATIONS.	TITLE 10—WEIGHTS, MEASURES, AND MARKETS.

TITLE 1.—ADMINISTRATION

Chap.	Sec.
1A. Self-Government	1-121
2. Mayor, Council, and Other Officers	1-201
11A. Election Campaigns—Lobbying—Conflict of Interest	1-1121
13A. Business and Economic Development....	1-1351
16. Codification and Publication of Acts, Resolutions, Rules, and Orders	1-1601
17. Official Correspondence	1-1701

Chapter 1.—CREATION OF DISTRICT— GENERAL PROVISIONS

§ 1-101. Territorial area of District of Columbia.

(a) The District of Columbia is that portion of the territory of the United States ceded by the state of Maryland for the permanent seat of government of the United States, including the river Potomac in its course through the District, and the islands therein.

(b) All of the territory constituting the permanent seat of the Government of the United States shall continue to be designated as the District of Columbia. (R.S., D.C., § 1; June 11, 1878, 20 Stat. 102, ch. 180, § 1; Dec. 24, 1973, Pub. L. 93-198, title VII, § 717(a), 87 Stat. 820.)

CODIFICATION

This section is a composite of the credits cited in the history line. Subsection (a) is based on R.S., D.C., § 1, and subsection (b) is based on the first sentence of section 717(a) of Act Dec. 24, 1973.

EFFECTIVE DATE OF SUBSEC. (b)

Subsection (b) is effective Jan. 2, 1975, see sec. 771(d) of Act Dec. 24, 1973, as amended, set out as a note under § 1-121.

PRESENT FORM OF GOVERNMENT

The present form of government was provided by the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774-836). See, generally, section 1-121 et seq. For complete classification of the Act to the Code, see the Parallel Reference Tables.

BOUNDARY LINE BETWEEN THE DISTRICT OF COLUMBIA AND THE COMMONWEALTH OF VIRGINIA

Section 717(c) of Act Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 820 provided: "Nothing contained in this sec-

tion [§ 101(b)] shall affect the boundary line between the District of Columbia and the Commonwealth of Virginia as the same was established or may be subsequently established under the provisions of title I of the Act of October 31, 1945 (59 Stat. 552)."

CROSS REFERENCE

National Capital Service Area, see § 9-146.

NOTES TO DECISIONS

Boundaries

Sections of 1945 Act establishing new boundary between the District of Columbia and Virginia for law enforcement purposes and ceding to Virginia sovereignty and concurrent jurisdiction with the United States over area between 1791 high watermark and the newly established pierhead line did not establish a jurisdictional boundary between the District of Columbia and Virginia for all purposes, and by virtue of section providing that nothing in the Act is to be construed as limiting jurisdiction of courts of United States for the District of Columbia to hear and determine suits to establish title of United States, United States District Court for the District of Columbia has jurisdiction to adjudicate title to lands along the Alexandria waterfront. *United States v. Herbert Bryant Incorporated, et al.* (1976, 543 F. 2d 299, 177 U.S. App. D.C. 152; cert. denied 97 S. Ct. 1100, 429 U.S. 1097).

The common-law doctrines of accretion and erosion were legislatively overruled by the Acts of 1912 and 1945 insofar as concerns jurisdiction of the United States District Court for the District of Columbia to adjudicate title to lands lying along the Alexandria waterfront. *Id.*

Washington National Airport is within boundaries of Commonwealth of Virginia and not within those of District of Columbia; thus employer of pilot, whose base of operations was the airport, correctly reported pilot's wages to Virginia for unemployment compensation purposes and pilot is not entitled to unemployment benefits from the District of Columbia. *J. L. Bryan v. District Unemployment Compensation Board* (D.C. App. 1975, 342 A.2d 45).

District court for the District of Columbia lacked jurisdiction to hear and determine action by the United States to quiet title to fast and submerged lands situated within the territorial limits of the Commonwealth of Virginia. *United States v. Herbert Bryant, Inc., et al.* (1974, 386 F.Supp. 1287).

Term "said Act" as used in provision of 1945 Act, which governs boundary between the District of Columbia and the Commonwealth of Virginia, that nothing in the 1945 Act was to be construed as limiting right of the United States to establish its title to any of specified lands as provided by 1912 Act or jurisdiction of the courts of United States to hear and determine suits to establish title of the United States in all lands as described by said Act below the mean high-water mark of January 24, 1791, referred

to the 1912 Act while the term "lands" referred to were those lands in the District of Columbia as specified by the 1912 Act. *Id.*

§ 1-102. District created body corporate for municipal purposes.

(a) The District is created a government by the name of the "District of Columbia," by which name it is constituted a body-corporate for municipal purposes, and may contract and be contracted with, sue and be sued, plead and be impleaded, have a seal, and exercise all other powers of a municipal corporation not inconsistent with the Constitution and laws of the United States and the provisions of this Code.

(b) The District of Columbia shall remain and continue a body corporate, as provided in subsection (a) of this section. Said Corporation shall continue to be charged with all the duties, obligations, responsibilities, and liabilities, and to be vested with all of the powers, rights, privileges, immunities, and assets, respectively, imposed upon and vested in said Corporation or the Commissioner. (R.S., D.C., § 2; June 11, 1878, 20 Stat. 102, ch. 180, § 1; Dec. 24, 1973, Pub. L. 93-198, title VII, § 717(a), 87 Stat. 820.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

This section is a composite of the credits cited in the history line. Subsection (a) is based on R.S., D.C., § 1, and subsection (b) is based on the second and third sentences of section 717(a) of Act Dec. 24, 1973.

EFFECTIVE DATE OF SUBSEC. (b)

Subsection (b) is effective Jan. 2, 1975, see sec. 771(d) of Act Dec. 24, 1973, as amended, set out as a note under § 1-121.

CROSS REFERENCE

Mayor as custodian of corporate seal, see § 1-162.

NOTES TO DECISIONS

Attorney fees, recovery from District

The fact that successful taxpayer-litigants against District of Columbia prevented the collection of illegally imposed taxes, rather than required their refund after collection, could not, in principle, defeat their recovery of attorney fees as successful litigants; thus, the common fund or common benefit exception to general American rule which, in absence of statutory authorization, prohibits an award of attorney fees to a successful litigant, could be applied on basis of tax savings realized by affected taxpayers and trial court could exercise jurisdiction over the District of Columbia to require collection of appropriate fees from the benefitted taxpayers, unless such course of action is otherwise prohibited or unwarranted. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1977, 381 A. 2d 578).

Common benefit theory is not applicable to shift to District of Columbia government burden of paying attorney fees of plaintiffs who brought action to enjoin construction of bridge across Potomac River, where action did not result in determination that bridge could not be built but in a determination that government officials had to follow certain procedures before making decision to build bridge with a resulting delay during which time bridge plan was abandoned and where class of beneficiaries included residents of Maryland and Virginia and not just District of Columbia taxpayers. *D.C. Federation of Civic Associations et al. v. J. A. Volpe, et al.* (1976, 71 F.R.D. 206).

Civil Rights Act

Neither District of Columbia nor its officers are amenable to suit under statute providing federal remedies in suits against state officers based on acts committed under color of state law and in violation of rights, privileges and immunities secured under the Constitution and laws of the United States in civil rights class action brought by plaintiff who, following his arrest, was taken into custody and held for 32 hours before being presented to Superior Court judge for setting of bail. *V. W. Jones v. District of Columbia et al.* (1977, 424 F. Supp. 110).

In light of unique status of District of Columbia and absent any indication in either language, purposes or history of civil rights statute dealing only with those deprivations of rights which are accomplished under the color of the law of "any State or Territory" of a legislative intent to include the District within scope of its coverage, District of Columbia does not constitute a "State or Territory" within meaning of the statute; disapproving *Sewell v. Pegelow*, 291 F.2d 196 (CA4 1961), *District of Columbia v. M. Carter* (1973, 93 S. Ct. 602, 409 U.S. 418; rev'g 447 F. 2d 358, 144 U.S. App. D.C. 388).

Counterclaims

Notwithstanding fact that prior malpractice action was not decided on merits, municipal corporation had opportunity to litigate its claim for cost of care and treatment of infant hospital patient as counterclaim in that malpractice action brought against it by parent for alleged negligence in treatment of infant, wherein municipal corporation filed responsive pleading after its motion for summary judgment on ground that parent had not complied with notice requirements was denied without prejudice for lack of sufficient actual predicate, but since it failed to include that claim in its responsive pleading, subsequent action to recover those costs is barred by rule requiring that compulsory counterclaim be stated in responsive pleading. *District of Columbia v. E. Morris et al.* (D.C. App. 1976, 367 A.2d 571).

Court costs

Length of delay in implementing retroactive payment order of Commissioner of Department of Human Resources justifies an assessment of costs in form of a \$25 filing fee against administrative officers in their official capacity once petition in nature of mandamus to compel agency action was dismissed as moot after officers tardily performed requested action. *B. Dillard et ano. v. J. P. Yeldell et al.* (D.C. App. 1975, 334 A. 2d 578).

Damages

Punitive damages were properly denied in father's suit against District of Columbia, on allegations that District parole officers negligently failed to advise potential employer of parolee's prior history of violent sex-related crimes, with result that parolee was hired to work at apartment complex, where he subsequently raped and murdered plaintiff's daughter, in view of fact that evidence showed no indication that higher officers of District government either participated in or ratified parole officers' misfeasance. *R. C. Rieser, Administrator etc. v. District of Columbia et ano.* (1977, 563 F.2d 462, 183 U.S. App. D.C. 375).

District Court, in awarding damages to persons unlawfully arrested while participating in peaceful Quaker vigil of prayer on White House sidewalk in 1971, erred in limiting recoverable damages on grounds that plaintiffs had sought notoriety by participating in demonstration and that some plaintiffs had chosen not to post \$10 collateral when they were given opportunity to do so in order to procure their release. *L. Tatum et al. v. R. C. B. Morton et al.* (1977, 562 F.2d 1279, 183 U.S. App. D.C. 331; rem'g 402 F. Supp. 719).

District Court acted properly in denying punitive damages to persons who were unlawfully arrested while participating in peaceful Quaker vigil of prayer on White House sidewalk in 1971 as part of protest against government's war policies in Vietnam. *Id.*

Injunction

Property owners who are financially able to repair broken water service pipes connecting District's main water pipe with their private plumbing systems have an adequate remedy against district in seeking money damages; hence preliminary injunction requiring the Dis-

trict to repair or replace the pipes was improvidently issued. *District of Columbia et al. v. North Washington Neighbors, Inc., et al.* (D.C. App. 1975, 336 A.2d 828).

Public works

In order to prevail on claim that District of Columbia had discriminated in provision of municipal services, plaintiffs had to show a substantial inequity in input of municipal services as among various groups and that some logical nexus might be discerned between these inequities and possible discrimination based on race or other suspect classification; such a nexus could be inferred from the linking of present policies to those followed during a prior history of overt racial discrimination. *M. Burner et al. v. W. E. Washington et al.* (1975, 399 F.Supp. 44.).

Respondent superior

Evidence that metropolitan police department is under general duty to enforce laws of the United States within the District, that there is a Capitol police force with special obligation to patrol Capitol grounds, that the Capitol police force is staffed by members of the metropolitan police department, that Chief of the metropolitan police had furnished members of the metropolitan police force for purpose of keeping order during demonstrations, and that the Capitol police force was under the direction of United States officials demonstrates that District of Columbia could be held liable for unlawful arrests of demonstrators despite contention that the Chief had become, at the time of the arrests, a borrowed servant of the United States. *R. V. Dellums et al. v. J. M. Powell, Chief etc.* (1977, 566 F.2d 216, 184 U.S. App. D.C. —).

District of Columbia, under common law theory of respondent superior, is liable for actions of police inspector who was operating within scope of his duties as senior police officer at scene of unlawful arrests of members of religious group who were conducting peaceful prayer vigil near White House. *L. Tatum et al. v. R. C. B. Morton et al.* (1974, 402 F.Supp. 719; rem'd 562 F.2d 1279, 183 U.S. App. D.C. 331).

Sovereign immunity

Where parole officer of District of Columbia was under clear duty, defined by Department of Corrections policy, to disclose parolee's full adult record when referring him for employment, and was similarly under duty to provide adequate supervision for parolee's parole, parole officer's actions in failing to disclose parolee's prior sex-related convictions to parolee's potential employers was "ministerial," not "discretionary" action, and District therefore was not shielded by sovereign immunity from liability arising out of parolee's actions in raping and murdering woman in apartment complex where he was employed. *R. C. Rieser, Administrator etc. v. District of Columbia et ano.* (1977, 563 F. 2d 462, 183 U.S. App. D.C. 375).

Municipal acts involving designing of streets and control of flow of traffic over them are discretionary in nature and therefore enjoy tort immunity. *District of Columbia, etc. v. North Washington Neighbors, Inc., et al.* (D.C. App. 1976, 367 A.2d 143; cert. denied. 98 S. Ct. 68, —U.S.—).

Where one plaintiff submitted affidavit supporting his allegations of past, present, and future exercise of his First Amendment freedoms in the District of Columbia through participation in various organizations and also swore to the inhibiting effect of District of Columbia's speech regulation upon the exercise of his First Amendment rights, the plaintiff has standing to challenge police regulation requiring that permit be obtained from the chief of police in order to deliver any speech in a public place in the District. *A. Shifrin et al. v. J. Wilson et al.* (1976, 412 F. Supp. 1282).

In federal actions brought under statute creating cause of action for deprivation of constitutionally protected rights, the District of Columbia can be held liable for its own acts and for those of its employees, regardless of whether those acts would fall within the common-law immunity for discretionary functions. *Id.*

District of Columbia may be sued for injuries resulting from defective playground equipment but proof of actual or constructive notice of defect which caused injury is a necessary predicate to its liability, and absent

such proof directed verdict is proper. *E. Miller et al. v. District of Columbia* (D.C. App. 1975, 343 A.2d 278).

The doctrine of sovereign immunity did not bar class action on behalf of tenants of rental units of the National Capital Housing Authority against the Commissioner of District of Columbia and the National Capital Housing Authority for injunctive and declaratory relief with respect to rental increases scheduled by the Authority. *C. O. Thompson et al. v. W. Washington, Commissioner etc.* (1973, 497 F. 2d 626, 162 U.S. App. D.C. 39).

Complaint which was brought by victim of shooting committed by police officer and which sought to hold police chief liable for negligence in hiring the officer and in failing to train and supervise him adequately and to hold the District of Columbia liable for negligence on the same grounds and vicariously liable for negligence of the police chief stated a cause of action against the District of Columbia and police chief on common-law grounds, notwithstanding fact that the officer was out of uniform at time of the alleged assault on plaintiff. *D. S. Marusa v. District of Columbia et al.* (1973, 484 F. 2d 828, 157 U.S. App. D.C. 348).

Federal Tort Claims Act in no way controls existence or scope of local government's immunity from suit. *Id.*

Action against the mayor of the District of Columbia and others seeking relief with respect to racial discrimination against Negro employees in the department of licenses and inspections was not barred by doctrine of sovereign immunity; the courts have power under the Constitution to remedy racial discrimination by a public agency in any form. *J. T. Watkins et al. v. W. E. Washington et al.* (1973, 366 F.Supp. 941; aff'd 505 F.2d 477, 164 U.S. App. D.C. 370).

District of Columbia is immune from suit for torts of agents under doctrine of municipal immunity only if act complained of was committed in exercise of discretionary function, and if act is committed in exercise of ministerial function, District must respond. *C. Wade v. District of Columbia* (D.C. App. 1973, 310 A. 2d 857).

Municipal immunity of District of Columbia is matter of common-law theory of municipal governmental immunity as developed in case law of jurisdiction, and is not derived from sovereignty of United States or limited to same extent as that of Federal government under Federal Tort Claims Act. *Id.*

District of Columbia may be sued under common-law doctrine of respondent superior for intentional torts of its employees acting within scope of their employment. *Id.*

Suit which sought to recover damages for loss of property stored in a warehouse partially destroyed by rioting mobs and which was based on allegation of negligent failure to provide against such an occurrence failed to state a valid claim for relief against District of Columbia. *D. Amos v. District of Columbia* (D.C. App. 1973, 309 A. 2d 305).

Absent legislation to contrary, District of Columbia is not liable for losses incurred by actions of riotous persons as a result of failure of District or its officers to maintain public order. *Id.*

§ 1-103. Commissioner and Council members made officers of the corporation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Sovereign immunity

Action brought by county against Attorney General of the United States and against the District of Columbia based on allegations that federal reformatory located in the county was being maintained in a manner not authorized by statute and a manner which was constitutionally void and that the escapes and riots at the reformatory resulting from the mismanagement constituted a public nuisance is not barred by sovereign immunity. *Board of Supervisors of Fairfax County, Virginia v. United States et al.* (1976, 408 F. Supp. 556).

Chapter 1A.—SELF-GOVERNMENT**SUBCHAPTER I.—GENERAL PROVISIONS****Sec.**

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- 1-171f. Determination of winners in elections for members of Advisory Neighborhood Commissions.
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- 1-171i. Duties and responsibilities of Advisory Neighborhood Commissions.
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- 1-171k. Joint Advisory Neighborhood Commission meetings—Involvement of other neighborhood groups—Appointment of service area coordinators and managers—Appointment of citizen advisors.
- 1-171l. Allocation, deposit, and disbursement of Neighborhood Advisory Commission funds—Audit of accounts—Employment procedures—Financial reports—Pooling of funds.
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- 1-171o. Qualifications and nominations of members of subsequently established Advisory Neighborhood Commissions.
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- 1-171q. Law applicable to subsequently established Advisory Neighborhood Commissions.
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SUBCHAPTER I.—GENERAL PROVISIONS**§ 1-121. Purposes.**

(a) Subject to the retention by Congress of the ultimate legislative authority over the Nation's Capital granted by article I, section 8, of the Constitution, the intent of Congress is to delegate certain legislative powers to the government of the District of Columbia; authorize the election of certain local officials by the registered qualified electors in the District of Columbia; grant to the inhabitants of the District of Columbia powers of local self-government; to modernize, reorganize, and otherwise improve the governmental structure of the District of Columbia; and, to the greatest extent possible, consistent with the constitutional mandate, relieve Congress of the burden of legislating upon essentially local District matters.

(b) Congress further intends to implement certain recommendations of the Commission on the Organization of the Government of the District of Columbia and take certain other actions irrespective of whether the charter for greater self-government provided for in title IV of this Act is accepted or rejected by the registered qualified electors of the District of Columbia. (Dec. 24, 1973, Pub. L. 93-198, title I, § 102, 87 Stat. 777.)

REFERENCE IN TEXT

"Title IV of this Act", referred to in subsec. (b), is title IV (consisting of sections 401 to 495) of the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 88 Stat. 785-811). For classification of title IV to the Code, see Parallel Reference Tables.

SHORT TITLE

Section 101 of Act Dec. 24, 1973, Pub. L. 93-198, provided: "This Act [consisting of the titles and sections enumerated in the following table of contents] may be cited as the 'District of Columbia Self-Government and Governmental Reorganization Act'." For classification of the Act to the Code, see Parallel Reference Tables.

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¹ Added, Pub. L. 93-268, § 3(b).

² Amended, D.C. Law 1-27, § 2(b), 22 DCR 2471.

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EFFECTIVE DATES

Section 771, Part G of title VII, Act Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 836, as amended Apr. 17, 1974, Pub. L. 93-268, § 3(c), 88 Stat. 87; Aug. 29, 1974, Pub. L. 93-395, § 1(8), 88 Stat. 793, provided:

"SEC. 771. (a) Titles I and V, and parts A and G, and section 722 of title VII shall take effect on the date of enactment of this Act.

"(b) Sections 712, 713, 714, and 715 of title VII, and section 401(b) of title IV, and title II shall take effect July 1, 1974, except that any provision thereof which in effect transfers authority to appoint any citizen member of the National Capital Planning Commission or the District of Columbia Redevelopment Land Agency shall take effect January 2, 1975.

"(c) Titles III and IV, except section 401(b) of title IV, shall take effect January 2, 1975, if title IV is accepted by a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum.

"(d) Title VI and parts D and F and sections 711, 716, 717, 718, 719, 721, and 723 of title VII shall take effect only if and upon the date that title IV becomes effective.

"(e) Part E of title VII shall take effect on the date on which title IV is accepted by a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum."

CHARTER REFERENDUM

Part A of title VII of Act Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 817, as amended Apr. 24, 1974, Pub. L. 93-272, 88 Stat. 93, provided:

REFERENDUM

SEC. 701. On a date to be fixed by the Board of Elections,¹ not more than five months after the date of enactment of this Act, a referendum (in this part referred to as the "charter referendum") shall be conducted to determine whether the registered qualified electors of the District accept the charter set forth as title IV of this Act.

BOARD OF ELECTIONS AUTHORITY

SEC. 702. (a) The Board of Elections shall conduct the charter referendum and certify the results thereof as provided in this part.

(b) Notwithstanding the fact that such section does not otherwise take effect unless the charter is accepted under this title, the applicable provisions of part E of title VII of this Act shall govern the Board of Elections in the performance of its duties under this Act.

REFERENDUM BALLOT AND NOTICE OF VOTING

SEC. 703. (a) The charter referendum ballot shall contain the following, with a blank space appropriately filled: "The District of Columbia Self-Government and Governmental Reorganization Act, enacted [Dec. 24, 1973], proposes to establish a charter for the governance of the District of Columbia, but provides that the charter shall take effect only if it is accepted by a majority of the registered qualified voters of the District voting on this issue.

"Indicate in one of the squares provided below whether you are for or against the charter.

☐ For the charter.

☐ Against the charter.

"In addition, the Act referred to above authorizes the establishment of advisory neighborhood councils if a majority of the registered qualified voters of the District voting on this issue in this referendum vote for the establishment of such councils.

"Indicate in one of the squares provided below whether you are for or against the establishment of Advisory Neighborhood Councils.

☐ For Advisory Neighborhood Councils

☐ Against Advisory Neighborhood Councils."

(b) Voting may be by paper ballot or by voting machine. The Board of Elections may make such changes in the second and fourth paragraphs of the charter referendum ballot as it determines to be necessary to permit the use of voting machines if such machines are used.

(c) Not less than five days before the date of the charter referendum, the Board of Elections shall mail to each registered qualified elector (1) a sample of the charter referendum ballot, and (2) information showing the polling place of such elector and the date and hours of voting.

(d) Not less than one day before the charter referendum, the Board of Elections shall publish, in one or more newspapers of general circulation published in the District, a list of the polling places and the date and hours of voting.

ACCEPTANCE OR NONACCEPTANCE OF CHARTER

SEC. 704. (a) If a majority of the registered qualified electors voting in the charter referendum vote for the charter, the charter shall be considered accepted as of the time the Board of Elections certifies¹ the result of the charter referendum to the President of the United States, as provided in subsection (b).

(b) The Board of Elections shall, within a reasonable time, but in no event more than thirty days after the date of the charter referendum, certify the results of the charter referendum to the President of the United States and to the Secretary of the Senate and the Clerk of the House of Representatives.

CROSS REFERENCE

Reservation of Congressional authority, see §§ 1-126, 1-127, 1-147, 47-228.

§ 1-122. Definitions.

For the purposes of this Act—

(1) The term "District" means the District of Columbia.

(2) The term "Council" means the Council of the District of Columbia provided for by subchapter III of this chapter.

(3) The term "Commissioner" means the Commissioner of the District of Columbia established under Reorganization Plan Numbered 3 of 1967.

(4) The term "District of Columbia Council" means the Council of the District of Columbia established under Reorganization Plan Numbered 3 of 1967.

(5) The term "Chairman" means, unless otherwise provided in this Act, the Chairman of the Council provided for by subchapter III of this chapter.

(6) The term "Mayor" means the Mayor provided for by subchapter IV of this chapter.

(7) The term "act" includes any legislation passed by the Council, except where the term "Act" is used to refer to this Act or other Acts of Congress herein specified.

(8) The term "capital project" means (A) any physical public betterment or improvement and any preliminary studies and surveys relative thereto; (B) the acquisition of property of a permanent nature; or (C) the purchase of equipment for any public betterment or improvement when first erected or acquired.

(9) The term "pending", when applied to any capital project, means authorized but not yet completed.

(10) The term "District revenues" means all funds derived from taxes, fees, charges, and miscellaneous

¹ May 7, 1974, see 20 D.C. Register 964, Apr. 15, 1974.

¹ Certification of results [approval] of charter referendum published in 21 D.C. Register 651, Oct. 15, 1974.

receipts, including all annual Federal payments to the District authorized by law, and from the sale of bonds.

(11) The term "election", unless the context otherwise provides, means an election held pursuant to the provisions of this Act.

(12) The terms "publish" and "publication", unless otherwise specifically provided herein, mean publication in a newspaper of general circulation in the District.

(13) The term "District of Columbia courts" means the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

(14) The term "resources" means revenues, balances, revolving funds, funds realized from borrowing, and the District share of Federal grant programs.

(15) The term "budget" means the entire request for appropriations and loan or spending authority for all activities of all agencies of the District financed from all existing or proposed resources and shall include both operating and capital expenditures. (Dec. 24, 1973, Pub. L. 93-198, title I, § 103, 87 Stat. 777.)

REFERENCES IN TEXT

"This Act", referred to in text, is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see Parallel Reference Tables.

"Reorganization Plan Numbered 3 of 1967", referred to in pars. (3) and (4), is set out in the Appendix to this title in the main edition.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on date of enactment [Dec. 24, 1973].

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1601, 2-1232.

§ 1-123. Charter preamble.

The charter for the District of Columbia set forth in title IV shall establish the means of governance of the District following its acceptance by a majority of the registered qualified electors of the District voting thereon in the charter referendum held with respect thereto. (Dec. 24, 1973, Pub. L. 93-198, title III, § 301, 87 Stat. 784.)

REFERENCE IN TEXT

"Title IV", referred to in text, is title IV (consisting of sections 401 to 495) of the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 88 Stat. 785-811). For classification of title IV to the Code, see Parallel Reference Tables.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

§ 1-124. Legislative power.

Except as provided in sections 1-126, 1-147, and 47-228, the legislative power of the District shall extend to all rightful subjects of legislation within the District consistent with the Constitution of the

United States and the provisions of this Act subject to all the restrictions and limitations imposed upon the States by the tenth section of the first article of the Constitution of the United States. (Dec. 24, 1973, Pub. L. 93-198, title III, § 302, 87 Stat. 784.)

REFERENCE IN TEXT

"This Act", referred to in text, is in the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see Parallel Reference Tables.

EFFECTIVE DATE

See note under § 1-123.

§ 1-125. Charter amending procedure.

(a) The charter set forth in title IV (including any provision of law amended by such title), except sections 401(a) and 421(a) [D.C. Code §§ 1-141(a) and 1-161(a)], and part C of such title, may be amended by an act passed by the Council and ratified by a majority of the registered qualified electors of the District voting in the referendum held for such ratification. The Chairman of the Council shall submit all such acts to the Speaker of the House of Representatives and the President of the Senate on the day the Board of Elections and Ethics certifies that such act was ratified by a majority of the registered qualified electors voting thereon in such referendum.

(b) An amendment to the charter ratified by the registered qualified electors shall take effect only if within thirty-five calendar days (excluding Saturdays, Sundays, holidays, and days on which either House of Congress is not in session) of the date such amendment was submitted to the Congress both Houses of Congress adopt a concurrent resolution, according to the procedures specified in section 1-127, approving such amendment.

(c) The Board of Elections and Ethics shall prescribe such rules as are necessary with respect to the distribution and signing of petitions and the holding of elections for ratifying amendments to title IV of this Act according to the procedures specified in subsection (a).

(d) The amending procedure provided in this section may not be used to enact any law or affect any law with respect to which the Council may not enact any act, resolution, or rule under the limitations specified in sections 1-126, 1-147, and 47-228. (Dec. 24, 1973, Pub. L. 93-198, title III, § 303, 87 Stat. 784; Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458.)

REFERENCES IN TEXT

"Title IV" and "title IV of this Act", referred to in subsecs. (a) and (c), is title IV (consisting of sections 401 to 495) of the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 88 Stat. 785-811). For classification of title IV to the Code, see Parallel Reference Tables.

"Part C of such title", referred to in subsec. (a), consisting of sections 431 to 434, is set out in Title 11, Appendix.

AMENDMENT

1974—Act Aug. 14, 1974, Pub. L. 93-376, amended subsecs. (a) and (c) by substituting "Board of Elections and Ethics" for "Board of Elections".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment effective on and after Aug. 14, 1974, see section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, set out as § 1-1156(a).

EFFECTIVE DATE

See note under § 1-123.

ELECTION PROCEDURES FOR INITIATIVE, REFERENDUM, AND RECALL CHARTER AMENDMENTS

Act Sept. 20, 1977, D.C. Law 2-15, 24 DCR 3335, provided: "That this act may be cited as the 'Charter Amendments Procedures Act of 1977'."

"SEC. 2. The District of Columbia Board of Elections and Ethics (hereinafter the 'Board') is directed to place the two amendments to the Charter of the District of Columbia stated in section 2 of the Initiative, Referendum and Recall Charter Amendments Act of 1977 (Bill 2-2) [Jan. 3, 1977, 23 DCR 4431] before the registered qualified electors of the District of Columbia at the general election to be held in November 1977.

"SEC. 3(a). The Board shall promulgate rules of general application, pursuant to the District of Columbia Administrative Procedure Act (82 Stat. 1204; D.C. Code sec. 1-1501 et seq.), for the conduct of the Charter amendment election provided in the Initiative, Referendum and Recall Charter Amendments Act of 1977 (Bill 2-2) which are not in conflict with any provisions of this act.

"(b) The Board shall promulgate the rules authorized by subsection (a) of this section so that they are effective as non-emergency rules before August 1, 1977.

"(c) Before August 2, 1977 the Board shall propose a short title and summary of the proposed Charter amendments, which accurately reflect their meaning and intent, to be placed on the ballot.

"(d) Any citizen of the District of Columbia may seek a writ in the nature of mandamus in the Superior Court of the District of Columbia before September 6, 1977 to correct any inaccurate short title and summary by the Board, of the amendment to be presented. That Court may direct and order a proper title and summary statement of the proposed Charter amendments to appear on the ballot.

"SEC. 4. There are hereby authorized to be expended such funds from the general funds available to the government of the District of Columbia as are necessary to conduct the Charter amendments election as herein provided.

"SEC. 5. This act shall become effective as provided for acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [1-147(c)]."

For temporary provisions relating to the placement of the amendments to the Charter on the November 8, 1977, ballot, see the Emergency Amendment of D.C. Law 2-15 (D.C. Act 2-95, Nov. 1, 1977, 24 DCR 3613).

§ 1-126. Congressional reservation of authority.

Notwithstanding any other provision of this Act, the Congress of the United States reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council by this Act, including legislation to amend or repeal any law in force in the District prior to or after enactment of this Act and any act passed by the Council. (Dec. 24, 1973, Pub. L. 93-198, title VI, § 601, 87 Stat. 813.)

REFERENCE IN TEXT

"This Act", referred to in text, is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see Parallel Reference Tables.

EFFECTIVE DATE

See note under § 1-123.

CROSS REFERENCES

Budget process and limitations on borrowing and spending, see § 47-228.

Limitations on District of Columbia Council, see § 1-147.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-124, 1-125, 1-144.

§ 1-127. Congressional action on certain District matters.

(a) This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such these provisions are deemed a part of the rule of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by this section; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rule (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(b) For the purpose of this section, "resolution" means only a concurrent resolution, the matter after the resolving clause of which is as follows: "That the _____ approves/disapproves of the action of the District of Columbia Council described as follows: _____.", the blank spaces therein being appropriately filled, and either approval or disapproval being appropriately indicated; but does not include a resolution which specifies more than one action.

(c) A resolution with respect to Council action shall be referred to the Committee on the District of Columbia of the House of Representatives, or the Committee on the District of Columbia of the Senate, by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(d) If the committee to which a resolution has been referred has not reported it at the end of twenty calendar days after its introduction, it is in order to move to discharge the committee from further consideration of any other resolution with respect to the same Council action which has been referred to the committee.

(e) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same action), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(f) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same action.

(g) When the committee has reported, or has been discharged from further consideration of, a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(h) Debate on the resolution shall be limited to not more than ten hours. which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(i) Motions to postpone made with respect to the discharge from committee or the consideration of a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(j) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate. (Dec. 24, 1973, Pub. L. 93-198, title VI, § 604, 87 Stat. 816.)

EFFECTIVE DATE

See note under § 1-123.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-125, 1-144, 1-147.

§ 1-128. Construction.

(a) To the extent that any provisions of this Act are inconsistent with the provisions of any other laws the provisions of this Act shall prevail and shall be deemed to supersede the provisions of such laws.

(b) No law or regulation which is in force on January 2, 1975, shall be deemed amended or repealed by this Act except to the extent specifically provided herein or to the extent that such law or regulation is inconsistent with this Act, but any such law or regulation may be amended or repealed by act or resolution as authorized in this Act, or by Act of Congress, except that, notwithstanding the provisions of section 1-1105a, such authority to repeal shall not be construed as authorizing the Council to repeal or otherwise alter, by amendment or otherwise, any provision of subchapter III of chapter 73 of title 5, United States Code, in whole or in part. (Dec. 24, 1973, Pub. L. 93-198, title VII, §§ 717(b), 761, 87 Stat. 820, 836.)

REFERENCE IN TEXT

"This Act", referred to in text, is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774).

CODIFICATION

Subsections (a) and (b) are based on sections 761 and 717(b), respectively, of Act Dec. 24, 1973.

In subsec. (b), "January 2, 1975" was substituted for "the effective date of title IV of this Act" on authority of sec. 717(d) of the Act which is set out as a note under § 1-121.

EFFECTIVE DATE

See note under § 1-123.

NOTES TO DECISIONS

Prior specific statute

Given the express intent of Congress to allow certain meetings of the Board of Education to be closed and the embodiment of that intent in a specific statute (§ 31-101), that prior statute remains in effect as a qualification of section 1-1503a requiring meetings of the District government to be open to the public. *R. Goodwin et al. v. District of Columbia Board of Education et al.* (D.C. App. 1975, 343 A.2d 63).

SUBCHAPTER II.—SUCCESSION IN GOVERNMENT

§ 1-131. Abolishment of existing government.

The District of Columbia Council, the offices of Chairman of the District of Columbia Council, Vice Chairman of the District of Columbia Council, and the seven other members of the District of Columbia Council, and the offices of the Commissioner of the District of Columbia and Assistant to the Commissioner of the District of Columbia, as established by Reorganization Plan Numbered 3 of 1967, are abolished as of noon January 2, 1975. This subsection¹ shall not be construed to reinstate any governmental body or office in the District abolished in said plan or otherwise heretofore. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 711, 87 Stat. 818.)

REFERENCE IN TEXT

"Reorganization Plan Numbered 3 of 1967", referred to in text, is set out in the Appendix to this title in the main edition.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this subchapter.

PENDING ACTIONS AND PROCEEDINGS

Section 715 of Act Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 819, provided:

"(a) No suit, action, or other judicial proceeding lawfully commenced by or against any officer or agency in his or its official capacity or in relation to the exercise of his or its official functions, shall abate by reason of the taking effect of any provision of this Act; but the court, unless it determines that the survival of such suit, action, or other proceedings is not necessary for purposes of settlement of the questions involved, shall allow the same to be maintained, with such substitutions as to parties as are appropriate.

"(b) No administrative action or proceeding lawfully commenced shall abate solely by reason of the taking effect of any provision of this Act, but such action or proceeding shall be continued with such substitutions as to parties and officers or agencies as are appropriate."

TRANSFER OF PERSONNEL, PROPERTY, AND FUNDS

Section 713 of Act Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 818, provided:

"(a) In each case of the transfer, by any provision of this Act, of functions to the Council, to the Mayor, or to any agency or officer, there are hereby authorized to be transferred (as of the time of such transfer of functions) to the Council, to the Mayor, to such agency, or to the agency of which such officer is the head, for use in the administration of the functions of the Council or such agency or officer, the personnel (except the Commissioner of the District of Columbia, the Assistant to the Commissioner, the Chairman of the District of Columbia Council, the Vice Chairman of the District of Columbia Council, the other members thereof, all of whose offices are abolished by this Act), property, records, and unexpended balances of appropriations and other funds which relate primarily to the functions so transferred.

"(b) If any question arises in connection with the carrying out of subsection (a), such questions shall be decided—

"(1) in the case of functions transferred from a Federal officer or agency, by the Director of the Office of Management and Budget; and

¹ So in original. Probably should be "section".

"(2) in the case of other functions (A) by the Council, or in such manner as the Council shall provide, if such functions are transferred to the Council, and (B) by the Mayor if such functions are transferred to him or to any other officer or agency.

"(c) Any of the personnel authorized to be transferred to the Council, the Mayor, or any agency by this section which the Council or the head of such agency shall find to be in excess of the personnel necessary for the administration of its or his function shall, in accordance with law, be retransferred to other positions in the District or Federal Government or be separated from the service.

"(d) No officer or employee shall, by reason of his transfer to the District government under this Act or his separation from service under this Act, be deprived of any civil service rights, benefits, and privileges held by him prior to such transfer or any right of appeal or review he may have by reason of his separation from service."

VACANCIES RESULTING FROM ABOLISHMENT OF OFFICES OF COMMISSIONER AND ASSISTANT TO THE COMMISSIONER

Section 716 of Act Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 820, provided: "Until the 1st day of July next after the first Mayor takes office under this Act no vacancy occurring in any District agency by reason of section 711 [this section], abolishing the offices of Commissioner of the District of Columbia and Assistant to the Commissioner, shall affect the power of the remaining members of such agency to exercise its functions; but such agency may take action only if a majority of the members holding office vote in favor of it."

§ 1-132. Certain delegated functions—Functions of certain agencies.

No function of the District of Columbia Council (established under Reorganization Plan Numbered 3 of 1967) or of the Commissioner of the District of Columbia which such District of Columbia Council or Commissioner has delegated to an officer, employee, or agency (including any body of or under such agency) of the District, nor any function now vested pursuant to section 501 of Reorganization Plan Numbered 3 of 1967 in the District Public Service Commission, Zoning Advisory Council, Board of Zoning Adjustment, Office of the Recorder of Deeds, or Armory Board, or in any officer, employee, or body of or under such agency, shall be considered as a function transferred to the Council pursuant to section 1-144(a). Each such function is hereby transferred to the officer, employee, or agency (including any body of or under such agency), to whom or to which it was delegated, or in whom or in which it has remained vested, until the Mayor or Council established under this chapter, or both, pursuant to the powers herein granted, shall revoke, modify, or transfer such delegation or vesting. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 712, 87 Stat. 818.)

REFERENCES IN TEXT

"Reorganization Plan Numbered 3 of 1967", referred to in text, is set out in the Appendix to this title in the main edition.

"This chapter", referred to in text, was in the original "this Act", meaning the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see Parallel Reference Tables.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on July 1, 1974.

§ 1-133. Existing statutes, regulations, and other actions.

(a) Any statute, regulation, or other action in respect of (and any regulation or other action issued, made, taken, or granted by) any officer or agency from which any function is transferred by this Act shall, except to the extent modified or made inapplicable by or under authority of law, continue in effect as if such transfer had not been made; but after such transfer, references in such statute, regulation, or other action to an officer or agency from which a transfer is made by this Act shall be held and considered to refer to the officer or agency to which the transfer is made.

(b) As used in subsection (a), the term "other action" includes, without limitation, any rule, order, contract, compact, policy, determination, directive, grant, authorization, permit, requirement, or designation.

(c) Unless otherwise specifically provided in this Act, nothing contained in this Act shall be construed as affecting the applicability to the District government of personnel legislation relating to the District government until such time as the Council may otherwise elect to provide equal or equivalent coverage. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 714, 87 Stat. 819.)

REFERENCE IN TEXT

"This Act", referred to in text, is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see Parallel Reference Tables.

EFFECTIVE DATE

Section effective July 1, 1974, see sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-162.

SUBCHAPTER III.—COUNCIL

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1-122.

§ 1-141. Creation—Membership—Personnel—Vacancies.

(a) There is established a Council of the District of Columbia; and the members of the Council shall be elected by the registered qualified electors of the District.

(b) (1) The Council established under subsection (a) shall consist of thirteen members elected on a partisan basis. The Chairman and four members shall be elected at large in the District, and eight members shall be elected one each from the eight election wards established, from time to time, under chapter 11 of this title. The term of office of the members of the Council shall be four years, except as provided in paragraph (3), and shall begin at noon on January 2 of the year following their election.

(2) In the case of the first election held for the office of member of the Council after January 2, 1975, not more than two of the at-large members (excluding the Chairman) shall be nominated by the same political party. Thereafter, a political party may nominate a number of candidates for the office of at-large member of the Council equal to one less

than the total number of at-large members (excluding the Chairman) to be elected in such election.

(3) To fill a vacancy in the Office of Chairman, the Board of Elections and Ethics shall hold a special election in the District on the first Tuesday occurring more than one hundred and fourteen days after the date on which such vacancy occurs, unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within sixty days of the date on which a special election would otherwise have been held under the provisions of this paragraph. The person elected Chairman to fill a vacancy in the Office of Chairman shall take office on the day in which the Board of Elections and Ethics certifies his election, and shall serve as Chairman only for the remainder of the term during which such vacancy occurred. When the Office of Chairman becomes vacant, the Council shall select one of the elected at-large members of the Council to serve as Chairman and one to serve as Chairman pro tempore until the election of a new Chairman.

(4) Of the members first elected after January 2, 1975, the Chairman and two members elected at-large and four of the members elected from election wards shall serve for four-year terms; and two of the at-large members and four of the members elected from election wards shall serve for two-year terms. The members to serve the four-year terms and the members to serve the two-year terms shall be determined by the Board of Elections and Ethics by lot, except that not more than one of the at-large members nominated by any political party shall serve for any such four-year term.

(c) The Council may establish and select such other officers and employees as it deems necessary and appropriate to carry out the functions of the Council.

(d) (1) In the event of a vacancy in the Council of a member elected from a ward, the Board of Elections and Ethics shall hold a special election in such ward to fill such vacancy on the first Tuesday occurring more than one hundred and fourteen days after the date on which such vacancy occurs, unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within sixty days of the date on which a special election would otherwise have been held under the provisions of this subsection. The person elected as a member to fill a vacancy on the Council shall take office on the day on which the Board of Elections and Ethics certifies his election, and shall serve as a member of the Council only for the remainder of the term during which such vacancy occurred.

(2) In the event of a vacancy in the office of Mayor, and if the Chairman becomes a candidate for the office of Mayor to fill such vacancy, the office of Chairman shall be deemed vacant as of the date of the filing of his candidacy. In the event of a vacancy in the Council of a member elected at large, other than a vacancy in the office of Chairman, who is affiliated with a political party, the central committee of such political party shall appoint a person

to fill such vacancy, until the Board of Elections and Ethics can hold a special election to fill such vacancy, and such special election shall be held on the first Tuesday occurring more than one hundred and fourteen days after the date on which such vacancy occurs unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within sixty days of the date on which a special election would otherwise be held under the provision of this subsection. The person appointed to fill such vacancy shall take office on the date of his appointment and shall serve as a member of the Council until the day on which the Board certifies the election of the member elected to fill such vacancy in either a special election or a general election. The person elected as a member to fill such a vacancy on the Council shall take office on the day on which the Board of Elections and Ethics certifies his election, and shall serve as a member of the Council only for the remainder of the term during which such vacancy occurred. With respect to a vacancy on the Council of a member elected at large who is not affiliated with any political party, the Council shall appoint a similarly non-affiliated person to fill such vacancy until such vacancy can be filled in a special election in the manner prescribed in this paragraph. Such person appointed by the Council shall take office and serve as a member at the same time and for the same term as a member appointed by a central committee of a political party.

(3) Notwithstanding any other provision of this section, at no time shall there be more than three members (including the Chairman) serving at large on the Council who are affiliated with the same political party. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 401, 87 Stat. 785; Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458; Aug. 29, 1974, Pub. L. 93-395, § 1(2), 88 Stat. 793.)

CODIFICATION

In subsec. (b) (2) and (4), "January 2, 1975" has been substituted for "the effective date of this title", referring to the effective date of title IV of Act Dec. 24, 1973, on authority of sec. 717 of the Act which is set out as a note under § 1-121.

AMENDMENTS

1974—Section 1(2) of Act Aug. 29, 1974, Pub. L. 93-395, amended subsec. (b) by redesignating par. (3) as par. (4), and by inserting a new par. (3).

Section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, amended subsecs. (b) and (d) by substituting "Board of Elections and Ethics" for "Board of Elections".

EFFECTIVE DATE OF 1974 AMENDMENT BY PUB. L. 93-376

Amendment effective on and after Aug. 14, 1974, see section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, set out as § 1-1156(a).

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that subsec. (b) of this section is July 1, 1974, and that the remaining subsections of this section and the other sections in this subchapter are effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this subchapter.

CROSS REFERENCES

Official mail, use by Chairman and members and Chairman and members-elect, see §§ 1-1705 to 1-1707.

Political activity restrictions on Federal and District employees, see 5 U.S.C. 7324.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-125, 1-146c, 1-1502, 1-1601, 6-2202, 31-1702, 31-1902, 45-1641.

NOTES TO DECISIONS

Constitutionality

Provisions of this section limiting number of candidates which a political party can nominate for office of at-large membership on the Council and limiting to three the number of candidates of any one political party serving at large does not work a deprivation of First Amendment rights of members of political party with a majority of registered voters; Congress' interest in facilitating representation of political minorities on the city council of the nation's capital is a valid one and is sufficient to warrant challenged interference with the rights of political association and means adopted to promote such interest are reasonable and do not amount to any unnecessary abridgement of rights. *J. W. Hechinger et al. v. R. Martin, Chairman, etc., et al.* (1976, 411 F. Supp. 650; aff'd 97 S. Ct. 721, 429 U.S. 1030).

Provisions of this section restricting candidates of any one political party to holding only two of the four at-large seats on the District Council do not unconstitutionally discriminate against political parties on ground that it allows independent candidates to be elected to all four at-large seats since purpose of such restriction, i.e., to prevent one organization's candidates from capturing more than two at-large seats does not exist with independent candidates since they are not related organizationally to any other candidates. *Id.*

Complaint by qualified voters seeking judgment declaring unconstitutional sections of District of Columbia Self-Government and Governmental Reorganization Act passed by Congress and approved by President and voters of District and an injunction ordering placing on general election ballot Democratic candidates for at-large membership on District of Columbia Council who finished third or fourth in primary and the Republican candidate who finished third in primary with instructions that voters could vote for any four candidates would be dismissed in light of imminence of November election, absence of any demonstration of constitutional invalidity of section and the desire to give Congress opportunity to reform its legislation. *E. Dulcan et ano. v. R. Martin, Chairman, et al.* (1974, 64 F.R.D. 327).

§ 1-141a. Definitions.

(a) "Council" shall mean the Council of the District of Columbia;

(b) "Legislative duties" shall include the responsibilities of each member of the Council in the exercise of such member's functions as a legislative representative, including but not limited to: everything said, written or done during legislative sessions, meetings, or investigations of the Council or any committee of the Council, and everything said, written, or done in the process of drafting and publishing legislation and legislative reports; and

(c) "Threatening letter or communication" shall mean any letter or communication which reasonably indicates an earnest intention or determination to inflict injury upon someone or something of value. (June 8, 1976, D.C. Law 1-65, § 2, 22 DCR 7150.)

CODIFICATION

This section was enacted as part of the Legislative Privilege act of 1975 (D.C. Law 1-65, June 8, 1976), and

not as a part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

EFFECTIVE DATE

Section 5 of act June 8, 1976, D.C. Law 1-65, provided: "This act [enacting §§ 1-141a to 1-141c] shall take effect upon becoming law by operation of section 602 of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act June 8, 1976, D.C. Law 1-65, provided "That this act [enacting §§ 1-141a to 1-141c] may be cited as the 'Legislative Privilege act of 1975'."

§ 1-141b. Legislative immunity.

For any speech or debate made in the course of their legislative duties, the members of the Council shall not be questioned in any other place. (June 8, 1976, D.C. Law 1-65, § 3, 22 DCR 7151.)

CODIFICATION

This section was enacted as part of the Legislative Privilege act of 1975 (D.C. Law 1-65, June 8, 1975), and not as a part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

EFFECTIVE DATE

See section 5 of act June 8, 1976, D.C. Law 1-65, set out as a note under § 1-141a.

§ 1-141c. Obstruction of Council proceedings and investigations—Penalty.

Whoever, corruptly or by threat or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness in any proceeding pending before the Council, or in connection with any inquiry or investigation being had by the Council, or any committee of the Council, or any joint committee of the Council; or

Whoever, injures any party or witness in his person or property on account of his attending or having attended such proceeding, inquiry, or investigation, or on account of his testifying or having testified to any matter pending, therein; or

Whoever, willfully removes from any place, conceals, destroys, mutilates, alters, or by other means falsifies any documentary material which is the subject of a subpoena lawfully issued by the Council, or any committee of the Council; or

Whoever, corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which such proceeding is being had before the Council, or the due and proper exercise of the power of inquiry under which such inquiry or investigation is being had by the Council, or any committee of the Council, or any joint committee of the Council;

shall be fined not more than \$2,000 or imprisoned not more than two years, or both. (June 8, 1976, D.C. Law 1-65, § 4, 22 DCR 7151.)

CODIFICATION

This section was enacted as part of the Legislative Privilege act of 1975 (D.C. Law 1-65, June 8, 1975), and not as a part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

EFFECTIVE DATE

See section 5 of act June 8, 1976, D.C. Law 1-65, set out as a note under § 1-141a.

§ 1-142. Qualifications for holding office.

No person shall hold the office of member of the Council, including the office of Chairman, unless he (a) is a qualified elector, (b) is domiciled in the District and if he is nominated for election from a particular ward, resides in the ward from which he is nominated, (c) has resided and been domiciled in the District for one year immediately preceding the day on which the general or special election for such office is to be held, and (d) holds no public office (other than his employment in and position as a member of the Council), for which he is compensated in an amount in excess of his actual expenses in connection therewith, except that nothing in this clause shall prohibit any such person, while a member of the Council, from serving as a delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice President of the United States, or from holding an appointment in a Reserve component of an armed force of the United States other than a member serving on active duty under a call for more than thirty days. A member of the Council shall forfeit his office upon failure to maintain the qualifications required by this section, and, in the case of the Chairman, section 1-143(c). (Dec. 24, 1973, Pub. L. 93-198, title IV, § 402, 87 Stat. 786.)

EFFECTIVE DATE

See note under § 1-141.

§ 1-143. Compensation.

(a) Each member of the Council shall receive compensation, payable in periodic installments, at a rate equal to the maximum rate as may be established from time to time for grade 12 of the General Schedule under section 5332 of title 5 of the United States Code. On and after the end of the two-year period beginning on the day the members of the Council first elected under this Act take office, the Council may, by act, increase or decrease such rate of compensation. Such change in compensation, upon enactment by the Council in accordance with the provisions of this chapter, shall apply with respect to the term of members of the Council beginning after the date of enactment of such change.

(b) All members of the Council shall receive additional allowances for actual and necessary expenses incurred in the performance of their duties of office as may be approved by the Council.

(c) The Chairman shall receive, in addition to the compensation to which he is entitled as a member of the Council, \$10,000 per annum, payable in equal installments, for each year he serves as Chairman, but the Chairman shall not engage in any employment (whether as an employee or as a self-employed individual) or hold any position (other than his position as Chairman), for which he is compensated in an amount in excess of his actual expenses in connection therewith. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 403, 87 Stat. 787.)

REFERENCE IN TEXT

"This Act", referred to in the second sentence of subsec. (a), is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). "This chapter", referred to in the last sentence of subsec. (a), was in the original "this Act". For classification of the Act to the Code, see the Parallel Reference Tables.

EFFECTIVE DATE

See note under § 1-141.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-142.

§ 1-144. Powers.

(a) Subject to the limitations specified in sections 1-126, 1-127, 1-147, and 47-228, the legislative power granted to the District by this Act is vested in and shall be exercised by the Council in accordance with this Act. In addition, except as otherwise provided in this Act, all functions granted to or imposed upon, or vested in or transferred to the District of Columbia Council, as established by Reorganization Plan Numbered 3 of 1967, shall be carried out by the Council in accordance with the provisions of this Act.

(b) The Council shall have authority to create, abolish, or organize any office, agency, department, or instrumentality of the government of the District and to define the powers, duties, and responsibilities of any such office, agency, department, or instrumentality.

(c) The Council shall adopt and publish rules of procedures which shall include provisions for adequate public notification of intended actions of the Council.

(d) Every act shall be published and codified upon becoming law as the Council may direct.

(e) An act passed by the Council shall be presented by the Chairman of the Council to the Mayor, who shall, within ten calendar days (excluding Saturdays, Sundays, and holidays) after the act is presented to him, either approve or disapprove such act. If the Mayor shall approve such act, he shall indicate the same by affixing his signature thereto, and such act shall become law subject to the provisions of section 1-147(c). If the Mayor shall disapprove such act, he shall, within ten calendar days (excluding Saturdays, Sundays, and holidays) after it is presented to him, return such act to the Council setting forth in writing his reasons for such disapproval. If any act so passed shall not be returned to the Council by the Mayor within ten calendar days after it shall have been presented to him, the Mayor shall be deemed to have approved it, and such act shall become law subject to the provisions of section 1-147(c). If, within thirty calendar days after an act has been timely returned by the Mayor to the Council with his disapproval, two-thirds of the members of the Council present and voting vote to reenact such act, the act so reenacted shall be transmitted by the Chairman to the President of the United States. Subject to the provisions of section 1-147(c), such act, except any act of the Council submitted to the President in accordance with the Budget and Accounting Act, 1921 (31 U.S.C. 1 et seq.), shall become law at the end of the thirty day period beginning

on the date of such transmission, unless during such period the President disapproves such act.

(f) In the case of any budget act adopted by the Council pursuant to section 47-224 and submitted to the Mayor in accordance with subsection (e) of this section, the Mayor shall have power to disapprove any items or provisions, or both, of such act and approve the remainder. In any case in which the Mayor so disapproves of any item or provision, he shall append to the act when he signs it a statement of the item or provision which he disapproves, and shall, within such ten-day period, return a copy of the act and statement with his objections to the Council. If, within thirty calendar days after any such item or provision so disapproved has been timely returned by the Mayor to the Council, two-thirds of the members of the Council present and voting vote to reenact any such item or provision, such item or provision so reenacted shall be transmitted by the Chairman to the President of the United States. In any case in which the Mayor fails to timely return any such item or provision so disapproved to the Council, the Mayor shall be deemed to have approved such item or provision not returned, and such item or provision not returned shall be transmitted by the Chairman to the President of the United States. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 404, 87 Stat. 787.)

REFERENCES IN TEXT

"This Act", referred to in subsec. (a), is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see Parallel Reference Tables.

"Reorganization Plan Numbered 3 of 1967", referred to in subsec. (a), is set out in the Appendix to this title in the main edition.

EFFECTIVE DATE

See note under § 1-141.

CROSS REFERENCES

Certain delegated functions and functions of certain agencies, see § 1-132.

District of Columbia Code, see § 49-112.

Elections, legislative authority of Council, see § 1-1105a.

Legislative immunity, see § 1-141b.

Open meetings, availability of written transcript, see § 1-1503a.

Regulations in nature of a law or municipal ordinance adopted by Council to be published in Municipal Code, see § 1-1602.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-132, 2-1233, 5-103a, 31-1901, 44-308.

§ 1-145. Chairman.

(a) The Chairman shall be the presiding officer of the Council.

(b) When the Office of Mayor is vacant, the Chairman shall act in his stead. While the Chairman is Acting Mayor he shall not exercise any of his authority as Chairman or member of the Council. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 411, 87 Stat. 788.)

EFFECTIVE DATE

See note under § 1-141.

§ 1-146. Acts—Resolutions—Requirements for quorum.

(a) The Council, to discharge the powers and duties imposed herein, shall pass acts and adopt

resolutions, upon a vote of a majority of the members of the Council present and voting, unless otherwise provided in this Act or by the Council. The Council shall use acts for all legislative purposes. Each proposed act shall be read twice in substantially the same form, with at least thirteen days intervening between each reading. Upon final adoption by the Council each act shall be made immediately available to the public in a manner which the Council shall determine. If the Council determines, by a vote of two-thirds of the members, that emergency circumstances make it necessary that an act be passed after a single reading, or that it take effect immediately upon enactment, such act shall be effective for a period of not to exceed ninety days. Resolutions shall be used to express simple determinations, decisions, or directions of the Council of a special or temporary character.

(b) A special election may be called by resolution of the Council to present for an advisory referendum vote of the people any proposition upon which the Council desires to take action.

(c) A majority of the Council shall constitute a quorum for the lawful convening of any meeting and for the transaction of business of the Council, except a lesser number may hold hearings. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 412, 87 Stat. 788.)

REFERENCE IN TEXT

"This Act", referred to in subsec. (a), is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see Parallel Reference Tables.

EFFECTIVE DATE

See note under § 1-141.

CROSS REFERENCES

Codification and publication of acts and resolutions, see § 1-1601 et seq.

Enrollment of acts, see § 1-1604.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-147, 1-1602, 47-622.

§ 1-146a. Definitions and words denoting number, gender, and so forth in acts and resolutions.

For the purposes of any act or resolution of the Council of the District of Columbia, unless specifically provided otherwise—

(1) words importing the singular include and apply to several persons, parties, or things;

(2) words importing the plural include the singular;

(3) words importing one gender include and apply to the other gender as well;

(4) words used in the present tense include the future as well as the present;

(5) the words "person" and "whoever" include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;

(6) "officer" includes any person authorized by law to perform the duties of the office;

(7) "signature" or "subscription" includes a mark when the person making it intended that mark as such;

(8) "oath" includes affirmation, and "sworn" includes affirmed; and

(9) "writing" includes printing and typewriting and reproductions of visual symbols by photographing, multigraphing, mimeographing, manifolding, or otherwise. (Sept. 23, 1975, D.C. Law 1-17, § 2, 22 DCR 1990.)

CODIFICATION

Section was enacted as part of the General Legislative Procedures Act of 1975, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

EFFECTIVE DATE

Section 5 of act Sept. 23, 1975, D.C. Law 1-17, provided "This act shall be effective immediately at the end of the thirty day period (excluding Saturdays, Sundays, holidays, and days on which either House of Congress is not in session) beginning on the date this act is submitted to the Congress, as provided in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act Sept. 23, 1975, D.C. Law 1-17, provided "That this act [enacting §§ 1-146a to 1-146c] may be cited as the 'General Legislative Procedures Act of 1975.'"

CROSS REFERENCE

Rules of construction, generally, see § 49-201 et seq.

§ 1-146b. Enacting and resolving clauses in acts and resolutions—Numbering of sections.

(a) Each act of the Council of the District of Columbia shall have an enacting clause only in the first section of each act and such enacting clause shall be in the following form: "Be it enacted by the Council of the District of Columbia,".

(b) Each resolution of the Council of the District of Columbia shall have a resolving clause in the following form: "Resolved, by the Council of the District of Columbia,".

(c) Each section of each act or resolution shall be numbered consecutively. (Sept. 23, 1975, D.C. Law 1-17, § 3, 22 DCR 1991.)

CODIFICATION

Section was enacted as part of the General Legislative Procedures Act of 1975, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

EFFECTIVE DATE

See note under § 1-146a.

§ 1-146c. Additional definitions of terms in acts and resolutions.

For the purposes of any act or resolution of the Council of the District of Columbia, unless specifically provided otherwise—

(a) The term "Council" means the Council of the District of Columbia established under section 1-141.

(b) The term "Mayor" means the Mayor of the District of Columbia established under section 1-161.

(c) The term "Act" means an Act of the Congress.

(d) The term "act" means an act of the Council. (Sept. 23, 1975, D.C. Law 1-17, § 4, 22 DCR 1992.)

CODIFICATION

Section was enacted as part of the General Legislative Procedures Act of 1975, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

EFFECTIVE DATE

See note under § 1-146a.

§ 1-147. Limitations.

(a) The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to—

(1) impose any tax on property of the United States or any of the several States;

(2) lend the public credit for support of any private undertaking;

(3) enact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District;

(4) enact any act, resolution, or rule with respect to any provision of title 11 (relating to organization and jurisdiction of the District of Columbia courts);

(5) impose any tax on the whole or any portion of the personal income, either directly or at the source thereof, of any individual not a resident of the District (the terms "individual" and "resident" to be understood for the purposes of this paragraph as they are defined in section 47-1551c);

(6) enact any act, resolution, or rule which permits the building of any structure within the District of Columbia in excess of the height limitations contained in section 5-405, and in effect on December 24, 1973;

(7) enact any act, resolution, or regulation with respect to the Commission on Mental Health;

(8) enact any act or regulation relating to the United States District Court for the District of Columbia or any other court of the United States in the District other than the District courts, or relating to the duties or powers of the United States attorney or the United States Marshal for the District of Columbia; or

(9) enact any act, resolution, or rule with respect to any provision of title 23 (relating to criminal procedure), or with respect to any provision of any law codified in title 22 or 24 (relating to crimes and treatment of prisoners), or with respect to any criminal offense pertaining to articles subject to regulation under chapter 32 of title 22 during the forty-eight full calendar months immediately following the day on which the members of the Council first elected pursuant to this Act take office.

(b) Nothing in this Act shall be construed as vesting in the District government any greater authority over the National Zoological Park, the National Guard of the District of Columbia, the Washington Aqueduct, the National Capital Planning Commission, or, except as otherwise specifically provided in this Act, over any Federal agency, than was vested in the Commissioner prior to January 2, 1975.

(c) (1) Except acts of the Council which are submitted to the President in accordance with the Budget and Accounting Act, 1921 (31 U.S.C. 1 et seq.) any act which the Council determines according to section 1-146(a), should take effect immediately because of emergency circumstances, and acts proposing amendments to title IV of this Act, the Chairman of the Council shall transmit to the Speaker

of the House of Representatives, and the President of the Senate a copy of each act passed by the Council and signed by the Mayor, or vetoed by the Mayor and repassed by two-thirds of the Council present and voting (and with respect to which the President has not sustained the Mayor's veto), and every act passed by the Council and allowed to become effective by the Mayor without his signature. Except as provided in paragraph (2), no such act shall take effect until the end of the 30-day period (excluding Saturdays, Sundays, and holidays, and any day on which either House is not in session) beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate and then only if during such 30-day period both Houses of Congress do not adopt a concurrent resolution disapproving such act. The provisions of section 1-127, except subsections (d), (e), and (f) of such section, shall apply with respect to any concurrent resolution disapproving any act pursuant to this paragraph.

(2) In the case of any such act transmitted by the Chairman with respect to any Act codified in titles 22, 23, or 24, such act shall take effect at the end of the 30-day period beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate only if during such 30-day period one House of Congress does not adopt a resolution disapproving such act. The provisions of section 1-127 relating to an expedited procedure for consideration of resolutions, shall apply to a simple resolution disapproving such act as specified in this paragraph. (Dec. 24, 1973, Pub. L. 93-198, title VI, § 602, 87 Stat. 813; Sept. 7, 1976, Pub. L. 94-402, 90 Stat. 1220.)

REFERENCE IN TEXT

"This Act", referred to in text, is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). "Title IV of this Act", referred to in subsec. (c) (1), is title IV (consisting of sections 401 to 495) of such Act. For classification of the Act to the Code, see Parallel Reference Tables.

CODIFICATION

In subsec. (a) (6), "December 24, 1973" has been substituted for "the date of enactment of this Act".

In subsec. (b), "January 2, 1975" has been substituted for "the effective date of title IV of this Act", on authority of section 717(d) of Act Dec. 24, 1973, which is set out as a note under § 1-121.

AMENDMENT

1976—Act Sept. 7, 1976, Pub. L. 94-402, amended subsec. (a) (9) by substituting "forty-eight" for "twenty-four"; and by inserting, immediately preceding the word "during", a comma and the words "or with respect to any criminal offense pertaining to articles subject to regulation under chapter 32 of title 22".

EFFECTIVE DATE

See note under § 1-141.

CROSS REFERENCE

Limitation on Council to repeal or alter any provision of subchapter III (relating to political activity restrictions) of chapter 73 of title 5, U.S. Code, see § 1-128.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-124, 1-125, 1-144, 5-1281, 11-2609, section 718 of title 11 Appendix, 47-254.

§ 1-148. Investigations—Subpenas—Oaths.

(a) The Council, or any committee or person authorized by it, shall have power to investigate any matter relating to the affairs of the District, and for that purpose may require the attendance and testimony of witnesses and the production of books, papers, and other evidence. For such purpose any member of the Council (if the Council is conducting the inquiry) or any member of the committee may issue subpoenas, and administer oaths upon resolution adopted by the Council or committee, as appropriate.

(b) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Council by resolution may refer the matter to the Superior Court of the District of Columbia, which may by order require such person to appear and give or produce testimony or books, papers, or other evidence, bearing upon the matter under investigation. Any failure to obey such order may be punished by such Court as a contempt thereof as in the case of failure to obey a subpoena issued, or to testify, in a case pending before such Court. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 413, 87 Stat. 789.)

EFFECTIVE DATE

See note under § 1-141.

CROSS REFERENCE

Penalty for obstructing Council investigations and subpoenas, see § 1-141c.

SUBCHAPTER IV.—MAYOR

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1-122.

§ 1-161. Election — Qualifications — Vacancy — Compensation.

(a) There is established the Office of Mayor of the District of Columbia; and the Mayor shall be elected by the registered qualified electors of the District.

(b) The Mayor established by subsection (a) shall be elected, on a partisan basis, for a term of four years beginning at noon on January 2 of the year following his election.

(c) (1) No person shall hold the Office of Mayor unless he (A) is a qualified elector, (B) has resided and been domiciled in the District for one year immediately preceding the day on which the general or special election for Mayor is to be held, and (C) is not engaged in any employment (whether as an employee or as a self-employed individual) and holds no public office or position (other than his employment in and position as Mayor), for which he is compensated in an amount in excess of his actual expenses in connection therewith, except that nothing in this clause shall be construed as prohibiting such person, while holding the Office of Mayor, from serving as a delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice President of the United States, or from holding an appointment in a reserve component of an armed force of the United States other than a member serving on active duty under a call for more than thirty days. The Mayor shall forfeit his office upon failure to maintain the qualifications required by this paragraph.

(2) To fill a vacancy in the Office of Mayor, the Board of Elections and Ethics shall hold a special election in the District on the first Tuesday occurring more than one hundred and fourteen days after the date on which such vacancy occurs, unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within sixty days of the date on which a special election would otherwise have been held under the provisions of this paragraph. The person elected Mayor to fill a vacancy in the Office of Mayor shall take office on the day on which the Board of Elections and Ethics certifies his election, and shall serve as Mayor only for the remainder of the term during which such vacancy occurred. When the Office of Mayor becomes vacant the Chairman shall become Acting Mayor and shall serve from the date such vacancy occurs until the date on which the Board of Elections and Ethics certifies the election of the new Mayor at which time he shall again become Chairman. While the Chairman is Acting Mayor, the Chairman shall receive the compensation regularly paid the Mayor, and shall receive no compensation as Chairman or member of the Council. While the Chairman is Acting Mayor, the Council shall select one of the elected at-large members of the Council to serve as Chairman and one to serve as chairman pro tempore, until the return of the regularly elected Chairman.

(d) The Mayor shall receive compensation, payable in equal installments, at a rate equal to the maximum rate, as may be established from time to time, for level III of the Executive Schedule in section 5314 of title 5 of the United States Code. Such rate of compensation may be increased or decreased by act of the Council. Such change in such compensation, upon enactment by the Council in accordance with the provisions of this chapter, shall apply with respect to the term of Mayor next beginning after the date of such change. In addition, the Mayor may receive an allowance, in such amount as the Council may from time to time establish, for official, reception, and representation expenses, which he shall certify in reasonable detail to the Council. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 421, 87 Stat. 789; Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458.)

REFERENCE IN TEXT

"This chapter", referred to in subsec. (d), was in the original "this Act", meaning the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see Parallel Reference Tables.

AMENDMENT

1974—Act Aug. 14, 1974, Pub. L. 93-376, amended subsec. (c) (2) by substituting "Board of Elections and Ethics" for "Board of Elections".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment effective on and after Aug. 14, 1974, see section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, set out as § 1-1156(a).

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, set out as a note under § 1-121, provided in part that this sub-

chapter is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this subchapter.

CROSS REFERENCES

Mayoral vacancy provisions, see §§ 1-141, 1-145.

Political activity restrictions on Federal and District employees, see 5 U.S.C. 7324.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-125, 1-146c, 1-1601, 31-1702, 31-1902, 45-1641, 47-271.

§ 1-162. Powers and duties.

The executive power of the District shall be vested in the Mayor who shall be the chief executive officer of the District government. In addition, except as otherwise provided in this Act, all functions granted to or vested in the Commissioner of the District of Columbia, as established under Reorganization Plan Numbered 3 of 1967, shall be carried out by the Mayor in accordance with this Act. The Mayor shall be responsible for the proper execution of all laws relating to the District, and for the proper administration of the affairs of the District coming under his jurisdiction or control, including but not limited to the following powers, duties, and functions:

(1) The Mayor may designate the officer or officers of the executive department of the District who may, during periods of disability or absence from the District of the Mayor execute and perform the powers and duties of the Mayor.

(2) The Mayor shall administer all laws relating to the appointment, promotion, discipline, separation, and other conditions of employment of personnel in the office of the Mayor, personnel in executive departments of the District, and members of boards, commissions, and other agencies, who, under laws in effect on the date immediately preceding January 2, 1975, were subject to appointment and removal by the Commissioner of the District of Columbia. All actions affecting such personnel and such members shall, until such time as legislation is enacted by the Council superseding such laws and establishing a permanent District government merit system, pursuant to paragraph (3), continue to be subject to the provisions of Acts of Congress relating to the appointment, promotion, discipline, separation, and other conditions of employment applicable to officers and employees of the District government, to section 713(d) of this Act, and where applicable, to the provisions of the joint agreement between the Commissioners and the Civil Service Commission authorized by Executive Order Numbered 5491 of November 18, 1930, relating to the appointment of District personnel. He shall appoint or assign persons to positions formerly occupied, ex-officio, by the Commissioner of the District of Columbia or by the Assistant to the Commissioner and shall have power to remove such persons from such positions. The officers and employees of each agency with respect to which legislative power is delegated by this Act and which immediately prior to January 2, 1975, was not subject to the adminis-

trative control of the Commissioner of the District, shall continue to be appointed and removed in accordance with applicable laws until such time as such laws may be superseded by legislation passed by the Council establishing a permanent District government merit system pursuant to paragraph (3).

(3) The Mayor shall administer the personnel functions of the District covering employees of all District departments, boards, commissions, offices and agencies, except as otherwise provided by this Act. Personnel legislation enacted by Congress prior to or after January 2, 1975, including, without limitation, legislation relating to appointments, promotions, discipline, separations, pay, unemployment compensation, health, disability and death benefits, leave, retirement, insurance, and veterans' preference applicable to employees of the District government as set forth in section 1-133(c), shall continue to be applicable until such time as the Council shall, pursuant to this section, provide for coverage under a District government merit system. The District government merit system shall be established by act of the Council. The system may provide for continued participation in all or part of the Federal Civil Service System and shall provide for persons employed by the District government immediately preceding the effective date of such system personnel benefits, including but not limited to pay, tenure, leave, residence, retirement, health and life insurance, and employee disability and death benefits, all at least equal to those provided by legislation enacted by Congress, or regulation adopted pursuant thereto, and applicable to such officers and employees immediately prior to the effective date of the system established pursuant to this Act. The District government merit system shall take effect not earlier than one year nor later than five years after January 2, 1975.

(4) The Mayor shall, through the heads of administrative boards, offices, and agencies, supervise and direct the activities of such boards, offices, and agencies.

(5) The Mayor may submit drafts of acts to the Council.

(6) The Mayor may delegate any of his functions (other than the function of approving or disapproving acts passed by the Council or the function of approving contracts between the District and the Federal Government under section 1-826) to any officer, employee, or agency of the executive office of the Mayor, or to any director of an executive department who may, with the approval of the Mayor, make a further delegation of all or a part of such functions to subordinates under his jurisdiction.

(7) The Mayor shall appoint a City Administrator, who shall serve at the pleasure of the Mayor. The City Administrator shall be the chief administrative officer of the Mayor, and he shall assist the Mayor in carrying out his functions under this Act, and shall perform such other duties as may be assigned to him by the Mayor. The City Administrator shall be paid at a rate established by the Mayor, not to exceed level IV of the Executive Schedule established under section 5315 of title 5 of the United States Code.

(8) The Mayor may propose to the executive or legislative branch of the United States Government legislation or other action dealing with any subject whether or not falling within the authority of the District government, as defined in this Act.

(9) The Mayor, as custodian thereof, shall use and authenticate the corporate seal of the District in accordance with law.

(10) The Mayor shall have the right, under rules to be adopted by the Council, to be heard by the Council or any of its committees.

(11) The Mayor is authorized to issue and enforce administrative orders, not inconsistent with this or any other Act of the Congress or any act of the Council, as are necessary to carry out his functions and duties.

(12) The Mayor may reorganize the offices, agencies, and other entities within the executive branch of the government of the District by submitting to the Council a detailed plan of such reorganization. Such a reorganization plan shall be valid only if the Council does not adopt, within sixty days (excluding Saturdays, Sundays, and holidays) after such reorganization plan is submitted to it by the Mayor, a resolution disapproving such reorganization. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 422, 87 Stat. 790.)

REFERENCES IN TEXT

"This Act", referred to in text, is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

"Reorganization Plan Numbered 3 of 1967", referred to in text, is set out in the Appendix to this title in the main edition.

"Section 713(d) of this Act", referred to in par. (2), is section 713(d) of Act Dec. 24, 1973, and is set out as a note under § 1-131.

CODIFICATION

In pars. (2) and (3), "January 2, 1975" has been substituted for "the effective date of section 711(a) of this Act" and "the effective date of this section" on authority of section 771(c), (d) of Act Dec. 24, 1973, which is set out as a note under § 1-121.

EFFECTIVE DATE

See note under § 1-161.

CROSS REFERENCES

Affirmative action and equal opportunity in District employment, see § 1-320a.

Assistance of U.S. Civil Service Commission in development of District merit system, see § 1-322.

Certain delegated functions and functions of certain agencies, see § 1-132.

Duties of Mayor,

Annual Federal payment, see § 47-2501c.

Financial affairs of District, see § 47-226.

Official mail, use by Mayor and Mayor-Elect, see §§ 1-1705 to 1-1707.

Personnel system for University of the District of Columbia, see § 31-1717.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-322, 5-103a, 6-2004, 6-2006, section 3 of title 28 Appendix.

NOTES TO DECISIONS

Employees—Public statements

Although subsequent to filing of action challenging constitutionality of District of Columbia regulation prohibiting employees from making public any disagreement or criticism of District operating policies and practices the regulation was expunged and disciplinary action taken against plaintiffs thereunder was rescinded, de-

claratory and injunctive relief would be issued in view of nature and character of the impermissive action and to avoid its repetition and to ensure that knowledge of the government's corrective action is widespread and generally known. *P. M. A. Matthews et al. v. W. E. Washington et al.* (1976, 424 F. Supp. 97).

§ 1-162a. Submission of statement of impact of proposed acts on taxpayers.

The Mayor shall submit to the Council of the District of Columbia, simultaneously with any proposed revenue measure or proposed act, a detailed statement with supporting data concerning the direct and indirect impact of the measure or bill upon those taxpayers who will be directly or indirectly affected by the measure or act. (Apr. 19, 1977, D.C. Law 1-124, title IX, § 902, 23 DCR 8749.)

CODIFICATION

Section was enacted as part of the Revenue Act for Fiscal Year 1978, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

EFFECTIVE DATE

See section 1101 of act Apr. 19, 1977, D.C. Law 1-124, set out as a note under § 47-1557a.

§ 1-163. Municipal planning.

(a) The Mayor shall be the central planning agency for the District. He shall be responsible for the coordination of planning activities of the municipal government and the preparation and implementation of the District's elements of the comprehensive plan for the National Capital which may include land use elements, urban renewal and redevelopment elements, a multi-year program of municipal public works for the District, and physical, social, economic, transportation, and population elements. The Mayor's planning responsibility shall not extend to Federal and international projects and developments in the District, as determined by the National Capital Planning Commission, or to the United States Capitol buildings and grounds as defined in sections 9-118 and 9-132, or to any extension thereof or addition thereto, or to buildings and grounds under the care of the Architect of the Capitol. In carrying out his responsibilities under this section, the Mayor shall establish procedures for citizen involvement in the planning process and for appropriate meaningful consultation with any State or local government or planning agency in the National Capital region affected by any aspect of a proposed District element of the comprehensive plan (including amendments thereto) affecting or relating to the District.

(b) The Mayor shall submit the District's elements and amendments thereto, to the Council for revision or modification, and adoption by act, following public hearings. Following adoption and prior to implementation, the Council shall submit such elements and amendments thereto, to the National Capital Planning Commission for review and comment with regard to the impact of such elements or amendments on the interests and functions of the Federal Establishment, as determined by the Commission.

(c) Such elements and amendments thereto shall be subject to and limited by determinations with respect to the interests and functions of the Federal

Establishment as determined in the manner provided by Act of Congress. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 423, 87 Stat. 792.)

EFFECTIVE DATE

See note under § 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-223.

SUBCHAPTER V.—MISCELLANEOUS

§ 1-171. Advisory Neighborhood Commissions.

(a) The Council shall by act divide the District into neighborhood commission areas and, upon receiving a petition signed by at least 5 per centum of the registered qualified electors of a neighborhood commission area, shall establish for that neighborhood an elected advisory neighborhood commission. In designating such neighborhoods, the Council shall consider natural geographic boundaries, election districts, and divisions of the District made for the purpose of administration of services.

(b) Elections for members of each advisory neighborhood commission shall be nonpartisan, shall be scheduled to coincide with the elections of members of the Board of Education held in the District, and shall be administered by the Board of Elections and Ethics. Advisory neighborhood commission members shall be elected from single member districts within each neighborhood commission area by the registered qualified electors thereof.

(c) Each advisory neighborhood commission—

(1) may advise the District government on matters of public policy including decisions regarding planning, streets, recreation, social services programs, health, safety, and sanitation in that neighborhood commission area;

(2) may employ staff and expend, for public purposes within its neighborhood commission area, public funds and other funds donated to it; and

(3) shall have such other powers and duties as may be provided by act of the Council.

(d) In the manner provided by act of the Council, in addition to any other notice required by law, timely notice shall be given to each advisory neighborhood commission of requested or proposed zoning changes, variances, public improvements, licenses or permits of significance to neighborhood planning and development within its neighborhood commission area for its review, comment, and recommendation.

(e) In order to pay the expenses of the advisory neighborhood commissions, enable them to employ such staff as may be necessary, and to conduct programs for the welfare of the people in a neighborhood commission area, the District government shall apportion to each advisory neighborhood commission, out of the revenue of the District received from the tax on real property in the District including improvements thereon, a sum not less than that part of such revenue raised by levying 1 cent per \$100 of assessed valuation which bears the same ratio to the full sum raised thereby as the population of the neighborhood bears to the population of the District. The Council may authorize additional methods of financing advisory neighborhood commissions.

(f) The Council shall by act make provisions for the handling of funds and accounts by each advisory neighborhood commission and shall establish guidelines with respect to the employment of persons by each advisory neighborhood commission which shall include fixing the status of such employees with respect to the District government, but all such provisions and guidelines shall be uniform for all advisory neighborhood commissions and shall provide that decisions to employ and discharge employees shall be made by the advisory neighborhood commission. These provisions shall conform to the extent practicable to the regular budgetary, expenditure and auditing procedures and the personnel merit system of the District.

(g) The Council shall have authority in accordance with the provisions of this Act, to legislate with respect to the advisory neighborhood commissions established in this section.

(h) The foregoing provisions of this section shall take effect only if agreed to in accordance with the provisions of section 703(a) of this Act. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 738, 87 Stat. 824; Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458; Oct. 30, 1975, D.C. Law 1-27, § 2, 22 DCR 2470.)

REFERENCES IN TEXT

"This Act", referred to in subsec. (g), is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

"Section 703(a) of this Act", referred to in subsec. (h), is set out as a note under § 1-121. The advisory neighborhood commissions were agreed to by the voters in the charter referendum on May 7, 1974.

AMENDMENTS

1975—Act Oct. 30, 1975, D.C. Law 1-27, amended section catchline by substituting "Commissions" for "Councils" and section by substituting "neighborhood commission" and "neighborhood commissions" for "neighborhood council" and "neighborhood councils", respectively.

1974—Act Aug. 14, 1974, Pub. L. 93-376, amended subsec. (b) by substituting "Board of Elections and Ethics" for "Board of Elections".

EFFECTIVE DATE OF 1975 AMENDMENT

Section 5 of act Oct. 30, 1975, D.C. Law 1-27, provided: "The provisions of this act [amending this section and §§ 1-1161, 1-1162, and 1-1182 and enacting material set out as a note under this section] shall be effective as provided by section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment effective on and after Aug. 14, 1974, see section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, set out as § 1-1156(a).

SHORT TITLE

Section 1 of act Oct. 30, 1975, D.C. Law 1-27, provided: "That this act [amending this section and §§ 1-1161, 1-1162, and 1-1182 and enacting material set out as a note under this section] may be cited as the 'Advisory Neighborhood Commissions Act.'"

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

REFERENCES IN OTHER LAWS TO ADVISORY NEIGHBORHOOD COUNCILS

Section 4 of act Oct. 30, 1975, D.C. Law 1-27, provided: "Any reference in any law or relating solely to the District of Columbia, or in any rule, regulation, paper,

report, or other document of the District of Columbia government (including any agency thereof) to the Advisory Neighborhood Councils shall be deemed to be, after the effective date of this act, a reference to the Advisory Neighborhood Commissions."

CROSS REFERENCES

Election campaigns, limitations of contributions, see §§ 1-1161, 1-1162.

Lobbying exemption, see § 1-1180.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-171a, 1-171f.

§ 1-171a. Purpose and definitions.

(a) Section 1-171 provides that the Council shall, by act, divide the District of Columbia into Neighborhood Commission areas and establish, for each such area, an Advisory Neighborhood Commission. Such section 1-171 was to be effective only if a majority of the qualified electors voting in the charter referendum voted for the establishment of the Advisory Neighborhood Commissions.

In the charter referendum a majority of the qualified electors did vote to establish such Commissions, and it is the purpose of this act to implement the provisions of section 1-171.

(b) For the purposes of this act:

(1) The term "removal" means the process by which the qualified electors of the District of Columbia may call for a vote of an Advisory Neighborhood Commission to remove or retain one of its members prior to the expiration of his or her term.

(2) The term "appointment procedure" means the process by which a vacancy on an Advisory Neighborhood Commission may be filled. (Oct. 10, 1975, D.C. Law 1-21, § 2, 22 DCR 2065; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; Sept. 20, 1977, D.C. Law 2-16, § 2(a), 24 DCR 3336.)

REFERENCE IN TEXT

"This act", referred to in subsecs. (a) and (b), is the Advisory Neighborhood Commissions Act of 1975, Oct. 10, 1975, D.C. Law 1-21, as amended. For classification to the Code, see Parallel Reference Tables.

CODIFICATION

Section was enacted as part of the Advisory Neighborhood Commissions Act of 1975, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

Prior to amendment by act Sept. 20, 1977, D.C. Law 2-16, section 2 of act Oct. 10, 1975, D.C. Law 1-21, which comprises this section, was set out as a note under this section. Section 3 of act Oct. 10, 1975, D.C. Law 1-21, which was formerly classified to this section, is now classified to section 1-171a-1.

AMENDMENTS

1977—Act Sept. 20, 1977, D.C. Law 2-16, designated existing provisions relating to purposes as subsec. (a) and added subsec. (b).

1975—Act Oct. 30, 1975, D.C. Law 1-27, amended subsec. (a) by substituting "Neighborhood Commission areas", "Advisory Neighborhood Commission", "Advisory Neighborhood Commissions", and "Commissions" for "Neighborhood Council areas", "Advisory Neighborhood Council", "Advisory Neighborhood Councils", and "Councils", respectively.

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of section, see sec. 2(a) of the Emergency Advisory Neighborhood Commissions Act of 1977 (D.C. Act 2-45, June 9, 1977, 24 DCR 192) and the Second Advisory Neighborhood Commission's Vacancy Emergency Act of 1977 (D.C. Act 2-82, Aug. 17, 1977, 24 DCR 1820).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 3 of act Sept. 20, 1977, D.C. Law 2-16, provided: "This act [amending §§ 1-171a and 1-171e] shall take effect as provided for acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-171.

EFFECTIVE DATE

Section 12 of act Oct. 10, 1975, D.C. Law 1-21, provided: "The provisions of this Act [enacting §§ 1-171a to 1-171h and amending §§ 1-1161, 1-1162, and 1-1182] shall become effective as provided by Section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLES

The first section of act Sept. 20, 1977, D.C. Law 2-16, provided "That this act [amending §§ 1-171a and 1-171e] may be cited as the 'Advisory Neighborhood Commissions Act of 1977'."

Section 1 of the act Oct. 10, 1975, D.C. Law 1-21, as amended by act Oct. 30, 1975, D.C. Law 1-27, § 4, provided: "This Act [enacting §§ 1-171a to 1-171h and amending §§ 1-1161, 1-1162, and 1-1182] may be cited as the 'Advisory Neighborhood Commissions Act of 1975'."

§ 1-171a-1. Advisory Neighborhood Commission areas.

There are hereby established in the District of Columbia Advisory Neighborhood Commission areas the boundaries of which shall be as depicted on the maps of the District of Columbia annexed to and made a part of this act. (Oct. 10, 1975, D.C. Law 1-21, § 3, 22 DCR 2066; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472.)

REFERENCES IN TEXT

"Maps of the District of Columbia annexed to and made a part of this act", referred to in text, are set forth in 22 DCR 2074 to 2081.

"This act", referred to in text, is the Advisory Neighborhood Commissions Act of 1975, Oct. 10, 1975, D.C. Law 1-21, as amended. For classification to the Code, see Parallel Reference Tables.

CODIFICATION

Section was enacted as part of the Advisory Neighborhood Commissions Act of 1975, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

Section 3 of act Oct. 10, 1975, D.C. Law 1-21, which comprises this section, was formerly classified to section 1-171a.

AMENDMENT

1975—Act Oct. 30, 1975, D.C. Law 1-27, amended section by substituting "Commission" for "Council".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-171.

EFFECTIVE DATE

See note under § 1-171a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-171b.

§ 1-171b. Single-member districts—Adjustments.

(a) The Council shall, by resolution, establish single-member districts for each of the Neighborhood Commission areas established in section 1-171a-1. Such districts shall be established by July 31, 1975, and shall each have a population of approximately 2000 people, and shall be as nearly equal as possible. Upon adoption of the resolution establishing such districts, the Council shall cause a description of the boundaries of each such district to be published in the District of Columbia Register.

(b) The Mayor of the District of Columbia shall transmit a copy of the official report of the decennial census received by him from the United States Bureau of the Census to the Council within 10 days after receiving it. The Council, after public hearing, shall make such adjustments in the boundaries of the single-member districts established according to the procedure specified in subsection (a) as are necessary as a result of population shifts and changes. Such adjustments shall be made no later than 180 days preceding the next regularly scheduled election for members to the Advisory Neighborhood Commissions. (Oct. 10, 1975, D.C. Law 1-21, § 4, 22 DCR 2066; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472.)

CODIFICATION

Section was enacted as part of the Advisory Neighborhood Commissions Act of 1975, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

AMENDMENT

1975—Act Oct. 30, 1975, D.C. Law 1-27, amended section by substituting in subsec. (a) "Neighborhood Commission" for "Neighborhood Council" and in subsec. (b) "Advisory Neighborhood Commissions" for "Advisory Neighborhood Councils".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-171.

EFFECTIVE DATE

See note under § 1-171a.

§ 1-171c. Establishment of Advisory Neighborhood Commissions.

(a) As soon as possible after October 10, 1975, but in no case later than 5 days after such date, the District of Columbia Board of Elections and Ethics (hereinafter in this act referred to as the "Board") shall—

(1) make available to any resident of an Advisory Neighborhood Commission area copies of petition forms for collecting signatures of registered qualified electors in such area; and

(2) publish in the District of Columbia Register and in at least two newspapers of general circulation in the District of Columbia, the number of registered qualified electors in each Advisory Neighborhood Commission area.

(b) Upon certification by the Board to the Chairman of the Council that five percent of the registered qualified electors of an Advisory Neighborhood Commission area have signed a petition calling for the establishment of an Advisory Neighborhood Commission in such area, the Council shall then establish by resolution a non-partisan elected Advisory Neighborhood Commission for such area, with its members to be elected from the single-member districts established for such area. Nothing in this section shall be construed to permit an individual to sign more than one petition for the establishment of an Advisory Neighborhood Commission. (Oct. 10, 1975, D.C. Law 1-21, § 5, 22 DCR 2067; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472.)

REFERENCE IN TEXT

This act, referred to in subsec. (a), is the Advisory Neighborhood Commissions Act of 1975, Oct. 10, 1975, D.C. Law 1-21, as amended. For classification to the Code, see Parallel Reference Tables.

CODIFICATION

Section was enacted as part of the Advisory Neighborhood Commissions Act of 1975, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

In subsec. (a), "October 10, 1975" and "such date" have been substituted for "the effective date of this act" and "such effective date", respectively.

AMENDMENT

1975—Act Oct. 30, 1975, D.C. Law 1-27, amended section by substituting "Advisory Neighborhood Commission" for "Advisory Neighborhood Council".

EMERGENCY ACT AMENDMENT

1975—For temporary provisions relating to the first election of members, see secs. 2 and 3 of the Emergency Advisory Neighborhood Commission Election Act of 1976 (D.C. Act 1-53, Oct. 8, 1975, 22 DCR 1929).

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-171.

EFFECTIVE DATE

See note under § 1-171a.

§ 1-171d. Members of Advisory Neighborhood Commissions—Qualifications—Nominations.

(a) (1) No person shall be a member of an Advisory Neighborhood Commission unless he (A) is a registered qualified elector actually residing in the single-member district from which he was elected; (B) has been residing in such district continuously for the 60 days immediately preceding the day on which he files the nominating petitions as a candidate as such a member; and (C) hold¹ no other elected public office.

(2) For the purpose of this subsection, the term "elected public office" means the office of Mayor of the District of Columbia, Chairman or member of the Council of the District of Columbia, member of the District of Columbia Board of Education, and the Delegate to the House of Representatives.

(b) Candidates for member of an Advisory Neighborhood Commission shall be nominated by a petition—

(1) prepared and presented to the Board in accordance with regulations of the Board no later than the sixtieth calendar day before the date of the election in which he intends to be a candidate; and

(2) signed by not less than twenty-five registered qualified electors who are residents of the single-member district from which he seeks election.

Such petitions shall be made available by the Board no later than the seventy-fourth calendar day before an election for members of an Advisory Neighborhood Commission. (Oct. 10, 1975, D.C. Law 1-21, § 6, 22 DCR 2068; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472.)

CODIFICATION

Section was enacted as part of the Advisory Neighborhood Commissions Act of 1975, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

AMENDMENT

1975—Act Oct. 30, 1975, D.C. Law 1-27, amended section by substituting "Advisory Neighborhood Commission" for "Advisory Neighborhood Council".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-171.

EFFECTIVE DATE

See note under § 1-171a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-171e, 1-171o.

§ 1-171e. Elections for members of Advisory Neighborhood Commissions—Term of office—Vacancies—Change of residency by member—Resignation and removal of members.

(a) The first election for members of Advisory Neighborhood Commissions shall be held on February 3, 1976. The next such election shall be held on the date of the general election held during 1977 for members of the District of Columbia Board of Education. Thereafter such elections shall be held on the date of such general election in every odd numbered year.

(b) Each member of an Advisory Neighborhood Commission shall serve for a term of two years which shall begin at noon on the second day of January next following the date of election of such member, or at noon on the day after the date the Board certifies such election of such member, whichever is later, except that the terms of the members elected at the first election for members of an Advisory Neighborhood Commission held after October 10, 1975, shall begin at noon on the first day of March, 1976, or at noon on the day after the date the Board certifies the results of such election, whichever is later, and shall terminate at noon on the second day of January, 1978.

(c) No member may represent a Single Member District for more than two (2) consecutive terms, except that the portion of a term served by a member as the result of a special election or as the result of an appointment to office shall not be considered in computing the two (2) consecutive terms.

(d) (1) Whenever any vacancy in office due to death, resignation, failure to continue the qualifications for office under section 1-171d(a), or removal exists within an Advisory Neighborhood Commission, such vacancy shall be filled pursuant to subparagraph (5) of this subsection (d).

(2) Within sixty (60) days of the date that the Board of Elections and Ethics declares, by publication in the District of Columbia Register, that such a vacancy exists, the Office of the Advisory Neighborhood Commission wherein the vacancy exists shall fill such vacancy by the appointment procedure of paragraph (5) of this subsection.

(3) Said individual shall meet the qualifications set forth in section 1-171d(a).

(4) Said individual shall fill such vacancy until a successor has been certified and sworn in pursuant to subsection (b) of this section.

(5) Within five (5) working days (excluding Saturdays, Sundays, and legal holidays) after the date that the Board declares such vacancy by publication in the District of Columbia Register, the Board shall make available petitions for the purpose of obtaining the signatures of registered electors within the respective Single Member District. Within thirty (30) days individuals interested in filling such vacancy shall submit a petition to the Board containing the signatures of thirty-five (35) of the registered elec-

¹ So in original. Probably should be "holds".

tors within the Single Member District. The Board after a ten (10) day challenge period shall transmit a list of the names of individuals qualifying for appointment to the respective Advisory Neighborhood Commission. The Advisory Neighborhood Commission shall appoint, after a public hearing and any other efforts designed to elicit the preference of the voters of the affected Single Member District, by majority vote of the remaining members, an individual from the said list to fill the vacancy at its next regular meeting.

(e) Any member of an Advisory Neighborhood Commission who ceases to reside in the single-member district from which he or she is elected shall be considered to have resigned, and the office shall be declared vacant.

(f) (1) Any member of an Advisory Neighborhood Commission who resigns from the Single Member District from which he or she is elected shall submit a copy of the letter of resignation to (A) the Board of Elections and Ethics, (B) the Central Advisory Neighborhood Commissions Office, and (C) the Chairperson of the member's Advisory Neighborhood Commission. The District of Columbia Board of Elections and Ethics shall then declare the vacancy as prescribed in subsection (d) of this section.

(2) When a vacancy occurs on an Advisory Neighborhood Commission and no letter of resignation is submitted as required by subparagraph (1) of this section¹ the respective Advisory Neighborhood Commission shall petition the District of Columbia Board of Elections and Ethics, by a resolution signed by the Chairman and the Secretary of the Advisory Neighborhood Commission, to declare the vacancy. The resolution, accompanied by minutes of the meeting at which the resolution was adopted and a list of those attending the meeting, shall be sent to: (A) the District of Columbia Board of Elections and Ethics and (B) the Central Advisory Neighborhood Commissions Office.

(3) (A) Any qualified elector may, within a ten (10) day period, challenge the validity of the resolution filed under subsection (2) of this section,² by a written statement duly signed by the challenger, filed with the District of Columbia Board of Elections and Ethics and specifying concisely the alleged defects in said resolution. A copy of the challenged statement shall be sent by the District of Columbia Board of Elections and Ethics to the Chairperson of the petitioning Advisory Neighborhood Commission.

(B) The District of Columbia Board of Elections and Ethics shall receive evidence in support of and in opposition to the challenge and shall determine the validity of the challenged resolution not more than thirty (30) days after the challenge has been filed. Within three (3) days after the announcement of the determination of the District of Columbia Board of Elections and Ethics with respect to the validity of the resolution either the challenger or the affected Single Member District Commissioner may apply to the District of Columbia Court of Appeals for a review of the reasonableness of such determination.

(C) The District of Columbia Court of Appeals shall expedite consideration of the determination. The decision of such Court shall be final and not appealable.

(D) If the resolution is found to be valid, then the District of Columbia Board of Elections and Ethics shall declare the vacancy as prescribed in subsection (d) of this section.

(g) (1) Any member of an Advisory Neighborhood Commission may be removed by the registered electors of the Single Member District from which he or she was elected, whenever a petition demanding his or her removal signed by ten (10) percent of the registered electors, thereof, is filed with the Board. The number of registered electors which is used for computing this requirement shall be according to the latest official count of registered electors by the Board which was issued thirty (30) or more days prior to submission of the signatures for the particular recall petition. The Board, after a ten (10) day challenge period, shall certify and forward the petition to the respective Advisory Neighborhood Commission which shall decide, by a majority vote, to remove or retain the member to which the petition refers. Such action shall be expressed in the form of a resolution of the respective Advisory Neighborhood Commission signed by the Chairman and the Secretary. Said resolution, accompanied by minutes of the meeting at which the resolution was adopted and a list of those attending the meeting at which the resolution was adopted, shall be sent to: (A) the Board of Elections and Ethics and (B) the Advisory Neighborhood Commission Office. The Board of Elections and Ethics, after a ten (10) day challenge period shall then declare the vacancy as prescribed in subsection (d) of this section.

(2) A member of an Advisory Neighborhood Commission may not be removed within the first six (6) months nor the last six (6) months of his or her term of office nor within six (6) months after an attempted removal procedure has been determined in his or her favor. (Oct. 10, 1975, D.C. Law 1-21, § 8, 22 DCR 2070; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; Sept. 20, 1977, D.C. Law 2-16, § 2(b), 24 DCR 3336.)

CODIFICATION

Section was enacted as part of the Advisory Neighborhood Commissions Act of 1975, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

In subsec. (b), "October 10, 1975," has been substituted for "the effective date of this act".

AMENDMENTS

1977—Act Sept. 20, 1977, D.C. Law 2-16, amended subsecs. (c) and (d) generally and added subsecs. (f) and (g).

1975—Act Oct. 30, 1975, D.C. Law 1-27, amended section by substituting "Commissions" and "Commission" for "Councils" and "Council", respectively.

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of section, see sec. 2(b) of the Emergency Advisory Neighborhood Commissions Act of 1977 (D.C. Act 2-45, June 9, 1977, 24 DCR 193) and the Second Advisory Neighborhood Commission's Vacancy Emergency Act of 1977 (D.C. Act 2-82, Aug. 17, 1977, 24 DCR 1821).

1975—For temporary provisions relating to the first election of members, see secs. 2 and 3 of the Emergency

¹ So in original. Probably should be "subsection".

² So in original. Probably should be "paragraph (2) of this subsection".

Advisory Neighborhood Commission Election Act of 1976 (D.C. Act 1-53, Oct. 8, 1975, 22 DCR 1929).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 3 of act Sept. 20, 1977, D.C. Law 2-16, set out as a note under § 1-171a.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-171.

EFFECTIVE DATE

See note under § 1-171a.

CROSS REFERENCE

General election for members of Board of Education, see § 1-1110.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-171p.

§ 1-171f. Determination of winners in elections for members of Advisory Neighborhood Commissions.

The candidate in each single-member district receiving the highest number of votes cast in such election shall be declared the winner, except that in the case of a tie the procedures set forth in section 1-1110(c) shall govern. (Oct. 10, 1975, D.C. Law 1-21, § 9, 22 DCR 2071.)

CODIFICATION

Section was enacted as part of the Advisory Neighborhood Commissions Act of 1975, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

EFFECTIVE DATE

See note under § 1-171a.

§ 1-171g. Boundary changes for Advisory Neighborhood Commission areas and single-member districts.

(a) Petitions for changes in the boundaries of an Advisory Neighborhood Commission area or single-member district within any such area may be filed with the Council of the District of Columbia during the month of January of the year in which elections for Advisory Neighborhood Commissions are to be held. Such petitions must be signed by at least 5 percent of the registered qualified electors of such Advisory Neighborhood Commission area.

(b) Upon certification by the Board to the Chairman of the Council that 5 percent of the registered qualified electors of an Advisory Neighborhood Commission have signed such a petition, the Council shall, after public hearing, accept or reject such petition.

(c) The Council shall accept or reject such a petition within three months after its receipt. (Oct. 10, 1975, D.C. Law 1-21, § 10, 22 DCR 2071; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472.)

CODIFICATION

Section was enacted as part of the Advisory Neighborhood Commissions Act of 1975, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

AMENDMENT

1975—Act Oct. 30, 1975, D.C. Law 1-27, amended section by substituting "Advisory Neighborhood Commission" and "Advisory Neighborhood Commissions" for "Advisory Neighborhood Council" and "Advisory Neighborhood Councils", respectively.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-171.

EFFECTIVE DATE

See note under § 1-171a.

§ 1-171h. Administration—Conduct of elections—Definition.

(a) The Board is authorized to conduct the elections provided for in this act and to adopt, amend, repeal, and enforce such regulations as are deemed necessary to carry out the provisions of this act. The Board shall conduct such elections in the same manner as elections held under chapter 11 of this title.

(b) For the purposes of this act, the term "registered qualified elector" means a qualified elector, as defined in section 1-1102, registered under section 1-1107. (Oct. 10, 1975, D.C. Law 1-21, § 11, 22 DCR 2072; June 19, 1976, D.C. Law 1-72, § 7, 23 DCR 578.)

REFERENCE IN TEXT

This act, referred to in the text, is the Advisory Neighborhood Commissions Act of 1975, Oct. 10, 1975, D.C. Law 1-21, as amended. For classification to the Code, see Parallel Reference Tables.

CODIFICATION

Section was enacted as part of the Advisory Neighborhood Commissions Act of 1975, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

AMENDMENT

1976—Act June 19, 1976, D.C. Law 1-72, amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The Board is authorized to conduct the elections provided for in this act and to adopt, amend, and enforce such regulations as are necessary to carry out the provisions of this act. The Board shall determine any challenges to the petitions, nominations, or elections provided under this act in the same manner as similar challenges are determined under chapter 11 of this title."

EMERGENCY ACT AMENDMENT

1976—For temporary amendment of subsec. (a), see sec. 7 of the Emergency Supplementary Neighborhood Commissions Act (D.C. Act 1-129, June 4, 1976, 22 DCR 6951).

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 9 of act June 19, 1976, D.C. Law 1-72, set out as a note under § 1-171m.

EFFECTIVE DATE

See note under § 1-171a.

§ 1-171i. Duties and responsibilities of Advisory Neighborhood Commissions.

(a) Each Advisory Neighborhood Commission (hereinafter in sections 1-171i to 1-171l the "Commission") may advise the Council of the District of Columbia, the Mayor and Each Executive Agency and all independent agencies, boards and commissions of the government of the District of Columbia with respect to all proposed matters of District government policy including decisions regarding planning, streets, recreation, social services programs, education, health, safety and sanitation which affect that Commission area. For the purposes of this act, proposed actions of District government policy shall be the same as those for which prior notice of proposed rule-making is required pursuant to section 1-1505(a) or as pertains to the Council of the District of Columbia.

(b) Thirty days written notice of such District government actions or proposed actions shall be given by mail to each Commission affected by said actions, except where shorter notice on good cause made and published with the notice may be provided or in the case of an emergency and such notice shall be published in the District of Columbia Register.

The Register shall be made available, without cost, to each Commission.

(c) (1) Proposed District government actions covered by this act shall include, but shall not be limited to, actions of the Council of the District of Columbia, the Executive Branch or independent agency. In addition to those notices required in subsection (a) above, each agency, board and commission shall, before the award of any grant funds to a citizen organization or group, or before the formulation of any final policy decision or guideline with respect to grant applications, comprehensive plans, requested or proposed zoning changes, variances, public improvements, licenses, or permits affecting said Commission area, the District Budget and city goals, and priorities, proposed changes in District government service delivery and the opening of any proposed facility systems, provide to each affected Commission notice of the proposed action as required by subsection (b). Each District of Columbia agency shall maintain a record of such notices sent to each Commission.

(2) The Alcoholic Beverage Control Board shall provide each affected Advisory Neighborhood Commission by mail with a notice of pending original applications for previously unissued liquor licenses, including transfers, for Retailer's License, Class A, or Retailer's License, Class C, within the boundaries of each affected Advisory Neighborhood Commission at least thirty (30) days prior to any hearing at which any such application may be scheduled for consideration. The Alcoholic Beverage Control Board shall publish annually in the District of Columbia Register, on or near the first day of November, or after that date with good cause published with such notice, a list of those licensees with a Retailer's License, Class A, or a Retailer's License, Class C, liquor license which will expire on the 31st of January of the next year.

(3) The Department of Economic Development shall ensure that each affected Advisory Neighborhood Commission is provided regularly by mail with a current list of applications for construction and demolition permits within the boundaries of that Advisory Neighborhood Commission.

(d) Each Commission so notified pursuant to subsections (b) and (c) of this section of proposed District government action or actions shall consider each such action or actions in a meeting with notice given in accordance with section 1-171j(c) which is open to the public in accordance with section 1-171j(g). No official action may be taken by a Commission unless a majority of the elected representatives of the Commission are present and voting. Each Commission shall forward its written recommendations with respect to the proposed actions to the Council of the District of Columbia, the Mayor and the appropriate agency, board or commission within thirty days of the mailing of the notification required by subsection (b) of this section, *Provided*, that, if the Commission does not have a recommendation with respect to the proposed action, it shall so indicate in writing within the required time period. At the close of business of the thirty-first day from mailing of such written notice or earlier if such limited publication has been provided, the affected District govern-

ment entity shall proceed to make its decision. The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the governmental agency and those issues shall be discussed in the written rationale for the governmental decision taken.

(e) In order that the Commissions may develop refined recommendations, the Mayor shall, by April 1, 1976, provide each Commission with census and agency operating data for the electoral ward within which said Commission is located and further, shall develop for Commissions and the Council of the District of Columbia, comprehensive plans, agency operating budgets and capital budgets on a ward basis by fiscal year 1978.

(f) Each Commission may present its views to any Federal or District agency.

(g) The Commission shall not have the power to initiate a legal action in the Courts of the District of Columbia or in the Federal courts, provided that this limitation does not apply to or prohibit any Commission from bringing suit as a citizen. The Commission may petition the Council through the Special Committee on Advisory Neighborhood Commissions or such successor committee should the Commission feel legal redress is required.

(h) Each Commission may initiate its own proposals for District government action, which proposals shall in general be reviewed and acted upon by the appropriate District government entity within five months of their submission, provided that a status report to the initiating Commission shall be given within 90 days of receipt and that acknowledgement of such proposal shall be given to the initiating Commission within ten (10) days of receipt.

(i) Each Commission shall have access to District government officials and to all District government official documents and public data pursuant to Commissioner's Order No. 71-370 that are material to the exercise of its development of recommendations to the District government.

(j) On or before November 30 of each year, each Commission shall file an annual report with the Council of the District of Columbia, and the Mayor, for the preceding fiscal year. Such report shall include, but shall not be limited to:

1. Summaries of important problems perceived by the Commission and in the order of their priority;
2. Recommendations for actions to be taken by District government;
3. Recommendations for improvements on the operation of the Commissions;
4. Financial report; and
5. Summary of Commission activities.

Minority reports may be filed.

(k) Other than neighborhood or community enhancement campaigns, Commissions may operate programs only in conjunction with existing governmental activities, provided that such activities on behalf of the Commissions do not duplicate already available programs or services and further provided that the Commissions' program are not conducted on a contractual basis with existing governmental agencies.

(l) No Commission may solicit or accept funds from a Federal or District government agency or

private source except as may be specifically and previously authorized by resolution of the Council; *Provided* that, receipt of contributions of \$100 or less from a single contributor need not be approved by the Council.

(m) Each Commission shall monitor complaints of Commission area residents with respect to the delivery of the District government services and file comments on same with the appropriate District government entity as well as the Council.

(n) Each Commission shall develop an annual fiscal year budget request on forms to be provided by the Mayor prior to which, such budget shall be submitted to the residents of the Commission areas in March of each year for their review and comment. The final budget shall be submitted to the Council and to the Mayor on or before April 30 of each year, provided that submission on any different dates may be required to conform with the District of Columbia budget schedule.

(o) Each Commission may, where appropriate, constitute the citizen advisory mechanism required by any federal statute (unless specifically prohibited by Federal statute). (Oct. 10, 1975, D.C. Law 1-21, § 13, as added Mar. 26, 1976, D.C. Law 1-58, § 2, 22 DCR 5454, and amended Apr. 19, 1977, D.C. Law 1-120, § 3, 23 DCR 9924; Oct. 26, 1977, D.C. Law 2-30, § 2(a), (b), 24 DCR 3723.)

REFERENCES IN TEXT

This act, referred to in subsecs. (a), (c), is the Advisory Neighborhood Commissions Act of 1975, Oct. 10, 1975, D.C. Law 1-21, as amended. For classification to the Code, see Parallel Reference Tables.

Commissioner's Order No. 71-370, referred to in subsec. (i), was set out in the main edition of the Code as a note under § 1-1504. The Order was repealed and replaced by Mayor's Order No. 76-109 which was repealed by § 4 of act Mar. 29, 1977, D.C. Law 1-96. The subject is now generally covered by subchapter II of chapter 15 of this title.

CODIFICATION

Section was enacted as part of the Advisory Neighborhood Commissions Act of 1975, as amended, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

In subsec. (a), "in sections 1-171i to 1-171j" was inserted following "hereinafter" to reflect the classification of the act Mar. 26, 1976, D.C. Law 1-58, to those sections.

AMENDMENTS

1977—Act Oct. 26, 1977, D.C. Law 2-30, amended subsec. (c) by designating existing provisions as par. (1) and adding pars. (2) and (3).

Act Apr. 19, 1977, D.C. Law 1-120, amended subsec. (b) by deleting from the end of the last sentence "and shall, as of March 26, 1976, be published on Friday of each week."

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of subsec. (c), see sec. 2 of the Emergency Advisory Neighborhood Commissions Additional Notice act of 1976 (D.C. Act 1-214, Jan. 12, 1977, 23 DCR 5091), the Second Emergency Advisory Neighborhood Commissions Additional Notice Act (D.C. Act 2-30, Apr. 13, 1977, 23 DCR 8391), the Third Emergency Advisory Neighborhood Commissions Additional Notice Act (D.C. Act 2-57, July 12, 1977, 24 DCR 908), and the Fourth Emergency Advisory Neighborhood Commissions Additional Notice Act (D.C. Act 2-86, Oct. 12, 1977, 24 DCR 3173).

1976—For temporary provisions relating to the sending of the notices required by this section, see sec. 4 of the Emergency Act to Provide for Proper Notice of Governmental Action to the Advisory Neighborhood Commissions (D.C. Act 1-100, Mar. 27, 1976, 22 DCR 5367).

For temporary amendment of section, see sec. 2 of the Emergency Act Regarding The Notice Requirements To Advisory Neighborhood Commissions Concerning Applications For Certain Licenses and Permits (D.C. Act 1-157, Oct. 8, 1976, 23 DCR 2582).

EFFECTIVE DATES OF 1977 AMENDMENTS

Section 4 of act Oct. 26, 1977, D.C. Law 2-30, provided: "This act [amending §§ 1-171i and 1-171j] shall take effect as provided for acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 814; D.C. Code, sec. 1-147(c) (1))."

Section 4 of act Apr. 19, 1977, D.C. Law 1-120, provided: "The provisions of this act [amending §§ 1-171i and 1-1504] shall become effective as provided by section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

EFFECTIVE DATE

Section 3 of act Mar. 26, 1976, D.C. Law 1-58, provided: "The provisions of this act [enacting §§ 1-171i to 1-171j] shall become effective as provided by section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLES

The first section of act Oct. 26, 1977, D.C. Law 2-30, provided "That this act [amending §§ 1-171i and 1-171j] may be cited as the 'Advisory Neighborhood Commissions Additional Notice Act of 1977'."

The first section of act Mar. 26, 1976, D.C. Law 1-58, provided "That this act [enacting §§ 1-171i to 1-171j] may be cited as the 'Duties and Responsibilities of the Advisory Neighborhood Commissions act of 1976'."

PURPOSES

Section 2 of act Mar. 26, 1976, D.C. Law 1-58, provided, in part: "The purpose of this act [enacting §§ 1-171i to 1-171j] is to further implement section 738 of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-171] by amending the Advisory Neighborhood Councils Act of 1975, as amended, [§§ 171a to 1-171h] by adding the following additional sections [§§ 1-171i to 1-171j] to said act."

INFORMATION OFFICE FOR ADVISORY NEIGHBORHOOD COMMISSIONS

Mayor's Order No. 76-92, Mar. 30, 1976, established in the Office of the Secretariat, Executive Office of the Mayor, the Information Office for Advisory Neighborhood Commissions. The text of the Order is set out under the heading "Organization Actions of the Mayor of the District of Columbia" in the appendix to title 1, Administration.

NOTES TO DECISIONS

Court actions

Advisory neighborhood commission has no capacity to seek court review of action of District of Columbia Alcoholic Beverage Control Board in issuing liquor license; area residents who were commission members, however, have standing to initiate such review and to assert rights of commission itself. *G. Kopff et al. v. District of Columbia Alcoholic Beverage Control Board et al.* (D.C. App. 1977, 381 A.2d 1372).

Government actions—Consideration of views

In proceedings before District of Columbia Alcoholic Beverage Control Board on application for liquor license, requirement of this section that "great weight" be given to views of advisory neighborhood commissions implies that explicit reference should be given by Board to each ANC issue and concern as such, that specific findings and conclusions with respect to each should be made, and that ANC be acknowledged as source of issue or concern. *G. Kopff et al. v. District of Columbia Alcoholic Beverage Control Board et al.* (D.C. App. 1977, 381 A.2d 1372).

—Notice of

Alcoholic Beverage Control Board erred when it failed to give special notice to affected advisory neighborhood commission before it issued liquor license; such error

was cured, however, when actual notice was given to affected ANC's by individual remonstrants. *G. Kopff et al. v. District of Columbia Alcoholic Beverage Control Board et al.* (D.C. App. 1977, 381 A.2d 1372).

§ 1-171j. Internal operating structure of Advisory Neighborhood Commissions.

(a) Each Commission shall convene the residents of its Commission area at regular intervals at least four (4) times a year to hear resident views on problems in the Commission area and on proposed District government actions affecting said area. Resident views shall be incorporated in positions taken by the Commissions.

(b) Each Commission shall generally meet at regular intervals not less than 9 (nine) times a year to consider matters before the Commission which may include but not be limited to consideration of actions or proposed actions of the Council of the District of Columbia, the Executive Branch or any independent agency, board or commission, and recommendations thereof. Meeting places shall be varied so as to be held in all geographic areas of the Commission. The Commissions may establish such mechanisms as will ensure the broadest dissemination of information with respect to the Commission meetings, positions and actions.

(c) No less than seven (7) days notice shall be given by each Commission of its meetings or convocations, except where shorter notice for good cause is necessary or in the case of an emergency by posting written notices in at least two (2) conspicuous places in each single-member district within the Commission area.

(d) Each Commission shall establish rules governing its operation and internal structure.

(1) These rules shall include a statement of Commission responsibilities, voting procedures, the establishment of standing and special committees, the manner of selection of chairpersons and other officers, procedures for prompt review and action on committee recommendations and procedures for receipt of and action upon constituent recommendations at both the single-member district and Commission levels. Said rules shall be consistent with the provisions of this act and other applicable laws and shall be a public document.

(2) An up-to-date copy of each Commission's rules and all amendments thereto shall be filed with the Council of the District of Columbia within seven (7) days of their initial adoption. No Commission shall be entitled to incorporation, provided that no member of the Commission may be liable for action taken as an elected representative from a single-member district.

(e) Each Commission shall elect from among its members a chairperson, a vice-chairperson, a secretary, a treasurer and such other officers as may be necessary from among the Commission members in January of each year, except that elections for the first officers shall be held at a meeting not later than 30 days following the certification of a majority of the members of a Commission by the District of Columbia Board of Elections and Ethics. No chairperson may serve more than two (2) consecutive terms. The chairperson shall serve as the convenor of the Commission and shall chair the Commission meetings. The vice-chairperson shall fulfill the obli-

gations of the chairperson in his absence. The views or recommendations of any Commission shall be presented by its officers or elected representatives from the single member districts. Where not otherwise provided, the procedures of the Commission shall be governed by Robert's Rules of Order.

(f) Chairmanship of each Commission committee or task force shall be open to any resident of the Commission area. The chairperson of each such committee or task force shall be appointed by the Commission. Each Commission shall make a good faith effort to involve all segments of the Commission population in its deliberations regardless of race, sex, age, voting status, religious or economic status.

(g) Each Commission shall be subject to the provisions of section 1-1503a(a). (Oct. 10, 1975, D.C. Law 1-21, § 14, as added Mar. 26, 1976, D.C. Law 1-58, § 2, 22 DCR 5460.)

REFERENCE IN TEXT

This act, referred to in subsec. (d) (1), is the Advisory Neighborhood Commissions Act of 1975, Oct. 10, 1975, D.C. Law 1-21, as amended. For classification to the Code, see Parallel Reference Tables.

CODIFICATION

Section was enacted as part of the Advisory Neighborhood Commissions Act of 1975, as amended, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

EMERGENCY ACT AMENDMENT

1976—For temporary provisions relating to organizational meetings of Advisory Neighborhood Commissions, see sec. 3 of the Emergency Act to Provide for Proper Notice of Governmental Action to the Advisory Neighborhood Commissions (D.C. Act 1-100, Mar. 27, 1976, 22 DCR 5366).

EFFECTIVE DATE

See section 3 of act Mar. 26, 1976, D.C. Law 1-58, set out as a note under § 1-171i.

SECTIONS REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-171i.

§ 1-171k. Joint Advisory Neighborhood Commission meetings—Involvement of other neighborhood groups—Appointment of service area coordinators and managers—Appointment of citizen advisors.

(a) Commissions may hold joint meetings to deal more effectively with or respond to similar concerns and issues which transcend and affect the areas of the Commissions jointly meeting and for informational purposes. Joint Commission meeting's¹ may be held only after authorization to participate in such joint meetings and to discuss such matters as have been given to each participant Commission in a Commission meeting held prior to such joint meetings. Commission members shall reflect but shall not necessarily be bound by the views of their Commissions. Associated Commissions shall have no power other than those which their constituent Commissions shall have agreed upon not inconsistent with the provisions of this act. All associated meetings of Commissions shall be open and at least 14 days notice shall be given by posting written notices in at least two conspicuous places in each single-member district of the Commissions. Discussions and voting at such meetings shall be limited to the Commission members.

¹ So in original. Probably should be "meetings".

(b) Each Commission may involve representatives of other neighborhood groups in the work of its standing or special committees.

(c) The Mayor shall appoint a service area coordinator for each ward who shall act as the chairperson of the Service Area Committee in that ward and shall coordinate all District government services at the ward level to residents of the ward. The head of each District government department or agency which delivers services at the ward level shall appoint a service area manager who shall oversee the day-to-day operations of the department or agency within the ward and shall represent that department or agency on the Service Area Committee of that ward. The service area coordinators and managers shall work closely with the Commissions in their service area ward and shall provide them with any technical assistance necessary to the performance of their duties and responsibilities.

(d) The Mayor shall, in carrying out the provisions of subsection (c), utilize the existing positions of the District government and nothing in this act shall be construed to authorize the Mayor to hire additional staff to carry out the provisions of this section.

(e) Whenever a District agency is required to establish a citizen's advisory mechanism, appointments to that mechanism shall be made in such a manner as to ensure as far as possible the equal representation on the mechanism of each electoral ward, *Provided* that, members of the advisory mechanism possess skills relevant to the tasks for which the advisory mechanism was established and, in the event that the size of the advisory mechanism requires the appointment of more than one person per ward, ward appointments shall be made in such a manner so as to ensure as far as possible a fair representation of each Commission area. (Oct. 10, 1975, D.C. Law 1-21, § 15, as added Mar. 26, 1976, D.C. Law 1-58, § 2, 22 DCR 5463.)

REFERENCE IN TEXT

This act, referred to in subsecs. (a), (d), is the Advisory Neighborhood Commissions Act of 1975, Oct. 10, 1975, D.C. Law 1-21, as amended. For classification to the Code, see Parallel Reference Tables.

CODIFICATION

Section was enacted as part of the Advisory Neighborhood Commissions Act of 1975, as amended, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

EFFECTIVE DATE

See section 3 of act Mar. 26, 1976, D.C. Law 1-58, set out as a note under § 1-171i.

§ 1-171l. Allocation, deposit, and disbursement of Neighborhood Advisory Commission funds—Audit of accounts—Employment procedures—Financial reports—Pooling of funds.

(a) Each Commission shall receive an initial allocation pursuant to section 1-171(e) on March 15, 1976, or when appropriated by Congress, whichever is later. Thereafter, on October 1 of each year, each Commission shall receive an allocation annually under section 1-171, except that, if the Budget and Revenue acts for that fiscal year have not become effective as of that date, then each Commission shall receive quarterly allocations under a continuing resolution. Each Commission shall by resolution

designate a financial institution in the District of Columbia as a depository into which it shall deposit all funds it receives. Disbursements of all funds shall be in accordance with District government accounting procedures.

(b) The Commission treasurer shall be bonded and the financial accounts of each Commission shall be audited at least once every two years by the District of Columbia Auditor.

(c) All employees of a Commission shall be hired by the Commission and shall serve at the pleasure of the Commission.

(d) Each Commission shall establish position descriptions for its employees. Employees may be hired on a full-time or part-time basis and for an indefinite or for a definite term. Persons hired by the Commission shall meet the qualifications established in the job description.

(e) Each Commission shall prepare and approve a quarterly financial report. These reports shall be public documents and shall be available for public inspection.

(f) Commissions within a ward may pool their funds in accordance with agreements adopted by their constituent Commissions.

(g) All materials, literature, newsletters, or letters produced or paid for by the funds allocated to the Advisory Neighborhood Commissions must bear the following sentence: "This material was printed by Advisory Neighborhood Commission (insert the appropriate Advisory Neighborhood Commission number) and paid for by District of Columbia tax revenues" in type of at least ten (10) points. (Oct. 10, 1975, D.C. Law 1-21, § 16, as added Mar. 26, 1976, D.C. Law 1-58, § 2, 22 DCR 5465, and amended Oct. 26, 1977, D.C. Law 2-30, § 2(c), 24 DCR 3723.)

CODIFICATION

Section was enacted as part of the Advisory Neighborhood Commissions Act of 1975, as amended, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

AMENDMENT

1977—Act Oct. 26, 1977, D.C. Law 2-30, added subsec. (g).

EMERGENCY ACT AMENDMENT

1976—For temporary provisions relating to allocations for Advisory Neighborhood Commissions, see sec. 5 of the Emergency Act to Provide for Proper Notice of Governmental Action to the Advisory Neighborhood Commissions (D.C. Act 1-100, March 27, 1976, 22 DCR 5367).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 4 of act Oct. 26, 1977, D.C. Law 2-30, set out as a note under § 1-171i.

EFFECTIVE DATE

See section 3 of act Mar. 26, 1976, D.C. Law 1-58, set out as a note under § 1-171i.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-171i.

§ 1-171m. Definitions.

For the purposes of this act—

(a) the term "Board" means the District of Columbia Board of Elections and Ethics; and

(b) the term "commission area" includes only those advisory neighborhood commission areas in which there was not established an Advisory Neighborhood Commission according to the provi-

sions of the Advisory Neighborhood Commissions Act of 1975, more particularly described as: 1B, 4C, 4D, 6C, 8A and 8D. (June 19, 1976, D.C. Law 1-72, § 2, 23 DCR 574.)

REFERENCES IN TEXT

This act, referred to in the text, is the Supplementary Neighborhood Commissions Act, June 19, 1976, D.C. Law 1-72, which is classified to §§ 1-171h and 1-171m to 1-171r.

The Advisory Neighborhood Commissions Act of 1975, referred to in subsec. (b), is act Oct. 10, 1975, D.C. Law 1-21, as amended. For classification to the Code, see Parallel Reference Tables.

CODIFICATION

Section was enacted as part of the Supplementary Neighborhood Commissions Act, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

EMERGENCY ACT AMENDMENT

1976—For temporary provisions relating to subsequently established Advisory Neighborhood Commissions, see the Emergency Supplementary Neighborhood Commissions Act (D.C. Act 1-129, June 4, 1976, 22 DCR 6947).

EFFECTIVE DATE

Section 9 of act June 19, 1976, D.C. Law 1-72, provided: "This act [enacting §§1-171m to 1-171r and amending § 1-171h] shall become law according to the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act June 19, 1976, D.C. Law 1-72, provided "That this act [enacting §§ 1-171m to 1-171r and amending § 1-171h] may be cited as the 'Supplementary Neighborhood Commissions Act'."

§ 1-171n. Supplementary petitions for establishing Advisory Neighborhood Commissions.

(a) As soon as possible after June 19, 1976, but in no case more than 5 days after such date, the Board shall—

(1) make available to any resident of a commission area copies of petition forms for collecting signatures of registered qualified electors in such area; and

(2) publish in the District of Columbia Register, and post in conspicuous places in each commission area, the number of registered qualified electors in such commission area.

(b) Upon certification by the Board to the Chairman of the Council that five percent of the registered qualified electors of a commission area have signed a petition calling for the establishment of an Advisory Neighborhood Commission in such area, the Council shall then establish, by resolution, a non-partisan elected Advisory Neighborhood Commission for such commission area, with its members to be elected from the single-member districts established for such commission area. Nothing in this section shall be construed to permit an individual to sign more than one petition for the establishment of an Advisory Neighborhood Commission. (June 19, 1976, D.C. Law 1-72, § 3, 23 DCR 575).

CODIFICATION

In subsec. (a) "June 19, 1976" and "date" were substituted for "the effective date of this act" and "effective date" respectively.

Section was enacted as part of the Supplementary Neighborhood Commissions Act, and not as part of the District of Columbia Self-Government and Governmental

Reorganization Act a portion of which comprises this chapter.

EMERGENCY ACT AMENDMENT

1976—For temporary provisions relating to subsequently established Advisory Neighborhood Commissions, see the Emergency Supplementary Neighborhood Commissions Act (D.C. Act 1-129, June 4, 1976, 22 DCR 6947).

EFFECTIVE DATE

See sec. 9 of act June 19, 1976, D.C. Law 1-72, set out as a note under § 1-171m.

§ 1-171o. Qualifications and nominations of members of subsequently established Advisory Neighborhood Commissions.

Members of the Advisory Neighborhood Commissions which are established pursuant to the provisions of this act shall—

(1) be nominated in the manner prescribed in section 1-171d(b); and

(2) have those qualifications specified in section 1-171d(a).

(June 19, 1976, D.C. Law 1-72, § 4, 23 DCR 576.)

REFERENCE IN TEXT

This act, referred to in the text, is the Supplementary Neighborhood Commissions Act, June 19, 1976, D.C. Law 1-72, which is classified to §§1-171h and 1-171m to 1-171r.

CODIFICATION

Section was enacted as part of the Supplementary Neighborhood Commissions Act, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

EMERGENCY ACT AMENDMENT

1976—For temporary provisions relating to subsequently established Advisory Neighborhood Commissions, see the Emergency Supplementary Neighborhood Commissions Act (D.C. Act 1-129, June 4, 1976, 22 D.C. 6947).

EFFECTIVE DATE

See sec. 9 of act June 19, 1976, D.C. Law 1-72, set out as a note under § 1-171m.

§ 1-171p. Election, term of office, vacancy in office, and change of residency of members of subsequently established Advisory Neighborhood Commissions.

(a) The election of members of the Advisory Neighborhood Commissions which are established under this act shall be held on November 2, 1976. The next such election shall be held on the date of the general election held during 1977 for members of the District of Columbia Board of Education. Thereafter, such elections shall be held on the date of such general election in every odd numbered year.

(b) Each such member shall serve for a term beginning at noon on the second day of January, 1977, and ending at noon on the second day of January, 1978. Thereafter, members elected to such Advisory Neighborhood Commissions shall serve for terms of two years which shall begin at noon on the second day of January next following the date of election of such members, or at noon on the day after the date the Board certifies the election of such members, whichever is later.

(c) The provisions of subsections (c), (d), and (e) of section 1-171e shall apply to members elected to such Advisory Neighborhood Commissions (June 19, 1976, D.C. Law 1-72, § 5, 23 DCR 576).

REFERENCE IN TEXT

This act, referred to in subsec. (a), is the Supplementary Neighborhood Commissions Act, June 19, 1976, D.C. Law 1-72, which is classified to §§ 1-171h and 1-171m to 1-171r.

CODIFICATION

Section was enacted as part of the Supplementary Neighborhood Commissions Act, and not as a part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

EMERGENCY ACT AMENDMENT

1976—For temporary provisions relating to subsequently established Advisory Neighborhood Commissions, see the Emergency Supplementary Neighborhood Commissions Act (D.C. Act 1-129, June 4, 1976, 22 DCR 6947).

EFFECTIVE DATE

See sec. 9 of act June 19, 1976, D.C. Law 1-72, set out as a note under § 1-171m.

CROSS REFERENCE

General election for members of Board of Education, see § 1-1110.

§ 1-171q. Law applicable to subsequently established Advisory Neighborhood Commissions.

Except to the extent specifically provided in this act, those provisions of the Advisory Neighborhood Commissions Act of 1975 including the amendments made by that act), and all other provisions of law relating to Advisory Neighborhood Commissions, shall apply to the Advisory Neighborhood Commissions established pursuant to the provisions of this act. (June 19, 1976, D.C. Law 1-72, § 6, 23 DCR 577.)

REFERENCES IN TEXT

This act, referred to in the text, is the Supplementary Neighborhood Commissions Act, June 19, 1976, D.C. Law 1-72, which is classified to §§ 1-171h and 1-171m to 1-171r.

The Advisory Neighborhood Commissions Act of 1975, referred to in the text, is act Oct. 10, 1975, D.C. Law 1-21, as amended. For classification to the Code, see Parallel Reference Tables.

CODIFICATION

Section was enacted as part of the Supplementary Neighborhood Commissions Act, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

EMERGENCY ACT AMENDMENT

1976—For temporary provisions relating to subsequently established Advisory Neighborhood Commissions, see the Emergency Supplementary Neighborhood Commissions Act (D.C. Act 1-129, June 4, 1976, 22 DCR 6947).

EFFECTIVE DATE

See sec. 9 of act June 19, 1976, D.C. Law 1-72, set out as a note under § 1-171m.

§ 1-171r. Regulations.

The Board is authorized to adopt, amend, repeal, and enforce such regulations as are necessary to carry out the provisions of this act, and is further directed to take such steps as are necessary to ensure that the election provided for under this act is held in an efficient manner. (June 19, 1976, D.C. Law 1-72, § 8, 23 DCR 578.)

REFERENCE IN TEXT

This act, referred to in the text, is the Supplementary Neighborhood Commissions Act, June 19, 1976, D.C. Law 1-72, which is classified to §§ 1-171h and 1-171m to 1-171r.

CODIFICATION

Section was enacted as part of the Supplementary Neighborhood Commissions Act, and not as a part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

EMERGENCY ACT AMENDMENT

1976—For temporary provisions relating to subsequently established Advisory Neighborhood Commissions,

see the Emergency Supplementary Neighborhood Commissions Act (D.C. Act 1-129, June 4, 1976, 22 DCR 6947).

EFFECTIVE DATE

See sec. 9 of act June 19, 1976, D.C. Law 1-72, set out as a note under § 1-171m.

Chapter 2.—MAYOR, COUNCIL, AND OTHER OFFICERS

Sec.

- 1-204c. Omitted.
- 1-213c. Surety bonds of officers and employees—Payment of premiums.
- 1-215. Repealed.
- 1-215a. Volunteers—Utilization by District government encouraged—Exception.
- 1-215b. Same—Promulgation of regulations.
- 1-215c. Same—Conflicts of interest—Ineligibility for employee benefits—Liability of District for torts of volunteers.
- 1-215d. Same—Inapplicability to offices of United States Marshal or United States Attorney for the District of Columbia.
- 1-215e. Same—Definitions.
- 1-218. Omitted.
- 1-226a. Expenditures for emergencies.
- 1-230a. Pleuropneumonia in District of Columbia—Duties of Council.
- 1-262a. Official expenses.
- 1-263. Omitted.

§ 1-204c. Omitted.

Section, act Oct. 27, 1972, Pub. L. 92-579, § 3, 86 Stat. 1276, provided for the compensation of the Chairman of the District of Columbia Council, and is now covered by § 1-143.

§ 1-213. Bonds of officers and employees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-213a. Commissioner authorized to obtain surety bonds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-213b. Commissioner's bond in lieu of employee bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-213c. Surety bonds of officers and employees—Payment of premiums.

Each officer and employee of the District required to do so by the Council shall provide a bond with such surety and in such amount as the Council may require. The premiums for all such bonds shall be paid out of appropriations for the District. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 737(c), 87 Stat. 824.)

CODIFICATION

Section is comprised of subsec. (c) of section 737 of Act Dec. 24, 1973. Subsections (a) and (b) of section 737 are classified to § 1-827.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

§ 1-214. Secretary of Board of Commissioners authorized to execute certain documents.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-215. Repealed. June 28, 1977, D.C. Law 2-12, § 6(a), 24 DCR 1442.

Section, Act July 7, 1898, 30 Stat. 666, ch. 571, prohibited the acceptance of volunteer services by the government of the District of Columbia.

EFFECTIVE DATE OF REPEAL

See section 9 of act June 28, 1977, D.C. Law 2-12, set out as a note under § 1-215a.

§ 1-215a. Volunteers—Utilization by District government encouraged—Exception.

It shall be the policy of the District of Columbia government to utilize volunteer citizens in as many governmental programs as is practicable to serve the interests of the community. No volunteer person shall be used to fill any position or perform any service which is currently being performed by an employee of the District of Columbia government. (June 28, 1977, D.C. Law 2-12, § 2, 24 DCR 1442.)

EFFECTIVE DATE

Section 9 of act June 28, 1977, D.C. Law 2-12, provided: "This act [for classification of act see Tables] shall become effective according to the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147 (c)]."

SHORT TITLE

The first section of act June 28, 1977, D.C. Law 2-12, provided "That this act [for classification of act see Tables] may be cited as the 'Volunteers Services Act of 1977'."

REPEAL OF INCONSISTENT LAWS BY D.C. LAW 2-12

Section 6(k) of act June 28, 1977, D.C. Law 2-12, provided: "Any provision of any law affecting the use of volunteers by the District of Columbia government is repealed insofar as it is inconsistent with this act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-215c to 1-215e.

§ 1-215b. Same—Promulgation of regulations.

The Mayor is directed to promulgate regulations governing the use of volunteers by agencies, departments, commissions, and instrumentalities of the District of Columbia: *Provided*, That the District of Columbia Board of Education and the Council of the District of Columbia may promulgate regu-

lations governing their respective use of volunteers. (June 28, 1977, D.C. Law 2-12, § 3, 24 DCR 1442.)

EFFECTIVE DATE

See section 9 of act June 28, 1977, D.C. Law 2-12, set out as a note under § 1-215a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-215c to 1-215e.

§ 1-215c. Same—Conflicts of interest—Ineligibility for employee benefits—Liability of District for torts of volunteers.

(a) Volunteer citizens may not assist governmental programs until regulations have been properly promulgated under the authority of sections 1-215a to 1-215e. No volunteer may be placed in any position likely to constitute a conflict of interest or the appearance of a conflict of interest in violation of the provisions of chapter 29 of title 18, United States Code, or subchapter VI of chapter 11a of this title.

(b) Persons engaged as volunteers by the District of Columbia government as authorized by this section shall not be eligible for benefits provided to employees of the District of Columbia government under chapters 81, 83, 85, 87, and 89 of title 5, United States Code.

(c) All volunteers shall be considered employees of the District of Columbia government for the purposes of sections 1-921 to 1-926.

(d) The District of Columbia shall be liable to third parties for tortious injury caused by volunteers under its supervision and control. (June 28, 1977, D.C. Law 2-12, § 4, 24 DCR 1442.)

EFFECTIVE DATE

See section 9 of act June 28, 1977, D.C. Law 2-12, set out as a note under § 1-215a.

TRANSITIONAL PROVISIONS OF D.C. LAW 2-12

Section 7 of act June 28, 1977, D.C. Law 2-12, provided: "Persons who are serving as volunteers for the District of Columbia government as provided for by law before the effective date of this act shall not be affected by the provisions of subsection (a) of section 4 of this act [§ 1-215c (a)] until thirty days after the regulations mandated by section 3 of this act [§ 1-215b] are adopted."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-215d, 1-215e.

§ 1-215d. Same—Inapplicability to offices of United States Marshal or United States Attorney for the District of Columbia.

No provision of sections 1-215a to 1-215e shall be deemed to apply to volunteers in the offices of the United States Marshal or the United States Attorney for the District of Columbia. (June 28, 1977, D.C. Law 2-12, § 5, 24 DCR 1442.)

EFFECTIVE DATE

See section 9 of act June 28, 1977, D.C. Law 2-12, set out as a note under § 1-215a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-215c, 1-215e.

§ 1-215e. Same—Definitions.

For the purposes of sections 1-215a to 1-215e—

(a) The term "employee" means a person who is paid by the District of Columbia government from grant or appropriated funds for his or her services.

(b) The term "volunteer" means a person who donates his or her services to a specific program or

department of the District of Columbia government, by his or her free choice and without payment for the services rendered. The reimbursement of the actual expenditures by a volunteer on behalf of the District of Columbia government shall not make that person an employee of the District of Columbia for the purposes of this section.

(c) The term "agencies, departments, commissions and instrumentalities of the District of Columbia" means all governmental instrumentalities and bodies of the District of Columbia government, except the Superior Court of the District of Columbia and the District of Columbia Court of Appeals. (June 28, 1977, D.C. Law 2-12, § 8, 24 DCR 1442.)

EFFECTIVE DATE

See section 9 of act June 28, 1977, D.C. Law 2-12, set out as a note under § 1-215a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-215c, 1-215d.

§ 1-216. Offices, abolition or consolidation—Reduction of employees—Appointments to and removal from office.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

LIMITATION ON EMPLOYMENT DURING FISCAL YEAR

Section 114 of title I of the District of Columbia Appropriation Act, 1977 (Oct. 1, 1976, Pub. L. 94-446, 90 Stat. 1495) provided:

"Appropriations in this title shall not be available, during the fiscal year ending September 30, 1977, for the compensation of any person appointed—

"(1) as full-time employee to a permanent, authorized position in the government of the District of Columbia during any month when the number of such employees is greater than 35,145, exclusive of positions initially authorized or funded by this title; and exclusive of the 20 positions approved in the transition period for Forest Haven, Department of Human Resources; 28 positions approved in fiscal year 1976 for Tax Administration, Department of Finance and Revenue; and 303 positions approved in fiscal year 1976 for the District of Columbia General Hospital, Department of Human Resources; or

"(2) as a temporary or part-time employee in the government of the District of Columbia during any month in which the number of such employees exceeds the number of such employees for the same month of the preceding fiscal year."

Similar provisions were contained in the following prior Acts:

1976—June 30, 1976, Pub. L. 94-333, § 13, 90 Stat. 791.
1975—Aug. 31, 1974, Pub. L. 93-405, § 13, 88 Stat. 828.
1974—Aug. 14, 1973, Pub. L. 93-91, § 16, 87 Stat. 311.
1973—July 10, 1972, Pub. L. 92-344, § 17, 86 Stat. 456.
1972—Dec. 15, 1971, Pub. L. 92-196, § 707, 85 Stat. 658.
1970—Oct. 31, 1969, Pub. L. 91-106, § 802, 83 Stat. 181.

§ 1-218. Omitted.

Section, R. S., D. C. § 3; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103 ch. 180, § 3; 1967 Reorg. Plan No. 3, § 401, eff. Nov. 3, 1967, 81 Stat. 951; provided that the executive power is vested in the Commissioner of the District of Columbia, and is now covered by § 1-162.

§ 1-219. Taxes not to be anticipated by sale or hypothecation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Borrowing in anticipation of revenues, see § 47-248.

§ 1-220. Pardons and respites—Power to grant—Commissioning of officers—Execution of laws.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-221. Location of hack stands.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-222. Establishment of hack stands adjoining railroad stations—Rates of charges.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-223. Rates for public vehicles to be fixed by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-224. Police regulations authorized in certain cases.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-224a. Additional penalties for violation of regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Imprisonment for nonpayment of fine

In view of rule that where defendant is indigent, jail sentence imposed as alternative to payment of fine should not exceed maximum prescribed for offense, indigent defendant who was convicted of tampering with an automobile would be remanded for resentencing, with alternative sentence in default of payment of \$100 fine not to

exceed ten days. *G. A. Batres v. District of Columbia* (D.C. App. 1975, 347 A.2d 585).

§ 1-224b. Regulations for the keeping and running at large of dogs.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-225. Publication of regulations—Effective date.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 1-226. Regulations for protection of life, health, and property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Civil rights

Harmful effects of illegal discrimination in employment are so deleterious to our society as to affect "lives, limbs, health, comfort and quiet of all persons" within District; thus they are within purview of this section authorizing Commissioners to make and enforce all such reasonable and usual regulations as they may deem necessary for protection of lives, limbs, health, comfort and quiet of all persons within District and prohibition by Commissioners of racial discrimination in employment is a "reasonable and usual regulation" within the section. *Newsweek Magazine, et al. v. District of Columbia Commission on Human Rights* (D.C. App. 1977, 376 A.2d 777; cert. denied 98 S.Ct. 729, — U.S. —).

Police regulation authorizing Commission on Human Rights to make recommendations for correction of illegal employment practice when violation is established, with notice that if practice is not corrected within 15 days, matter will be referred to corporation counsel for enforcement did not authorize Commission's decision ordering employer to implement affirmative action program and to make monthly reports to human rights office. *Id.*

Portion of order of the Commission on Human Rights which awarded to black complainant, who had been denied an apartment because of her race, damages in the amount of \$950 as compensation for humiliation and mental anguish and for out-of-pocket expenses was unauthorized by regulation authorizing the Commission "to take such affirmative action as will effectuate the purposes of this Article," despite contention that the monetary award was mere incidental relief. *Mendota Apartments et al. v. District of Columbia Commission on Human Rights* (D.C. App. 1974, 315 A.2d 832).

Disruption of government business—Constitutionality

Commissioner's order which provides that no person shall wilfully and knowingly utter loud, threatening or abusive language or engage in disorderly conduct within any building owned or under the control of the District with the intent to disrupt orderly conduct of government meeting or business is valid under the First Amendment. The order is not overbroad and vague and there is a valid state interest in regulating such conduct. *District of Columbia v. A. Gueory* (D.C. App. 1977, 376 A.2d 834).

—Construction

Commissioner's order which provides that no person shall wilfully and knowingly utter loud, threatening or

abusive language or engage in any disorderly conduct within any building owned or under control of District with intent to impede, disrupt or disturb orderly conduct of government meeting or official business should be interpreted as prohibiting actual or imminent interference with peaceful conduct of government business. *District of Columbia v. A. Gueory* (D.C. App. 1977, 376 A.2d 834).

Insurance

Fact that no previous cases upheld the municipality's exercise of police power to regulate insurance did not compel conclusion that the District Council was without such power. *Firemen's Insurance Company of Washington, D.C. v. W. E. Washington et al.* (1973, 483 F. 2d 1323, 157 U.S. App. D.C. 320).

Regulation prohibiting auto, fire or casualty insurer from considering geographical location in determining whether to insure or continue to insure a risk in the District of Columbia except in cases of overconcentration of liability in a single high risk area and regulation prohibiting cancellation of auto, fire and casualty policies only for specified reasons are within the police power accorded to the District of Columbia by congressional enactment. *Id.*

District of Columbia regulation generally precluding the insurance company from considering geographic location in determining whether to insure or continue to insure auto, fire and casualty risks in district and prohibiting cancellation of those policies for other than specified conditions do not conflict with specific provisions of the District of Columbia Insurance Code or the Automobile Insurance Plan and were not preempted thereby; with respect to basic property insurance regulation prohibiting geographic discrimination did conflict with and was preempted by the District of Columbia Insurance Placement Act. *Id.*

Nature of power

Congress in legislating for District of Columbia has all the powers of a state legislature and may delegate to district government that full legislative power subject to constitutional limitations to which all lawmaking is subservient and subject to the power of Congress at any time to revise, alter, or revoke authority granted. *Firemen's Insurance Company of Washington, D.C. v. W. E. Washington et al.* (1973, 483 F. 2d 1323, 157 U.S. App. D.C. 320).

District of Columbia City Council, while possessing no inherent legislative authority, does have broad delegation of police power from Congress. *Id.*

Police line regulation

Since District of Columbia police line regulation deals only with extraordinary or emergency occasions in which substantial factors of unpredictability exist, the regulation's definition of the scope of police discretion in functional terms is reasonable and meticulous specificity is not required; regulation is not unconstitutionally vague for failure to set out the "mechanics" of the police line, such as geographic area, number of officers deployed, means of maintaining a line against assault, how long the line is to be maintained and how to announce to the public initiation of a line. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1977, 566 F.2d 107, 184 U.S. App. D.C. —).

Tampering with automobiles

Police regulation making it a violation to tamper with an automobile is clearly authorized under this section which empowers the District of Columbia to make and enforce police regulations for protection of all property within the District of Columbia. *G. A. Batres v. District of Columbia* (D.C. App. 1975, 347 A.2d 585).

—Constitutionality

Police regulation making it unlawful to tamper with a motor vehicle without the owner's permission provides adequate notice and standards concerning what conduct is proscribed and is not unconstitutionally vague. *In re R. F. H.* (D.C. App. 1976, 354 A.2d 844).

—Construction

Word "tamper" as used in police regulation making it unlawful for one other than a policeman or fireman to tamper with a motor vehicle without permission of owner

means wrongful or harmful interference with motor vehicle plus physical touching or damaging of vehicle and an improper purpose or intent. *In re R. F. H.* (D.C. App. 1976, 354 A.2d 844).

— Evidence

Evidence showing, *inter alia*, that juvenile was seen inside automobile looking under dashboard, that lock on driver's door had been broken, that wires under dashboard had been ripped out, that ignition was destroyed and that juvenile was apprehended leaving automobile as smoke was forming in front seat under dashboard is sufficient to establish juvenile's violation of police regulation making it unlawful to tamper with a motor vehicle without owner's permission. *In re R. F. H.* (D.C. App. 1976, 354 A.2d 844).

§ 1-226a. Expenditures for emergencies.

When required by the public exigencies to meet conditions caused by emergencies such as riot, pestilence, public insanitary conditions, flood, fire, storm, and similar disasters, the Mayor of the District of Columbia, pursuant to regulations prescribed by the Council of the District of Columbia, is authorized to expend such amounts as may be necessary without regard to advertising provisions of section 1-808. (Oct. 26, 1973, Pub. L. 93-140, § 1, 87 Stat. 504.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

APPROPRIATIONS

Section 28 of act Oct. 26, 1973, Pub. L. 93-140, 87 Stat. 509, provided: "Appropriations to carry out the purposes of this Act and the amendments made by this Act [adding §§ 1-226a, 1-262a, 1-809a, 3-213a, 4-188, 4-189, 4-415, 7-135b, 7-135c, 7-807, 9-221, 24-426, 24-427, 31-1119, 31-1120, 31-1121, 31-1122, 31-1542a, 32-331, 32-332, 32-333, 32-334, 36-503, 40-501a, 43-1543, 47-2331 note; and amending §§ 6-1203(h), 7-601, 47-1001, 47-1008] are hereby authorized."

§ 1-227. Regulations relative to firearms, explosives, and weapons.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Application for license

Applications for licenses to carry concealed weapons should be treated under proper regulatory criteria duly adopted. *A. F. Jordan, Jr. v. District of Columbia Board of Appeals and Review* (D.C. App. 1974, 315 A. 2d 153).

Publication of regulations

Whatever rule is used in District of Columbia to determine eligibility for a license to carry a handgun, it must be adopted, published, and applied according to law, and remain consistent with congressional policy. *A. F. Jordan, Jr. v. District of Columbia Board of Appeals and Review* (D.C. App. 1974, 315 A. 2d 153).

§ 1-228. Building regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Building and construction requirements to minimize flood and mudslide damages, see §§ 5-1101 et seq.

Public space permits, schedule of fees, see § 47-2216.

Riparian permits, schedule of fees, see § 47-2211.

NOTES TO DECISIONS

Applicability

Where District of Columbia Redevelopment Land Agency maintained properties acquired by it as residences only temporarily until relocation housing for residents becomes available and redevelopment or rehabilitation could be undertaken, the District of Columbia Housing Code was not directly applicable to the agency's temporary residential properties. *D. Jones et al. v. District of Columbia Redevelopment Land Agency et al.* (1974, 499 F. 2d 502, 163 U.S. App. D.C. 366).

§ 1-229. Regulations for construction and operation of elevators—Penalty.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-230. Regulations for control of rabies—Vaccination of dogs—Penalties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-230a. Pleuropneumonia in District of Columbia—Duties of Council.

Whenever any contagious, infectious, or communicable disease affecting domestic animals or live poultry, and especially the disease known as pleuropneumonia, shall be brought into or shall break out in the District of Columbia, it shall be the duty of the Council of said District to take measures to suppress the same promptly and to prevent the same from spreading; and for this purpose the said Council is empowered to order and require that any premises, farm, or farms where such disease exists, or has existed, be put in quarantine; to order all or any animals coming into the District to be detained at any place or places for the purpose of inspection and examination; to prescribe regulations for and to require the destruction of animals or live poultry affected with contagious, infectious, or communicable disease, and for the proper disposition of their hides and carcasses; to prescribe regulations for disinfection, and such other regulations as they may deem necessary to prevent infection or contagion being communicated, and shall report to the Secretary of Agriculture whatever it may do in pursuance of the provisions of this section. (May 29, 1884, ch. 60, § 8, 23 Stat. 33; Feb. 7, 1928, ch. 30, 45 Stat. 59.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section is also classified to 21 U.S.C. 130.

AMENDMENT

1928—Act Feb. 7, 1928, amended section by including within its provisions live poultry.

TRANSFER OF FUNCTION TO DISTRICT OF COLUMBIA COUNCIL

Section 402(430) of Reorg. Plan No. 3 of 1967, effective August 11, 1967, transferred the regulatory and other functions of the Board of Commissioners, relating to the prescribing of regulations for the destruction of animals or live poultry affected by contagious, infectious, or communicable disease, and for the proper disposition of their hides and carcasses, and the prescribing of regulations for disinfection and other regulations under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

CROSS REFERENCE

Prevention of introduction and spread of contagion of animals or poultry, see sections 111 and 123-127 of title 21, United States Code.

§ 1-231. Outdoor signs—Council may make regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-232. License requirements—Outdoor signs—Fee.

No person, persons, firm, or corporation shall engage in the business of erecting, hanging, placing, painting, displaying, or maintaining any sign for outdoor display within the District of Columbia without first having obtained a license therefor from the superintendent of licenses of the District of Columbia, which license shall bear an identification number: *Provided*, That no license shall issue without the prepayment of \$14 to the collector of taxes of the District of Columbia, and an annual fee of \$14 thereafter for each succeeding year. For good cause shown the Mayor of the District of Columbia shall have the power to reject any application for a license hereunder, or, where license has been issued, to revoke it. (Mar. 3, 1931, 46 Stat. 1486, ch. 399, § 2; Sept. 14, 1976, D.C. Law 1-82, title I, § 102, 23 DCR 2461.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section by substituting “\$14” for “\$5”.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 102 of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 61) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1823).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 1-233. Penalties—Publication of regulations.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 1-234. Lights—Maintenance outside city limits.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-235. Cleaning streets, alleys, and avenues, and repairs of sewers made municipal objects.

CROSS REFERENCES

Snow and ice removal,

Appropriations, see § 7-807.

Sidewalks, see §§ 7-801 to 7-806.

§ 1-236. Sale of street sweepings authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided, by §§ 1-141 and 1-161.

§ 1-237. Investigations of municipal matters by Commissioner and Council—Authority to administer oaths.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Investigative authority of Council of the District of Columbia, see § 1-148.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-2274, 6-2281.

§ 1-238. Annual report to Congress.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-239. Illustrations in reports prohibited, unless authorized by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-240. Originals of discontinued reports of government of District of Columbia to be preserved for public inspection.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-243b. Leasing authority—Limitations—Maximum rental.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-244. Additional powers of Commissioner and Council.

* * * * *

(f) *Name and rename highways, buildings, public places and property, etc.*—The Council of the District of Columbia is authorized and empowered within its discretion to name or change the name of a highway, circle, bridge, building, park or other public place or property in the District of Columbia under the jurisdiction of the District of Columbia, except

(1) No highway, circle, bridge, building, park or other public place or property under the jurisdiction of the District of Columbia shall hereafter be named in honor of any living person, and consideration shall not be given to naming any such public place in honor of any deceased person, until two years after his or her death.

(2) The name of any person shall embrace the given name or names as well as the surname of such person and shall be so noted on the records of the Council of the District of Columbia and official records filed with the Surveyor of the District of Columbia.

* * * * *

(As amended Apr. 7, 1977, D.C. Law 1-109, § 2, 23 DCR 8739.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-109, amended subsec. (f) generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 6 of act Apr. 7, 1977, D.C. Law 1-109, provided: "This act [amending §§ 1-244, 7-106, and 7-112, repealing § 7-107, and enacting material set out as notes under § 1-244] shall take effect at the end of the period provided for Congressional review of acts of the Council of the District of Columbia in subsection (c) (1) of Section 602 of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code 1975 Supp., sec. 1-147(c) (1))."

SHORT TITLE

The first section of act Apr. 7, 1977, D.C. Law 1-109, provided: "That this act [amending §§ 1-244, 7-106, and 7-112, repealing § 7-107, and enacting material set out as notes under § 1-244] may be cited as the 'Naming of Public Places Act of 1976'."

SEVERABILITY PROVISIONS OF D.C. LAW 1-109

Section 5 of act Apr. 7, 1977, D.C. Law 1-109, provided: "If any section or provision of this act is held to be un-

constitutional or invalid, such unconstitutionality or invalidity shall not affect the remaining sections or provisions of this act."

NAMING OF PUBLIC SCHOOL BUILDINGS BY BOARD OF EDUCATION

Section 4 of act Apr. 7, 1977, D.C. Law 1-109, provided: "The provisions of this act shall not be deemed to limit any authority of the Board of Education to name public school buildings and grounds under its control."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-249, 1-255, 2-2302, 4-171a, 7-106, 7-112, 7-902, 40-903, 47-2345.

§ 1-245. Appointment of contracting officers—Powers—Approval of contracts over \$3,000—Void contracts—Liquidated damage contracts.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-246. Powers and duties of Director of Inspection—Delegation of authority.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-248. Effectuate settlement for real estate acquired by purchase or condemnation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-249. Power conferred by sections 1-244 to 1-246 and 1-248 as additional.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-250. Purchase of vehicles—Trade-in as part payment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-251. Authority to grant additional compensation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-252. Authority to fix certain licensing and registration fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Boxing and Wrestling Commission authorized to fix fees for permits and licenses, subject to approval of Mayor, see § 2-1236.

§ 1-253. Same—Increase or decrease of fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-254. Commissioner's authority to determine honorariums for members of boards—Deposit of fees in the Treasury—Receipt of honorarium without prejudice to other compensation—Definition—Operation of civil service retirement laws.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-257. Council authorized to change and fix licensing periods.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-258. Applicability of sections 1-254 to 1-258 to boards covered by Reorganization Plan No. 5 of 1952.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-260. Holidays for District employees—Regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-261. Authority for transporting children of certain employees in District-owned vehicles.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-262. Reception of eminent persons—Appropriation authorized.

There is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States to the credit of the District of Columbia not otherwise appropriated, not to exceed \$10,000 in any fiscal year for such expenses as the Council of the District of Columbia shall deem to be necessary, including personal services, and without reference to section 1-808; or the civil-service laws, for the reception and entertainment of officials of foreign, State, local, or Federal Governments and other dignitaries and eminent persons visiting in or returning to the District of Columbia; and the certificate of the Council shall be sufficient voucher for the expenditure of appropriations made pursuant to this section. (July 11, 1947, 61 Stat. 314, ch. 231, § 1.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

The "civil service laws", referred to in this section, are set forth in title 5, U.S.C. See, particularly, § 3301 et seq. of that title.

CODIFICATION

The exception from "the Classification Act of 1923, as amended" has been omitted as obsolete. Sections 1202 and 1204 of the Classification Act of 1949 (63 Stat. 972, 973) repealed the 1923 Act and all laws or parts of laws inconsistent with the 1949 Act. While § 1106(a) of the 1949 Act provided that references in other laws to the 1923 Act should be held and considered to mean the 1949 Act, it did not have the effect of continuing the exception contained in this section because of § 1106(b) that provided that the application of the 1949 Act to any position, officer, or employee shall not be affected by § 1106(a). The Classification Act of 1949 was repealed by Act Sept. 6, 1966, Pub. L. 89-554, § 8(a), 80 Stat. 632 (of which § 1 revised and enacted title 5, U.S.C., into law). Section 5102 of title 5, U.S.C., now contains the applicability provisions of the 1949 Act.

§ 1-262a. Official expenses.

The Mayor of the District of Columbia and the Chairman of the Council of the District of Columbia are hereby authorized to provide for the expenditure, within the limits of specified annual appropriations, of funds for appropriate purposes related to their official capacity as they may respectively deem necessary. Their determination thereof shall be final and conclusive, and their certificate shall be sufficient voucher for the expenditure of appropriations made pursuant to this section. (Oct. 26, 1973, Pub. L. 93-140, § 26, 87 Stat. 509.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

The portion of the source statute (sec. 26 of act Oct. 26, 1973) that relates to the Superintendent of Schools, the

President of the Federal City College, the President of the Washington Technical Institute, and the President of the District of Columbia Teachers College is classified to § 31-1122.

APPROPRIATIONS

See note under § 1-226a.

CROSS REFERENCE

School ceremonial expenses, see § 31-1121.

§ 1-263. Omitted.

This section is omitted as it was not continued by the District of Columbia Appropriation Act, 1975. Previously it was continued for the fiscal years, and by the statutes, listed below. For further details for prior years, see the Codification note under this section in the main edition of the Code.

1974—Aug. 14, 1973, Pub. L. 93-91, § 10, 87 Stat. 310.

1973—July 10, 1972, Pub. L. 93-344, § 11, 86 Stat. 455.

§ 1-264. Imposition of penalties for delivery of bad checks in payment of obligations due District of Columbia—Basis for penalty—Exception—Manner of collection.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-265. District of Columbia student loan insurance program.

(a) The government of the District of Columbia is authorized (1) to establish a student loan insurance program which meets the requirements of this part for a State loan insurance program in order to enter into agreements with the Commissioner for the purposes of this title, (2) to enter into such agreements with the Commissioner, (3) to use amounts appropriated for the purposes of this section to establish a fund for such purposes and for expenses in connection therewith, and (4) to accept and use donations for the purposes of this section.

(b) Notwithstanding the provisions of any applicable law, if the borrower, on any loan insured under the program established pursuant to this section, is a minor, any otherwise valid note or other written agreement executed by him for the purposes of such loan shall create a binding obligation.

(c) There are authorized to be appropriated such amounts as may be necessary for the purposes of this section. (Nov. 8, 1965, Pub. L. 89-329, title IV, § 436, as added Nov. 3, 1966, 80 Stat. 1244, Pub. L. 89-572, § 12; and amended Oct. 16, 1968, Pub. L. 90-575, title I, § 116(b) (5), 82 Stat. 1024; Oct. 12, 1976, Pub. L. 94-482, title I, § 127(a), 90 Stat. 2132.)

REFERENCES IN TEXT

In subsec. (a), the words "this part" refer to Part B of title IV of the Higher Education Act of 1965, as amended, which is classified to 20 U.S.C. 1071 et seq.

In subsec. (a), the words "this title" refer to title IV of the Higher Education Act of 1965, as amended, which is classified to 20 U.S.C. 1070 et seq.

The terms "State" and "Commissioner", appearing in subsec. (a), are governed by the definitions appearing in 20 U.S.C. 1141. In that section, "State" includes, in addition to the several States of the Union, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, and the Virgin Islands; and "Commissioner" means the Commissioner of Education.

CODIFICATION

Section, enacted by act Nov. 3, 1966 cited to the text, is a part of the Higher Education Act of 1966 (Nov. 8, 1965, Pub. L. 89-329), as amended. See 20 U.S.C. § 1001 et seq. and short title note set out under 20 U.S.C. § 1001.

Section is also classified to 20 U.S.C. 1086.

AMENDMENT

1976—Act Oct. 12, 1976, Pub. L. 94-482, amended section generally to eliminate references to the Commissioner of the District of Columbia. For prior provisions, see main edition.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment effective Oct. 1, 1976. For further details, see section 127(b) of Pub. L. 94-482, 90 Stat. 2142, which is set out as a note under 20 U.S.C. 1071.

§ 1-266. District of Columbia medical assistance program—Standards and criteria for determining eligibility—Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Limited podiatric services

Limiting podiatric services that podiatrists may provide under District of Columbia medicaid plan while permitting physicians to furnish a full range of podiatric care does not violate medicaid provisions of the Social Security Act or implementing regulations. *District of Columbia Podiatry Society et al. v. District of Columbia et al.* (1975, 407 F. Supp. 1259).

§ 1-267. Supplementary medical insurance program.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Injunction

Residents of District of Columbia and Virginia did not have standing to sue to enjoin Secretary of Health, Education and Welfare from complying with provision of federal appropriations statute prohibiting Secretary from using any money appropriated to him to perform abortions except where the life of mother would be endangered if fetus were carried to term, in light of fact that plaintiffs did not demonstrate that officials of District of Columbia and Virginia would, or legally could, refuse to pay for abortions performed for reasons other than those specified in statute. *D. Doe et al. v. F. D. Mathews, Secretary etc.* (1976, 422 F. Supp. 141).

Chapter 2A.—DELEGATE TO THE HOUSE OF REPRESENTATIVES

§ 1-292. Applicability of other laws.

REFERENCES IN TEXT

Section 81 of title 2, United States Code, referred to in par. (23), was repealed by sec. 505(2) of Act July 12, 1974, Pub. L. 93-344, 88 Stat. 322.

Section 82 of title 2, United States Code, referred to in par. (24), was repealed by sec. 220(d), (e) of Act June 6, 1972, Pub. L. 92-310, 86 Stat. 204.

CODIFICATION

Section is also set out as a note under 2 U.S.C. 25.

Chapter 3.—OFFICERS AND EMPLOYEES GENERALLY

Sec.

- 1-314b. Designation by Mayor of Dr. King's Birthday as holiday.
- 1-320a. Affirmative action in employment in the District government—Definition.
- 1-320b. Development and submission of agency affirmative action plans.
- 1-320c. Agency affirmative action plan goals—Actual employment data.
- 1-320d. Agency's projected personnel actions for period of the affirmative action plan.
- 1-320e. Agency's program for securing equal employment opportunity.
- 1-320f. Continuing responsibility of agencies for equal employment opportunity.
- 1-320g. Agency data on personnel actions, grievances, and complaints during period of previous affirmative action plan.
- 1-320h. Detail by Mayor of equal employment opportunity officers and specialists to Office of Human Rights.
- 1-322. Assistance of Civil Service Commission in development of District merit system.
- 1-323. Consent by District to garnishment and similar proceedings for enforcement of child support and alimony obligations.

§ 1-301. Corporation counsel—Duties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Employment of minors violations, prosecution by Corporation Counsel, see § 36-228.

Representation of Office of Consumer Protection, see 28 App., § 6.

NOTES TO DECISIONS

Civil liability

In rendering advice to the various departments of the District government the corporation counsel owes duty of care to the public in general and to potentially affected individuals; hence, counsel can be held civilly liable for alleged negligent delay in passing on request by general counsel of the police department for opinion as to constitutionality of police regulation requiring a permit to give speech in a public place, provided the plaintiff establishes that the alleged deprivation of his constitutional rights because of arrest for violating the regulation was a natural consequence of the alleged negligence. *A. Shifrin et al. v. J. Wilson et al.* (1976, 412 F. Supp. 1282).

— Statute of limitations

Action seeking damages from corporation counsel on ground that his failure to supervise processing of request for opinion as to validity of police regulation requiring a permit to give a speech in a public place caused the ten-month delay in its issuance and led to plaintiff's arrest under an unconstitutional regulation sounds in negligence, rather than false arrest and imprisonment; hence, applicable statute of limitations is the District's three-year period for negligence actions, rather than the one-year limitation period for false arrest. *A. Shifrin et al. v. J. Wilson et al.* (1976, 412 F. Supp. 1282).

Prosecutorial immunity

Although corporation counsel enjoys no prosecutorial immunity for alleged negligent supervision of his subordinates in issuing opinion as to constitutionality of police regulation requiring a permit to give a speech in a public place, the counsel, sought to be held liable for alleged violation of plaintiff's constitutional rights because of his arrest prior to issuance of opinion that reg-

ulation is unconstitutional, is entitled to a "good faith-reasonableness" qualified immunity. *A. Shifrin et al. v. J. Wilson et al.* (1976, 412 F. Supp. 1282).

Representation of private petitioner

To accept or create additional obligation to obey court order for corporation counsel to undertake representation of private citizens in mental health cases is antithetical to this section setting forth duties of corporation counsel and is also contrary to separation of powers doctrine, and thus not only is corporation counsel not required by statute to represent private petitioners, seeking involuntary civil commitment of adult son or daughter, but Superior Court judge has no power to make such an appointment. *District of Columbia et ano. v. W. C. Pryor, Associate Judge etc.* (D.C. App. 1976, 366 A. 2d 141).

§ 1-302. Assistant corporation counsels—Duties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-304. Purchasing officer—Duties—Bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-306. Municipal architect—Duties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-309. Reports by custodians of property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-310a. Salary increases by reason of reallocation of positions—Limitation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-313. Per diem employees—Leave of absence.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-314b. Designation by Mayor of Dr. King's Birthday as holiday.

The Mayor is authorized to designate the holiday in honor of Dr. King as a holiday for all employees of the government of the District of Columbia. Employees who are required to work on that holiday shall be entitled to such pay as they are entitled to on other holidays during which they work. (July 12, 1977, D.C. Law 2-13, § 3, 24 DCR 1443.)

EFFECTIVE DATE

Section 4 of act July 12, 1977, D.C. Law 2-13, provided: "This act [enacting § 1-314b and amending §§ 28-2701] shall take effect as provided for acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act July 12, 1977, D.C. Law 2-13, provided "That this act [enacting § 1-314b and amending § 28-2701] may be cited as the 'Dr. King's Birthday Act of 1977'."

CROSS REFERENCES

Designation of Dr. King's Birthday as a holiday, see § 28-2701.

Legal holidays, generally, see 5 U.S.C. §§ 6103, 6104.

§ 1-315. Payrolls—Signature by mark.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-316. Persons convicted of certain crimes ineligible to hold office.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Forfeiture of office or position of officer or employee of District convicted of having personal financial interest in contract or transaction, see § 1-828.

§ 1-320. Eligibility for employment in the District of Columbia Government.

NOTES TO DECISIONS

Class actions

Regardless of whether plaintiff could have qualified to maintain as a class action his complaint of racial discrimination against District of Columbia employees had it been filed in district court ab initio, class action was proper where administrative proceedings had been maintained on class basis, administrative findings and proposed remedies had dealt with all aspects of the complaint, and mayor's action complained of was predicated on grounds generally applicable to the class. *J. T. Watkins et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 941; aff'd 505 F.2d 477, 164 U.S. App. D.C. 370).

Injunctions

Refusal to issue an injunction against racial discrimination within Housing Division of Department of Licenses and Inspections and to retain jurisdiction until all steps had been taken to eliminate effects of past discrimination and to insure nondiscrimination in future was manifestly unjust, notwithstanding that a new director had taken steps to insure equal employment opportunity, where period of nondiscrimination was very brief compared to long record of discrimination demonstrated in

case and task of eliminating ingrained discriminatory practices was a difficult one deserving of active judicial support. *J. T. Watkins et al. v. W. E. Washington, Commissioner, et al.* (1972, 472 F.2d 1373, 153 U.S. App. D.C. 298).

Racial discrimination

Positive relationship between test of verbal skill administered applicants for employment as police officers to training course performance is sufficient to validate the test, wholly aside from its possible relationship to actual performance as a police officer. *W. E. Washington, et al. v. A. E. Davis et al.* (1976, 96 S. Ct. 2040, 426 U.S. 229; rev'g 512 F.2d 956, 168 U.S. App. D.C. 42).

The disproportionate impact on Negroes of written test of verbal skill administered to applicants for employment as police officers does not warrant the conclusion that the test, which is neutral on its face, is a purposely discriminatory device. *Id.*

The affirmative efforts of Police Department to recruit black officers, the changing racial composition of the recruit classes and of the force in general, and the relationship of written test of verbal skill to the training program negates any inference that the Department discriminated on the basis of race notwithstanding the disproportionate impact of the test on Negro applicants. *Id.*

A discriminatory employment practices proceeding brought by a District of Columbia employee is not a "contested case" within meaning of the Administrative Procedure Act and, hence, is not subject to direct review by Court of Appeals; following enactment of Equal Employment Opportunity Act of 1972 to include government employees a District employee has the right to bring a civil action in federal court following pursuit of his administrative remedies through the appropriate local and federal commissions. *H. O'Neill et al. v. District of Columbia Office of Human Rights* (D.C. App. 1976, 355 A.2d 805).

Order 71-26, which was promulgated by the Mayor to govern complaints of discrimination made by District government employees against their agency or department employer, governs exclusively discrimination claims by District government employees. *Id.*

Where District of Columbia employee who was victim of racial discrimination in employment and personnel policies had been promoted to first vacant GS-12 position as recommended by hearing committee appointed by district court, and had received all back pay for time during which he was discriminated against, he had received all relief to which he was entitled under original action, and he was not entitled to determination that promotion should be retroactive to time he filed his original action and award of back pay from that date. *J. T. Watkins et al. v. W. E. Washington, Mayor, et al.* (1975, 511 F.2d 404, 167 U.S. App. D.C. 166; cert. denied 96 S. Ct. 61, 423 U.S. 835).

Upon findings of hearing committee and equal employment opportunity officer of racial discrimination in the District of Columbia department of licenses and inspections, mayor had discretion in framing an appropriate remedy, but where a definite and persistent pattern of unconstitutional racial discrimination was demonstrated, it was not sufficient to express the hope that discrimination would disappear and to exhort those involved to a better performance; mayor was obliged to take affirmative steps to reinforce his expectations. *J. T. Watkins et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 941; aff'd 505 F.2d 477, 164 U.S. App. D.C. 370).

Where there had been racial discrimination against Negro employees of the District of Columbia department of licenses and inspections, district court would not disturb mayor's determination that no disciplinary action would be taken nor direct promotion of particular individuals to specific jobs, but would direct, inter alia, payment of back pay, would enjoin further discrimination, and would order the establishment of certain procedures with respect to hiring and promotion. *Id.*

Sovereign immunity

Action against the mayor of the District of Columbia and others seeking relief with respect to racial discrimination against Negro employees in the department of licenses and inspections was not barred by doctrine of sovereign immunity; the courts have power under the Constitution

to remedy racial discrimination by a public agency in any form. *J. T. Watkins et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 941; aff'd 505 F.2d 477, 164 U.S. App. D.C. 370).

§ 1-320a. Affirmative action in employment in the District government—Definition.

The goal of affirmative action in employment throughout the District government is, and must continue to be, full representation, in jobs at all salary and wage levels and scales, in accordance with the representation of all groups in the available work force of the District of Columbia, including but not limited to, Blacks, Whites, Spanish-speaking Americans, Native Americans, Asian Americans, females, and males. As used in sections 1-320a to 1-320h, "available work force" means the total population of the District of Columbia between the ages of 18 and 65. (May 6, 1976, D.C. Law 1-63, § 2, 22 DCR 6538.)

EFFECTIVE DATE

Section 10 of act May 6, 1976, D.C. Law 1-63, provided: "This act [enacting §§ 1-320a to 1-320h] shall become effective at the end of the period provided for Congressional review of acts of the Council by section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLES

The first section of act Apr. 6, 1977, D.C. Law 1-100, provided "That this act [amending § 1-320h] may be cited as the 'Affirmative Action Clarifying Act.'"

The first section of act May 6, 1976, D.C. Law 1-63 provided "That this act [enacting §§ 1-320a to 1-320h] may be cited as the 'Affirmative Action in District Government Employment Act.'"

CROSS REFERENCE

District merit system, see § 1-162.

§ 1-320b. Development and submission of agency affirmative action plans.

Every District government agency shall develop and submit to the Mayor and Council an affirmative action plan. Such plan shall be submitted within 12 calendar weeks after May 6, 1976, and each year thereafter, at the time each agency's annual budget is submitted to the Council. (May 6, 1976, D.C. Law 1-63, § 3, 22 DCR 6538.)

CODIFICATION

"May 6, 1976" has been substituted for "the effective date of this act".

EFFECTIVE DATE

See section 10 of act May 6, 1976, D.C. Law 1-63, set out as a note under § 1-320a.

§ 1-320c. Agency affirmative action plan goals—Actual employment data.

Each plan shall state the number of females and males who are Black, White, Spanish-speaking, Native American and Asian American, who would, by using the goal of their representation in the available work force in the District, be employed by the agency at the actual employment levels in the agency at the time the plan is submitted. Such numbers shall be broken down—

- (1) agency-wide;
- (2) within each office in the agency; and
- (3) within each pay level of each salary scale in the agency.

These shall be the goals, not the quotas, of the plan. The plan shall also state the actual employment levels in the agency, broken down in the same way

as the goals, and the difference between the actual employment and the goals. (May 6, 1976, D.C. Law 1-63, § 4, 22 DCR 6539.)

EFFECTIVE DATE

See section 10 of act May 6, 1976, D.C. Law 1-63, set out as a note under § 1-320a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-320d, 1-320e.

§ 1-320d. Agency's projected personnel actions for period of the affirmative action plan.

The plan shall state the number of hires and promotions the agency projects for the period until the next plan is submitted, and the number of hires and promotions of the groups enumerated in section 1-320c, projected for that period. Such projections shall be broken down in the manner provided in section 1-320c. (May 6, 1976, D.C. Law 1-63, § 5, 22 DCR 6539.)

EFFECTIVE DATE

See section 10 of act May 6, 1976, D.C. Law 1-63, set out as a note under § 1-320a.

§ 1-320e. Agency's program for securing equal employment opportunity.

The plan shall further state what actions the agency is taking to secure the equal employment opportunity within the agency of the groups enumerated in section 1-320c, and of the aging, the young, the handicapped, and the homosexual citizens of the District, whether such citizens be actual or potential employees of the District government. (May 6, 1976, D.C. Law 1-63, § 6, 22 DCR 6539.)

EFFECTIVE DATE

See section 10 of act May 6, 1976, D.C. Law 1-63, set out as a note under § 1-320a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-320g.

§ 1-320f. Continuing responsibility of agencies for equal employment opportunity.

Equal employment opportunity is a continuing responsibility of every agency, whether or not the hiring and promotion goals in affirmative action employment plans have been reached. (May 6, 1976, D.C. Law 1-63, § 7, 22 DCR 6540.)

EFFECTIVE DATE

See section 10 of act May 6, 1976, D.C. Law 1-63, set out as a note under § 1-320a.

§ 1-320g. Agency data on personnel actions, grievances, and complaints during period of previous affirmative action plan.

The plan shall further state the number of hires, promotions, and terminations (due to retirement, death, reductions in service or force, lack of performance, disciplinary action, and all other reasons), and indicating the permanent, temporary, or probationary status of the terminated employees of, and personnel grievance and equal employment complaints instituted by, persons known to be members of the various classes specified in section 1-320e, during the period since the previously submitted plan. (May 6, 1976, D.C. Law 1-63, § 8, 22 DCR 6540.)

EFFECTIVE DATE

See section 10 of act May 6, 1976, D.C. Law 1-63, set out as a note under § 1-320a.

§ 1-320h. Detail by Mayor of equal employment opportunity officers and specialists to Office of Human Rights.

The Mayor shall have the authority and is directed to detail, on a full-time basis, all persons who, on May 6, 1976, are employed, on a full-time basis, as non-uniformed equal employment opportunity officers and equal employment opportunity specialists by any agency of the District government other than the Office of Human Rights, to work in the Office of Human Rights as investigators or in other positions, all directly involved in the decision of equal employment opportunity cases instituted against the District government or any of its agencies. No person so detailed shall work on cases instituted against the agency from which the person is detailed. The Mayor shall assign such details on May 6, 1976. The positions which such persons hold shall be transferred to the budget of the Office of Human Rights in and for Fiscal Year 1977. The Metropolitan Police Department and the Fire Department are not authorized by this section to abolish, leave unfilled, or reduce the authority or duties of, any uniformed equal employment opportunity officer or specialist position. This section shall not be construed to affect any uniformed position in the District Government. (May 6, 1976, D.C. Law 1-63, § 9, 22 DCR 6540; Apr. 6, 1977, D.C. Law 1-100, § 2, 23 DCR 8730.)

CODIFICATION

"May 6, 1976" has been substituted for "the effective date of this section".

AMENDMENT

1977—Act Apr. 6, 1977, D.C. Law 1-100, amended section as follows:

- (1) inserting in the first sentence "non-uniformed" immediately following "on a full-time basis, as";
- (2) striking "and the Fire Department," immediately following "other than the Office of Human Rights,";
- (3) striking ", and in the case of the person so detailed from the Metropolitan Police Department, such person shall not be a uniformed employee of the Metropolitan Police force" at the end of the second sentence; and
- (4) adding the last two sentences.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 3 of act Apr. 6, 1977, D.C. Law 1-100, provided: "This act [amending this section] shall take effect immediately following the period provided for Congressional review in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)(1)]."

EFFECTIVE DATE

See section 10 of act May 6, 1976, D.C. Law 1-63, set out as a note under § 1-320a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-320a.

§ 1-322. Assistance of Civil Service Commission in development of District merit system.

The United States Civil Service Commission is hereby authorized to advise and assist the Mayor and the Council in the further development of the merit system or systems required by section 1-162(3) and the said Commission is authorized to enter into agreements with the District government to make available its registers of eligibles as a recruiting source to fill District positions as needed. The costs of any specific services furnished by the Civil Service Commission may be compensated for under the

provisions of section 1-826. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 734, 87 Stat. 823.)

CODIFICATION

Section is also set out as a note under 5 U.S.C. 3320.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

§ 1-323. Consent by District to garnishment and similar proceedings for enforcement of child support and alimony obligations.

On and after July 26, 1977, wages, salaries, annuities, retirement and disability benefits, and other remuneration based upon employment, that are owed by, due from, and payable by the government of the District of Columbia to any individual shall be subject to attachment and garnishment provided the levy is predicated upon the entry of a judgment, order, or decree determining the individual's legal obligation to provide child support or to make maintenance or alimony payments. Whenever such wages, salaries, annuities, retirement and disability benefits, or other remuneration based upon employment shall be sought to be levied upon pursuant to this section, the legal process shall be such as is usual in other cases of attachment and garnishment. The government of the District of Columbia shall be subject to such process in like manner and to the same extent as if it were a private person, except that no writ or similar process served under the authority of this section shall be honored by the government of the District of Columbia unless proof of service of process upon the judgment debtor and a certified copy of the judgment, order, or decree upon which the levy is predicated has been provided to the Mayor of the District of Columbia or his duly authorized designee. (July 26, 1977, D.C. Law 2-14, § 2, 24 DCR 1774.)

CODIFICATION

"July 26, 1977" has been substituted for "the effective date of this act".

EFFECTIVE DATE

Section 3 of act July 26, 1977, D.C. Law 2-14, provided: "This act [enacting § 1-323] shall take effect as provided for acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act July 26, 1977, D.C. Law 2-14, provided "That this act [enacting § 1-323] may be cited as the 'Employees' Garnishment Act of 1977'."

CROSS REFERENCE

Attachment and garnishment of wages, generally, see §§ 16-571 et seq.

Chapter 5.—NOTARIES PUBLIC

§ 1-501. Appointment—Representation of clients before government departments—Administration of certain acknowledgments—License fee—Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-504. Oath and bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-506. Signature and impression of seal deposited.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-511. Empowered to certify certain instruments, to administer oaths and affirmations—Affidavits.

Each notary public shall have power to take and to certify the acknowledgment or proof of powers of attorney, mortgages, deeds, and other instruments of writing, to take depositions and to administer oaths and affirmations and also to take affidavits to be used before any court, judge, or officer within the District. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 568; June 30, 1902, 32 Stat. 533, ch. 1329; Oct. 1, 1976, D.C. Law 1-87, § 2, 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, struck out "the acknowledgment of any conveyance or other instrument of writing executed by any married woman," following "of writing".

EFFECTIVE DATE OF 1976 AMENDMENT

Section 43 of act Oct. 1, 1976, D.C. Law 1-87, provided: "(a) Except as provided in subsection (b), the amendments made by this act [for classification of act to the Code, see Parallel Reference Tables] shall take effect pursuant to the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act (87 Stat. 813, D.C. Code, Supp. II, 1-147(c)).

"(b) (1) The amendment made by section 11 [amending § 15-502] shall apply only with respect to mortgages, deeds of trust, assignments for the benefit of creditors, and bills of sale upon exempted articles executed more than sixty days after the effective date of this act.

"(2) The amendments made by sections 12 through 21, and 33 shall apply with respect to all actions, proceedings, and matters commenced or pending, in any administrative or judicial forum, on or after the effective date of this act."

SHORT TITLE

The first section of act Oct. 1, 1976, D.C. Law 1-87, provided "That this act [for classification of act to the Code, see Parallel Reference Tables] may be cited as the 'Anti-Sex Discriminatory Language act'."

§ 1-516. Vacation of office—Custody of records and papers.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-517. Certificates issued by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-518. Appropriation—Inclusion of expenses and salaries in Commissioner's annual estimates.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 6.—SURVEYOR

§ 1-601. Appointment and term of office—Salary.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-602. Oath.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-603. Assistant surveyor and other employees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-605. Surveyor's office to be legal office of record of plats and subdivisions.

NOTES TO DECISIONS

Purpose of filing plat

Principal purpose of filing plat in office of surveyor is to establish areas and boundaries of lots in the subdivision. *H. Case v. A. E. Morrisette* (1973, 475 F. 2d 1300, 155 U.S. App. D.C. 31).

Servitudes

Although subdivision plats must be duly recorded in office of surveyor, once that requirement has been met, District of Columbia statutes do not prohibit an owner from incorporating a revised copy of the same plat in another recordable instrument in order to impress, through a suitable endorsement on the plat, a servitude upon a single lot in the original subdivision and, in such circumstances, the revised plat is being used only as method of imposing a servitude, and not to establish the areas and boundaries of lots in the subdivision. *H. Case v. A. E. Morrisette* (1973, 475 F.2d 1300, 155 U.S. App. D.C. 31).

Equitable servitudes can be created by inscriptions on subdivision plats filed with surveyor, but they also may be created by deeds, with or without plats attached. *Id.*

Where deed described parcel as lot on subdivision plat recorded in office of surveyor and referred to it as area for parking as shown on revised plat recorded with declara-

tion of covenants, purchaser was placed on notice of inscription affecting lot and either such constructive notice or purchaser's actual knowledge was sufficient to require enforcement of equitable servitude against purchaser and it was immaterial that copy of revised plat bearing inscription was recorded in office of recorder of deeds rather than with surveyor. *Id.*

§ 1-606. Records, papers, and instruments to be kept and preserved by surveyor.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-613. Plats—Regulation—Recording.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Review of proposals for subdivisions and new developments to minimize flood hazards, see § 5-1102.

§ 1-615. Cemeteries—Right of way through.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-616. Surveys for District—Fees and documents.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-621. Lots and parcels may be resurveyed to determine accuracy—Recording only on order.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-622. Reference to subdivisions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-623. Alleys—Police regulation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of

the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-629. District of Columbia Council to prescribe fees for surveyor—Schedule of fees to be displayed.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 7.—INSPECTION—REGULATORY PROVISIONS

Sec.

1-720. Repealed.

1-723. Repealed.

§ 1-703. Boiler inspection service created—Personnel.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-704. Bond—Oath.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-705. Inspection of designated steam boilers and unfired pressure vessels.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-706. Operating at pressure greater than permitted.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-707. Annual inspection—Certificate of inspection—Display.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-710. Fees—Certificate invalidated by cessation of insurance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-712. Records to be kept.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-715. Regulations—Fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-718. Effective date of sections 1-701 to 1-718—Promulgation of regulations and schedule of fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 1-719. Electric wiring—Inspection—Rules and regulations—Fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, § 1-131, and replaced by the Council of the District of Columbia, and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Fee schedule for electrical inspection and permits, see § 47-2212.

NOTES TO DECISIONS

Regulations, reasonableness

Exclusion of persons in situation of petitioner, who owned and occupied residential premise in which basement apartment was occupied by unrelated tenants, and who sought permit allowing him personally to rewire his living quarters, from District of Columbia electrical code exemption of owner-occupants of single-family dwellings from requirement of involvement of appropriately licensed electrician in rewiring project is neither irrational nor invidiously discriminatory, and thus application of regulations requiring involvement of electrician to petitioner is reasonable. *R. R. Snider v. District of Columbia Board of Appeals and Review* (D.C. App. 1975, 342 A.2d 50).

§ 1-720. Repealed. Sept. 21, 1977, D.C. Law 2-17, § 6, 24 DCR 3337.

Section, Acts Apr. 26, 1904, 33 Stat. 307, ch. 1602, § 2; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570, required the electrical engineer to inspect buildings for violations of electrical regulations and provided the penalty for failure to correct violations.

EFFECTIVE DATE OF REPEAL

Section 8 of act Sept. 21, 1977, D.C. Law 2-17, provided: "This act [repealing §§ 1-720 and 1-723] shall take effect according to the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act Sept. 21, 1977, D.C. Law 2-17, provided "That this act [repealing §§ 1-720 and 1-723] may be cited as the 'District of Columbia Electrical Code Act'."

§ 1-721. Electrical engineer—Appointment—Qualifications—Assistant inspectors.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-723. Repealed. Sept. 21, 1977, D.C. Law 2-17, § 6, 24 DCR 3337.

Section, Act Apr. 26, 1904, 33 Stat. 307, ch. 1602, § 4, prohibited the connection of current before inspection, provided the penalty for violation of the prohibition, and authorized the chief inspector to remove improper connections.

EFFECTIVE DATE OF REPEAL

See section 8 of act Sept. 21, 1977, D.C. Law 2-17, set out as a note under § 1-720.

§ 1-724. Plumbing—Appointment of inspector—Duties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-725. Regulations governing plumbing, house drainage, sewers, and for examination and licensing of plumbers and gas-fitters—Noncompliance—Penalty.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-726. Fees for permits for sewer, gas, and water connections, excavations—Disposition of fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Fee schedule for public space permits, see § 47-2216.

§ 1-727. Inspector of plumbing—Inspection of buildings—Enforcement of regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-728. Principal assistant inspector of buildings may discharge duties of inspector.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 8.—CONTRACTS

SUBCHAPTER I.—GENERAL PROVISIONS

Sec.

- 1-801. Limitation on right of Commissioner to contract.
- 1-802. Contracts in which Commissioner personally interested to be void.
- 1-803. Commissioner's contracts to be in writing and filed.
- 1-804. Repealed.
- 1-804a. Public contractors required to post performance and payment bonds in certain cases—Amount of bonds.
- 1-804b. Rights of laborers and materialmen to sue on payment bonds—Prior notice of claim required in certain cases—Time limitations—Suit to be brought in name of District of Columbia.
- 1-804c. Certified copy of bond and contract to be furnished on application of interested parties—Copy as prima facie evidence—Fees.
- 1-805. Contractors' bond not required for contracts not exceeding \$25,000.
- 1-806. Formal contract with bond not required in contracts not exceeding \$2,000.
- 1-807. Retents.
- 1-808. Advertisement for proposals for purchases and contracts for supplies or services; application to sales and contracts to sell.
- 1-809. Cost of advertising.
- 1-809a. Advertising and publication of notices—Availability of appropriations.
- 1-810. Separate contracts for material and for labor authorized.
- 1-811. Operation of District quarry.
- 1-812. Use of agents in purchasing sites for schools and public buildings—Commissions—Future enlargement.
- 1-813. Building materials may be tested by Bureau of Standards.
- 1-814. Testing materials in laboratory of highway department.
- 1-815. Omitted.
- 1-816. Insurance of District of Columbia property.
- 1-816a. Payment of fire insurance premiums.
- 1-817. Sewerage agreement with Maryland authorized.
- 1-817a. Contracts for removal of certain byproducts of the District of Columbia sewage-treatment plant.
- 1-817b. [Reserved.]
- 1-817c. Sewerage agreement with Virginia authorized.
- 1-818. Sale of property unfit for service—Proceeds credited to appropriation.
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- 1-823. Same; Commissioner to direct cut of District police and other personnel—Enforcement of District laws by cut of District police and personnel.
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- 1-826. Agreements between United States and District of Columbia for reimbursable services—Delegation of functions—Costs and payments—Exception.

Sec.

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SUBCHAPTER II.—MINORITY CONTRACTING

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SUBCHAPTER I.—GENERAL PROVISIONS

§ 1-801. Limitation on right of Commissioner to contract.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Disputes—Review

Principles of Wunderlich Act, 41 U.S.C. 321, apply to contract dispute to which District of Columbia is party and thus contractor is not entitled to trial de novo in district court. *Gunnell Construction Company, Inc. v. District of Columbia* (1977, 551 F.2d 425, 179 U.S. App. D.C. 239).

§ 1-802. Contracts in which Commissioner personally interested to be void.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-803. Commissioner's contracts to be in writing and filed.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

ABOLITION OF OFFICE

The office of secretary of the District was established by section 4 of Act Feb. 21, 1871, ch. 62, 16 Stat. 420. The first section of Act June 20, 1874, ch. 337, 18 Stat. 116, provided in part that all provisions of law providing for a secretary for the District are hereby repealed. See also section 1-214 and notes thereunder.

NOTES TO DECISIONS

Filing

Where landscape architect and city planner who performed services for municipality pursuant to oral contract with acting director of agency submitted itemized statement which was initialed by acting director and which complied with requirement of writing, failure to file same as required by law did not rest with landscape architect and city planner. *L. E. Coffin, Jr. v. District of Columbia* (D.C. App. 1974, 320 A.2d 301).

Negligence

Even if the District of Columbia succeeded in proving that sewer construction contractor was negligent in connection with explosion at job site wherein several employees of the contractor were injured and one was killed, where it had been established by a previous judgment against the District arising out of the same accident that the District was concurrently negligent, such concurrent negligence precluded the District from recovering against the contractor under contract provision requiring the contractor and its insurer to indemnify the District for losses sustained as a result of negligence on the part of the contractor. *District of Columbia v. C. F. & B., Inc., et al.* (1977, 442 F.Supp. 251).

Where provision of sewer construction contract and performance bond required the contractor and its insurer to indemnify the District of Columbia only for losses sustained as a result of negligence on the part of the contractor, the District could not recover for damages resulting either from its own negligence or from acts or omissions in which it was concurrently negligent. *Id.*

Oral contract

Where applicable regulations prohibited municipal contracting officers from entering into contracts for personal services in excess of \$2,500 and required such contracts to be in writing and entered into by municipal procurement officer, landscape architect and city planner who provided services for municipality pursuant to oral agreement with acting director of agency and whose itemized statement for services in the amount of \$3,270 had been initialed by acting director and submitted for processing and payment could not recover full amount of bill but was entitled to recover sum of \$2,500. *L. E. Coffin, Jr. v. District of Columbia* (D.C. App. 1974, 320 A.2d 301).

Itemized statement for services performed for municipality by landscape architect and city planner pursuant to oral contract with acting director of agency satisfied statute of frauds. *Id.*

§ 1-804a. Public contractors required to post performance and payment bonds in certain cases—Amount of bonds.

(a) Before any contract, exceeding \$10,000 in amount, for the construction, alteration, or repair of any public building or public work of the District of Columbia is awarded to any person, such person shall furnish to the District of Columbia the following bonds, which shall become binding upon the award of the contract to such person, who is hereinafter designated as "contractor":

* * * * *

(b) Nothing in this section shall be construed to limit the authority of the Mayor to require a performance bond or other security in addition to those, or in cases other than the cases specified in subsection (a) of this section, or he, through the District of Columbia Minority Business Opportunity Commission, may waive the requirement for performance and payment bonds in such cases as he shall determine. (As amended Aug. 14, 1973, Pub. L. 93-89, title V, § 501, 87 Stat. 305; Mar. 29, 1977, D.C. Law 1-95, § 11(a), 23 DCR 9532b.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1977—Act Mar. 29, 1977, D.C. Law 1-95, amended subsec. (a) by substituting "\$25,000" for "\$10,000" and subsec. (b) by inserting ", or he, through the District of Columbia Minority Business Opportunity Commission, may waive the requirement for performance and payment bonds in such cases as he shall determine" immediately after "of this section".

1973—Section 501 of Act Aug. 14, 1973, Pub. L. 93-89, amended the first sentence by striking out "\$2,000" and inserting in lieu thereof "\$10,000".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 14 of act Mar. 29, 1977, D.C. Law 1-95, set out as a note under § 1-851.

NOTES TO DECISIONS

Negligence

Even if the District of Columbia succeeded in proving that sewer construction contractor was negligent in connection with explosion at job site wherein several employees of the contractor were injured and one was killed, where it had been established by a previous judgment against the District arising out of the same accident that the District was concurrently negligent, such concurrent negligence precluded the District from recovering against the contractor under contract provision requiring the contractor and its insurer to indemnify the District for losses sustained as a result of negligence on the part of the contractor. *District of Columbia v. C. F. & B., Inc., et al.* (1977, 442 F.Supp. 251).

Where provision of sewer construction contract and performance bond required the contractor and its insurer to indemnify the District of Columbia only for losses sustained as a result of negligence on the part of the contractor, the District could not recover for damages resulting either from its own negligence or from acts or omissions in which it was concurrently negligent. *Id.*

§ 1-804b. Rights of laborers and materialmen to sue on payment bonds—Prior notice of claim required in certain cases—Time limitations—Suit to be brought in name of District of Columbia.

NOTES TO DECISIONS

Jurisdiction of District Court

Requirement of this section that every materialman suit should be brought in Superior Court does not deprive District Court of diversity jurisdiction in such suits nor render such cases nonremovable once they were brought in Superior Court. *District of Columbia v. Ranger Construction Company et al.* (1974, 394 F. Supp. 801).

§ 1-804c. Certified copy of bond and contract to be furnished on application of interested parties—Copy as prima facie evidence—Fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-805. Contractors' bond not required for contracts not exceeding \$25,000.

In all cases where the Mayor of the District of Columbia contracts for work or material involving a sum not exceeding \$25,000 it shall not be necessary for said Mayor to require a bond with said contract. (June 28, 1906, 34 Stat. 546, ch. 3575; June 26,

1912, 37 Stat. 168, ch. 182; Aug. 3, 1968, Pub. L. 90-455, § 4, 82 Stat. 629; Aug. 14, 1973, Pub. L. 93-89, title V, § 501, 87 Stat. 305; Mar. 29, 1977, D.C. Law 1-95, § 11(b), 23 DCR 9532b.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1977—Act Mar. 29, 1977, D.C. Law 1-95, amended section by substituting "\$25,000" for "\$10,000" and by striking "; but no work capable of execution under a single contract, nor any purchase of material where the total expenditure involved is greater than \$10,000, shall be subdivided or lessened for the purpose of reducing the sum of money to be paid therefor to less than that amount".

1973—Section 501 of Act Aug. 14, 1973, Pub. L. 93-89, amended section by striking out "\$2,000" and inserting in lieu thereof "\$10,000".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 14 of act Mar. 29, 1977, D.C. Law 1-95, set out as a note under § 1-851.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7-603.

§ 1-807. Retents.

On all contracts made by the District of Columbia for construction work there shall be withheld, until completion and acceptance of the work, a retent of 10 per centum of the total amount of any payments made thereunder as a guaranty fund that the terms of such contracts shall be strictly and faithfully performed: *Provided, however,* That whenever 50 per centum of the work required under a contract for construction work has been completed and payments therefor have been made the Mayor of the District of Columbia, in his sole discretion, may authorize subsequent payments to be made to the contractor without withholding from such subsequent payments 10 per centum thereof as required by this section, or the said Mayor may authorize retention from such subsequent payments of less than 10 per centum thereof, and whenever the work is substantially complete, the Mayor, if he considers the amount retained to be in excess of the amount adequate for the protection of the District of Columbia, at his discretion may release to the contractor all or a portion of such excess amount; and the said Mayor in his sole discretion, may further authorize payment in full, including retained percentages, for each separate building or public work on which the price is stated separately in the contract upon completion and acceptance of such building or work. (Mar. 3, 1887, 24 Stat. 501, ch. 355; Mar. 31, 1906, 34 Stat. 94, ch. 1356, § 1; Aug. 3, 1949, 63 Stat. 493, ch. 386; Aug. 3, 1968, Pub. L. 90-455, § 5, 82 Stat. 629.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Provisions of Act Mar. 3, 1887, cited as a credit for this section, which authorized the Treasurer of the United States to retain or invest money retained from District contracts, have been omitted in view of the amendatory 1949 Act which eliminated the requirement that retents for one year or more be deposited with the Treasurer of the United States.

AMENDMENTS

1968—Section 5 of Act Aug. 3, 1968, Pub. L. 90-455, amended section by inserting the following before the semicolon, "and whenever the work is substantially complete, the Commissioners, if they consider the amount retained to be in excess of the amount adequate for the protection of the District of Columbia, at their discretion may release to the contractor all or a portion of such excess amount".

1949—Act Aug. 3, 1949, amended section generally. Prior to amendment, the section read: "On all contracts made by the District of Columbia for construction work there shall be held a retent of ten per centum of the cost of such construction work as a guaranty fund to keep the work done under such contracts in repair, and that the terms of such contracts shall be strictly and faithfully performed. On contracts for the construction of asphalt, tar, brick, cement, or stone pavements the retent shall be held for a term of five years from the date of completion of the contract. On contracts for the construction of bridges and sewers the retent shall be held for a term of one year from the date of completion of the contract. On contracts for the construction of buildings, and other contracts for construction work, the retent shall be held until the completion of the work. All retents for one year or more shall be deposited with the Treasurer of the United States as now required by law."

CROSS REFERENCE

Cash retents not required to guarantee street repairs, see § 7-603.

§ 1-808. Advertisement for proposals for purchases and contracts for supplies or services; application to sales and contracts to sell.

Unless otherwise provided in the appropriation concerned or other law, purchases and contracts for supplies or services for the Government may be made or entered into only after advertising a sufficient time previously for proposals, except (1) when the amount involved in any one case does not exceed \$10,000, (2) when the public exigencies require the immediate delivery of the articles or performance of the service, (3) when only one source of supply is available and the Government purchasing or contracting officer shall so certify, or (4) when the services are required to be performed by the contractor in person and are (A) of a technical and professional nature or (B) under Government supervision and paid for on a time basis (5) in order to foster local minority business opportunities, the Mayor, through the District of Columbia Minority Business Opportunity Commission, may establish that the advertisement of selected contracts be limited to categories of contractors as he defines for supply and service contracts or he may authorize negotiation in selected cases. Except (1) as authorized by section 1638 of Appendix to Title 50, U.S. Code, (2) when otherwise authorized by law, or (3) when the reasonable value involved in any one case does not exceed \$500, sales and contracts of sale by the Government shall be governed by the requirements of this section for advertising (R.S. § 3709; Aug. 2, 1946, ch. 744, § 9(a), 60 Stat. 809; June 30, 1949, ch. 288, title VI, § 602(f), formerly title V, § 502(e), 63 Stat. 403, renumbered Sept. 5,

1950, ch. 849, §§ 6 (a), (b), 8(c), 64 Stat. 583; Aug. 28, 1958, Pub. L. 85-800, § 7, 72 Stat. 967; July 25, 1974, Pub. L. 93-356, § 1, 88 Stat. 390; Mar. 29, 1977, D.C. Law 1-95, § 11(c), 23 DCR 9532b.)

REFERENCES IN TEXT

Section 1638 of Appendix to Title 50, U.S. Code, referred to in the text, was repealed by Act June 30, 1949, ch. 288, title VI, § 602(a) (1), 63 Stat. 399, eff. July 1, 1949, renumbered by Act Sept. 5, 1950, ch. 849, § 6 (a), (b), 64 Stat. 583, and is now covered by section 484 of Title 40, U.S. Code, Public Buildings, Property, and Works.

AMENDMENTS

1977—Act Mar. 29, 1977, D.C. Law 1-95, amended section by adding the fifth clause in the first sentence.

1974—Act July 25, 1974, Pub. L. 93-356, substituted "\$10,000" for "\$2,500" in the first sentence.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 14 of act Mar. 29, 1977, D.C. Law 1-95, set out as a note under § 1-851.

REPEAL OF EXEMPTIONS

Section 9(b) of Act Aug. 2, 1946, provided: "Exemptions from section 3709, Revised Statutes [this section], in other law in amounts of \$100 or less are hereby repealed."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-226a, 1-262, 1-1002, 1-1354, 4-186, 5-713, 9-209.

§ 1-809a. Advertising and publication of notices—Availability of appropriations.

Appropriations authorized by this Act or any Act of Congress shall be available to the Mayor for general advertising authorized by law, and for the publication of notices of public hearings, orders, regulations, amendments of orders and regulations, tax and school notices, and similar matters of public interest, in the District of Columbia Register, and, except as otherwise provided by law, in such newspapers, legal periodicals, trade journals, and other printed media at such times and in such places as may be approved by the said Mayor. (Oct. 26, 1973, Pub. L. 93-140, § 25(d), 87 Stat. 509.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

"This Act", referred to in text, is the Act of Oct. 26, 1973, Pub. L. 93-140, 87 Stat. 504. See Tables for classification of the act to the Code.

APPROPRIATIONS

See note under § 1-226a.

§ 1-810. Separate contracts for material and for labor authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-811. Operation of District quarry.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-812. Use of agents in purchasing sites for schools and public buildings—Commissions—Future enlargement.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-813. Building materials may be tested by Bureau of Standards.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-814. Testing materials in laboratory of highway department.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-817. Sewerage agreement with Maryland authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-817a. Contracts for removal of certain byproducts of the District of Columbia sewage-treatment plant.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-817c. Sewerage agreement with Virginia authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-818. Sale of property unfit for service—Proceeds credited to appropriation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-819. Exchange of equipment on purchase of new.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-820. Reciprocal agreements for police mutual aid with authorities in Maryland and Virginia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-823. Same; Commissioner to direct out of District police and other personnel—Enforcement of District laws by out of District police and personnel.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-824. Contracts for inspection, maintenance and repair of fixed equipment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-825. Contracts extending beyond one year.

No contract involving expenditures out of an appropriation which is available for more than one year shall be made for a period of more than five years unless, with respect to a particular contract, the Council, by a two-thirds vote of its members present and voting, authorizes the extension of such period for such contract. Such contracts shall be made pursuant to criteria established by act of the Council. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 451, 87 Stat. 803.)

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

§ 1-826. Agreements between United States and District of Columbia for reimbursable services—Delegation of functions—Costs and payments—Exception.

(a) For the purpose of preventing duplication of effort or for the purpose of otherwise promoting

efficiency and economy, any Federal officer or agency may furnish services to the District government and any District officer or agency may furnish services to the Federal Government. Except where the terms and conditions governing the furnishing of such services are prescribed by other provisions of law, such services shall be furnished pursuant to an agreement (1) negotiated by the Federal and District authorities concerned, and (2) approved by the Director of the Federal Office of Management and Budget and by the Mayor. Each such agreement shall provide that the cost of furnishing such services shall be borne in the manner provided in subsection (c) by the government to which such services are furnished at rates or charges based on the actual cost of furnishing such services.

(b) For the purpose of carrying out any agreement negotiated and approved pursuant to subsection (a), any District officer or agency may in the agreement delegate any of his or its functions to any Federal officer or agency, and any Federal officer or agency may in the agreement delegate any of his or its functions to any District officer or agency. Any function so delegated may be exercised in accordance with the terms of the delegation.

(c) The cost to each Federal officer and agency in furnishing services to the District pursuant to any such agreement are authorized to be paid, in accordance with the terms of the agreement, out of appropriations available to the District officers and agencies to which such services are furnished. The costs to each District officer and agency in furnishing services to the Federal Government pursuant to any such agreement are authorized to be paid, in accordance with the terms of the agreement, out of appropriations made by the Congress or other funds available to the Federal officers and agencies to which such services are furnished, except that the Chief of the Metropolitan Police shall on a nonreimbursable basis when requested by the Director of the United States Secret Service assist the Secret Service and the Executive Protection Service in the performance of their respective protective duties under section 3056 of title 18 of the United States Code and section 302 of title 3 of the United States Code. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 731, 87 Stat. 822.)

CODIFICATION

Section is also classified to 31 U.S.C. 685a.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

CROSS REFERENCES

Board of Education authorized to enter into contracts with governments of United States and District of Columbia and other public and private agencies to render and receive services, see § 31-1735.

Federal control of Metropolitan Police in emergencies, see § 4-101a.

Services furnished by Civil Service Commission authorized to be compensated for under this section, see § 1-322.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-162, 1-322, 1-827, 9-146.

§ 1-827. Same; Adjustment and payment of debts—Reimbursement of costs of demonstrations.

(a) Subject to section 1-826, the Mayor, with the approval of the Council, and the Director of the Office of Management and Budget, is authorized and empowered to enter into an agreement or agreements concerning the manner and method by which amounts owed by the District to the United States, or by the United States to the District, shall be ascertained and paid.

(b) The United States shall reimburse the District for necessary expenses incurred by the District in connection with assemblages, marches, and other demonstrations in the District which relate primarily to the Federal Government. The manner and method of ascertaining and paying the amounts needed to so reimburse the District shall be determined by agreement entered into in accordance with subsection (a) of this section. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 737 (a), (b), 87 Stat. 824.)

CODIFICATION

Section comprises subsecs. (a) and (b) of section 737 of Act Dec. 24, 1973. Subsection (c) of section 737 is classified to § 1-213c.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

§ 1-828. Personal financial interest in contract or transaction—Forfeiture of office or position on conviction.

Any officer or employee of the District who is convicted of a violation of section 208 of title 18, United States Code, shall forfeit his office or position. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 732, 87 Stat. 822.)

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

CROSS REFERENCE

Persons convicted of certain crimes ineligible to hold office, see § 1-316.

SUBCHAPTER II.—MINORITY CONTRACTING

§ 1-851. Findings.

The Council finds that—

(a) a persistent pattern of racial discrimination in our society has prevented minority business

enterprises from gaining a fair share of contracts and subcontracts for construction, supplies, and materials in both the public and private sector;

(b) the inability of minority business enterprises to prosper and participate fully is particularly unacceptable in the District of Columbia, where there is a great disparity between the number of minority business enterprises operating in the community and the number of such enterprises participating in public contracting;

(c) in addition to other impediments, difficulties in the financing and bonding markets have kept minority business enterprises from full participation in public contracting in the District of Columbia;

(d) as a result of this discrimination, minority group residents of the District of Columbia have not only been deprived of equal business opportunities, but have also been deprived of numerous employment opportunities;

(e) the District of Columbia government is committed to a policy of equal employment opportunity, and carries out affirmative action programs to fulfill that policy, in the allocation of District of Columbia government contracts; and

(f) the minority contracting programs established according to this subchapter will work to achieve the goal of equal opportunity, to overcome the effects of past discrimination in the allocation of contracts, and the financing and bonding of minority business enterprises. (Mar. 29, 1977, D.C. Law 1-95, § 2, 23 DCR 9532b.)

EFFECTIVE DATE

Section 14 of act Mar. 29, 1977, D.C. Law 1-95, provided: "Sections 2, 3, 4, 5, 6, 9, 10, and 14 of this act [enacting sections 1-851 to 1-855, 1-858, 1-859, and this section] shall become effective as provided by section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)] and all other sections of this act [enacting sections 1-856, 1-857, 1-860, and 1-861 and provision set out as a note under this section and amending sections 1-804a, 1-805, and 1-808] shall become effective 90 days thereafter."

SHORT TITLE

The first section of act Mar. 29, 1977, D.C. Law 1-95, provided "That this act [enacting this subchapter and amending sections 1-804a, 1-805, and 1-808] may be cited as the 'Minority Contracting Act of 1976'."

§ 1-852. Definitions.

For the purposes of this subchapter:

(a) The term "minority" means Blacks, Hispanics, American Indians, Orientals, and Eskimos.

(b) The term "minority business enterprise" means a business enterprise of which more than 50 percent of the voting shares or interest in such business enterprise is held by individuals who are members of a minority, and that more than 50 percent of the net profit or loss attributable to that business enterprise accrues to members of a minority.

(c) The term "local business enterprise" means a business enterprise licensed under chapter 23 of title 47, or subject to the tax levied under sections 47-1580 to 47-1580b.

(d) The term "joint venture" means a combination of contractors performing a specific job in which

minority business enterprises participate and share a percentage of the net profit or net loss.

(e) The term "Commission" means the District of Columbia Minority Business Opportunity Commission established by section 1-853.

(f) The term "agency" means an agency, department, office, or instrumentality of the District of Columbia government.

(g) The term "sheltered market" means a process whereby contracts or subcontracts are designated, before solicitation of bids, for limited competition from minority business enterprises on either a negotiated or competitive bid process. (Mar. 29, 1977, D.C. Law 1-95, § 3, 23 DCR 9532b.)

CODIFICATION

In subsec. (c), "chapter 23 of title 47" read in the original "section 9 of the Act of July 1, 1902 (D.C. Code, secs. 47-2301 et seq.)". Since the Act of July 1, 1902, does not contain a section 9, this reference has been translated to reflect the probable intent of the Council.

§ 1-853. Establishment and termination of Minority Business Opportunity Commission—Appointment of members—Vacancies—Removal—Oath of office—Compensation.

(a) There is hereby established for the District of Columbia a District of Columbia Minority Business Opportunity Commission (hereinafter in this subchapter referred to as the "Commission") to oversee the implementation of minority participation in public contracting. The Commission shall exercise the powers set forth in section 1-859 to foster local minority business opportunities consistent with ensuring that the interests of the District of Columbia government are protected. The Commission shall terminate at the end of the third complete calendar year occurring after March 29, 1977.

(b) The Commission shall consist of seven members appointed by the Mayor within 30 days after March 29, 1977.

(c) Three of the members shall be appointed from the membership of the Washington Area Construction Industry Task Force. Of the remaining four, one member shall be a Minority Construction Contractor, who has acted as a general contractor; and two members shall be minority suppliers of goods, services, and materials other than construction.

(d) Any person appointed to fill a vacancy on the Commission shall be appointed only for the unexpired term of the member whose vacancy he is filling in the same manner, and according to the same criteria, as the member whose term he is appointed to fill.

(e) The Mayor may remove any member of the Commission for misconduct, incapacity, or neglect of duty in accordance with a procedure which the Mayor shall establish that shall include procedure for notification, opportunity for hearing and review.

(f) Each member of the Commission shall, before entering upon the discharge of the duties of his office, take, subscribe and file with the Corporation Counsel of the District of Columbia, a required oath of office.

(g) The members of the Commission shall receive no compensation for time spent in attendance at meetings or in conducting other official business of

the Commission. (Mar. 29, 1977, D.C. Law 1-95, § 4, 23 DCR 9532b.)

CODIFICATION

In subsecs. (a) and (b), "March 29, 1977" has been substituted for "the effective date of this act".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-852.

§ 1-854. Regulations—Disclosure of financial interests—Commission meetings—Election of chairman and vice-chairman—Staff—Records and files—Register of applicants.

(a) The Commission may promulgate, amend, repeal and enforce such regulations, consistent with the provisions of this subchapter, as may be necessary and appropriate to promote the ethical practice of contracting and subcontracting and to carry out the provisions, intents and purposes of this subchapter.

(b) Any Commission member who has direct financial or personal interest in any measure pending before the Commission shall disclose this fact to the Commission and shall not vote upon such measure.

(c) The Commission shall meet at least once each month for the purpose of transacting such business as may properly come before it. Special meetings may be held at such times as a majority of the Commission provides. Notice of each meeting and the time and place thereof shall be given to each member in such manner as the Commission may provide. Four members of the Commission shall constitute a quorum and action of the Commission shall be based on a majority vote of those present.

(d) At the initial meeting of the Commission upon appointment, and at the October meeting in each year, the members of the Commission shall elect a chairman and a vice-chairman, from among their number, each to serve for a term of one year.

(e) The Mayor shall, by transferring existing contract compliance officials and support staff from executive agencies or departments, make available to the Commission sufficient administrative staff and the necessary support services within 60 days after March 29, 1977. The Mayor shall also appoint a staff director from existing government officials.

(f) A record of the proceedings of the Commission shall be kept and files shall be maintained. The Commission shall maintain a register of all applicants for registration showing for each applicant the date of the application, name, qualifications, place of business, place of applicant's residence, and whether the certificate was granted or refused. The books and register of the Commission shall be prima facie evidence of all matters recorded herein. (Mar. 29, 1977, D.C. Law 1-95, § 5, 23 DCR 9532b.)

CODIFICATION

In subsec. (e), "March 29, 1977" has been substituted for "the effective date of this act".

§ 1-855. Reports.

The Commission shall submit a report every six months to the Mayor and to the Council reviewing the performance of agencies in meeting the goals established under this subchapter. The first report shall be submitted not later than the end of the sixth complete month occurring after March 29, 1977. Such report shall—

(a) be attested by the affidavits of the chairman, the vice-chairman, and include a copy of the roster of registered contracts and joint ventures;

(b) state the degree to which each agency has met the goals in section 1-856, and identify agencies which have failed to comply with the provisions of this subchapter;

(c) recommend amendments to this subchapter which the Commission believes necessary to accomplish its purposes, including higher goals than those set forth in section 1-856; and

(d) summarize its general activities during the reporting period. (Mar. 29, 1977, D.C. Law 1-95, § 6, 23 DCR 9532b.)

CODIFICATION

In the matter preceding par. (a), "March 29, 1977" has been substituted for "the effective date of this act".

§ 1-856. Allocation of agency contracts to local minority enterprises—Quarterly agency reports on contracts—Council review of goals.

(a) Each agency of the District of Columbia, including those agencies which contract a portion of their procurement through the Department of General Services shall, unless otherwise determined by the Commission in section 1-859;

(1) allocate its construction contracts in order to reach the goal of 25 percent (or such other goal as may be determined by the Commission under the provisions set forth below) of the dollar volume of all construction contracts to be let to local minority business enterprises;

(2) allocate its procurement of goods and services other than construction in order to reach the goal of 25 percent (or such other goal as may be determined by the Commission under the provisions set forth below) of the dollar volume to local minority business enterprises;

(3) provide quarterly reports to the Commission specifying, with respect to the contracts and subcontracts subject to the provisions of this subchapter within 30 days after the end of a quarter—

(A) the means by which it intends to implement the programs provided in section 1-857 during the next 12 months;

(B) the dollar percentage of all contracts and subcontracts it has let during the quarter which were let to minority contractors and other minority business enterprises;

(C) the dollar volume of contracts and subcontracts let during the quarter to minority business enterprises;

(D) the degree to which the agency has met the goals set forth in subsections (a) and (b) of this section, and an explanation of any failure to meet those goals; and

(E) a description of its past and current activities under section 1-857.

(b) Upon receipt of the semi-annual report from the Commission, the Council shall review the goals set forth under this section and consider appropriate amendments to this subchapter. (Mar. 29, 1977, D.C. Law 1-95, § 7, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-855, 1-857, 1-859.

§ 1-857. Agency programs to assist local minority contractors.

To achieve the goals set forth in section 1-856, a program(s) designed to assist local minority contractors shall be established under guidelines issued by the Commission pursuant to section 1-859(a). Such a program shall be implemented by each agency within 60 days after issuance of such guidelines. This program shall include, but not be limited to, a sheltered market approach to contracts. Minority contractors shall not be limited to bidding or negotiating only on contracts within these programs. (Mar. 29, 1977, D.C. Law 1-95, § 8, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-856, 1-858, 1-859.

§ 1-858. Certificates of registration—Criteria—Applications—Expiration and renewal—Revocation—Charges of violations—Hearings—Subpoenas—Reissuance.

(a) Notwithstanding any other provision of law, no firm or joint venture shall be permitted to participate in the program established under section 1-857, unless it has been issued a certificate of registration under the provisions of this subchapter. Eligibility criteria for certification, under this subchapter, shall include the following:

(1) written evidence that the applicant is a bona fide, minority business enterprise;

(2) written evidence that the applicant is a local entity;

(3) written evidence of the applicant's financial standing;

(4) compliance with the regulations set forth in subsection (b) of this section; and

(5) fulfillment of such other criteria as the Commission may require by regulation.

(b) Any firm or joint venture desiring to be registered as a bona fide minority business enterprise in the District of Columbia shall make and file with the Commission a written application on such form as may be prescribed by the Commission. The Commission shall require the applicant to furnish evidence of eligibility under this subchapter, ability, character and financial position, which may be the applicant's last financial statement as of a date not more than 90 days prior thereto, on a form prescribed by the Commission which will include an affidavit regarding the correctness of such statement. If at any time the information previously submitted changes wherein a firm or joint venture can no longer satisfy the requirements of this subchapter, the applicant shall immediately report such change to the Commission. The use of information submitted to the Commission shall be governed by the terms set forth in existing law. If the application is satisfactory to the Commission, the Commission shall issue to the applicant a certificate to engage in the sheltered market program established under section 1-857.

(c) A certificate of registration shall expire two years from the date of approval. An application for renewal of a certificate must be submitted 90 days prior to the expiration date or as the Commission determines.

(d) The Commission may revoke the certificate of any firm or joint venture registered hereunder who is found guilty of any of the following conditions:

- (1) fraud or deceit in obtaining the registration;
- (2) furnishing of substantially inaccurate or incomplete ownership or financial information;
- (3) failure to report changes which affect the requirement for certification;
- (4) gross negligence, incompetence, financial irresponsibility, or misconduct in the practice of his profession; or
- (5) willful violation of any provision of this subchapter, or regulations adopted pursuant thereto.

(e) Any person may prefer charges of a violation of this subchapter against any applicant for registration, or contractor registered hereunder. Such charges shall be in writing and sworn to by the complainant and submitted to the Commission. Such charges, unless dismissed without hearing by the Commission as unfounded or trivial, shall be heard and determined within three months after the date on which they were preferred. A time and place for such hearing shall be fixed by the Commission. A copy of the charges together with the notice of the time and place of hearing shall be served on the accused personally or by certified or registered mail thirty days before the fixed date for the hearing. At the hearing the accused shall have the right to appear personally by representative and to cross-examine witnesses against him, and to present evidence and witnesses in his defense. In connection with any such hearing, the Commission shall have the power to issue subpoenas requiring the attendance of witnesses and the production of records, papers and other documents. If after such hearing the Commission shall find that the charges are upheld, the Commission shall revoke the registration of the accused, or take such other action as it deems appropriate.

(f) The Commission may at any time reissue a certificate of registration to any firm or joint venture whose certificate has been revoked, provided four or more members of the Commission vote in favor of such reissuance. The Commission may consider whether the firm should be required to submit satisfactory proof that conditions within the company which lead to the violation have been corrected. (Mar. 29, 1977, D.C. Law 1-95, § 9, 23 DCR 9532b.)

§ 1-859. Functions of the Commission.

The Commission shall—

- (a) establish procedures and guidelines for the implementation of the programs established pursuant to this subchapter.
- (b) determine which minority business enterprises and joint ventures will be eligible for certification under this subchapter.
- (c) review the procurement plans of each agency of the District of Columbia government and determine, if it deems appropriate, which contracts, or parts thereof, shall be reserved for the programs established under section 1-857. Where an agency has failed to meet the goals set forth in section 1-856, the Commission shall reserve portions of the agency's contracts to be performed in accordance with the programs established under section 1-857,

so that such agency's failings shall be timely remedied;

(d) consider agency requests for adjustment of goals in particular instances, *Provided*, That the Commission report to the Mayor and the Council each time it acts upon such requests, and submit to the Council on a semi-annual basis recommendations for changes of the goals under section 1-856, on an agency basis if appropriate, and accompanied by necessary supporting data;

(e) determine that portion of the dollar amount of a minority/non-minority joint venture which may be attributed toward an agency's percentage goal;

(f) may recommend any agency to waive bonding in excess of the standard waiver provided in section 11(a) and 11(b) of this act where such a waiver is appropriate and necessary to achieve the purposes of this subchapter;

(g) may recommend any agency to make advance payments to a certified contractor or to subdivide a contract into smaller parts where the Commission has determined that such payments of such subdivisions are necessary to achieve the purposes of this subchapter;

(h) review bids in the sheltered market arrangements established under section 1-857 and may authorize agencies to refuse to let a contract where the Commission determines that bids for a particular contract are excessive;

(i) maintain contacts with the business community (financial institutions, and bonding companies,) and elicit cooperation for economic development for the District of Columbia;

(j) review minority contracting problems and make further recommendations that increase minority contractor's participation with the District of Columbia government. Such recommendations shall include, but not be limited to, improved schedules that ensure prompt payment to contractors, special geographic radii requirements on certain contracts, innovative contract advertising procedures, the encouragement of joint ventures, and advising the Mayor on methods to be utilized to ensure minority participation;

(k) review and determine the continued eligibility of contractors certified by the Commission; and

(l) issue regulations to implement this subchapter. (Mar. 29, 1977, D.C. Law 1-95, § 10, 23 DCR 9532b.)

REFERENCE IN TEXT

Section 11(a) and 11(b) of this act, referred to in subsection (f), is section 11 (a) and (b) of act Mar. 29, 1977, D.C. Law 1-95, which amended sections 1-804a(a) and (b) and 1-805.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-853, 1-856, 1-857.

§ 1-860. Advance, partial, or progress payments under contracts—Security.

(a) Any District of Columbia agency may (1) make advance, partial, progress or other payments under contracts for property or services made by the agency; and (2) insert in bid solicitations for procurement of property or services, a provision

limiting to minority business concerns, advance or progress payments.

(b) Payments made under subsection (a) may not exceed the unpaid contract price.

(c) Advance payments under subsection (a) may be made only upon adequate security and a determination by the agency head, upon recommendation by the Commission, that to do so would be in the public interest. Such security may be in the form of a lien in favor of the government on the property contracted for, on the balance in an account in which such payments are deposited, and on such of the property acquired for performance of the contract as the parties may agree. This lien shall be paramount to all other liens imposed by the District of Columbia government. (Mar. 29, 1977, D.C. Law 1-95, § 12, 23 DCR 9532b.)

§ 1-861. Severability.

If any provision of this subchapter, or any section, sentence, clause, phrase or word or the application thereof, in any circumstance is held invalid, the validity of the remainder of the subchapter and of the application of any other provision section, sentence, clause, phrase, or word shall not be affected. (Mar. 29, 1977, D.C. Law 1-95, § 13, 23 DCR 9532b.)

Chapter 9.—CLAIMS AGAINST DISTRICT

Sec.

1-907. Settlement of claims of District employees for damages to or loss of personal property incident to service.

NON-LIABILITY OF DISTRICT EMPLOYEES

1-925. Action against District employees barred for negligent operation of vehicles—Exception—Indemnification of medical employees—Disciplinary actions not affected.

§ 1-901. Service of process.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-902. Settlement of claims and suits against the District of Columbia—Cases that may be settled—Defenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Abuse of discretion

Where plaintiff complained against District of Columbia for false arrest, false imprisonment, unlawful search and assault, District's pretrial statement demonstrated that it would not be surprised by testimony on causes other than false arrest and there was no indication that plaintiff had intended to abandon other causes, trial court abused its discretion in refusing to permit plaintiff to amend pretrial order to include other claims on basis that only issue of false arrest had been spelled out in pre-

trial order. *C. L. Clarke v. District of Columbia* (D.C. App. 1973, 311 A. 2d 508).

Attorney fees, recovery from District

The fact that successful taxpayer-litigants against District of Columbia prevented the collection of illegally imposed taxes, rather than required their refund after collection, could not, in principle, defeat their recovery of attorney fees as successful litigants; thus, the common fund or common benefit exception to general American rule which, in absence of statutory authorization, prohibits an award of attorney fees to a successful litigant, could be applied on basis of tax savings realized by affected taxpayers and trial court could exercise jurisdiction over District of Columbia to require collection of appropriate fees from the benefitted taxpayers, unless such course of action is otherwise prohibited or unwarranted. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1977, 381 A. 2d 578).

Civil Rights Act

Neither District of Columbia nor its officers are amenable to suit under statute providing federal remedies in suits against state officers based on acts committed under color of state law and in violation of rights, privileges and immunities secured under the Constitution and laws of the United States in civil rights class action brought by plaintiff who, following his arrest, was taken into custody and held for 32 hours before being presented to Superior Court judge for setting of bail. *V. W. Jones v. District of Columbia et al.* (1977, 424 F. Supp. 110).

In light of unique status of District of Columbia and absent any indication in either language, purposes or history of civil rights statute dealing only with those deprivations of rights which are accomplished under the color of the law of "any State or Territory" of a legislative intent to include the District within scope of its coverage, District of Columbia does not constitute a "State or Territory" within meaning of the statute; disapproving *Sewell v. Pegelow*, 291 F.2d 196 (CA4 1961). *District of Columbia v. M. Carter* (1973, 93 S. Ct. 602, 409 U.S. 418; rev'g 447 F. 2d 358, 144 U.S. App. D.C. 388).

Damages

Punitive damages were properly denied in father's suit against District of Columbia, on allegations that District parole officers negligently failed to advise potential employer of parolee's prior history of violent sex-related crimes, with result that parolee was hired to work at apartment complex, where he subsequently raped and murdered plaintiff's daughter, in view of fact that evidence showed no indication that higher officers of District government either participated in or ratified parole officers' misfeasance. *R. C. Rieser, Administrator etc. v. District of Columbia et ano.* (1977, 563 F. 2d 462, 183 U.S. App. D.C. 375).

False arrest

Police report of plaintiff's arrest, coupled with his trial and acquittal and official United States Attorney "reports" on such case, did not, for purposes of plaintiff's claim against District of Columbia for false arrest and malicious prosecution, constitute sufficient compliance with provision of this section which provides that "A report in writing by the Metropolitan Police Department, in regular course of duty, is a sufficient notice under this section." *H. Jenkins v. District of Columbia* (D.C. App. 1977, 379 A. 2d 1177).

Allegation that plaintiff was arrested and imprisoned without process raised the presumption of unlawful restraint and shifts to defendant burden of justifying the restraint as lawful. *C. L. Clarke v. District of Columbia* (D.C. App. 1973, 311 A. 2d 508).

Absence of probable cause for arrest was not an essential element of plaintiff's proof in action for false arrest, but was simply a matter of defense to allegations of complaint; thus, failure of plaintiff to establish such would not preclude her from recovering. *Id.*

Respondent superior

Evidence that metropolitan police department is under general duty to enforce laws of the United States within the District, that there is a Capitol police force with special obligation to patrol Capitol grounds, that

the Capitol police force is staffed by members of the metropolitan police department, that Chief of the metropolitan police had furnished members of the metropolitan police force for purpose of keeping order during demonstrations, and that the Capitol police force was under the direction of United States officials demonstrates that District of Columbia could be held liable for unlawful arrests of demonstrators despite contention that the Chief had become, at the time of the arrests, a borrowed servant of the United States. *R. V. Dellums et al. v. J. M. Powell, Chief etc.* (1977, 566 F.2d 216, 184 U.S. App. D.C. —).

Sovereign immunity

Where parole officer of District of Columbia was under clear duty, defined by Department of Corrections policy, to disclose parolee's full adult record when referring him for employment, and was similarly under duty to provide adequate supervision for parolee's parole, parole officer's actions in failing to disclose parolee's prior sex-related convictions to parolee's potential employers was "ministerial," not "discretionary" action, and District therefore was not shielded by sovereign immunity from liability arising out of parolee's actions in raping and murdering woman in apartment complex where he was employed. *R. C. Rieser, Administrator etc. v. District of Columbia et ano.* (1977, 563 F.2d 462, 183 U.S. App. D.C. 375).

An arresting officer can be held liable when acting under a statute which has not been declared unconstitutional if it is found that he or she should have anticipated that statute could not pass constitutional muster. *A. Shifrin et al. v. J. Wilson et al.* (1976, 412 F. Supp. 1282).

Although under District of Columbia common-law principles a distinction is made between discretionary and ministerial acts of public officials and immunity is provided in cases involving the former, the common-law immunity is not available in cases arising under the Civil Rights Act or cases arising under the Constitution itself. *Id.*

Although police chief, who allegedly was aware of dubious constitutionality of police regulation requiring a permit to give a speech in a public place and who was sought to be held liable for violations of plaintiff's constitutional rights in connection with his arrest for speaking without a permit, is not entitled to invoke a common-law immunity, he is entitled to a "good faith-reasonableness" qualified immunity. *Id.*

Municipal acts involving designing of streets and control of flow of traffic over them are discretionary in nature and therefore enjoy tort immunity. *District of Columbia, etc. v. North Washington Neighbors, Inc., et al.* (D.C. App. 1976, 367 A.2d 143; cert. denied 98 S.Ct. 68, — U.S. —).

Complaint which was brought by victim of shooting committed by police officer and which sought to hold police chief liable for negligence in hiring the officer and in failing to train and supervise him adequately and to hold the District of Columbia liable for negligence on the same grounds and vicariously liable for negligence of the police chief stated a cause of action against the District of Columbia and police chief on common-law grounds, notwithstanding fact that the officer was out of uniform at time of the alleged assault on plaintiff. *D. S. Marusa v. District of Columbia et al.* (1973, 484 F. 2d 828, 157 U.S. App. D.C. 348).

Federal Tort Claims Act in no way controls existence or scope of local government's immunity from suit. *Id.*

Action against the mayor of the District of Columbia and others seeking relief with respect to racial discrimination against Negro employees in the department of licenses and inspections was not barred by doctrine of sovereign immunity; the courts have power under the Constitution to remedy racial discrimination by a public agency in any form. *J. T. Watkins et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 941; aff'd 505 F.2d 477, 164 U.S. App. D.C. 370).

District of Columbia is immune from suit for torts of agents under doctrine of municipal immunity only if act complained of was committed in exercise of discretionary function, and if act is committed in exercise of ministerial function, District must respond. *C. Wade v. District of Columbia* (D.C. App. 1973, 310 A. 2d 857).

Municipal immunity of District of Columbia is matter of common-law theory of municipal governmental immunity as developed in case law of jurisdiction, and is not derived from sovereignty of United States or limited to same extent as that of Federal government under Federal Tort Claims Act. *Id.*

District of Columbia may be sued under common-law doctrine of respondeat superior for intentional torts of its employees acting within scope of their employment. *Id.*

Suit which sought to recover damages for loss of property stored in a warehouse partially destroyed by rioting mobs and which was based on allegation of negligent failure to provide against such an occurrence failed to state a valid claim for relief against District of Columbia. *D. Amos v. District of Columbia* (D.C. App. 1973, 309 A.2d 305).

Absent legislation to contrary, District of Columbia is not liable for losses incurred by actions of riotous persons as a result of failure of District or its officers to maintain public order. *Id.*

§ 1-903. Refund of taxes when similar assessments have been held void by court decisions—Limitations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-904. Settlements limited to \$10,000—Report to Congress—Appropriations authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-905. Effective date.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-906. Authority to compromise claim or suit—Limitations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-907. Settlement of claims of District employees for damages to or loss of personal property incident to service.

The provisions of sections 240 to 243 of title 31, United States Code, apply in respect to the damage to, or loss of, personal property incident to service of any officer or employee of the government of the District of Columbia, irrespective of whether the damage or loss occurs within or outside the District of Columbia, except that in applying such provisions in connection with the damage or loss of personal property of an officer or employee of the government of the District of Columbia, the terms

"agency" and "United States" shall be held to mean the government of the District of Columbia, and the term "head of agency" shall be held to mean the Mayor of the District of Columbia. (Aug. 31, 1964, Pub. L. 88-558, § 3(f), as added Oct. 12, 1968, Pub. L. 90-561, 82 Stat. 998.)

SUCCESSION IN GOVERNMENT

This District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section is also classified to 31 U.S.C. 241(f).

"Sections 240 to 243 of title 31, United States Code" in the original read "this Act" and referred to Pub. L. 88-558. For complete classification of Pub. L. 88-558, see Short Title note for "Military Personnel and Civilian Employees' Claims Act of 1964" under 31 U.S.C. 240.

NON-LIABILITY OF DISTRICT EMPLOYEES

§ 1-921. Definitions.

As used in sections 1-921 to 1-926 the term—

* * * * *

(h) "Medical employees of the District of Columbia" shall include physicians, dentists, optometrists, podiatrists, nurses, nursing assistants, emergency medical technician, emergency medical technician/paramedic, physicians' assistants, laboratory technicians, physical therapists, osteopaths, chiropodists and chiropractors in the employment of the District of Columbia.

(As amended Mar. 26, 1976, D.C. Law 1-59, § 2, 22 DCR 5473; Sept. 28, 1977, D.C. Law 2-25, § 4, 24 DCR 3718.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1977—Act Sept. 28, 1977, D.C. Law 2-25, amended par. (h) by inserting "emergency medical technician, emergency medical technician/paramedic," immediately following "nursing assistants."

1976—Mar. 26, 1976, D.C. Law 1-59, amended section by adding par. (h).

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of section, see sec. 4 of the Emergency Advanced Life Support Act of 1977 (D.C. Act 2-55, July 8, 1977, 24 DCR 816).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 6 of act Sept. 28, 1977, D.C. Law 2-25, set out as a note under § 2-142.

EFFECTIVE DATE OF 1976 AMENDMENT

The second section 3 of act Mar. 26, 1976, D.C. Law 1-59, 22 DCR 5474, provided:

"This act [amending this section and § 1-925] shall take effect upon becoming law by operation of subsection (c) of section 602 of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act Mar. 26, 1976, D.C. Law 1-59, provided "That this act [amending this section and § 1-925] may be cited as the 'Medical Employee Protection act of 1975'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-215c, 1-922, 1-925, 1-926.

§ 1-922. Negligent operation of vehicles by employees—Defense of governmental immunity—Exception.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-215c, 1-921, 1-923 to 1-926.

§ 1-923. Judgment against District as bar to action against employee—Notice of claim.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-215c, 1-921, 1-922, 1-925, 1-926.

§ 1-924. Excessive verdicts—Treatment of by court.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-215c, 1-921, 1-922, 1-925, 1-926.

§ 1-925. Action against District employees barred for negligent operation of vehicles—Exception—Indemnification of medical employees—Disciplinary actions not affected.

(a) After the effective date of sections 1-921 to 1-926, no civil action or proceeding shall be brought or be maintained against an employee of the District for loss of or damage to property or for personal injury, including death, resulting from the operation by such employee of any vehicle if it be alleged in the complaint or develop in a later stage of the proceeding that the employee was acting within the scope of his office or employment, unless the District shall, in an action brought against it for such damage or injury, including death, specifically deny liability on the ground that the employee was not, at the time and place alleged, acting within the scope of his office or employment. If in any such civil action or proceeding pending in a court in the District of Columbia as of the effective date of sections 1-921 to 1-926 the District has not been named as a defendant, said District shall be joined as a defendant and after its answer has been filed and subject to the provisions of the preceding sentence, the action shall be dismissed as to the employee and the case shall proceed as if the District had been a party defendant from the inception thereof.

(b) Whenever in a case in which the District of Columbia is not a party, a final judgment and order to pay money damages is entered against a medical employee of the District of Columbia on account of damage to or loss of property or on account of personal injury or death caused by the negligent act or omission of the medical employee within the scope of his employment and performance of professional responsibilities, the District of Columbia shall, to the extent the medical employee is not covered by appropriate insurance purchased by the District of Columbia, indemnify the employee in the amount of said money damages.

(c) Nothing in this section shall be construed to restrict appropriate disciplinary action by the District of Columbia against any employee for a negligent act or omission. (July 14, 1960, Pub. L. 86-654, § 6, 74 Stat. 520; Mar. 26, 1976, D.C. Law 1-59, § 3, 22 DCR 5473.)

AMENDMENT

1976—Section 3 of act Mar. 26, 1976, D.C. Law 1-59, designated existing provisions as subsec. (a) and added subsecs. (b) and (c). A second section 3 of such act provided for the effective date of the act and is set out as a note under § 1-921.

EFFECTIVE DATE OF 1976 AMENDMENT

See second section 3 of act Mar. 26, 1976, D.C. Law 1-59, set out as a note under § 1-921.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-215c, 1-921, 1-922, 1-926.

§ 1-926. Liability of employee to District for negligent damage to its property.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-215c, 1-921, 1-922, 1-925.

Chapter 10.—NATIONAL CAPITAL PLANNING COMMISSION

Sec.

1-1006. Repealed.

1-1007. Public works program—Capital improvements plan.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 7-133, 8-103, 49-401.

§ 1-1001. General purposes, findings, and definitions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1009 to 1-1011, 8-103.

§ 1-1002. The Commission—Composition—Functions.

(a)(1) The National Capital Planning Commission (hereinafter referred to as the "Commission") is created as the central Federal planning agency for the Federal Government in the National Capital, and to preserve the important historical and natural features thereof, except with respect to the United States Capitol buildings and grounds as defined in sections 9-118 and 9-132, and to any extension thereof or additions thereto, or to buildings and grounds under the care of the Architect of the Capitol.

(2) The Mayor of the District of Columbia (hereinafter referred to as the "Mayor") shall be the central planning agency for the government of the District of Columbia (hereinafter referred to as the "District") in the National Capital. The Mayor shall be responsible for coordinating the planning activities of the District government and for preparing and implementing the District elements of the comprehensive plan for the National Capital, which may include land use elements, urban renewal and redevelopment elements, a multi-year program of public works for the District, and physical, social, economic, transportation, and population elements. The Mayor's planning responsibility shall not extend to Federal or international projects and developments in the District, as determined by the Commission, or to the United States Capitol buildings and grounds as defined in sections 9-118 and 9-132, or to any extension thereof or additions thereto, or to buildings and grounds under the care of the Architect of the Capitol. In carrying out his responsibility under this section, the Mayor shall establish procedures for citizen participation in the planning process, and for appropriate meaningful consultation with any State or local government or planning agency in the Na-

tional Capital region affected by any aspect of a comprehensive plan (including amendments thereto) affecting or relating to the District.

(3) The Mayor shall submit each District element of the comprehensive plan and any amendment thereto, to the Council for revision or modification, and adoption, by act, following public hearings. Following adoption and prior to implementation, the Council shall submit each such element or amendment to the Commission for review and comment with regard to the impact of such element or amendment on the interests or functions of the Federal Establishment in the National Capital.

(4)(A) The Commission shall, within sixty days after receipt of such a District element of the comprehensive plan, or amendment thereto, from the Council, certify to the Council whether such element or amendment has a negative impact on the interests or functions of the Federal Establishment in the National Capital. If within such sixty days the Commission takes no action with respect to such element or amendment, such element or amendment shall be deemed to have no such negative impact, and such element or amendment shall be incorporated into the comprehensive plan for the National Capital and shall be implemented.

(B) If the Commission finds, within such sixty days, such negative impact, it shall certify its findings and recommendations with respect to such negative impact to the Council. Upon receipt of the Commission's findings and recommendations, the Council may—

(i) reject such findings and recommendations and resubmit such element or amendment, in a modified form, to the Commission for reconsideration; or

(ii) accept such findings and recommendations and modify such element or amendment accordingly.

If the Council accepts such findings and recommendations and modifies such element or amendment under clause (ii), the Council shall submit such element or amendment to the Commission for it to determine whether such modification has been made in accordance with the Commission's findings and recommendations. If, within thirty days after receipt of the modified element or amendment, the Commission takes no action with respect to such element or amendment, it shall be deemed to have been modified in accordance with such findings or recommendations, and shall be incorporated into the comprehensive plan for the National Capital and shall be implemented. If within such thirty days, the Commission again determines such element or amendment to have a negative impact on the functions or interests of the Federal Establishment in the National Capital such element or amendment shall not be implemented.

(C) If the Council rejects the findings and recommendations of the Commission and resubmits a modified element or amendment to it under clause (i), the Commission shall, within sixty days after receipt of such modified element or amendment from the Council, determine whether such modified element or amendment has a negative impact on the interests or functions of the Federal Establish-

ment within the National Capital. If the Commission finds such negative impact it shall certify its findings (in sufficient detail that the Council can understand the basis of the objection of the Commission) and recommendations to the Council, and such element or amendment shall not be implemented. If the Commission takes no action with respect to such modified element or amendment within such sixty days, such modified element or amendment shall be deemed to have no such negative impact and shall be incorporated into the comprehensive plan and it shall be implemented. Any element or amendment which the Commission has determined to have a negative impact on the Federal Establishment in the National Capital, and which is submitted again in a modified form not less than one year from the day it was last rejected by the Commission shall be deemed to be a new element or amendment for purposes of the review procedure specified in this section.

(D) The Commission and the Mayor shall jointly publish, from time to time as appropriate, a comprehensive plan for the National Capital, consisting of the elements of the comprehensive plan for the Federal activities in the National Capital developed by the Commission, and the District elements developed by the Mayor and the Council in accordance with the provisions of this section.

(E) The Council may grant, upon request made to it by the Commission, an extension of any time limitation contained in this section.

(F) The Commission and the Mayor shall jointly establish procedures for appropriate meaningful continuing consultation throughout the planning process for the National Capital.

(b) The National Capital Planning Commission shall be composed of—

(1) ex officio, the Secretary of the Interior, the Secretary of Defense, the Administrator of the General Services Administration, the Mayor, the Chairman of the Council of the District of Columbia and the chairmen of the committees on the District of Columbia of the Senate and the House of Representatives, or such alternates as each such person may from time to time designate to serve in his stead, and in addition,

(2) five citizens with experience in city or regional planning, three of whom shall be appointed by the President and two of whom shall be appointed by the Mayor. The citizen members appointed by the Mayor shall be bona fide residents of the District of Columbia and of the three appointed by the President at least one shall be a bona fide resident of Virginia and at least one shall be a bona fide resident of Maryland. The terms of office of members appointed by the President shall be for six years, except that of the members first appointed, the President shall designate one to serve two years and one to serve four years. Members appointed by the Mayor shall serve for four years. The members first appointed under this section shall assume their office on January 2, 1975. Any person appointed to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The citizen members shall each receive compensation at the rate of \$100

for each day such member is engaged in the actual performance of duties vested in the Commission in addition to reimbursement for necessary expenses incurred by them in the performance of such duties.

(c) The President shall designate the Chairman of the Commission and the Commission may elect from among its members such other officers as it deems desirable. The Commission is authorized to employ a Director, an executive officer, and such other technical and administrative personnel as it may deem necessary. Further, without regard to section 1-808, the civil service and classification laws, or section 3109 of title 5, U.S. Code, the Commission may employ, by contract or otherwise, the temporary or intermittent (not in excess of one year) services of city planners, architects, engineers, appraisers, and other experts or organizations thereof, as may be necessary to carry out its functions, and in any such case the rate of compensation shall be fixed by the Commission so as not to exceed the rate usual for similar services.

* * * * *

(e) As hereinafter more specifically described in sections 1-1004 to 1-1008, it shall be among the principal duties of the Commission to (1) prepare, adopt, and amend a comprehensive plan for the Federal activities in the National Capital and make related recommendations to the appropriate developmental agencies; (2) serve as the central planning agency for the Federal government within the National Capital region, and in such capacity to review their development programs in order to advise as to consistency with the comprehensive plan; and (3) be the representative of the Federal and District Governments for collaboration with the Regional Planning Council, as hereinafter provided. (As amended Dec. 24, 1973, Pub. L. 93-198, title II, § 203(a), (b), 87 Stat. 779, 782.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

The "civil service and classification laws", referred to in subsec. (c), are set forth in 5 U.S.C. See, particularly, 5 U.S.C. §§ 3301 et seq., 5101 et seq., 5331 et seq.

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended subsecs. (a) and (b) generally [for prior provisions, see the 1973 ed. of the Code] and amended subsec. (e) by (1) inserting "Federal activities in the" immediately before "National Capital" in clause (1); and (2) striking out "and District Governments," and inserting in lieu thereof "government" in clause (2).

EFFECTIVE DATE OF 1973 AMENDMENT

See sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

TERMINATION OF ADVISORY COMMITTEES

Advisory Committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year

period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory Committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, U.S. Code.

COMMISSIONER'S ORDER ASSIGNING PLANNING
RESPONSIBILITIES UNDER P.L. 93-198¹

(Commissioner's Order No. 74-146, June 29, 1974.)

This Order is issued by virtue of Reorganization Plan No. 3 of 1967, and in accordance with P.L. 93-198, the District of Columbia Self-Government and Governmental Reorganization Act.

I. *Background of Order:* Title II of the Self-Government and Governmental Reorganization Act, P.L. 93-198 lodges with the Mayor-Commissioner responsibility to take certain actions with respect to local planning namely:

(a) To be the central planning agency for the District of Columbia;

(b) To coordinate the planning activities of the District of Columbia Government;

(c) To prepare and implement the District elements of the Comprehensive Plan for the National Capital;

(d) To establish processes for citizen participation in the planning process; and

(e) To establish procedures for appropriate meaningful consultation with any state or local government or planning agency in the National Capital Region affected by any aspect of a comprehensive plan (including amendments thereto) affecting or relating to the District.

II. *Purpose:* To carry out the foregoing provisions of the Act in an efficient and effective manner in accordance with principles of sound planning and provision for participation and consultation with citizens.

III. *Delegation:* The Director of the Office of Planning and Management is hereby given responsibility to develop the required local elements of the comprehensive plan and to coordinate the planning activities of the District of Columbia Government on behalf of the Mayor-Commissioner in accordance with PL 93-198.

IV. *Liaison Officers:* The directors of all departments and agencies of the District government are directed to designate planning liaison officers to provide coordination between the planning activities of the individual departments and agencies and the Office of Planning and Management in accordance with PL 93-198.

V. *Citizens Panel:* (a) To assist the Mayor-Commissioner in establishing procedures for citizen participation and to advise the Director of Planning and Management in the preparation of the comprehensive plan, a Citizens Panel broadly representative of all segments of the community, and of the District's various geographical areas, shall be appointed by the Mayor-Commissioner. (b) Staff support for the Citizens Panel shall be provided by the Office of Planning and Management. The Director of the Office of Planning and Management, or his designated alternate shall be an ex-officio member of the Citizens Panel.

VI. *Alternate to NCPC:* The Director of Planning and Management is hereby designated as alternate for the Mayor-Commissioner on the National Capital Planning Commission. The Director of the Office of Housing and Community Development and the Director of the Department of General Services shall serve as additional alter-

nates to the National Capital Planning Commission as required.

VII. *Effective Date:* This order will take effect July 1, 1974.

§ 1-1003. Omitted.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 71b.

§ 1-1004. Comprehensive plan for the National Capital—Elements—Procedure.

(a) The Commission is hereby charged with the duty of preparing and adopting a comprehensive, consistent, and coordinated plan for the National Capital, which plan shall include the Commission's recommendations or proposals for Federal developments or projects in the environs, and those District elements, or amendments thereto, of the comprehensive plan adopted by the Council and with respect to which the Commission has not determined a negative impact to exist, which elements or amendments shall be incorporated into such comprehensive plan without change. The Commission shall collaborate with the National Capital Regional Planning Council in the development of those elements of the plan for the National Capital which should be incorporated in the regional plan provided for in section 1-1003. While consistency between the respective proposals of the Commission and the National Capital Regional Planning Council shall be sought, lack of action or agreement by the National Capital Regional Planning Council shall not prevent the Commission from adopting any part of its plan or any recommendation or proposal for Federal developments or projects in the environs. The Commission may include in its plan any portion of any plan adopted by the National Capital Regional Planning Council or any planning agency in the environs and from time to time make recommendations of collateral interest to the National Capital Regional Planning Council or to the aforesaid agencies.

(b), (c) Repealed. Dec. 24, 1973, Pub. L. 93-198, title II, § 203(c) (3), 87 Stat. 782.

* * * * *

(As amended Dec. 24, 1973, Pub. L. 93-198, title II, § 203(c), 87 Stat. 782.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

Section 1-1003, referred to in subsec. (a), was omitted from the Code in view of the abolishment of the National Capital Regional Planning Council by Reorg. Plan No. 5 of 1966, eff. Sept. 8, 1966, 31 F.R. 11857 set out in the Appendix to this title.

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended section by (1) striking out "Federal and District developments or projects in the environs" in the first sentence of subsec. (a) and inserting "Federal developments or projects in the environs, and those District elements, or amendments thereto, of the comprehensive plan adopted by the Council and with respect to which the Commission has not determined a negative impact to exist, which elements or amendments shall be incorporated into such comprehen-

¹ Planning responsibilities were subsequently assigned to the Municipal Planning Office, see Org. Ord. No. 50, set out in the appendix to title 1, Administration.

sive plan without change" in lieu thereof; (2) striking out of the third sentence of subsec. (a) "within the District of Columbia" immediately after "plan", and "or District" immediately after "Federal"; and (3) repealing subssecs. (b) and (c).

EFFECTIVE DATE OF 1973 AMENDMENT

See sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

CROSS REFERENCE

Comprehensive plan for zoning, see § 5-414.

NOTES TO DECISIONS

Environmental impact

Although the District of Columbia Zoning Commission and the National Capital Planning Commission are not required to prepare an environmental impact statement in connection with applications under the District's zoning regulations for planned unit development or for amendment of zoning maps and zoning regulations, the environmental policies delineated in the National Environmental Policy Act should find expression in the planning and zoning process in the District; proper avenue for implementation of the purposes of the NEPA is in the planning operations of the National Capital Planning Commission, particularly in formulation of the Comprehensive Plan. *McLean Gardens Residents Association, Inc., et al. v. National Capital Planning Commission et al.* (1974, 390 F. Supp. 165).

§ 1-1005. Proposed Federal and District developments and projects.

(c) The provisions of section 5-428, are extended to include public buildings erected by any agency of the Government of the District of Columbia within the boundaries of the central area of the District, as such central area may be defined and from time to time redefined by concurrent action of the Commission and the Council, except that the Commission shall transmit its approval or disapproval respecting any such building within thirty days after the day it was submitted to the Commission.

(e) It is the intent of this section to obtain cooperation and correlation of effort between the various agencies of the Federal Government which are responsible for public developments and projects, including the acquisition of land. These agencies, therefore, shall look to the Commission and utilize it as the central planning agency for the Federal activities in the National Capital region. To aid the Commission in carrying out this function, plans, data, and records, or copies thereof, necessary to the Commission shall be furnished upon its request by such Federal and District governmental agencies; and the Commission shall likewise furnish related plans, data, and records, or copies thereof, to Federal and District of Columbia governmental agencies upon request. (As amended Dec. 24, 1973, Pub. L. 93-198, title II, § 203(d), 87 Stat. 782.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended subsec. (c) and the first and second sentences of subsec. (e) generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1973 AMENDMENT

See sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

NOTES TO DECISIONS

Attorney fees, recovery from District

Common benefit theory is not applicable to shift to District of Columbia government burden of paying attorney fees of plaintiffs who brought action to enjoin construction of bridge across Potomac River, where action did not result in determination that bridge could not be built but in a determination that government officials had to follow certain procedures before making decision to build bridge with a resulting delay during which time bridge plan was abandoned and where class of beneficiaries included residents of Maryland and Virginia and not just District of Columbia taxpayers. *D.C. Federation of Civic Associations et al. v. J. A. Volpe, et al.* (1976, 71 F.R.D. 206).

Injunctions

Without finding abuse of district court's discretion in denying preliminary injunction against continued construction of Washington Bulk Mail Center, case would be remanded so that reconsideration could be given oil and water runoff problem and to whether an impact statement was required, and also to the possibility, taking into account the advanced stage of project construction, the district court might conjoin any continued denial of injunctive relief with equitable conditions more protective of the environment than those already provided. *Maryland-National Capital Park and Planning Commission v. U.S. Postal Service* (1973, 487 F.2d 1029, 159 U.S. App. D.C. 158; remanding 349 F. Supp. 1212).

Preliminary injunction restraining further construction of bulk mail center on 63-acre tract forming part of 800-acre industrial area would not issue where determination that facility would not significantly affect environment and that environmental impact statement was not required was not arbitrary, capricious or abuse of discretion, plaintiff, a park planning commission, failed to establish likelihood of success on the merits, failed to establish irreparable injury and that defendant failed to comply with governing executive order and construction had commenced and cost of delay in continuing construction was not insignificant. *Maryland-National Capital Park and Planning Commission v. U.S. Postal Service* (1972, 349 F. Supp. 1212; rem'd 487 F.2d 1029, 159 U.S. App. D.C. 159).

§ 1-1006. Repealed. Dec. 24, 1973, Pub. L. 93-198, title II, § 203(e), 87 Stat. 782.

Section, act June 6, 1924, ch. 270, § 6, as added July 19, 1952, 66 Stat. 789, ch. 949, § 1, directed the Commission to prepare a major thoroughfare plan and a mass transportation plan. Section was formerly classified to 40 U.S.C. § 71e.

EFFECTIVE DATE OF REPEAL

See sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

§ 1-1007. Public works program—Capital improvements plan.

(a) The Commission shall recommend a six-year program of public works projects for the Federal Government which it shall review annually with the agencies concerned. To this end, each Federal agency shall submit to the Commission in the first quarter of each fiscal year a copy of its advance program of capital improvements within the National Capital and its environs.

(b) The Mayor shall submit to the commission, by February 1 of each year, a copy of the multiyear capital improvements plan for the District developed by him under section 47-223. The Commission shall have thirty days within which to comment upon such plan but shall have no authority to change or disapprove of such plan. (June 6, 1924, ch. 270, § 7, as added July 19, 1952, 66 Stat. 789, ch. 949, § 1, and amended Dec. 24, 1973, Pub. L. 93-198, title II, § 203 (f), 87 Stat. 782.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended section generally. For prior provisions, see the 1973 ed. of the Code.

EFFECTIVE DATE OF 1973 AMENDMENT

See sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

§ 1-1008. Zoning and subdivision functions.

(a) The Commission may make a report and recommendation to the Zoning Commission of the District of Columbia, as provided in section 5-417, on proposed amendments of the zoning regulations and maps as to the relation, conformity, or consistency of such amendments with the comprehensive plan for the National Capital. The Commission may also submit to the said Zoning Commission proposed amendments or general revisions to the zoning regulations or the zoning map for said District.

* * * * *

(d) Any proposed change in or addition to the regulations or general orders regulating the platting and subdividing of lands and grounds in the District of Columbia shall first be submitted to the Commission by the Council of the District of Columbia for report and recommendation prior to adoption by such Council. Should the Council not concur in the recommendations of the Commission, it shall so advise the Commission with its reasons therefor and the Commission shall submit a final report within thirty days. After consideration of this final report, the Council may proceed to take action in accordance with its legal responsibilities and authority. It shall be the duty of the Commission to submit any proposed changes in or amendments to the general orders that the Commission considers appropriate and the Council shall treat the amendments proposed in the same manner as other proposed amendments. (As amended Dec. 24, 1973, Pub. L. 93-198, title II, § 203(g), 87 Stat. 783.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended the first sentence of subsec. (a) by (1) inserting “, as provided by section 5-417,” immediately after “Zoning Commission of the District of Columbia”; (2) substituting “relation, conformity, or consistency” for “relation or conformity”; and (3) substituting “for the National Capital” for “of the District of Columbia” at the end thereof.

EFFECTIVE DATE OF 1973 AMENDMENT

See sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

TRANSFER OF FUNCTIONS

References in subsec. (d) to the Board of Commissioners of the District of Columbia has been changed to the District of Columbia Council to reflect section 1-613 and 402(21) of Reorganization Plan No. 3 of 1967, 32 F.R. 11669, set out in the Appendix to this title, which transferred the regulatory and other functions of the Board of Commissioners relating to the making and publishing of general orders regulating the platting and subdividing of lands and grounds to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorg. Plan 3 of 1967.

CROSS REFERENCE

Zoning regulations, see §§ 5-413, 5-414.

NOTES TO DECISIONS

Judicial review

In reviewing refusal by Zoning Commission to enact interim amendment to zoning ordinance preventing major construction not in conformance with National Capital Planning Commission's comprehensive recommendations as to development of waterfront area until completion of pending area study, Court of Appeals would consider only whether Commission acted arbitrarily and capriciously, i.e., whether its decision had no substantial relationship to the general welfare. *Citizens Association of Georgetown, Inc. v. Zoning Commission of the District of Columbia* (1973, 477 F. 2d 402, 155 U.S. App. D.C. 233).

Actions of Zoning Commission are entitled to presumption of validity; however, the Commission must put forward or the court must be otherwise able to discern some basis in fact and law to justify Commission's action as consistent with reasonableness. *Id.*

Recommendation to Zoning Commission

Zoning Commission must accord substantial weight and respect to the National Planning Commission's statutorily authorized commentary on proposed maps, regulations and amendments to the comprehensive plan; the record must contain a strong basis for resort to a different interpretation. *Capitol Hill Restoration Society et al. v. The Zoning Commission of the District of Columbia* (D.C. App. 1977, 380 A.2d 174).

The Zoning Commission, in determining whether to adopt interim amendment to zoning ordinance preventing major construction in waterfront area until completion of study looking toward implementation of National Capital Planning Commission's comprehensive land use plan, was not bound to follow NCPC's recommendation to adopt interim amendment; Zoning Commission was not required to show a compelling public interest before it could override recommendation. *Citizens Association of Georgetown, Inc. v. Zoning Commission of the District of Columbia* (1973, 477 F. 2d 402, 155 U.S. App. D.C. 233).

§ 1-1010. Appropriations.

REFERENCES IN TEXT

Section 1-1003, included within the reference in text to sections 1-1001 to 1-1010, was omitted from the Code in view of the abolishment of the National Capital Regional Planning Council by Reorg. Plan No. 5 of 1966, eff. Sept. 8, 1966, 31 F.R. 11857, set out in the Appendix to this title.

Section 1-1006, included within the reference in text to sections 1-1001 to 1-1010, was repealed by Pub. L. 93-198, title II, § 203(e), Dec. 24, 1973, 87 Stat. 782.

§ 1-1011. Acquisition of land by commission—Advice of Commission of Fine Arts—Approval of President.

REFERENCES IN TEXT

Section 1-1003, included within the reference in text to sections 1-1001 to 1-1010, was omitted from the Code in view of the abolishment of the National Capital Regional Planning Council by Reorg. Plan No. 5 of 1966, eff. Sept. 8, 1966, 31 F.R. 11857, set out in the Appendix to this title.

Section 1-1006, included within the reference in text to sections 1-1001 to 1-1010, was repealed by Pub. L. 93-198, title II, § 203(e), Dec. 24, 1973, 87 Stat. 782.

§ 1-1012. Appropriation for acquisition of such lands—Control—Use.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-1013. Report of commission to Congress—Estimate for Office of Management and Budget.

Said commission shall report to Congress annually on the first Monday of March the lands acquired during the preceding fiscal year, the method of acquisition, and the cost of each tract. It shall also submit to the Office of Management and Budget on or before December 15 of each year its estimate of the total sum to be appropriated for expenditure under the provisions of sections 1-1001 to 1-1013 during the succeeding fiscal year. (June 6, 1924, 43 Stat. 464, ch. 270, § 13, formerly § 4; renumbered July 19, 1952, 66 Stat. 791, ch. 949, § 2; Apr. 21, 1976, Pub. L. 94-273, § 21, 90 Stat. 379.)

REFERENCES IN TEXT

Section 1-1003, included within the reference in text to sections 1-1001 to 1-1010, was omitted from the Code in view of the abolishment of the National Capital Regional Planning Council by Reorg. Plan No. 5 of 1966, eff. Sept. 8, 1966, 31 F.R. 11857, set out in the Appendix to this title.

Section 1-1006, included within the reference in text to sections 1-1001 to 1-1010, was repealed by Pub. L. 93-198, title II, § 203(e), Dec. 24, 1973, 87 Stat. 782.

AMENDMENT

1976—Act Apr. 21, 1976, Pub. L. 94-273, amended section by substituting "March" for "December" and "December" for "September".

Chapter 11.—ELECTIONS

Sec.

- 1-1101. Election of electors of President and Vice President, Delegate, the members of the Board of Education and of the District Council, the Mayor, and officials of political parties.
- 1-1103. Board of Elections and Ethics—Terms of office—Vacancies—Designation of Chairman.
- 1-1104a. Same; Compensation from more than one source.
- 1-1105a. Council authority over elections.
- 1-1105b. Election wards.
- 1-1105c. Multilingual election materials.
- 1-1107. Registration—Conditions for registration—Registration application and notification—Hearings—Appeals.
- 1-1108. Candidates for office—Form, date, and time of day for filing petitions—Number of signatures

Sec.

required—Arrangement of ballot—Nominations for presidential electors—Names of candidates for President and Vice President to appear on ballot under party designation—Form of ballot—Candidates for electors not to appear on ballot—Nominations by nonqualifying political parties—Qualifications of electors—Nomination and election of Delegate, Mayor, Chairman and members of Council—Election of candidates by primary or party runoff election—Nominating petition—Arrangement of names on ballot—Designations of offices of local party committees—Nominating petition for election of members of Board of Education—Posting of petitions in a public place—Challenging validity of petition—Board of Elections and Ethics to determine validity of petition—Appeal—Arrangement of names on ballot.

1-1110. Dates for holding elections—Votes cast for President and Vice President to be counted as votes for presidential electors—Voting hours—Method of deciding tie votes—Naming successor to official who dies, resigns, or is unable to serve—Filling vacancies on Board of Education.

1-1113. Appropriations.

1-1115. Candidacy for more than one office not permitted—Choice of nominations—Withdrawal from multiple nominations—Candidacy of officeholder for other office restricted.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1-141, 1-171h, 1-291, 1-1121, 1-1156, 31-101.

§ 1-1101. Election of electors of President and Vice President, Delegate, the members of the Board of Education and of the District Council, the Mayor, and officials of political parties.

In the District of Columbia electors of President and Vice President of the United States, the Delegate to the House of Representatives, the members of the Board of Education, the members of the Council of the District of Columbia, the Mayor and the following officials of political parties in the District of Columbia shall be elected as provided in this chapter:

* * * * *

(As amended Dec. 24, 1973, Pub. L. 93-198, title VII, § 751(1), 87 Stat. 832.)

AMENDMENT

1973—Section 751(1) of Dec. 24, 1973, Pub. L. 93-198, inserted "the members of the Council of the District of Columbia, the Mayor" immediately after "Board of Education,".

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of chapter substituting "he or she" and "his or her" for "he" and "his", respectively, wherever the words appear, see sec. 402 of the Elections and Latino Community Development Emergency Amendments Act of 1976 (D.C. Act 1-215, Jan. 12, 1977, 23 DCR 5108).

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771(e) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided that Part E of title VII [comprising sections 751 and 752, which amended §§ 1-1101, 1-1102, 1-1110, 1-1115, and enacted § 1-1105a] is effective on the date on which title IV is accepted by a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum. The charter was approved by the voters on May 7, 1974.

SHORT TITLES

The first section of act Apr. 23, 1977, D.C. Law 1-126, provided "That this act [for classification of act see Tables] may be cited as the 'Elections and Latino Community Development Amendments Act of 1976'."

Section 101 of act Sept. 2, 1976, D.C. Law 1-79, title I, provided that "This title [amending §§ 1-1102 to 1-1104, 1-1105, and 1-1108] may be cited as the 'Elections Organization act of 1976'."

Section 501 of act Sept. 2, 1976, D.C. Law 1-79, title V, provided that "This title [amending §§ 1-1105, 1-1110] may be cited as the 'Presidential Preference Primary Amendments of 1976'."

Section 601 of act Sept. 2, 1976, D.C. Law 1-79, title VI, provided that "This title [amending § 1-1102] may be cited as the 'Enfranchisement of Ex-Felons Voting act of 1976'."

The first section of act Feb. 17, 1976, D.C. Law 1-45, provided: "That this act [amending § 1-1105] may be cited as the 'Publication of Sample Ballots act of 1975'."

The first section of act Sept. 2, 1976, D.C. Law 1-79, provided "That this act [for classification of act see Tables] may be cited as the 'District of Columbia Election Act Amendments of 1976'."

The first section of act Dec. 16, 1975, D.C. Law 1-37, provided "That this act [amending §§ 1-1105, 1-1107, 1-1109, and 1-1114] may be cited as the 'Voter Registration Act of 1975'."

SEVERABILITY PROVISION OF D.C. LAW 1-126

Section 401 of act Apr. 23, 1977, D.C. Law 1-126, title IV, provided: "Should any provision of this act be declared unconstitutional, invalid, or beyond the statutory authority of the Council, the provisions unaffected by such a declaration shall remain in effect."

POLITICAL PARTICIPATION IN FIRST ELECTIONS FOR MAYOR AND COUNCIL

Section 724 of the District of Columbia Self-Government and Governmental Reorganization Act, as added Apr. 17, 1974, Pub. L. 93-268, § 3(a), 88 Stat. 86, provided:

"SEC. 724. (a) In order to provide continuity in the government of the District of Columbia during the transition from the appointed government to the elected government provided for under this Act, no person employed by the United States or by the government of the District of Columbia shall be prohibited by reason of such employment—

"(1) from being a candidate in the first primary election and general election held under this Act for the office of Mayor or Chairman or member of the Council of the District of Columbia provided for under title IV of this Act, and

"(2) if such a candidate, from taking an active part in political management or political campaigns in any election referred to in paragraph (1) of this subsection.

"(b) Such candidacy shall be deemed to have commenced on the day such person obtains from the Board of Elections an official nominating petition with his name stamped thereon, and shall terminate—

"(1) in the case of such candidate who ceases to be eligible as a nominee for the office with respect to which such petition was obtained by reason of his inability or failure to qualify as a bona fide nominee prior to the expiration of the final date for filing such petition under the election laws of the District of Columbia, on the day following such expiration date;

"(2) in the case of such candidate who is elected to any such office with respect to which such nominating petition was obtained, on the day such candidate takes office following the election held with respect thereto;

"(3) in the case of such candidate who is defeated in a primary election held to nominate candidates for the office with respect to which such nominating petition was obtained, on the expiration of the thirty day period following the date of such primary election; and

"(4) in the case of such candidate who fails to be elected in a general election to any such office with respect to which such nominating petition was obtained, on the expiration of the thirty day period following the date of such election.

"(c) The provisions of this section shall terminate as of January 2, 1975."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1108, 1-1110, 47-1567f.

§ 1-1102. Definitions.

For the purposes of this chapter—

* * * * *

(2) Except as provided in paragraph (7) of this section, the term "qualified elector" means a citizen of the United States (A) who resides or is domiciled in the District and who does not claim voting residence or right to vote in any State or Territory; (B) who is, or will be on the day of the next election, eighteen years old; and (C) who is not mentally incompetent as adjudged by a court of competent jurisdiction.

(3) The term "Board" means the District of Columbia Board of Elections and Ethics provided for by section 1-1103.

(4) The term "ward" means an election ward established by the Council.

* * * * *

(7) (A) Any person in the District of Columbia who has been convicted of a crime in the United States which is a felony in the District of Columbia, may be a qualified elector, if otherwise qualified, at the end of his incarceration.

(B) For the purposes of this paragraph, the term "felony" shall include any crime committed in the District of Columbia referred to in section 1-1114 or sections 1-1177 or 1-1191.

(C) Nothing in this paragraph shall be construed to grant a pardon or amnesty to any person.

(8) The term "Council" or "Council of the District of Columbia" means the Council of the District of Columbia established pursuant to the District of Columbia Self-Government and Governmental Reorganization Act.

(9) The term "Mayor" means the office of Mayor of the District of Columbia established pursuant to the District of Columbia Self-Government and Governmental Reorganization Act.

(As amended Aug. 14, 1973, Pub. L. 93-92, § 1(1), 87 Stat. 311; Dec. 24, 1973, Pub. L. 93-198, title VII, § 751(2), 87 Stat. 832; Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458; Sept. 2, 1976, D.C. Law 1-79, title I, § 102(1), title VI, § 602, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title III, § 301 (a), (b), 24 DCR 2372.)

REFERENCE IN TEXT

The District of Columbia Self-Government and Governmental Reorganization Act, referred to in pars. (8) and (9), is the Act of Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 774. For classification of the Act to the Code, see the Parallel Reference Tables. See sections 1-141 and 1-161 for establishment of the Council and the office of Mayor.

AMENDMENTS

1977—Act Apr. 23, 1977, D.C. Law 1-126, amended par. (7) by deleting from the end of subpar. (A) " , or completion of his sentence, whichever last occurs" and by amending subpar. (B) generally.

1976—Section 102(1) of act Sept. 2, 1976, D.C. Law 1-79, amended par. (4) by substituting "Council" for "Board under section 1-1105(a) (4)".

Section 602 of such act amended par. (7) (A) generally.

1974—Section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, amended par. (3) by substituting "District of Columbia Board of Elections and Ethics" for "Board of Elections for the District of Columbia".

1973—Pars. (8) and (9) added by section 751(2) of Act Dec. 24, 1973, Pub. L. 93-198.

Par. (2)(A). Section 1(1) of Act Aug. 14, 1973, Pub. L. 93-92, amended par. (2)(A) by inserting at the beginning thereof "who resides or is domiciled in the District and"; and by striking out at the end thereof "and who, for the purpose of voting in an election under this chapter, has resided or has been domiciled in the District continuously since the beginning of the ninety-day period ending on the day of such election, except in the case of an election of electors of President and Vice President of the United States the period shall be thirty days;".

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of section, see sec. 301 (a) and (b) of the Elections and Latino Community Development Emergency Amendments Act of 1976 (D.C. Act 1-215, Jan. 12, 1977, 23 DCR 5096, 5097).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 404 of act Apr. 23, 1977, D.C. Law 1-126, title IV, provided: "This act [for classification of act see Tables] shall take effect in accordance with the provision of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

EFFECTIVE DATES OF 1976 AMENDMENTS

Section 103 of act Sept. 2, 1976, D.C. Law 1-79, title I, provided: "The provisions of this title [amending §§ 1-1102 to 1-1104, 1-1105, and 1-1108] shall take effect at the end of the thirty day period of review provided for acts of the Council in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 1-147(c))."

Section 603 of act Sept. 2, 1976, D.C. Law 1-79, title VI, provided: "The provisions of this title [amending this section] shall become effective at the end of the thirty day period of Congressional review provided for acts of the Council in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment effective on and after Aug. 14, 1974, see section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, set out as § 1-1156(a).

EFFECTIVE DATE OF 1973 AMENDMENT BY PUB. L. 93-198

Amendment effective May 7, 1974, see note under § 1-1101.

EFFECTIVE DATE OF 1973 AMENDMENT BY PUB. L. 93-92

Section 3 of Act Aug. 14, 1973, Pub. L. 93-92, provided: "The amendments made by this Act [amending §§ 1-1102, 1-1105, 1-1108, 1-1109, 1-1110, 1-1111, 31-101] shall take effect on and after the date of enactment of this Act."

CROSS REFERENCE

Election wards established by Council, see § 1-1105b.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-171h, 1-291, 1-1107, 31-101.

§ 1-1103. Board of Elections and Ethics—Terms of office—Vacancies—Designation of Chairman.

(a) There is created a District of Columbia Board of Elections and Ethics (hereafter in this section referred to as the "Board"), to be composed of three members, no more than two of whom shall be of the same political party, appointed by the Mayor, with the advice and consent of the Council. Members shall be appointed to serve for terms of three years, except of the members first appointed under this chapter. One member shall be appointed to serve for a one-year term, one member shall be appointed to serve for a two-year term, and one member shall be appointed to serve for a three-year term, as designated by the Mayor.

(b) Any person appointed to fill a vacancy on the Board shall be appointed only for the unexpired

term of the member whose vacancy he or she is filling.

(c) A member may be reappointed to one additional term. No member shall serve beyond the expiration of the term to which such member was appointed unless such member is reappointed.

(d) The Mayor shall, from time to time, designate the Chairman of the Board. (Aug. 12, 1955, 69 Stat. 699, ch. 862, § 3; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87-389, § 1(2); Dec. 24, 1973, Pub. L. 93-198, title IV, § 491, 87 Stat. 809; Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458; Sept. 2, 1976, D.C. Law 1-79, title I, § 102(2), 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372.)

AMENDMENTS

1977—Act Apr. 23, 1977, D.C. Law 1-126, amended subsec. (b) by substituting "he or she" for "he".

1976—Act Sept. 2, 1976, D.C. Law 1-79, amended subsec. (c) generally. Prior to amendment, subsec. (c) read: "A member may be reappointed, and, if not reappointed, the member shall serve until his successor has been appointed and qualifies."

1974—Section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, amended subsec. (a) by substituting "Board of Elections and Ethics" for "Board of Elections".

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 103 of act Sept. 2, 1976, D.C. Law 1-79, title I, set out as a note under § 1-1102.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment effective on and after Aug. 14, 1974, see section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, set out as § 1-1156(a).

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this amendment is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in the amendments to this section made by Act Dec. 24, 1973, Pub. L. 93-198.

CROSS REFERENCES

Change of name to Board of Elections and Ethics, see § 1-1156.

Director of Campaign Finance, establishment of office within Board of Elections and Ethics, see § 1-1151.

Nominating Committee to nominate individuals for appointment as members of Board of Elections and Ethics and for vacancies occurring on such Board, see § 1-1155.

§ 1-1104. Qualifications and compensation of members.

(a) No person shall be a member of the Board unless he or she qualifies as an elector and resides in the District. No person may be appointed to the Board unless he or she has resided in the District continuously since the beginning of the three-year period ending on the day he or she is appointed. Members of the Board shall hold no other paid office or employment in the District government and shall hold no active office, position or employment in the Federal Government. Not more than two members shall be members of the same political party.

(b) No person, while a member of the Board, shall (1) campaign for any other public office, (2) hold any office in any political party or political committee, (3) participate in or contribute to any political campaign of any candidate in any election held under this chapter, (4) act in his or her capacity as a member, to directly or indirectly attempt to influence any decision of a District government agency, department, or instrumentality relating to any action which is beyond the jurisdiction of the Board, or (5) be convicted of having committed a felony in the District of Columbia; or if the crime is committed elsewhere, conviction of such offense as would be a felony in the District of Columbia.

(c) Each member of the Board shall be paid compensation at the rate of \$100 for each eight hour period with a limit of \$12,500 per annum, while performing duties under this chapter, except during 1974 such compensation shall be paid without regard to such annual limitation. Except as provided in subsection (a) no person shall be ineligible to serve or to receive compensation as a member of the Board because he or she occupies another office or position or because he or she receives compensation (including retirement compensation) from another source. The right to compensation from another source otherwise secured to such a person under the laws of the United States shall not be abridged by the fact of his or her service or receipt of compensation as a member of the Board, or as an employee of the Board.

(d) (1) The Mayor may remove any member of the Board who engages in any activity prohibited by subsections (a) or (b), and appoint a new member to serve until the expiration of the term of the member so removed. When the Mayor believes that any member has engaged in any such activity he or she shall notify such member, in writing, of the charge against him and that such member has seven days in which to request a hearing before the Council on such charge. If such member fails to request a hearing within seven days after receiving such notice then the Mayor may remove such member and appoint a new member.

(2) The hearing requested by a member may be either open or closed, as requested by such member. In the event such hearing is closed, the vote of the Council as a result of such hearing shall be taken at an open meeting of the Council. The Council shall begin such hearings within sixty calendar days after receiving notice from the Mayor indicating that a member has requested such a hearing. If two-thirds of the Council vote to remove such member then such member shall be removed.

(e) Any vacancy occurring on the Board shall be filled within forty-five days after the occurrence of such vacancy, excluding Saturdays, Sundays, and holidays. (Aug. 12, 1955, 69 Stat. 699, ch. 862, § 4; Sept. 22, 1970, Pub. L. 91-405, title II, § 205(i), 84 Stat. 854; Dec. 23, 1971, Pub. L. 92-220, § 1(26), 85 Stat. 794; Aug. 14, 1974, Pub. L. 93-376, title VII, § 706(b), 88 Stat. 471, Sept. 2, 1976, D.C. Law 1-79, title I, § 102 (3), (4), 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title I, § 103(a), title IV, § 402, 24 DCR 2372.)

AMENDMENTS

1977—Section 103(a) of act Apr. 23, 1977, D.C. Law 1-126, amended subsec. (d) (2) by substituting "sixty" for "seven".

Section 402 of such act amended subsecs. (a), (b), (c), and (d) (1) by substituting "he or she" and "his or her" for "he" and "his", respectively.

1976—Sec. 102(4) of act Sept. 2, 1976, D.C. Law 1-79, redesignated subsec. (b) as subsec. (c) and added a new subsec. (b).

Sec. 102(3) of such act added subsecs. (d) and (e).

1974—Section 706(b) of Act Aug. 14, 1974, Pub. L. 93-376, amended the first sentence of subsec. (b) generally. Prior to amendment, the sentence read: "Each member of the Board shall be paid compensation at the rate of \$75 per day with a limit of \$11,250 per annum, while performing duties under this chapter."

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subsec. (d) (2), see sec. 103(a) of the Elections and Latino Community Development Emergency Amendments Act of 1976 (D.C. Act 1-215, Jan. 12, 1977, 23 DCR 5095).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 103 of act Sept. 2, 1976, D.C. Law 1-79, title I, set out as a note under § 1-1102.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment effective Aug. 14, 1974, see section 705(b) of the Act Aug. 14, 1974, Pub. L. 93-376, set out as a note under § 1-1121.

§ 1-1104a. Same; Compensation from more than one source.

(a) Except as provided in this Act, no person shall be ineligible to serve or to receive compensation as a member of the Board of Elections and Ethics because he occupies another office or position or because he receives compensation (including retirement compensation) from another source.

(b) The right to another office or position or to compensation from another source otherwise secured to such a person under the laws of the United States shall not be abridged by the fact of his service or receipt of compensation as a member of such Board, if such service does not interfere with the discharge of his duties in such other office or position. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 733, 87 Stat. 822; Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458.)

REFERENCE IN TEXT

"This Act", referred to in text, is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

CODIFICATION

Section was enacted as part of the District of Columbia Self-Government and Governmental Reorganization Act, and not as part of the District of Columbia Election Act which comprises this chapter.

AMENDMENT

1974—Section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, amended subsec. (a) by substituting "Board of Elections and Ethics" for "Board of Elections".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment effective on and after Aug. 14, 1974, see section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, set out as § 1-1156(a).

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a

majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

§ 1-1105. Functions and authority of Board—Presidential preference primary election.

(a) The Board shall—

(1) maintain a registry, keeping it accurate and current;

(2) take whatever action is necessary and appropriate to actively locate, identify, and register qualified voters;

(3) conduct elections;

(4) provide for recording and counting votes by means of ballots or machines or both,

(5) publish in the District of Columbia Register no later than 45 days before each election held under this chapter, a fictitious name sample design and layout of the ballot to be used in the election,

(6) publish in one or more newspapers of general circulation in the District, a sample copy of the official ballot to be used in any such election, *Provided, however*, nothing contained herein shall require the publication of a sample copy of the official ballots to be used in the Advisory Neighborhood Commissions' elections;

(7) divide the District into appropriate voting precincts, each of which shall contain at least three hundred fifty registered persons; draw precinct lines within election wards created by the Council, subject to the approval of the Council;

(8) operate polling places;

(9) develop and administer procedures for absentee registration and voting in any election held under this chapter by any person included within the categories referred to in paragraphs (1), (2), or (3) of section 101 of the Federal Voting Assistance Act of 1955 (69 Stat. 584) [42 U.S.C. 1973cc];

(10) certify nominees and the results of elections;

(11) take all reasonable steps to inform all residents and voters of elections and means of casting votes therein;

(12) take all reasonable steps to register, overseas citizen voters as provided by the Overseas Citizens Voting Rights Act of 1975 (89 Stat. 1143) [42 U.S.C. 1973dd et seq.];

(13) prescribe such regulations and expressly delegate authority to officials and employees of the Board as it considers necessary to carry out its statutory purpose of administering the laws governing elections under this chapter and

(14) perform such other duties as are imposed upon it by this chapter.

(b) (1) The Board shall, on the first Tuesday in May of each presidential election year, conduct a presidential preference primary election within the District of Columbia in which the registered qualified voters therein may express their preference for candidates of each political party of the District of Columbia for nomination for President.

(2) No person shall be listed on the ballot as a candidate for nomination for President in such primary unless there shall have been filed with the

Board no later than sixty days before the date of such presidential primary election a petition on behalf of his or her candidacy signed by the candidate and at least one thousand qualified electors of the District of Columbia who are registered under section 1-1107, and of the same political party as the nominee.

(3) Candidates for delegate and alternates where permitted by political party rules to a particular political party national convention convened to nominate that party's candidate for President shall be listed on the ballot of the presidential preference primary held under this chapter as—

(A) full slates of candidates for delegates supporting a candidate for nomination for President if there shall have been filed with the Board, no later than sixty days before the date of such presidential primary, a petition on behalf of such slate's candidacy signed by the candidates on the slate, the candidate for nomination for President supported by the slate, and by at least one thousand qualified electors of the District of Columbia who are registered under section 1-1107 and are of the same political party as the candidates on such slate;

(B) full slates of candidates for delegates not committed to support any named candidate for nomination for President if there shall have been filed with the Board, no later than sixty days before the date of such presidential primary, a petition on behalf of such slate's candidacy, signed by the candidates on the slate and by at least one thousand qualified electors of the District of Columbia who have registered under section 1-1107 and are of the same political party as the candidates on such slate;

(C) an individual candidate for delegate supporting a candidate for nomination for President if there shall have been filed with the Board, no later than sixty days before the date of such presidential primary, a petition on behalf of such candidate, signed by the candidate and by at least one thousand qualified electors of the District of Columbia who have registered under section 1-1107 and are of the same political party as the candidate; or

(D) an individual not committed to support any named candidate for nomination for President if there shall have been filed with the Board, no later than sixty days before the date of such presidential primary, a petition on behalf of such candidate, signed by the candidate and by at least one thousand qualified electors of the District of Columbia who have registered under section 1-1107 and are of the same political party as the candidate.

No candidate for delegate or alternate may be listed on the ballot unless such candidate was properly selected according to the rules of his political party relating to the nomination of candidates for delegate or alternate.

(4) The Board shall (A) arrange the ballot for the presidential preference primary so as to enable each voter to indicate his or her choice for presidential nominee and for the slate of delegates and alternates pledged to support that prospective

nominee with one mark, and provide an alternative to vote for individual delegates or uncommitted slates of delegates, and (B) clearly indicate on the ballot the candidate for nomination for President which a slate or candidate for delegate supports, or name of the person who shall manage an uncommitted slate of delegates.

(5) The delegates and alternates, of each political party in the District of Columbia to the national convention of that party convened for the nomination of that party for President, elected in accordance with this chapter, shall only be obliged to vote for the candidate whom he or she has been selected to represent in accordance with properly promulgated rules of the political party, on the first ballot cast at the convention for nominees for President, or until such time as such candidate to whom the delegate is committed withdraws his candidacy, whichever first occurs.

(6) Repealed. Aug. 14, 1973, Pub. L. 93-93, § 1(5), 87 Stat. 312.

(c) Each member of the Board and persons authorized by the Board may administer oaths to persons executing affidavits pursuant to section 1-1108. It may provide for the administering of such other oaths as it considers appropriate to require in the performance of its functions.

(d) The Board may permit either persons temporarily absent from the District or persons physically unable to appear personally at an official registration place to register for the purpose of voting in any election held under this chapter.

(e) The Board may employ necessary personnel, at such rates of compensation as may be fixed by the Mayor of the District of Columbia, without reference to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]. The Board, at the request of the Director of Campaign Finance, shall provide such employees, subject to the compensation provisions of this subsection, as requested to carry out the powers and duties of the Director. Employees so assigned to the Director shall, while so assigned, be under the direction and control of the Director.

No provision of this chapter shall be construed as permitting the Board to appoint any personnel who are not full-time paid employees of the Board to preliminarily determine alleged violations of the law affecting elections, conflicts of interest, or lobbying.

(f) Repealed. June 28, 1977, D.C. Law 2-12, § 6(j), 24 DCR 1442.

(g) The Board shall prescribe such regulations as may be necessary to insure that all persons responsible for the proper administration of this chapter maintain a position of strict impartiality and refrain from any activity which would imply support of or opposition to (1) a candidate or group of candidates for office in the District of Columbia, or (2) any political party or political committee. As used in this subsection, the terms "office", "political party", and "political committee" shall have the same meaning as that prescribed in section 1-1121.

(h) Notwithstanding provisions of the District of Columbia Administrative Procedure Act (D.C. Code,

sec. 1-1501 et seq.), the Board may hear any case brought before it under this chapter or under chapter 11A of this title by one member panels. An appeal from a decision of any such one member panel may be taken to either the full Board or to the District of Columbia Court of Appeals, at the option of any adversely affected party. If appeal is taken directly to the District of Columbia Court of Appeals, the decision of a one member panel shall be, for purposes of such appeal, considered to be a final decision of the Board. If an appeal is taken from a decision of a one member panel to the full Board, the decision of the one member panel shall be stayed pending a final decision of the Board. The Board may, upon a vote of the majority of its members, hear de novo all issues of fact or law relating to an appeal of a decision of a one member panel, except the Board may decide to consider only the record made before such one member panel. A final decision of the full Board, relating to an appeal brought to it from a one member panel, shall be appealable to the District of Columbia Court of Appeals in the same manner and to the same extent as all other final decisions of the Board. (Aug. 12, 1955, 69 Stat. 700, ch. 862, § 5; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87-389, § 1 (3), (4), (5), (6); Apr. 22, 1968, Pub. L. 90-292, § 4(3), 82 Stat. 103; Dec. 23, 1971, Pub. L. 92-220, § 1 (5)-(7), (28), (29), 85 Stat. 789, 795; Aug. 14, 1973, Pub. L. 93-92, § 1 (2)-(7), 87 Stat. 311, 312; Jan. 3, 1975, Pub. L. 93-635, § 13, 88 Stat. 2177; Dec. 16, 1975, D.C. Law 1-37, § 2 (1), (2), 22 DCR 3426; Dec. 16, 1975, D.C. Law 1-38, § 4, 22 DCR 3433; Feb. 17, 1976, D.C. Law 1-45, § 2, 22 DCR 4678; Sept. 2, 1976, D.C. Law 1-79, title I, § 102 (5), (6), title V, §§ 502, 503, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title I, § 103(b), title III, § 301(c)-(f), title IV, § 402, 24 DCR 2372; June 28, 1977, D.C. Law 2-12, § 6(j), 24 DCR 1442.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1977—Act June 28, 1977, D.C. Law 2-12, provided for the repeal of section 1(7) of the District of Columbia Election Act. Since section 1 which is classified to section 1-1101 does not contain a par. (7) and D.C. Law 2-12 indicated that section 1(7) is classified to section 1-1105 (f) the amendment was executed to this section by repealing subsec. (f) as the probable intent of the Council.

Subsec. (a). Section 301(c) of act Apr. 23, 1977, D.C. Law 1-126, amended subsec. (a) generally.

Subsecs. (b) (2), (4), and (5). Section 402 of such act amended subsecs. (b) (2), (4), and (5) by substituting "he or she" and "his or her" for "he" and "his", respectively.

Subsec. (b) (4). Section 301(d) of such act amended subsec. (b) (4) by striking "and the Board shall publish a copy of the ballot required under this subsection in the District of Columbia Register 45 days prior to the primary election" from the end thereof.

Subsec. (b) (5). Section 103(b) of such act amended subsec. (b) (5) by substituting "properly" for "property".

Subsec. (e). Section 301(e) of such act amended subsec. (e) by adding the second paragraph.

Subsec. (h). Section 301(f) of such act amended the first sentence of subsec. (h) generally.

1976—Subsec. (a). Section 102(5) of act Sept. 2, 1976, D.C. Law 1-79, title I, provided for the amendment of subsec. (a) by striking out "and" at the end of par. (8), redesignating par. (9) as par. (11), and adding new pars. (9) and (10). To reflect the redesignation of pars. (8) and (9) as pars. (9) and (10) by act Dec. 16, 1975, D.C. Law 1-37, this amendment has been executed to subsec. (a) by striking out "and" at the end of par. (9), redesignating par. (10) as par. (11), and adding the second par. (9) and par. (10).

Act Feb. 17, 1976, D.C. Law 1-45, provided for the amendment of subsec. (a) (3) by adding a proviso at the end thereof. To reflect the redesignation of subsec. (a) (3) as subsec. (a) (4) by act Dec. 16, 1975, D.C. Law 1-37, this amendment has been executed to subsec. (a) (4) by adding the proviso at the end thereof.

Subsec. (b). Section 503 of act Sept. 2, 1976, D.C. Law 1-79, title V, amended subsec. (b) (4) by adding at the end thereof ", or name of the person who shall manage an uncommitted slate of delegates, and the Board shall publish a copy of the ballot required under this subsection in the District of Columbia Register 45 days prior to the primary election."

Section 502 of such act amended subsec. (b) (5) generally.

Subsec. (h). Section 102(6) of act Sept. 2, 1976, D.C. Law 1-79, title I, added subsec. (h).

1975—Subsec. (a). Section 4 of act Dec. 16, 1975, D.C. Law 1-38, amended par. (4) [redesignated as par. (5) by D.C. Law 1-37] by substituting "draw precinct lines within the election wards created by the Council, subject to the approval of the Council" for "divide the District into eight compact and contiguous election wards which shall include such numbers of precincts as will provide approximately equal population within each ward; and reapportion the wards accordingly after each decennial census".

Section 2(1) of act Dec. 16, 1975, D.C. Law 1-37, struck out par. (2) and inserted in lieu thereof new pars. (2) and (3), and renumbered pars. (3) through (9) as pars. (4) through (10).

Subsec. (c). Section 2(2) of such act struck out reference to section 1-1107.

Subsec. (e). Section 13(a) of Act Jan. 3, 1975, Pub. L. 93-635, amended subsec. (e) by adding the second and third sentences.

Subsec. (g). Section 13(b) of such Act added subsec. (g).

1973—Subsec. (a). Section 1(2) of Act Aug. 14, 1973, Pub. L. 93-92 amended subsec. (a) by (A) striking out "and" at the end of par. (7), (B) by redesignating par. (8) as par. (9), and (C) by inserting after par. (7) a new par. (8) as above set out.

Subsec. (b) (1). Section 1(3) of such Act amended subsec. (b) (1) by striking out "after the first Monday" immediately after the word "Tuesday".

Subsec. (b) (2) (3). Section 1(4) of such Act amended subsec. (b) (2) (3) by striking out "forty-five" wherever it appeared and inserting "sixty" in lieu thereof.

Subsec. (b) (6). Section 1(5) of such Act repealed subsec. (b) (6). Prior to repeal, subsec. (b) (6) read:

"(6) The Board shall by regulation specify such additional details as may be necessary and proper to effectuate the purposes and provisions of this subsection."

Subsec. (d). Section 1(6) of such Act amended subsec. (d) to read as above set out. Prior to amendment, subsec. (d) read:

"(d) The Board may prescribe such regulations as it considers necessary to carry out the purposes of this chapter, including, a regulation permitting either persons temporarily absent from the District or persons physically unable to appear personally at an official registration place, to register in the manner prescribed in such regulation for the purpose of voting in any election held pursuant to this chapter."

Subsec. (f). Section 1(7) of such Act added subsec. (f) to read as above set out.

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subsecs. (a), (b), (e), and (h), see secs. 103(b) and 301 (c)-(f) of the Elections and Latino Community Development Emergency

Amendments Act of 1976 (D.C. Act 1-215, Jan. 12, 1977, 23 DCR 5095, 5097-5099).

EFFECTIVE DATES OF 1977 AMENDMENTS

For act June 28, 1977, D.C. Law 2-12, see section 9 of that act set out as a note under § 1-215a.

For act Apr. 23, 1977, D.C. Law 1-126, see section 404 of that act set out as a note under § 1-1102.

EFFECTIVE DATES OF 1976 AMENDMENTS

For title I of act Sept. 2, 1976, D.C. Law 1-79, see § 103 of such act set out as a note under § 1-1102.

Section 505 of act Sept. 2, 1976, D.C. Law 1-79, title V, provided: "The provisions of this title [amending this section and § 1-1110] shall become effective at the end of the thirty day period of Congressional review provided for acts of the Council in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act. (D.C. Code, sec. 1-147(c))."

Section 3 of act Feb. 17, 1976, D.C. Law 1-45, provided: "This section [amending this section] shall become effective as provided by section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

EFFECTIVE DATE OF 1975 AMENDMENT BY D.C. LAW 1-38

See effective date note under § 1-1105b.

EFFECTIVE DATE OF 1973 AMENDMENT BY PUB. L. 93-92

See note under § 1-1102.

DISTRICT CHARTER REFERENDUM

See note under § 1-121.

PUBLICATION OF BOARD RULES AND REGULATIONS

Section 303 of act Apr. 23, 1977, D.C. Law 1-126, title III, provided: "The Board is directed to publish a current edition of its rules and regulations of general application, properly promulgated under the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.) within one hundred eighty days of the effective date of this act."

POWERS OF THE PRESIDENT DURING TRANSITIONAL PERIOD

Section 721 of title VII of Act Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 821, provided: "The President of the United States is hereby authorized and requested to take such action during the period following the date of the enactment of this Act and ending on the date of the first meeting of the Council, by Executive order or otherwise, with respect to the administration of the functions of the District government, as he deems necessary to enable the Board of Elections properly to perform its functions under this Act."

CROSS REFERENCES

Acceptance of volunteer services, see §§ 1-215a et seq. Advisory Neighborhood Commissions, functions and conduct of elections, see §§ 1-171e, 1-171h, 1-171r.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1107.

NOTES TO DECISIONS

Constitutional questions

Even though the constitutional questions regarding challenge of the Socialist Workers' party to the District of Columbia Campaign Finance Reform and Conflict of Interest Act (§§ 1-1121 et seq.) based on ground that the application of Act to it would subject members whose names must be disclosed to harassment must be ruled on directly, it was within three-judge district court's power to direct the Board of Elections and Ethics to provide a suitable forum for plaintiffs' claims and, should the claims be proved, to provide an appropriate remedy. *J. Doe et ano. v. R. Martin, Chairman, et al.* (1975, 404 F. Supp. 753).

Construction

Where statutory reporting requirements of section 1-1182 are applicable to district employees serving in certain grades or positions "for more than six months" during a calendar year, District of Columbia Board of Elections and Ethics does not have power by regulation to require reports from employees of lesser tenure. *C. W. Hanke v.*

District of Columbia Board of Elections and Ethics (D.C. App. 1976, 353 A.2d 301).

Judicial review—Exhaustion of administrative remedies

Plaintiff's failure to pursue their administrative remedy by requesting Board of Elections and Ethics to grant them exemptions from requirement of filing enumerated tax and financial data with Board precludes their initiating judicial action to have statute imposing such requirement declared unconstitutional and to enjoin its enforcement. *H. T. Foley et al. v. District of Columbia Board of Elections and Ethics* (D.C. App. 1976, 358 A.2d 305).

Write-in votes

The Board of Elections should exercise its rule-making power to facilitate write-in votes in the future for candidates for president and vice president. *L. R. Kamins v. Board of Elections for the District of Columbia* (D.C. App. 1974, 324 A.2d 187).

§ 1-1105a. Council authority over elections.

Notwithstanding any other provision of this Act or of any other law, the Council shall have authority to enact any act or resolution with respect to matters involving or relating to elections in the District. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 752, 87 Stat. 836.)

REFERENCE IN TEXT

"This Act", referred to in text, is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

CODIFICATION

Section was enacted as part of the District of Columbia Self-Government and Governmental Reorganization Act, and not as part of the District of Columbia Election Act which comprises this chapter.

EFFECTIVE DATE

Section 771(e) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided that Part E of title VII [comprising sections 751 and 752, which amended §§ 1-1101, 1-1102, 1-1110, 1-1115, and enacted § 1-1105a] is effective on the date on which title IV is accepted by a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-128.

§ 1-1105b. Election wards.

The Council of the District of Columbia shall divide the District into eight compact and contiguous election wards which shall include such numbers of precincts as will provide approximately equal population within each ward; and reapportion the wards accordingly after each decennial census. (Dec. 16, 1975, D.C. Law 1-38, § 2, 22 DCR 3433.)

CODIFICATION

Section was enacted as part of the Boundaries Act of 1975, and not as part of the District of Columbia Election Act which comprises this chapter.

EFFECTIVE DATE

Section 7 of act Dec. 16, 1975, D.C. Law 1-38, provided: "This act, and the amendments made by this act [enacting § 1-1105b and amending § 1-1105], shall be effective as provided in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act Dec. 16, 1975, D.C. Law 1-38, provided "That this act [enacting § 1-1105b and amending § 1-1105] may be cited as the 'Boundaries Act of 1975'."

EXISTING WARD BOUNDARIES

Section 3 of act Dec. 16, 1975, D.C. Law 1-38, provided: "The order of the District of Columbia Board of Elections and Ethics of June 25, 1971, is repealed, except the boundaries of the election wards established by such order shall remain in effect until changed by the Council of the District of Columbia according to law."

BOUNDARIES OF SERVICE AREAS

Sections 5 and 6 of act Dec. 16, 1975, D.C. Law 1-38, provided:

"Sec. 5. The Commissioner's Order establishing the Service Areas (C.O. No. 70-142, April 20, 1970, as amended by C.O. No. 72-95, April 21, 1972) is amended by striking out the maps attached thereto and incorporated therein. On and after the effective date of this act, the boundaries of those Service Areas shall be identical to the boundaries that may be established from time to time for the election wards. Beginning with such effective date, the boundaries of the Service Areas shall be the boundaries established for the election wards in section 3 of this act.

"Sec. 6. The Mayor shall report to the Council within 90 days after the date of enactment of this act with respect to establishing a uniform and coterminous delivery system for all city services not delivered within the service areas defined in section 5 of this act."

§ 1-1105c. Multilingual election materials.

(a) As used in this section, the term "non-English speaking person" shall mean a person whose native speaking language is a language other than English, and who continues to use his or her native language as his or her primary means of oral and written communication.

(b) In election wards in the District of Columbia in which non-English speaking persons who speak the same language constitute five percent or more of the eligible voting population, as determined by the statistical office of the District of Columbia government, the Board of Elections and Ethics (hereinafter in this section referred to as the "Board") shall cause all election materials, including, but not limited to ballots, voting instructions, and voter pamphlets, to be supplied in both the native language of such non-English speaking eligible voters and English.

(c) The Board may by regulation adopt lesser percentages of non-English speaking persons in a particular ward or precinct who would be sufficient to obtain election materials in a language other than English, and may by regulation, establish procedures to allow non-English speaking persons to participate in the electoral process where such non-English speaking persons do not constitute five percent or more of the eligible voting population in one ward or precinct. (Sept. 2, 1976, D.C. Law 1-79, title IV, §§ 402, 403, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372.)

CODIFICATION

Section was enacted as part of the Multilingual Elections Material act of 1976, and not as part of the District of Columbia Election Act which comprises this chapter.

Section 402 of act Sept. 2, 1976, D.C. Law 1-79, has been classified to subsec. (a) and section 403 of such act has been classified to subsecs. (b) and (c).

AMENDMENT

1977—Act Apr. 23, 1977, D.C. Law 1-126, amended subsec. (a) by substituting "his or her" for "his".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

EFFECTIVE DATE

Section 404 of act Sept. 2, 1976, D.C. Law 1-79, title IV, provided: "The provisions of this title [enacting this section] shall take effect at the end of the thirty day period of review provided for acts of the Council in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 1-147(c)), or on July 1, 1976, whichever last occurs."

SHORT TITLE

Section 401 of act Sept. 2, 1976, D.C. Law 1-79, title IV, provided that "This title [enacting this section] may be cited as the 'Multilingual Elections Material act of 1976'."

§1-1106. Board independent agency—District to furnish facilities to Board—Seal.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§1-1107. Registration—Conditions for registration—Registration application and notification—Hearings—Appeals.

(a) A person shall be entitled to vote in an election in the District of Columbia only if he or she is a qualified elector and, except as provided in subsection (e) of this section, he or she is duly registered in the District on the date of such election. A qualified elector shall be considered duly registered in the District if he or she registers under this chapter after January 1, 1968, and if after the date he or she registers no four-year period elapses during which he or she fails to vote in an election held under this chapter;

(b) No person shall be registered unless—

(1) he or she is a qualified elector;

(2) he or she executes a registration application by signature or mark (unless prevented by physical disability) on the form prescribed by the Board pursuant to subsection (c) showing that he or she meets each of the requirements specified in paragraphs (2) and (7) of section 1-1102 for a qualified elector or qualifies under procedures established by the Board under paragraph (7) of subsection (a) of section 1-1105, and, if he or she desires to vote in a party election, such form shall show his or her political party affiliation; and

(3) the Board accepts his or her registration as provided in subsection (e).

(c) (1) In administering the provisions of subsection (b) (2), the Board shall prepare and use a registration application form in which each request for information is readily understandable and can be satisfied by a concise answer or mark. The Board may request additional information required to determine whether the registrant meets the requirements imposed by or referred to in subsection (b).

(2) The registration application form shall be designed by the Board to provide an easily understood method of registering to vote by mail and shall be mailable to the Board postage prepaid. Such forms shall have printed on them in bold face type the penalties for fraudulently attempting to register to vote.

(d) After January 1, 1976, the Board shall distribute a sufficient quantity of such forms to post offices, libraries, schools, firehouses, churches, banks, settlement houses, food establishments, in the District of Columbia, and such other places in the District of Columbia, as the Board deems appropriate. Once every second year, the Board shall mail registration application forms and information on how to obtain more registration application forms to each residential mailing address in the District no earlier than 120 days and no later than 90 days before the primary election beginning with the primary election to be held in September, 1976.

(e) Within 15 calendar days after receipt of a registration application form from any applicant, the Board shall mail a nonforwardable registration notification form to such applicant advising him of the acceptance or rejection of his or her registration application. Such notification form shall include the applicant's name, address, birth date, party affiliation (if any), ward and precinct number, the address of his or her polling place, and the hours during which the polls will be open. The Board may include along with such registration notification any voter education materials it deems appropriate. Registration of an applicant shall be deemed effective on the date the Board mails such registration notification to the applicant, except any registration notification form undelivered and returned to the Board shall be deemed to be a challenged application subject to the provisions of subsection (f).

(f) In the case where a registration application is deemed to be challenged under subsection (e), or in the case where a registration application is actually challenged, the Board shall immediately notify the concerned applicant of the challenge by first class mail. Such applicant, or any qualified candidate, may request a hearing before the Board on the challenge within 5 days after such notification is mailed. Upon request for such a hearing the Board shall hold such hearing within 7 days after receipt of such request. At such hearing the applicant, and any interested party, may appear and give testimony on the question of the challenge. The Board shall determine such challenge within 2 days after such hearing. Any aggrieved party may appeal the decision of the Board to the Superior Court of the District of Columbia within 3 days after the date of the Board's decision. The decision of the Court shall be final and not appealable. If any part of this challenge process is pending on the date of an election held under this chapter, the applicant whose registration is being challenged shall be permitted to cast a ballot in such election which is marked "challenged". Such ballot shall be counted in the election if the applicant is ultimately deemed to be a qualified registered elector.

(g) The registry shall be open during reasonable hours, except that the registry shall not be open during the thirty-day period which immediately preceded¹ any regular primary or general election held under this chapter. Registration forms received by mail from eligible voters shall be processed as provided in this section, *Provided, however* that no

¹ So in original. Probably should be "precedes".

such forms shall be processed if they are postmarked during the thirty-day period which immediately preceded¹ any regular primary or general election held under this chapter. The Board may close the registry on Saturdays, Sundays, and holidays. (Aug. 12, 1955, 69 Stat. 700, ch. 862, § 7; Oct. 4, 1961, 75 Stat. 817, 818, Pub. L. 87-389, § 1 (8, 9, 10, 11); July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; Apr. 22, 1968, Pub. L. 90-292, § 4(4), 82 Stat. 103; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570; Dec. 23, 1971, Pub. L. 92-220, § 1(8), (30), (31), 85 Stat. 790, 795; Dec. 16, 1975, D.C. Law 1-37, § 2(3)-(5), 22 DCR 3426; Apr. 23, 1977, D.C. Law 1-126, title III, § 301(g)-(i), title IV, § 402, 24 DCR 2372.)

AMENDMENTS

1977—Subsec. (b)(2). Section 301(g) of act Apr. 23, 1977, D.C. Law 1-126, amended subsec. (b)(2) by substituting "under paragraph (7)" for "under paragraph (6)".

Subsec. (d). Section 301(h) of such act amended subsec. (d) by substituting "120 days and no later than 90 days" for "75 days and no later than 60 days".

Subsec. (g). Section 301(i) of such act amended subsec. (g) generally.

Subsecs. (a), (b), and (e). Section 402 of such act amended subsecs. (a), (b), and (e) by substituting "he or she" for "he" and "his or her" for "his".

1975—Subsec. (b). Section 2(3) of act Dec. 16, 1975, D.C. Law 1-37, substituted "application" for "affidavit" in par. (2); struck out the period at the end of par. (2) and inserted "; and" in lieu thereof; and added par. (3).

Subsec. (c). Section 2(4) of such act inserted "(1)" immediately before "In administering"; substituted "application" for "affidavit"; and added a new par. (2).

Subsec. (d). Section 2(5) of such act redesignated subsec. (d) as "(g)"; struck out subsec. (e); and added new subsecs. (d)-(f).

Subsec. (e). Section 2(5) of such act struck out subsec. (e) and added new subsec. (e).

Subsec. (f). Section 2(5) added subsec. (f).

Subsec. (g). Section 2(5) redesignated subsec. (d) as "(g)".

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subsecs. (b)(2), (d), and (g), see sec. 301(g)-(i) of the Elections and Latino Community Development Emergency Amendments Act of 1976 (D.C. Act 1-215, Jan. 12, 1977, 23 DCR 5100).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-171g, 1-1105, 1-1108.

§ 1-1108. Candidates for office—Form, date, and time of day for filing petitions—Number of signatures required—Arrangement of ballot—Nominations for presidential electors—Names of candidates for President and Vice President to appear on ballot under party designation—Form of ballot—Candidates for electors not to appear on ballot—Nominations by nonqualifying political parties—Qualifications of electors—Nomination and election of Delegate, Mayor, Chairman and members of Council—Election of candidates by primary or party runoff election—Nominating petition—Arrangement of names on ballot—Designations of offices of local party committees—Nominating petition for election of members of Board of Education—Posting of petitions in a public place—Challenging validity of petition—Board of Elections and Ethics to determine validity of petition—Appeal—Arrangement of names on ballot.

(a) (1) Each candidate for election to the office of national committeeman or alternate, or national

committeewoman or alternate, and for election as a member or official designated for election at large under clause (4) of section 1-1101, shall be a qualified elector registered under section 1-1107 who has been nominated for such office, or for election as such member or official, by a nominating petition (A) signed by not less than five hundred qualified electors registered under such section 1-1107, who are of the same political party as the candidate, and (B) filed with the Board not later than the sixty ninth day before the date of the election held for such office, member, or official.

* * * * *

(b) No such person shall hold elected office pursuant to this chapter unless he or she has been a bona fide resident of the District of Columbia continuously since the beginning of the ninety-day period ending on the date of the next election, and is a qualified elector registered under section 1-1107.

* * * * *

(d) Each political party who has had its candidate elected as President of the United States after January 1, 1950, shall be entitled to nominate candidates for presidential electors. The executive committee of the organization recognized by the national committee of each such party as the official organization of that party in the District of Columbia shall nominate by appropriate means the presidential electors for that party. Nominations shall be made by message to the Board of Elections and Ethics on or before September 1 next preceding a presidential election.

* * * * *

(f) A political party which does not qualify under subsection (d) of this section may have the names of its candidates for President and Vice President of the United States printed on the general election ballot provided a petition nominating the appropriate number of candidates for presidential electors signed by at least 1 per centum of registered qualified electors of the District of Columbia, as of July 1 of the year in which the election is to be held is presented to the Board on or before the third Tuesday in August preceding the date of the presidential election.

(g) No person may be elected to the office of elector of President and Vice President pursuant to this chapter unless (1) he or she is a registered voter in the District and (2) he or she has been a bona fide resident of the District for a period of three years immediately preceding the date of the presidential election. Each person elected as elector of President and Vice President shall, in the presence of the Board, take an oath or solemnly affirm that he or she will vote for the candidates of the party he or she has been nominated to represent, and it shall be his or her duty to vote in such manner in the electoral college.

(h) (1) (A) The Delegate, Mayor, Chairman of the District Council and the four at-large members of the Council shall be elected by the registered qualified electors of the District of Columbia in a general election. Each candidate for the office of Delegate, Mayor, Chairman of the District Council, and at-large members of the Council in any general elec-

¹ So in original. Probably should be "precedes".

tion shall, except as otherwise provided in subsection (j) of this section and section 1-1110(d), have been elected by the registered qualified electors of the District as such candidate by the next preceding primary election.

(B) (i) A member of the office of Council (other than the Chairman and any member elected at large) shall be elected in a general election by the registered qualified electors of the respective ward of the District from which the individual seeking such office was elected as a candidate for such office as provided in clause (ii) of this paragraph.

(ii) Each candidate for the office of member of the Council (other than Chairman and at-large members) shall, except as otherwise provided in subsection (j) of this section and section 1-1110(d), have been elected as such a candidate, by the registered qualified electors of the ward of the District from which such individual was nominated, at the next preceding primary election to fill such office within that ward.

(2) The nomination and election of any individual to the office of Delegate, Mayor, Chairman of the Council and member of the Council shall be governed by the provisions of this chapter. No political party shall be qualified to hold a primary election to select candidates for election to any such office in a general election unless, in the next preceding election year, at least seven thousand five hundred votes were cast in the general election for a candidate of such party for any such office or for its candidates for electors of President and Vice President.

(1) (1) Each individual in a primary election for candidate for the office of Delegate, Mayor, Chairman of the Council, or at-large member of the Council shall be nominated for any such office by a petition (A) filed with the Board not later than sixty nine days before the date of such primary election, and (B) signed by at least two thousand registered qualified electors of the same political party as the nominee, or by 1 per centum of the duly registered members of such political party, whichever is less, as shown by the records of the Board of Elections and Ethics as of the one hundred twenty third day before the date of such election.

(2) Each individual in a primary election for candidate for the office of member of the Council (other than Chairman and at-large members) shall be nominated for such office by a petition filed with the Board not later than sixty-nine days before the date of such primary election, and signed by at least two-hundred fifty persons, or by 1 per centum of persons (whichever is less, in the ward from which such individual seeks election) who are duly registered in such ward under section 1-1107 and who are of the same political party as the nominee.

(3) A nominating petition for a candidate in a primary election for any such office may not be circulated for signature before the one hundred twenty third day preceding the date of such election and may not be filed with the Board before the ninety fourth day preceding such date. The Board may prescribe rules with respect to the preparation and presentation of nominating petitions. The Board shall arrange the ballot of each political party in each

such primary election as to enable a voter of such party to vote for nominated candidates of that party.

(j) (1) A duly qualified candidate for the office of Delegate, Mayor, Chairman of the Council, or member of the Council, may subject to the provisions of this subsection, be nominated directly as such a candidate for election for such office (including any such election to be held to fill a vacancy). Such person shall be nominated by petition (A) filed with the Board not less than sixty nine days before the date of such general election, and (B) in the case of a person who is a candidate for the office of member of the Council (other than the Chairman or an at-large member), signed by five hundred voters who are duly registered under section 1-1107 in the ward from which the candidate seeks election; and in the case of a person who is a candidate for the office of Delegate, Mayor, Chairman of the Council, or at-large member of the Council, signed by duly registered voters equal in number to $1\frac{1}{2}$ per centum of the total number of registered voters in the District, as shown by the records of the Board as of one hundred twenty three days before the date of such election, or by three thousand persons duly registered under section 1-1107, whichever is less. No signatures on such a petition may be counted which have been made on such petition more than one hundred fourteen days before the date of such election.

(2) Nominations under this subsection for candidates for election in a general election to any office referred to in paragraph (1) shall be of no force and effect with respect to any person whose name has appeared on the ballot of a primary election for that office held within eight months before the date of such general election.

(k) (1) In each general election for the office of member of the Council (other than the office of the Chairman or an at-large member) the Board shall arrange the ballots in each ward to enable a voter registered in that ward to vote for any one candidate who (A) has been duly elected by any political party in the next preceding primary election for such office from such ward, (B) has been duly nominated to fill a vacancy in such office in such ward pursuant to section 1-1110(d), or (C) has been nominated directly as a candidate for such office in such ward under subsection (j) of this section.

(2) In each general election for the office of Chairman and member of the Council at large, the Board shall arrange the ballots to enable a registered qualified elector to vote for as many candidates for election as members at large as there are members at large to be elected in such election, including the Chairman. Such candidates shall be only those persons who (A) have been duly elected by any political party in the next preceding primary election for such office, (B) have been duly nominated to fill vacancies in such office pursuant to section 1-1110(d), or (C) have been nominated directly as a candidate under subsection (j) of this section.

(3) In each general election for the office of Delegate and Mayor, the Board shall arrange the ballots to enable a registered qualified elector to vote for any one of the candidates for any such office who (A) has been duly elected by any political party in the next preceding primary election for such office, (B)

has been duly nominated to fill a vacancy in such office pursuant to section 1-1110(d), or (C) has been nominated directly as a candidate under subsection (j) of this section.

* * * * *

(m) (1) Designation of offices of local party committees to be filled by election pursuant to clause (4) of section 1-1101 shall be effected, in accordance with the provision of this subsection, by written communication signed by the chairman of such committee and filed with the Board not later than ninety days before the date of such election.

(2) Such designation shall specify separately (A) the titles of the offices and the total number of members to be elected at large, if any, and (B) the title of the offices and the total number of members to be elected by ward, if any.

(3) In the event that a party committee designates members to be elected by ward pursuant to clause (B) of paragraph (2) this subsection, the number of such officials to be elected from each of the wards shall be based on the relative numerical strength of such party in such ward, as compared with the total numerical strength of such party in the District, in each case as measured by the total number of registered voters of such party residing in each ward (as shown by the records of the Board as of one hundred twenty days before such election), based on the method known as the method of equal proportions, with no ward to elect less than one member.

* * * * *

(o) Each candidate in a general election for member of the Board of Education shall be nominated for such office by a nominating petition (A) filed with the Board not later than the sixty ninth calendar day before the date of such general election; and (B) signed by at least two hundred qualified electors who are duly registered under section 1-1107, who reside in the ward from which the candidate seeks election, or in the case of a candidate running at large, signed by at least one thousand of the qualified electors in the District of Columbia registered under such section 1-1107. A nominating petition for a candidate in a general election for member of the Board of Education may not be circulated for signatures before the one hundred twenty third day preceding the date of such election and may not be filed with the Board before the ninety fourth day preceding such date. In a general election for members of the Board of Education, the Board shall arrange the ballot for each ward to enable a voter registered in that ward to vote for any one candidate duly nominated to be elected to such office from such ward, and to vote for as many candidates duly nominated for election at large to such office as there are Board of Education members to be elected at large in such election.

(p) (1) The Board is authorized to accept any nominating petition for a candidate for any office as bona fide with respect to the qualifications of the signatories thereto if the original or facsimile thereof has been posted in a suitable public place for the ten-day period beginning on the third day after the filing deadline for nominating petitions for such office. Any qualified elector may within such ten-day

period challenge the validity of any petition by a written statement duly signed by the challenger and filed with the Board and specifying concisely the alleged defects in such petition. Copy of such challenge shall be sent by the Board promptly to the person designated for the purpose in the nominating petition.

(2) The Board shall receive evidence in support of and in opposition to the challenge and shall determine the validity of the challenged nominating petition not more than fifteen days after the challenge has been filed. Within three days after announcement of the determination of the Board with respect to the validity of the nominating petition, either the challenger or any person named in the challenged petition as a nominee may apply to the District of Columbia Court of Appeals for a review of the reasonableness of such determination. The court shall expedite consideration of the matter and the decision of such court shall be final and not appealable.

* * * * *

(As amended Aug. 14, 1973, Pub. L. 93-92, § 1(8)-(14), 87 Stat. 312, 313; Dec. 24, 1973, Pub. L. 93-198, title VII, § 751(3), 87 Stat. 833; Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458; Sept. 2, 1976, D.C. Law 1-79, title I, § 102(7)-(12), 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title III, § 301(j), title IV, § 402, 24 DCR 2372.)

AMENDMENTS

1977—Section 301(j) of act Apr. 23, 1977, D.C. Law 1-126, amended subsec. (i) (2) generally.

Section 402 of such act amended subsecs. (b) and (g) by substituting "he or she" for "he" and subsec. (g) by substituting "his or her" for "his".

1976—Section 102(7) of act Sept. 2, 1976, D.C. Law 1-79, amended subsec. (p) (2) by substituting "fifteen" for "eight."

Section 102(8) of such act amended subsecs. (a) (1) (B) and (o) (A) by substituting "sixty ninth" for "sixtieth."

Section 102(9) of such act amended subsecs. (i) (1) (B), (i) (3), and (o) by substituting "one hundred twenty third" for "one hundred fourteenth."

Section 102(10) of such act amended subsecs. (i) (3) and (o) by substituting "ninety fourth" for "eighty fifth."

Section 102 (11) amended subsec. (j) (1) (B) by substituting "one hundred twenty three" for "one hundred fourteen."

Section 102(12) amended subsecs. (i) (1) (A), (i) (2) (A), and (j) (1) (A) by substituting "sixty nine" for "sixty."

1974—Section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, amended subsecs. (d) and (i) by substituting "Board of Elections and Ethics" for "Board of Elections".

1973—Subsecs. (h)-(k). Section 751(3) of Act Dec. 24, 1973, Pub. L. 93-198, amended subsecs. (h)-(k) generally. For prior provisions, see the 1973 edition of the Code and Supp. I thereto.

Subsec. (a) (1). Section 1(8) of Act Aug. 14, 1973, Pub. L. 93-92, amended subsec. (a) (1) by eliminating clause (A) which read: "(A) prepared in accordance with rules prescribed by the Board,;" by redesignating clauses (B) and (C) as clauses (A) and (B); and by substituting "sixtieth" for "forty-fifth" in redesignated clause (B).

Subsec. (f). Section 1(9) of such Act amended subsec. (f) by substituting "1 per centum" for "5 per centum".

Subsec. (i). Section 1(10) of such Act amended subsec. (i) as follows: (A) by striking out "forty-fifth" and inserting in lieu thereof "sixtieth", (B) by striking out "ninety-ninth", "ninety-ninth", and "seventieth", respectively, and by inserting in lieu thereof "one hundred fourteenth", "one hundred fourteenth", and "eighty-fifth", respectively, and (C) by striking out "The Board may prescribe rules with respect to the preparation and presentation of nominating petitions."

Subsec. (j) (1). Section 1(11) of such Act amended

subsec. (j) (1) as follows: (A) by striking out in clause (A) "forty-fifth", and inserting in lieu thereof "sixtieth", (B) by striking out "ninety-ninth", "ninety-ninth", and "seventieth," respectively, and by inserting in lieu thereof "one hundred fourteenth", "one hundred fourteenth", and "eighty-fifth", respectively, and (C) by striking out "The Board may prescribe rules with respect to the preparation and presentation of such nominating petitions."

Subsec. (m) (3). Section 1(12) of such Act amended subsec. (m) (3) by striking out "The Board shall by regulation specify such additional details as may be necessary and proper to effectuate the purpose of this subsection."

Subsec. (o). Section 1(13) of such Act amended subsec. (o) as follows: (A) by striking out in clause (A) "forty-fifth", and by inserting in lieu thereof "sixtieth", (B) by striking out "ninety-ninth" and "seventieth", respectively, and by inserting in lieu thereof "one hundred fourteenth" and "eighty-fifth", respectively, and (C) by striking out "The Board may prescribe rules with respect to the preparation and presentation of nominating petitions."

Subsec. (p) (1). Section 1(14) of such Act amended subsec. (p) (1) by striking out "forty-second day before the date of the election" and by inserting in lieu thereof "third day after the filing deadline for nominating petitions".

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subsec. (1) (2), see sec. 301(j) of the Elections and Latino Community Development Emergency Amendments Act of 1976 (D.C. Act 1-215, Jan. 12, 1977, 23 DCR 5101).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as note under § 1-1102.

EFFECTIVE DATE OF 1976 AMENDMENT

See § 103 of act Sept. 2, 1976, D.C. Law 1-79, set out as a note under § 1-1102.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment effective on and after Aug. 14, 1974, see section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, set out as § 1-1156(a).

EFFECTIVE DATE OF 1973 AMENDMENT BY PUB. L. 93-198

Amendment effective May 7, 1974, see note under § 1-1101.

EFFECTIVE DATE OF 1973 AMENDMENT BY PUB. L. 93-92

See note under § 1-1102.

CROSS REFERENCE

Election of Advisory Neighborhood Commission members, see §§ 1-171d to 1-171f, 1-171o.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1105, 1-1109.

NOTES TO DECISIONS

Application for review

Application for review which appealed order of District of Columbia Board of Elections' determination that ward candidate's nominating petition challenged by elector satisfied code requirements and which was filed on Wednesday following receipt by the elector of the order on the preceding Saturday was not filed within three-day period prescribed by Congress for review of determinations of the board of elections and therefore the District of Columbia Court of Appeals was without jurisdiction. *G. C. Moore v. Board of Elections for the District of Columbia* (D.C. App. 1974, 325 A.2d 452).

Challenge

Written challenge, which was filed with the District of Columbia Board of Elections by the Board's executive secretary who did not present his challenge as a "qualified elector" and which challenged the validity of several nominating petitions for the office of at-large council member, was invalid because not filed by a "qualified elector." *C. L. Crawford v. Board of Elections for the District of Columbia* (D.C. App. 1974, 325 A.2d 451).

Presidential candidates

Statutory provisions for nominating candidates for presidential electors by executive committees of major

parties or by petition signed by at least 5% of the voters are the exclusive means through which presidential and vice presidential candidates may have their names printed on the ballot, but do not restrict the right of citizens, by write-in votes, to vote for candidates for whom qualified electors have been appointed but whose names are not printed on the ballot. *L. R. Kamins v. Board of Elections for the District of Columbia* (D.C. App. 1974, 324 A.2d 187).

Standing

Alleged injuries to the public at large from the Board of Elections' refusal to check nominating petitions in the manner suggested by plaintiffs, the party political committee and its chairman, did not give plaintiffs standing to maintain action for preliminary injunction in absence of allegation of any injury in fact to plaintiffs. *Board of Elections for the District of Columbia et al. v. Democratic Central Committee et al.* (D.C. App. 1973, 300 A.2d 725).

Validity of petition

The presence of some invalid signatures on nominating petition does not necessarily make a petition deficient if petition contains the required numbers of valid signatures. *Board of Elections for the District of Columbia et al. v. Democratic Central Committee et al.* (D.C. App. 1973, 300 A.2d 725).

In view of statute setting forth duty of Board of Elections with respect to certification of nominating petitions and proper procedure to be utilized by an elector to challenge the validity of the petition, court would not attempt to judicially legislate a different procedure. *Id.*

Validity of signatures

In view of statutory provisions for determining validity of nominating petitions and for review of decisions of Board of Elections regarding challenges to such petitions, plaintiffs, the central committee of political party and its chairman, lacked standing to bring action for injunctive relief against board's refusal to check validity of signatures on nominating petitions in the manner desired by plaintiffs. *Board of Elections for the District of Columbia et al. v. Democratic Central Committee et al.* (D.C. App. 1973, 300 A.2d 725).

§ 1-1109. Method of voting—Place—Watchers—Challenging of votes—Appeal from challenged ballots—Handicapped and absent voters—Voting in party elections—Election of unopposed candidates—Availability of regulations.

* * * * *

(b) Except as otherwise provided by regulation of the Board, the vote of a person who is registered as a resident of the District shall be valid only if cast in the voting precinct where the residence shown on his or her registration is located. The Board shall by regulation permit voting by any registered elector who is absent from the District or who, because of his or her physical condition, is unable to vote in person at the polling place in his or her voting precinct on election day.

* * * * *

(d) If the official in charge of the polling place, after hearing both parties to any such challenge or acting on his or her own initiative with respect to a prospective voter, reasonably believes the prospective voter is unqualified to vote, he or she shall allow the voter to cast a paper ballot marked "challenged", and shall provide the prospective voter with written notification of his or her rights of appeal as provided in subsection (e) of this section. Ballots so cast shall be segregated, and no such ballot shall be counted until the challenge has been removed as provided in subsection (e).

(e) Within 3 days after the date of any election held under this chapter, any person who was permitted to vote in that election with a ballot marked

"challenged" may petition the Board to have such designation removed and have such ballot counted in the same manner as all other ballots cast in that election. The Board shall hold a hearing with respect to such petition within seven days after receipt of such petition. At such hearing, the petitioner may appear and give testimony on the question of the challenge. The Board shall make a determination regarding the challenge within 2 days after the date of such hearing. Any aggrieved party may appeal the decision of the Board to the Superior Court of the District of Columbia within three days after the date of the Board's decision. The decision of the Court in any such case shall be final and not appealable.

(f) If a qualified elector is unable to record his or her vote by marking the ballot or operating the voting machine an official of the polling place shall, on the request of the voter, enter the voting booth and comply with the voter's directions with respect to recording his or her vote. Upon the request of any such voter, a second official of the polling place shall also enter the voting booth and witness the recollection of the voter's directions. The official or officials shall in no way influence or attempt to influence the voter's decisions, and shall tell no one how the voter voted. The official in charge of the voting place shall make a return of all such voters, giving their names and disabilities.

(g) No person shall vote more than once in any election nor shall any person vote in a primary or party runoff election held by a political party other than that to which he or she has declared himself to be a member.

* * * *

(As amended Aug. 14, 1973, Pub. L. 93-92, § 1(15), 87 Stat. 313; Dec. 16, 1975, D.C. Law 1-37, § 2(6), (7), 22 DCR 3430; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372.)

AMENDMENTS

1977—Act Apr. 23, 1977, D.C. Law 1-126, amended subsecs. (b), (d), and (f) by substituting "his or her" for "his" and subsecs. (d) and (g) by substituting "he or she" for "he".

1975—Subsec. (d). Section 2(6) of act Dec. 16, 1975, D.C. Law 1-37, inserted ", and shall provide the prospective voter with written notification of his rights of appeal as provided in subsection (e) of this section" at the end of the first sentence.

Subsec. (e). Section 2(7) of such act amended subsec. (e) generally.

1973—Subsec. (e). Section 1(15) of Act of Aug. 14, 1973, Pub. L. 93-92, amended subsec. (e) by substituting "ten" for "seven".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

EFFECTIVE DATE OF 1973 AMENDMENT BY PUB. L. 93-92

See note under § 1-1102.

§ 1-1110. Dates for holding elections—Votes cast for President and Vice President to be counted as votes for presidential electors—Voting hours—Method of deciding tie votes—Naming successor to official who dies, resigns, or is unable to serve—Filling vacancies on Board of Education.

(a) (1) The elections of the officials referred to in clause (1), (2), and (3) of section 1-1101, and of officials designated pursuant to clause (4) of such

section, and the primary under section 1-1105(b) shall be held on the first Tuesday in May of each presidential election year.

* * * *

(3) (A) Except as otherwise provided in the case of special elections under this chapter or section 206(a) of the District of Columbia Delegate Act, primary elections of each political party for the office of Delegate to the House of Representatives shall be held on the first Tuesday in May of each even-numbered year which is a presidential election year, and in other even-numbered years, on the first Tuesday after the second Monday in September; and general elections for such office shall be held on the Tuesday next after the first Monday in November of each even-numbered year.

(B) Except as otherwise provided in the case of special elections under this chapter primary elections of each political party for the office of member of the Council shall be held on the first Tuesday after the second Monday in September in 1974, and every second year thereafter, and general election for such offices shall be held on the first Tuesday after the first Monday in November in 1974 and every second year thereafter.

(C) Except as otherwise provided in the case of a special election under this chapter, primary elections of each political party for the office of Mayor and Chairman shall be held on the first Tuesday after the second Monday in September of every fourth year, commencing with calendar year 1974, and the general election for such office shall be held on the first Tuesday after the first Monday in November in 1974 and every fourth year thereafter.

(4) With respect to special elections required or authorized by this chapter, the Board may establish the dates on which such special elections are to be held and prescribe such other terms and conditions as may, in the Board's opinion, be necessary or appropriate for the conduct of such elections in a manner comparable to that prescribed for other elections held pursuant to this chapter.

(5) General elections for members of the Board of Education shall be held on the first Tuesday after the first Monday in November of each odd-numbered calendar year.

(6)–(9) Repealed. Dec. 24, 1973, Pub. L. 93-198, title VII, § 751(5), 87 Stat. 835.

(b) All elections prescribed by this chapter shall be conducted by the Board in conformity with the provisions of this chapter. In all elections held pursuant to this chapter the polls shall be open from 7 o'clock antemeridian to 8 o'clock postmeridian. Candidates receiving the highest number of votes in elections held pursuant to this chapter, other than candidates for election as political party officials or delegates to national conventions nominating candidates for the Presidency and Vice Presidency of the United States, shall be declared the winners.

(c) In the case of a tie vote, the resolution of which will affect the outcome of any election, the candidates receiving the tie vote shall cast lots before the Board, at 12 o'clock noon on a date to be set by the Board, but not sooner than ten days following determination by the Board of the results of the

election which require the resolution of such tie, and the one to whom the lot shall fall shall be declared the winner. If any candidate or candidates, receiving a tie vote, fail to appear before 12 o'clock noon on said day, the Board shall cast lots for him or them. For the purpose of casting lots any candidate may appear in person, or by proxy appointed in writing.

(d) In the event that any official, other than the Delegate, Mayor, member of the Council, member of the Board of Education, or a winner of a primary election for the office of Delegate, Mayor, or member of the Council, elected pursuant to this chapter dies, resigns, or becomes unable to serve during his or her term of office leaving no person elected pursuant to this chapter to serve the remainder of the unexpired term of office, the successor or successors to serve the remainder of such term shall be chosen pursuant to the rules of the duly authorized party committee, except that such successor shall have the qualifications required by this chapter for such office. In the event that such a vacancy occurs in the office of a candidate for the office of Delegate, Mayor, or member of the Council who has been declared the winner in the preceding primary election of such office, the vacancy may be filled not later than fifteen days prior to the next general election for such office, by nomination by the party committee of the party which nominated his predecessor. In the event that such a vacancy occurs in the office of Delegate more than eight months before the expiration of its term of office, the Board shall call special elections to fill such vacancy for the remainder of its term of office.

(e) Whenever a vacancy occurs in the office of member of the Board of Education, such vacancy shall be filled at the next general election which occurs more than one hundred fourteen days after such vacancy occurs. However, the Board of Education shall appoint a person to fill such vacancy until the unexpired term of the vacant office ends or until the fourth Monday in January next following the date of the election of a person to serve the remainder of such unexpired term, whichever occurs first. A person elected to fill a vacancy shall hold office for the duration of the unexpired term of office to which he or she was elected. Any person appointed under this subsection shall have the same qualifications for holding such office as were required of his or her immediate predecessor. (As amended Aug. 14, 1973, Pub. L. 93-92, § 1(16)-(19), 87 Stat. 313; Dec. 24, 1973, Pub. L. 93-198, title VII, § 751(4)-(8), 87 Stat. 834, 835; Aug. 29, 1974, Pub. L. 93-395, § 3(a), 88 Stat. 794; Sept. 2, 1976, D.C. Law 1-79, title V, § 504, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title II, § 201, title IV, § 402, 24 DCR 2372.)

REFERENCE IN TEXT

Section 206(a) of the District of Columbia Delegate Act, referred to in subsec. (a) (3) (A), is set out in the main edition as a note under § 1-291.

AMENDMENTS

1977—Subsec. (a) (3) (A). Section 201 of act Apr. 23, 1977, D.C. Law 1-126, amended subsec. (a) (3) (A) generally.

Subsec. (e). Section 402 of such act amended subsec. (e) by substituting "he or she" for "he" and "his or her" for "his".

1976—Act Sept. 2, 1976, D.C. Law 1-79, amended subsec. (b) by substituting "Candidates receiving the highest

number of votes in elections held pursuant to this chapter, other than candidates for election as political party officials or delegates to national conventions nominating candidates for the Presidency and Vice Presidency of the United States, shall be declared the winners." for "Candidates receiving the highest number of votes in elections held pursuant to this chapter shall be declared the winners."

1974—Subsec. (e). Section 2(a) of Act Aug. 29, 1974, Pub. L. 93-395, amended subsec. (e) by striking out "for members of the Board of Education" immediately following "election" in the first sentence.

1973—Subsec. (a) (3). Section 751(4) of Act Dec. 24, 1973, Pub. L. 93-198, amended subsec. (a) (3) by inserting "(A)" immediately before the word "Except", and by adding at the end thereof a new par. (B).

Subsec. (a) (4)-(9). Section 751(5) of such Act amended pars. (4) and (5) generally, and repealed pars. (6)-(9). For prior provisions, see the 1973 edition of the Code and Supp. I thereto.

Subsec. (b). Section 751(6) of such Act amended subsec. (b) by striking out "other than general elections for the Office of Delegate and for members of the Board of Education," immediately before "shall be declared the winners" at the end thereof.

Subsec. (c). Section 751(7) of such Act amended subsec. (c) by striking out "other than an election for members of the Board of Education" immediately after "the outcome of any election".

Subsec. (d). Section 751(8) of such Act amended subsec. (d) generally. For prior provisions, see the 1973 edition of the Code.

Subsec. (a) (1). Section 1(16) of Act Aug. 14, 1973, Pub. L. 93-92, amended subsec. (a) (1) by striking out "after the first Monday" immediately after the word "Tuesday".

Subsec. (a) (4). Section 1(17) of such Act amended subsec. (a) (4) generally to read as above set out. Prior to amendment, it read:

"(4) Runoff elections shall be held whenever (A) in any primary election of a political party for candidates for the office of Delegate, no one candidate receives at least 40 per centum of the total votes cast in that election for all candidates of that party for that office, and (B) in any general election for the office of Delegate, no one candidate receives at least 40 per centum of the total votes cast in that election for all candidates for that office. Any such runoff election shall be held not less than two weeks nor more than six weeks after the date on which the Board has determined the results of the preceding primary or general election, as the case may be. At the time of announcing any such determination, the Board shall establish and announce the date on which the runoff election will be held, if one is required. The candidates in any such runoff election shall be the two persons who received, respectively, the two highest numbers of votes in such preceding primary or general election; except that if any person withdraws his candidacy from such runoff election (under the rules and within the time limits prescribed by the Board), the person who received the next highest number of votes in such preceding primary or general election and who is not already a candidate in the runoff election shall automatically become such a candidate."

Subsec. (b). Section 1(18) of such Act amended subsec. (b) by striking out "8 o'clock antemeridian" and by inserting in lieu thereof "7 o'clock antemeridian".

Subsec. (e). Section 1(19) of such Act amended subsec. (e) by striking out "ninety-nine" and inserting in lieu thereof "one hundred fourteen".

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subsec. (a) (3) (A), see sec. 201 of the Elections and Latino Community Development Emergency Amendments Act of 1976 (D.C. Act 1-215, Jan. 12, 1977, 23 DCR 5095).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 504 of act Sept. 2, 1976, D.C. Law 1-79, set out as a note under § 1-1105.

EFFECTIVE DATE OF 1973 AMENDMENT BY PUB. L. 93-198
Amendment effective May 7, 1974, see note under
§ 1-1101.

EFFECTIVE DATE OF 1973 AMENDMENT BY PUB. L. 93-92
See note under § 1-1102.

REGULATIONS TO CARRY OUT 1974 AMENDMENT

Section 3(b) of Act Aug. 29, 1974, Pub. L. 93-395, as amended by Act Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458, provided: "The Board of Elections and Ethics shall prescribe regulations as it considers necessary in order to carry out the purposes of the amendment made by subsection (a) [amending § 1-1110(e)], including establishing the filing date for nomination petitions for any elections to be held during November 1974."

CROSS REFERENCE

Date of election of Advisory Neighborhood Commission members, see §§ 1-171e, 1-171p.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-171f, 1-1108, 31-101.

NOTES TO DECISIONS

Write-in votes

Statute providing that "Each vote cast for a candidate * * * whose name appears on the general election ballot shall be counted as a vote cast for the candidates for presidential electors" of that candidate's party means that the Board of Elections need not count votes for candidates for whom no slate of electors has been filed but does not preclude counting write-in votes in favor of candidates for whom a slate of electors has been filed, despite contention that the names of such write-in candidates do not "appear" on the ballot. *L. R. Kamins v. Board of Elections for the District of Columbia* (D.C. App. 1974, 324 A.2d 187).

There is nothing in statute regulating elections in the District of Columbia which precluded the counting of write-in and sticker votes in a presidential election where such votes were cast for candidates for whom a valid slate of elections had been filed, and such votes should have been counted. *Id.*

§ 1-1111. Petition for recount by candidate—Procedure—Expenses—Petition for recount by voter to District of Columbia Court of Appeals—Grounds for voiding election.

(a) If, within seven days after the Board certifies the results of an election, any qualified candidate at such election petitions the Board to have the votes cast at such election recounted in one or more voting precincts, the Board shall order such recount. In each such case, the petitioner shall deposit a fee of \$20 for each precinct petitioned to be recounted. If the cost of the recount is less than \$20 per precinct, the difference shall be refunded. If the result of the election is changed as a result of the recount, the entire amount deposited by the petitioner shall be refunded. In no case, however, shall the petitioner be required to pay the cost of any recount in any such election if the difference in the number of votes received by the petitioner in connection with any office and the number of votes received by the person certified as having been elected to that office, in the case of an election from a ward, is less than 1 per centum or fifty votes, whichever is less, or in the case of an election at large, is less than 1 per centum or three hundred and fifty votes, whichever is less.

* * * * *

(As amended Aug. 14, 1973, Pub. L. 93-92, § 1(20), 87 Stat. 313.)

AMENDMENT

1973—Subsec. (a). Section 1(20) of Act Aug. 14, 1973, Pub. L. 93-92, amended subsec. (a) by striking out "Such

recounts shall be conducted in the manner prescribed by the Board by regulation."

EFFECTIVE DATE OF 1973 AMENDMENT BY PUB. L. 93-92
See note under § 1-1102.

NOTES TO DECISIONS

Exhaustion of administrative remedies

Petitioners, seeking review of refusal of Board of Elections and Ethics to count over 8,000 ballots cast in District of Columbia presidential preference primary and delegate election, exhausted whatever administrative remedies they had when they participated in the hearing conducted by the Board and urged that the votes be counted; exhaustion of administrative remedies doctrine does not require a petition for rehearing or require petitioners to initially seek relief from credentials committee of the national political party. *A. E. Gollin et al. v. District of Columbia Board of Elections and Ethics et al.* (D.C. App. 1976, 359 A.2d 590).

Administrative remedy available to individuals or groups who may institute action before the Board of Elections and Ethics by challenge "according to law or regulation" is unavailable as regards challenge to Board's refusal to count over 8,000 ballots cast in the presidential preference primary and delegate election since only law or regulation permitting such challenge pertains to challenges to nominating petitions and challenges to persons who have been allowed to vote by a challenged ballot, none of which situations is involved in instant case. *Id.*

Judicial review

Court of Appeals' review of refusal of Board of Elections and Ethics to count over 8,000 ballots cast in District of Columbia presidential preference primary and delegate election does not constitute a prohibited attempt to substitute judicial judgment for that of the political party on question of seating of delegates since court's review of the election merely insures that no voter was disenfranchised through improper interpretation on part of the Board and that results certified by the Board were, in fact, the true results; court is not interfering with internal affairs of the political party since action by its credentials committee or any other committee is not precluded. *A. E. Gollin et al. v. District of Columbia Board of Elections and Ethics et al.* (D.C. App. 1976, 359 A.2d 590).

Unsworn allegations in petition that winning candidate in primary for particular ward made unfair and illegal use of certain facilities of a nonprofit organization, including the use of mailing privileges of a church and the use of nursery van of the church in connection with mobile campaigning and that the Board of Elections should have removed the name or indicated the withdrawal of a particular person as a candidate was not sufficient to enable court to utilize its review powers over the election procedure. *J. K. Morgan v. R. E. Martin, Chairman, etc.* (D.C. App. 1974, 327 A.2d 827).

Validity of ballots

Petition challenging refusal of Board of Elections and Ethics to count ballots cast in District of Columbia presidential preference primary and delegate election because voters failed to mark box next to name of candidate or uncommitted slate is not untimely on ground that petitioners did not challenge the form of the ballot before the election since form of the ballot is not the crux of the matter, but, rather, issue is whether the ballots in dispute evidence an intent sufficient to warrant crediting of those ballots to particular presidential candidates or uncommitted slates. *A. E. Gollin et al. v. District of Columbia Board of Elections and Ethics et al.* (D.C. App. 1976, 359 A.2d 590).

In fulfilling its statutory duty to determine whether results of presidential preference primary, as certified by Board of Elections and Ethics, are in fact the true results it is the duty of the court to attempt to discern the intent of the voters; standard to be applied in determining intent is not one of absolute sureness since reasonable certainty is enough. *Id.*

Although in voting in presidential preference primary and delegate election some 8,000 voters who selected delegates committed to a particular candidate or listed on the uncommitted slate failed to mark the box next to name of that candidate or uncommitted slate, such ballots are

not thereby rendered invalid where, among other things, it was impossible to vote for a presidential candidate or uncommitted slate and then vote for delegates pledged to another candidate or uncommitted slate. *Id.*

Voiding of election

Even though it was a matter of common knowledge that there had been problems with election machinery in primary election, unsworn allegations that the election procedures in one ward constituted an election fiasco, that some ballot boxes could have been altered or misplaced, that ballots were mixed together, that the computerized results were a fiasco, that supervision was lacking, that a voting circular violated fair campaign practices, and that one precinct was located in a physically inadequate room were insufficient to warrant voiding of the election in the ward or to warrant the institution by the court of an ad hoc fact finding process. *J. K. Morgan v. R. E. Martin, Chairman, etc.* (D.C. App. 1974, 327 A. 2d 827).

Where Board of Elections submitted sworn statements that no ballots were lost or destroyed and that all valid ballots were counted, petition which alleged that candidate for Council in the ward was present at recount which decided winning candidate but was not present during the entire duration of a previous recount, and that Board of Elections failed to assure that program and equipment to count the votes by machine were in working order, failed to maintain adequate security of the ballots, erroneously held recounts, and failed to notify candidate of the first recount did not warrant setting aside the certified results of the election. *Id.*

§ 1-1113. Appropriations.

There are hereby authorized to be appropriated, out of any money in the Treasury to the credit of the District of Columbia not otherwise appropriated, such sums as are necessary to carry out the purposes of this chapter. (As amended Aug. 14, 1974, Pub. L. 93-376, title VII, § 706(a), 88 Stat. 471.)

AMENDMENT

1974—Section 706(a) of Act Aug. 14, 1974, Pub. L. 93-376, amended section generally. For prior provisions, see the 1973 ed. of the Code.

CONSTRUCTION OF 1974 AMENDMENT

Section 706(c) of Act Aug. 14, 1974, Pub. L. 93-376, provided: "The amendment [to this section] made by subsection (a) shall not affect the liability of any person arising out of any violation of section 13 of the District of Columbia Election Act [this section] committed before the date of enactment of this title, and any action commenced with respect to such a violation shall not abate."

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment effective Aug. 14, 1974, see section 705(b) of Act Aug. 14, 1974, Pub. L. 93-376, set out as a note under § 1-1121.

REIMBURSABLE APPROPRIATIONS

Section 722 of title VII of the District of Columbia Self-Government and Governmental Reorganization Act [approved Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 821] provided:

"(a) The Secretary of the Treasury is authorized to advance to the District of Columbia the sum of \$750,000, out of any money in the Treasury not otherwise appropriated, for use (1) in paying the expenses of the Board of Elections (including compensation of the members thereof), and (2) in otherwise carrying into effect the provisions of this Act.

"(b) The full amount expended out of the money advanced pursuant to this section shall be reimbursed to the United States, without interest, during the second fiscal year which begins after the effective date of title IV [Jan. 2, 1975], from the general fund of the District."

§ 1-1114. False registration, fraud, and other corrupt practices in elections—Penalties.

Any person who shall register, or attempt to register, under the provisions of this chapter and make

any false representations as to his or her qualifications for voting or for holding elective office, or be guilty of violating section 1-1109, 1-1112, or 1-1113, or be guilty of bribery or intimidation of any voter at the elections herein provided for, or, being registered, shall vote or attempt to vote more than once in any election so held, or shall purloin or secrete any of the votes cast in such elections, or attempt to vote in an election held by a political party other than that to which he or she has declared himself to be affiliated, or, if employed in the counting of votes in any election held pursuant to this chapter knowingly, make a false report in regard thereto, and every candidate, person, or official of any political committee who shall knowingly make any expenditure or contribution in violation of this chapter, shall upon conviction thereof be fined not more than \$10,000 or be imprisoned not more than five years, or both. The provisions of this section shall be supplemental to and not in derogation of any penalties under other laws of the District of Columbia. (Aug. 12, 1955, 69 Stat. 704, ch. 862, § 14; Oct. 4, 1961, 75 Stat. 820, Pub. L. 87-389, § 1(24); Sept. 22, 1970, Pub. L. 91-405, title II, § 205(k), 84 Stat. 854; Dec. 16, 1975, D.C. Law 1-37, § 2(8), 22 DCR 3430; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372.)

AMENDMENTS

1977—Act Apr. 23, 1977, D.C. Law 1-126, amended section by substituting "he or she" for "he" and "his or her" for "his".

1975—Section 2(8) of act Dec. 16, 1975, D.C. Law 1-37, substituted "\$10,000" and "five years" for "\$500" and "ninety days", respectively.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

SEPARABILITY

Section 3 of act Dec. 16, 1975, D.C. Law 1-37, provided: "If any provision of this act, including any amendment [to §§ 1-1105, 1-1107, 1-1109, 1-1114] made by this act, is found to be unconstitutional or otherwise contrary to law, the remaining provisions of this act, including such amendments, shall not be affected thereby."

§ 1-1115. Candidacy for more than one office not permitted—Choice of nominations—Withdrawal from multiple nominations—Candidacy of officeholder for other office restricted.

(a) No person shall be a candidate for more than one office on the Board of Education or the Council in any election for members of the Board of Education or Council, and no person shall be a candidate for more than one office on the Council in any primary election. If a person is nominated for more than one such office, he or she shall, within three days after the Board has sent him notice that he or she has been so nominated, designate in writing the office for which he or she wishes to run, in which case he or she will be deemed to have withdrawn all other nominations. In the event that such person fails within such three-day period to file such a designation with the Board, all such nominations of such person shall be deemed withdrawn.

(b) No person who is holding the office of Mayor, Delegate, Chairman or member of the Council, or member of the School Board shall, while holding such office, be eligible as a candidate for any other of such offices in any primary or general election, un-

less the term of the office which he or she so holds expires on or prior to the date on which he or she would be eligible, if elected in such primary or general election, to take the office with respect to which such election is held. (Aug. 12, 1955, ch. 862, § 15, as added Apr. 22, 1968, Pub. L. 90-292, § 4(9), 82 Stat. 106, and amended Dec. 24, 1973, Pub. L. 93-198, title VII, § 751(9), (10), 87 Stat. 835; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372.)

AMENDMENTS

1977—Act Apr. 23, 1977, D.C. Law 1-126, amended section by substituting "he or she" for "he".

1973—Section 751(9), (10) of Act Dec. 24, 1973, Pub. L. 93-198, amended the first sentence by inserting reference to the Council and by providing that no person shall be a candidate for more than one office on the Council in any primary election; designated the existing text as subsec. (a); and added subsec. (b).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment effective May 7, 1974, see note under § 1-1101.

Chapter 11A.—ELECTION CAMPAIGNS— LOBBYING—CONFLICT OF INTEREST

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1-1105.

SUBCHAPTER I.—GENERAL PROVISIONS

§ 1-1121. Definitions.

When used in this chapter, unless otherwise provided—

(a) The term "election" means a primary, runoff, general, or special election held in the District of Columbia for the purpose of nominating an individual to be a candidate for election to office or for the purpose of electing a candidate to office, and includes a convention or caucus of a political party held for the purpose of nominating such a candidate.

(b) The term "candidate" means an individual who seeks nomination for election, or election, to office, whether or not such individual is nominated or elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, if he or she has (1) obtained or authorized any other person to obtain nominating petitions to qualify himself for nomination for election, or election, to office, (2) received contributions or made expenditures, or has given his or her consent for any other person to receive contributions or make expenditures, with a view to bringing about his or her nomination for election, or election, to office, or (3) reason to know, or knows, that any other person has received contributions or made expenditures for that purpose, and has not notified that person in writing to cease receiving contributions or making expenditures for that purpose. A person who is deemed to be a candidate for the purposes of this chapter shall not be deemed, solely by reason of that status, to be a candidate for the purposes of any other Federal law.

(c) The term "office" means the office of Mayor of the District of Columbia, Chairman or member of the Council of the District of Columbia, member of the Board of Education of the District of Columbia, or an official of a political party.

(d) The term "official of a political party" means—

(1) national committeemen and national committeewomen;

(2) delegates to conventions of political parties nominating candidates for the Presidency and Vice Presidency of the United States;

(3) alternates to the officials referred to in clauses (1) and (2) above, where permitted by political party rules; and

(4) such members and officials of local committees of political parties as may be designated by the duly authorized local committees of such parties for election, by public ballot, at large or by ward in the District of Columbia.

(e) The term "political committee" means any committee (including a principal campaign committee), club, association, organization, or other group of individuals organized for the purpose of, or engaged in, promoting or opposing a political party or the nomination or election of an individual to office.

(f) The term "contribution" means—

(1) a gift, subscription (including any assessment, fee, or membership dues), loan, advance, or deposit of money or anything of value, made for the purpose of financing, directly or indirectly, the election campaign of a candidate or any operations of a political committee;

(2) a contract, promise, or agreement, whether or not legally enforceable, to make a contribution for any such purpose;

(3) a transfer of funds between political committees; or

(4) the payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to such candidate or committee without charge, or for less than reasonable value, for any such purpose or the furnishing of goods, advertising, or services to a candidate's campaign without charge, or at a rate which is less than the rate normally charged for such services.

Notwithstanding the foregoing, such term shall not be construed to include (A) services provided without compensation, by individuals volunteering a portion or all of their time on behalf of a candidate or political committee, (B) personal services provided without compensation by individuals volunteering a portion or all of their time to a candidate or political committee, (C) communications by an organization, other than a political party, solely to its members and their families on any subject, (D) communications (including advertisements) to any person on any subject by any organization which is organized solely as an issue-oriented organization, which communications neither endorse nor oppose any candidate for office, or (E) normal billing credit for a period not exceeding thirty days.

(g) The term "expenditure" means—

(1) a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made for the purpose of financing, directly or indirectly, the election campaign of a candidate or any operations of a political committee;

(2) a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure;

(3) a transfer of funds between political committees; and

(4) notwithstanding the foregoing provisions of this paragraph, such term shall not be construed to include the incidental expenses (as defined by the Board) made by or on behalf of individuals in the course of volunteering their time on behalf of a candidate or political committee.

(h) The term "person" means an individual, partnership, committee, association, corporation, labor organization, and any other organization.

(i) The term "Director" means the Director of Campaign Finance of the District of Columbia Board

of Elections and Ethics created by subchapter III of this chapter.

(j) The term "political party" means an association, committee, or organization which nominates a candidate for election to any office and qualifies under chapter 11 of this title, to have the names of its nominees appear on the election ballot as the candidate of that association, committee, or organization.

(k) The term "Board" means the District of Columbia Board of Elections and Ethics established under chapter 11 of this title and redesignated by section 1-1156 of this title. (Aug. 14, 1974, Pub. L. 93-376, title I, § 102, 88 Stat. 447; Sept. 2, 1976, D.C. Law 1-79, title VIII, § 806, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372.)

AMENDMENTS

1977—Act Apr. 23, 1977, D.C. Law 1-126, amended subsec. (b) by substituting "he or she" for "he" and "his or her" for "his".

1976—Act Sept. 2, 1976, D.C. Law 1-79, amended subsec. (h) by striking "or group of persons" immediately following "other organization".

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of chapter substituting "he or she" and "his or her" for "he" and "his", respectively, wherever the words appear, see sec. 402 of the Elections and Latino Community Development Emergency Amendments Act of 1976 (D.C. Act 1-215, Jan. 12, 1977, 23 DCR 5108).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 808 of act Sept. 2, 1976, D.C. Law 1-79, title VIII, provided: "The provisions of this title [amending §§ 1-1121, 1-1131, 1-1161, 1-1192, 47-1567f, and repealing § 1-1155] shall become effective at the end of the thirty day period of Congressional review provided for acts of the Council in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

EFFECTIVE DATES

Section 705 of Act Aug. 14, 1974, Pub. L. 93-376, provided:

"(a) Titles II and IV of this Act [subchapter II and IV of this chapter] shall take effect on the date of enactment of this Act, except the first report or statement required to be filed by any individual or political committee under the provisions of such titles shall include that information required under section 13(e) of the District of Columbia Election Act (D.C. Code, sec. 1-1113(e)) with respect to contributions and expenditures made before the date of enactment of this Act, but after January 1, 1974.

"(b) Titles I, III, VI and VII of this Act [subchapter I, III, VI and VII of this chapter, provisions set out under this section, section 47-1567f, and amendments of sections 1-1102, 1-1103, 1-1104, 1-1108, 1-1113] shall take effect on the date of enactment of this Act.

"(c) Title V of this Act [subchapter V of this chapter] shall take effect January 2, 1975."

SHORT TITLES

Section 201 of act Sept. 2, 1976, D.C. Law 1-79, title II, provided that "This title [amending §§ 1-1181 and 1-1182] may be cited as the 'Conflicts of Interest and Disclosure Amendments Act of 1976'."

Section 301 of act Sept. 2, 1976, D.C. Law 1-79, title III, provided that "This title [amending §§ 1-1171 et seq.] may be cited as the 'Lobbying Amendments of 1976'."

Section 701 of act Sept. 2, 1976, D.C. Law 1-79, title VII, provided that "This title [amending § 1-1162] may be

cited as the 'Constituent Services and Repeal of Expenditure Limitations act of 1976'."

Section 101 of Act Aug. 14, 1974, Pub. L. 93-376, title I, 88 Stat. 447, provided: "This Act [enacting this chapter, provisions set out under this section, and § 47-1567f; and amending §§ 1-1102, 1-1103, 1-1104, 1-1108, and 1-1113] may be cited as the 'District of Columbia Campaign Finance Reform and Conflict of Interest Act'."

SEVERABILITY PROVISION OF D.C. LAW 1-79

Section 807 of act Sept. 2, 1976, D.C. Law 1-79, title VIII, provided: "Should a court of competent jurisdiction declare any portion of this act to be invalid, the remaining provisions shall remain in effect."

AUTHORIZATION OF APPROPRIATIONS

Section 708 of Act Aug. 14, 1974, Pub. L. 93-376, provided: "Amounts authorized under section 722 of the District of Columbia Self-Government and Governmental Reorganization Act may be used to carry out the purposes of this Act [this chapter]."

STUDY OF 1974 ELECTION AND REPORT BY COUNCIL

Section 704 of Act Aug. 14, 1974, Pub. L. 93-376, provided:

"(a) The Council of the District of Columbia shall, during calendar year 1975, conduct public hearings and other appropriate investigations on (1) the operation and effect of the District of Columbia Campaign Finance Reform Act [this chapter] and the District of Columbia Election Act [chapter 11 of this title] on the elections held in the District of Columbia during 1974; and (2) the necessity and desirability of modifying either or both of those Acts so as to improve electoral machinery and to insure open, fair, and effective election campaigns in the District of Columbia.

"(b) Upon the conclusion of its hearings and investigations the Council shall issue a public report on its findings and recommendations. Nothing in this section shall be construed as limiting the legislative authority over elections in the District of Columbia vested in the Council by the District of Columbia Self-Government and Governmental Reorganization Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1105, 1-1171.

NOTES TO DECISIONS

Constitutionality—Determination by Board of Elections

Even though the constitutional questions regarding challenge of the Socialist Workers' party to the provisions of this chapter based on ground that the application of the provisions to it would subject members whose names must be disclosed to harassment must be ruled on directly, it was within three-judge district court's power to direct the Board of Elections and Ethics to provide a suitable forum for plaintiffs' claims and, should the claims be proved, to provide an appropriate remedy. *J. Doe et ano. v. R. Martin, Chairman, et al.* (1975, 404 F.Supp. 753).

—General

Campaign contribution disclosure statute [this chapter] serves too important an interest to subject it to excisions on allegations of a subjective "chill" based on real or perceived controversial character of candidate; such allegations are not an adequate substitute for claim of specific present objective harm. *J. Doe et ano. v. R. Martin, Chairman, et al.* (1975, 404 F.Supp. 753).

—Proper party to challenge

Socialist Workers' party could properly assert claim regarding fear of harassment and reprisal to members of party by campaign contribution disclosure law [this chapter] on behalf of its members since to require that party members assert the claim would result in nullification of right at very moment of its assertion. *J. Doe et ano. v. R. Martin, Chairman, et al.* (1975, 404 F.Supp. 753).

SUBCHAPTER II.—FINANCIAL DISCLOSURES

§ 1-1131. Organization of political committees.

(a) Every political committee shall have a chairman and a treasurer. No contribution and no ex-

penditure shall be accepted or made by or on behalf of a political committee at a time when there is a vacancy in the office of treasurer thereof and no other person has been designated and has agreed to perform the functions of treasurer. No expenditure shall be made for or on behalf of a political committee without the authorization of its chairman or treasurer, or their designated agents.

(b) Every person who receives a contribution of \$50 or more for or on behalf of a political committee shall, on demand of the treasurer, and in any event within five days after receipt of such contribution, submit to the treasurer of such committee a detailed account thereof, including the amount, the name and address (including the occupation and the principal place of business, if any) of the person making such contribution, and the date on which such contribution was received. All funds of a political committee shall be segregated from, and may not be commingled with, any personal funds of officers, members, or associates of such committee.

(c) Except for accounts of expenditures made out of the petty cash fund provided for under section 1-1131(b),¹ the treasurer of a political committee, and each candidate, shall keep a detailed and exact account of—

(1) all contributions made to or for such political committee or candidate;

(2) the full name and mailing address (including the occupation and the principal place of business, if any) of every person making a contribution of \$50 or more, and the date and amount thereof;

(3) all expenditures made by or on behalf of such committee or candidate; and

(4) the full name and mailing address (including the occupation and the principal place of business if any) of every person to whom any expenditure is made, the date and amount thereof and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made.

(d) The treasurer or candidate shall obtain and preserve such receipted bills and records as may be required by the Board.

(e) Each political committee and candidate shall include on the face or front page of all literature and advertisement soliciting funds the following notice: "A copy of our report is filed with the Director of Campaign Finance of the District of Columbia Board of Elections and Ethics." (Aug. 14, 1974, Pub. L. 93-376, title II, § 201, 88 Stat. 449; Sept. 2, 1976, D.C. Law 1-79, title VIII, § 803, 23 DCR 2050.)

AMENDMENT

1976—Act Sept. 2, 1976, D.C. Law 1-79, amended subsecs. (b) and (c) (2) by substituting "\$50" for "\$10".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 808 of act Sept. 2, 1976, D.C. Law 1-79, set out as a note under § 1-1121.

EFFECTIVE DATE OF SUBCHAPTER

See note under § 1-1121.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1139.

¹ So in original. Probably should be section "1-1133(b)".

NOTES TO DECISIONS

Disclosure of records

Requirement of statute regarding the keeping of records for each contribution of \$10 or more to political party has an implicit provision against disclosure of those records except for that which is inextricably and unavoidably involved in the process of verification and audit. *J. Doe et ano. v. R. Martin, Chairman, et al.* (1975, 404 F. Supp. 753).

§ 1-1132. Principal campaign committee.

(a) Each candidate for office shall designate in writing one political committee as his or her principal campaign committee. The principal campaign committee shall receive all reports made by any other political committee accepting contributions or making expenditures for the purpose of influencing the nomination for election, or election, of the candidate who designated it as his or her principal campaign committee. The principal committee may require additional reports to be made to it by any such political committee and may designate the time and number of all reports. No political committee may be designated as the principal campaign committee of more than one candidate, except a principal campaign committee supporting the nomination or election of a candidate as an official of a political party may support the nomination or election of more than one such candidate, but may not support the nomination or election of a candidate for any public office.

(b) Each statement (including the statement of organization required under section 1-1134) or report that a political committee is required to file with or furnish to the Director under the provisions of this chapter shall also be furnished, if that political committee is not a principal campaign committee, to the campaign committee for the candidate on whose behalf that political committee is accepting or making, or intends to accept or make, contributions or expenditures.

(c) The treasurer of each political committee which is a principal campaign committee, and each candidate, shall receive all reports and statements filed with or furnished to it or him by other political committees, consolidate, and furnish the reports and statements to the Director, together with the reports and statements of the principal campaign committee of which he or she is treasurer or which was designated by him, in accordance with the provisions of this subchapter and regulations prescribed by the Board. (Aug. 14, 1974, Pub. L. 93-376, title II, § 202, 88 Stat. 450; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372.)

AMENDMENT

1977—Act Apr. 23, 1977, D.C. Law 1-126, amended subsecs. (a) and (c) by substituting "his or her" for "his" and subsec. (c) by substituting "he or she" for "he".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

§ 1-1133. Designation of campaign depository.

(a) Each political committee, and each candidate accepting contributions or making expenditures, shall designate, in the registration statement required under section 1-1134 or 1-1135, one national bank located in the District of Columbia as the cam-

paign depository of that political committee or candidate. Each such committee or candidate shall maintain a checking account at such depository and shall deposit any contributions received by the committee or candidate into that account. No expenditures may be made by such committee or candidate except by check drawn payable to the person to whom the expenditure is being made on that account, other than petty cash expenditures as provided in subsection (b).

(b) A political committee or candidate may maintain a petty cash fund out of which may be made expenditures not in excess of \$50 to any person in connection with a single purchase or transaction. A record of petty cash receipts and disbursements shall be kept in accordance with requirements established by the Board and such statements and reports thereof shall be furnished to the Director as it may require. Payments may be made into the petty cash fund only by check drawn on the checking account maintained at the campaign depository of such political committee or candidate. (Aug. 14, 1974, Pub. L. 93-376, title II, § 203, 88 Stat. 451.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1131.

§ 1-1134. Registration of political committees—Statements.

(a) Each political committee shall file with the Director a statement of organization within ten days after its organization. Each such committee in existence on August 14, 1974, shall file a statement of organization with the Director at such time as the Director may prescribe—¹

(b) The statement of organization shall include—

(1) the name and address of the political committee;

(2) the names, addresses, and relationships of affiliated or connected organizations;

(3) the area, scope, or jurisdiction of the political committee;

(4) the name, address, and position of the custodian of books and accounts;

(5) the name, address, and position of other principal officers, including officers and members of the finance committee, if any;

(6) the name, address, office sought, and party affiliation of (A) each candidate whom the committee is supporting, and (B) any other individual, if any, whom the committee is supporting for nomination for election or election, to any public office whatever; or, if the committee is supporting the entire ticket of any party, the name of the party;

(7) a statement whether the political committee is a continuing one;

(8) the disposition of residual funds which will be made in the event of dissolution;

(9) the name and address of the bank designated by the committee as the campaign depository, together with the title and number of each account and safety deposit box used by that committee at the depository, and the identification of each individual authorized to make withdrawals or payments out of each such account or box; and

¹ So in original. A period probably should follow the word "prescribe".

(10) such other information as shall be required by the Director.

(c) Any change in information previously submitted in a statement of organization shall be reported to the Director within the ten-day period following the change.

(d) Any political committee which, after having filed one or more statements of organization, disbands or determines it will no longer receive contributions or make expenditures during the calendar year shall so notify the Director. (Aug. 14, 1974, Pub. L. 93-376, title II, § 204, 88 Stat. 451.)

CODIFICATION

In subsec. (a), the words "on August 14, 1974" were substituted for "at the date of enactment of this Act".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1132, 1-1133.

§ 1-1135. Registration of candidates.

(a) Each individual shall, within five days of becoming a candidate, or within five days of the day on which he or she, or any person authorized by him (pursuant to section 1-1161(d)) to do so, has received a contribution or made an expenditure in connection with his or her campaign or for the purposes of preparing to undertake his or her campaign, file with the Director a registration statement in such form as the Director may prescribe.

(b) In addition, candidates shall provide the Director the name and address of the campaign depository designated by that candidate, together with the title and number of each account and safety deposit box used by that candidate at the depository, and the identification of each individual authorized to make withdrawals or payments out of such account or box, and such other information as shall be required by the Director. (Aug. 14, 1974, Pub. L. 93-376, title II, § 205, 88 Stat. 452; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372.)

AMENDMENT

1977—Act Apr. 23, 1977, D.C. Law 1-126, amended subsec. (a) by substituting "he or she" for "he" and "his or her" for "his".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1133, 1-1139.

§ 1-1136. Reports by political committees and candidates.

(a) The treasurer of each political committee supporting a candidate, and each candidate, required to register under this chapter, shall file with the Director, and with the applicable principal campaign committee, reports of receipts and expenditures on forms to be prescribed or approved by the Director. Except for the first such report which shall be filed on the twenty-first day after August 14, 1974, such reports shall be filed on the 10th day of March, June, August, October, and December in each year during which there is held an election for the office such candidate is seeking, and on the fifteenth and fifth days next preceding the date on which such election is held, and also by the 31st day of January of each year. In addition such reports

shall be filed on the 31st day of July of each year in which there is no such election. Such reports shall be complete as of such date as the Director may prescribe, which shall not be more than five days before the date of filing, except that any contribution of \$200 or more received after the closing date prescribed by the Director for the last report required to be filed prior to the election shall be reported within twenty-four hours after its receipt.

(b) Each report under this section shall disclose—

(1) the amount of cash on hand at the beginning of the reporting period;

(2) the full name and mailing address (including the occupation and the principal place of business, if any) of each person who has made one or more contributions to or for such committee or candidate (including the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events) within the calendar year in an aggregate amount or value in excess of \$50 or more, together with the amount and date of such contributions;

(3) the total sum of individual contributions made to or for such committee or candidate during the reporting period and not reported under paragraph (2);

(4) the name and address of each political committee or candidate from which the reporting committee or the candidate received, or to which that committee or candidate made, any transfer of funds, together with the amounts and dates of all transfers;

(5) each loan to or from any person within the calendar year in an aggregate amount or values of \$50 or more, together with the full names and mailing addresses (including the occupation and the principal place of business, if any) of the lender and endorers, if any, and the date and amount of such loans;

(6) the net amount of proceeds from (A) the sale of tickets to each dinner, luncheon, rally, and other fundraising events organized by such committee; (B) mass collections made at such events; and (C) sales by such committee of items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials;

(7) each contribution, rebate, refund, or other receipt of \$50 or more not otherwise listed under paragraphs (2) through (6);

(8) the total sum of all receipts by or for such committee or candidate during the reporting period;

(9) the full name and mailing address (including the occupation and the principal place of business, if any) of each person to whom expenditures have been made by such committee or on behalf of such committee or candidate within the calendar year in an aggregate amount or value of \$10 or more, the amount, date, and purpose of each such expenditure and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made;

(10) the total sum of expenditures made by such committee or candidate during the calendar year;

(11) the amount and nature of debts and obligations owed by or to the committee, in such form as the Director may prescribe and a continuous reporting of its debts and obligations after the election at such periods as the Director may require until such debts and obligations are extinguished; and

(12) such other information as may be required by the Director.

(c) The reports to be filed under subsection (a) shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous report during such year, only the unchanged amount need be carried forward. If no contributions or expenditures have been accepted or expended during a calendar year, the treasurer of the political committee or candidate shall file a statement to that effect.

(d) Each treasurer of a political committee, each candidate for election to office, and each treasurer appointed by a candidate, shall file with the Director weekly reports of cash contributions on forms to be prescribed or approved by the Director. (Aug. 14, 1974, Pub. L. 93-376, title II, § 206, 88 Stat. 452.)

CODIFICATION

In subsec. (a), "August 14, 1974" was substituted for "the date of enactment of this Act".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1137, 1-1181.

NOTES TO DECISIONS

Disclosure of records

Requirement of statute regarding the keeping of records for each contribution of \$10 or more to political party has an implicit provision against disclosure of those records except for that which is inextricably and unavoidably involved in the process of verification and audit. *J. Doe et ano. v. R. Martin, Chairman, et al.* (1975, 404 F. Supp. 753).

§ 1-1137. Reports by others than political committees.

Every person (other than a political committee or candidate) who makes contributions or expenditures, other than by contribution to a political committee or candidate, in an aggregate amount of \$50 or more within a calendar year shall file with the Director a statement containing the information required by section 1-1136. Statements required by this section shall be filed on the dates on which reports by political committees are filed, but need not be cumulative. (Aug. 14, 1974, Pub. L. 93-376, title II, § 207, 88 Stat. 453.)

§ 1-1138. Formal requirements respecting reports and statements.

(a) A report or statement required by this subchapter to be filed by a treasurer of a political committee, a candidate, or by any other person, shall be verified by the oath or affirmation of the person filing such report or statement, taken before any officer authorized to administer oaths.

(b) A copy of a report or statement shall be preserved by the person filing it for a period to be designated by the Board in a published regulation.

(c) The Board, shall, by published regulations of general applicability, prescribe the manner in which contributions and expenditures in the nature of debts

and other contracts, agreements, and promises to make contributions or expenditures shall be reported. Such regulations shall provide that they be reported in separate schedules. In determining aggregate amounts of contributions and expenditures, amounts reported as provided in such regulations shall not be considered until actual payment is made. (Aug. 14, 1974, Pub. L. 93-376, title II, § 208, 88 Stat. 454.)

§ 1-1139. Exemption for candidates who anticipate spending less than \$250.

Except for the provisions of subsections (c) and (d) of section 1-1131, and subsection (a) of section 1-1135, the provisions of this subchapter shall not apply to any candidate who anticipates spending or spends less than \$250 in any one election and who has not designated a principal campaign committee. On the fifteenth day prior to the date of the election in which such candidate is entered, and on the thirtieth day after the date of such election, such candidate shall certify to the Director that he or she has not spent more than \$250 in such election. (Aug. 14, 1974, Pub. L. 93-376, title II, § 209, 88 Stat. 454; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372.)

AMENDMENT

1977—Act Apr. 23, 1977, D.C. Law 1-126, amended section by substituting "he or she" for "he".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

§ 1-1140. Identification of campaign literature.

All newspaper or magazine advertising, posters, circulars, billboards, handbills, bumper stickers, sample ballots, and other printed matter with reference to or intended for the support or defeat of a candidate or group of candidates for nomination or election to any public office shall be identified by the words "paid for by" followed by the name and address of the payer or the committee or other person and its treasurer on whose behalf the material appears. (Aug. 14, 1974, Pub. L. 93-376, title II, § 210, 88 Stat. 454.)

§ 1-1141. Effect on liability.

Nothing in this subchapter shall be construed as creating or limiting in any way the liability of any person under existing law for any financial obligation incurred by a political committee or candidate. (Aug. 14, 1974, Pub. L. 93-376, title II, § 211, 88 Stat. 454.)

SUBCHAPTER III.—DIRECTOR OF CAMPAIGN FINANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1-1121.

§ 1-1151. Establishment of the office of Director.

(a) There is established within the District of Columbia Board of Elections and Ethics the office of Director of Campaign Finance (hereinafter in this chapter referred to as the "Director"). The Commissioner of the District of Columbia shall appoint, by and with the advice and consent of the Senate, the Director, except that on and after January 2,

1975, appointments to the Office of Director, including vacancies therein, shall be made by the Mayor, with the advice and consent of the Council. The Director shall serve for a term of four years, subject to removal for cause by the Commissioner or the Mayor, as the case may be, and may be reappointed for a like term or terms, with the advice and consent of the Council, except that in the case of the Director serving as such on January 1, 1975, such Director's term shall terminate upon the expiration of June 1, 1979, unless sooner so removed for cause. Any appointment to fill a vacancy in the Office of Director shall be for the unexpired portion of the term. Such appointments shall be made without regard to the provisions of title 5 of the United States Code, governing appointments in the competitive service. The Director shall be entitled to receive compensation at the maximum rate as may be established from time to time for grade 16 of the General Schedule in section 5332 of title 5 of the United States Code, and shall be responsible for the administrative operations of the Board pertaining to this chapter and shall perform such other duties as may be delegated or assigned to him from time to time by regulations or orders of the Board. However, the Board shall not delegate to the Director the making of regulations regarding elections.

(b) The Board may appoint a General Counsel without regard to the provisions of title 5 of the United States Code, governing appointments in the competitive service, to serve at the pleasure of the Board. The General Counsel shall be entitled to receive compensation at the same rate as the Director of the Board and shall be responsible solely to the Board. The General Counsel shall perform such duties as may be delegated or assigned to him from time to time by regulation or order of the Board.

(c) In any appropriate case where the Board upon its own motion or upon recommendation of the Director makes a finding of an apparent violation of this chapter, it shall refer such case to the United States Attorney for the District of Columbia for prosecution, and shall make public the fact of such referral and the basis for such finding. In addition, the Board, through its General Counsel, shall initiate, maintain, defend, or appeal any civil action (in the name of the Board) relating to the enforcement of the provisions of this chapter. The Board may, through its General Counsel, petition the courts of the District of Columbia for declaratory or injunctive relief concerning any action covered by the provisions of this chapter. (Aug. 14, 1974, Pub. L. 93-376, title III, § 301, 88 Stat. 454; Jan. 3, 1975, Pub. L. 93-635, § 12, 88 Stat. 2177.)

AMENDMENT

1975—Section 12 of Act Jan. 3, 1975, Pub. L. 93-635, amended the second sentence of subsec. (a) by striking out "any vacancy in the office of Director shall be filled by appointment by the Mayor" and inserting in lieu thereof "appointments to the Office of Director, including vacancies therein, shall be made by the Mayor"; and amended subsec. (a) further by inserting after the second sentence two new sentences relating to the term of office of the Director.

EFFECTIVE DATE OF SUBCHAPTER

See note under § 1-1121.

§ 1-1152. Powers of the Director.

(a) The Director, under regulations of general applicability approved by the Board, shall have the power—

(1) to require any person to submit in writing such reports and answers to questions as the Director may prescribe relating to the administration and enforcement of this chapter; and such submission shall be made within such reasonable period and under oath or otherwise as the Director may determine;

(2) to administer oaths;

(3) to require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(4) in any proceeding or investigation to order testimony to be taken by deposition before any person who is designated by the Director and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection;

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the Superior Court of the District of Columbia; and

(6) to accept gifts.

Subpenas issued under this section shall be issued by the Director upon the approval of the Board.

(b) The Superior Court of the District of Columbia may, upon petition by the Board, in case of refusal to obey a subpoena or order of the Board issued under subsection (a) of this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof. (Aug. 14, 1974, Pub. L. 93-376, title III, § 302, 88 Stat. 455; June 28, 1977, D.C. Law 2-12, § 6(i), 24 DCR 1442.)

AMENDMENT

1977—Act June 28, 1977, D.C. Law 2-12, amended subsec. (a) (6) by striking "and voluntary and uncompensated services" from the end thereof.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 9 of act June 28, 1977, D.C. Law 2-12, set out as a note under § 1-215a.

CROSS REFERENCE

Acceptance of volunteer services, see §§ 1-215a et seq.

§ 1-1153. Duties of the Director.

The Director shall—

(1) develop and furnish (upon request) prescribed forms for the making of the reports and statements required to be filed with him under this chapter;

(2) develop a filing, coding, and cross-indexing system consonant with the purposes of this chapter;

(3) make the reports and statements filed with him available for public inspection and copying, commencing as soon as practicable but not later than the end of the second day following the day during which it was received, and to permit and facilitate copying of any such report or statement by hand and by duplicating machine, as requested by any person, at reasonable cost to such person, except any information copied from such reports

and statements shall not be sold or utilized by any person for the purpose of soliciting contributions or for any commercial purpose;

(4) preserve such reports and statements for a period of ten years from date of receipt;

(5) compile and maintain a current list of all statements or parts of statements on file pertaining to each candidate;

(6) prepare and publish such other reports as he or she may deem appropriate;

(7) assure dissemination of statistics, summaries, and reports prepared under this subchapter;

(8) make from time to time audits and field investigations with respect to reports and statements filed under the provisions of this subchapter, and with respect to alleged failures to file any report or statement required under the provisions of this subchapter; and

(9) perform such other duties as the Board may require.

(Aug. 14, 1974, Pub. L. 93-376, title III, § 303, 88 Stat. 456; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372.)

AMENDMENT

1977—Act Apr. 23, 1977, D.C. Law 1-126, amended par. (6) by substituting "he or she" for "he".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

§ 1-1154. General Accounting Office to assist Board and Director.

The Board and Director may, in the performance of its functions under this chapter, request the assistance of the Comptroller General of the United States, including such investigations and audits as the Board and Director may determine necessary, and the Comptroller General shall provide such assistance with or without reimbursement, as the Board and Director and the Comptroller General shall agree. (Aug. 14, 1974, Pub. L. 93-376, title III, § 304, 88 Stat. 456.)

§ 1-1155. Repealed. Sept. 2, 1976, D.C. Law 1-79, title VIII, § 801, 23 DCR 2050.

Section, Act Aug. 14, 1974, Pub. L. 93-376, title III, § 305, 88 Stat. 456, established the District of Columbia Board of Elections and Ethics Nominating Committee which was responsible for nominating individuals for appointment as members of the District of Columbia Board of Elections and Ethics.

§ 1-1156. District of Columbia Board of Elections and Ethics.

(a) On and after August 14, 1974, the Board of Elections of the District of Columbia established under chapter 11 of this title, shall be known as the "District of Columbia Board of Elections and Ethics" and shall have the powers, duties, and functions as provided in such chapter, in any other law in effect on the date immediately preceding August 14, 1974, and in this chapter. Any reference in any law or regulation to the Board of Elections for the District of Columbia or the District of Columbia Board of Elections shall, on and after August 14, 1974, be held and considered to refer to the District of Columbia Board of Elections and Ethics.

(b) (1) Any person who violates any provision of this chapter or of chapter 11 of this title may be assessed a civil penalty by the District of Columbia Board of Elections and Ethics under paragraph (2) of this subsection of not more than \$50 for each such violation. Each occurrence of a violation of this chapter and each day of noncompliance with a disclosure requirement of this chapter or an order of the Board shall constitute a separate offense.

(2) A civil penalty shall be assessed by the Board by order only after the person charged with a violation has been given an opportunity for a hearing, and the Board has determined, by decision incorporating its findings of facts therein, that a violation did occur, and the amount of the penalty. Any hearing under this section shall be of record and shall be held in accordance with the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.).

(3) If the person against whom a civil penalty is assessed fails to pay the penalty, the Board shall file a petition for enforcement of its order assessing the penalty in the Superior Court of the District of Columbia. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall be forthwith sent by registered or certified mail to the respondent and his attorney of record, and if the respondent is a political committee, to the Chairman thereof, and thereupon the Board shall certify and file in such court the record upon which such order sought to be enforced was issued. The court shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order and the decision of the Board or it may remand the proceedings to the Board for such further action as it may direct. The court may determine de novo all issues of law but the Board's findings of fact, if supported by substantial evidence, shall be conclusive.

(c) Upon application made by any individual holding public office, any candidate, any person who may be a potential registrant under this chapter or any political committee, the Board, through its General Counsel, shall provide within a reasonable period of time an advisory opinion, with respect to any specific transaction or activity inquired of, as to whether such transaction or activity would constitute a violation of any provision of this chapter or of any provision of chapter 11 of this title over which the Board has primary jurisdiction.

Advisory opinions shall be published in the District of Columbia Register within thirty days of their issuance, *Provided*, That the identity of any person requesting an advisory opinion shall not be disclosed in the District of Columbia Register without their prior consent in writing. (Aug. 14, 1974, Pub. L. 93-376, title III, § 306, 88 Stat. 458; Jan. 3, 1975, Pub. L. 93-635, § 14(a), 88 Stat. 2178; Apr. 23, 1977, D.C. Law 1-126, title III, § 302(a), 24 DCR 2372.)

CODIFICATION

In subsec. (a), "August 14, 1974" was substituted for "the date of the enactment of this Act" each place it appeared therein.

AMENDMENTS

1977—Act Apr. 23, 1977, D.C. Law 1-126, amended subsec. (c) by inserting "any person who may be a potential registrant under this chapter" immediately before "or any political committee" and by adding the second paragraph.

1975—Section 14(a) of Act Jan. 3, 1975, Pub. L. 93-635, amended subsec. (b) (2) by deleting "chapter 5 of title 5, United States Code" and inserting "the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.)".

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subsec. (c), see sec. 302(a) of the Elections and Latino Community Development Emergency Amendments Act of 1976 (D.C. Act 1-215, Jan. 12, 1977, 23 DCR 5101).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1121.

NOTES TO DECISIONS

Constitutional questions

Even though the constitutional questions regarding challenge of the Socialist Workers' party to the provisions of this chapter based on ground that the application of the provisions to it would subject members whose names must be disclosed to harassment must be ruled on directly, it was within three-judge district court's power to direct the Board of Elections and Ethics to provide a suitable forum for plaintiffs' claims and, should the claims be proved, to provide an appropriate remedy. *J. Doe et al. v. R. Martin, Chairman, et al.* (1975, 404 F. Supp. 753).

SUBCHAPTER IV.—FINANCE LIMITATIONS

§ 1-1161. General limitations.

(a) No individual shall make any contribution which, and no person shall receive any contribution from any individual which when aggregated with all other contributions received from that individual, relating to a campaign for nomination as a candidate for election to public office, including both the primary and general or special elections, exceeds—

(1) in the case of a contribution in support of a candidate for Mayor, \$1,000;

(2) in the case of a contribution in support of a candidate for Chairman of the Council, \$750;

(3) in the case of a contribution in support of a candidate for member of the Council elected at large, \$500;

(4) in the case of a contribution in support of a candidate for member of the Board of Education elected at large or for member of the Council elected from a ward, \$200, and in the case of a runoff election, an additional \$200;

(5) in the case of a contribution in support of a candidate for member of the Board of Education elected from a ward or for official of a political party, \$100, and in case of a runoff election, an additional \$100; and

(6) in the case of a contribution in support of a candidate for a member of an Advisory Neighborhood Commission, \$25.

(b) No person (other than an individual with respect to whom subsection (a) applies) shall make any contribution which, and no person shall receive any contribution from any person (other than such an individual) which when aggregated with all other

contributions received from that person, relating to a campaign for nomination as a candidate or election to public office, including both the primary and general or special elections, exceeds—

(1) in the case of a contribution in support of a candidate for Mayor, \$2,000;

(2) in the case of a contribution in support of a candidate for Chairman of the Council, \$1,500;

(3) in the case of a contribution in support of a candidate for member of the Council elected at large, \$1,000;

(4) in the case of a contribution in support of a candidate for member of the Board of Education elected at large or for member of the Council elected from a ward \$400, and in the case of a runoff election, an additional \$400;

(5) in the case of a contribution in support of a candidate for member of the Board of Education elected from a ward or for official of a political party, \$200, and in the case of a runoff election, an additional \$200; and

(6) in the case of a contribution in support of a candidate for a member of an Advisory Neighborhood Commission, \$25.

(c) No individual shall make any contribution in any one election which when aggregated with all other contributions made by that individual in that election exceeds \$2,000.

(d) Any expenditure made by any person advocating the election or defeat of any candidate for office which is not made at the request or suggestion of the candidate, any agent of the candidate, or any political committee authorized by the candidate to make expenditures or to receive contributions for the candidate is not considered a contribution to or an expenditure by or on behalf of the candidate for the purposes of the limitations specified in this chapter.

(e) In no case shall any person receive or make any contribution in legal tender in an amount of \$50 or more.

(f) No person shall make a contribution in the name of another person, and no person shall knowingly accept a contribution made by one person in the name of another person.

(g) For purposes of the limitations contained in this section all contributions made by any person directly or indirectly to or for the benefit of a particular candidate, including contributions which are in any way earmarked, encumbered, or otherwise directed through an intermediary or conduit to that candidate, shall be treated as contributions from that person to that candidate.

(h) (1) No candidate or member of the immediate family of a candidate may make a loan or advance from his or her personal funds for use in connection with a campaign of that candidate for nomination for election, or for election, to public office unless that loan or advance is evidenced by a written instrument fully disclosing the terms, conditions, and parts to the loan or advance. The amount of any such loan or advance shall be included in computing and applying the limitations contained in this section only to extent of the balance of the

loan or advance which is unpaid at the time of determination.

(2) For purposes of this subsection, the term "immediate family" means the candidate's spouse and any parent, brother, or sister, or child of the candidate, and the spouse of any such parent, brother, sister, or child. (Aug. 14, 1974, Pub. L. 93-376, title IV, § 401, 88 Stat. 459; Sept. 23, 1975, D.C. Law 1-16, § 2, 22 DCR 1987; Oct. 10, 1975, D.C. Law 1-21, § 7(a), 22 DCR 2069; Oct. 30, 1975, D.C. Law 1-27, § 3(a), (b), 22 DCR 2471; Sept. 2, 1976, D.C. Law 1-79, title VIII, § 802, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title I, § 104, title IV, § 402, 24 DCR 2372.)

AMENDMENTS

1977—Section 402 of act Apr. 23, 1977, D.C. Law 1-126, amended subsec. (h)(1) by substituting "his or her" for "his".

Section 104 of such act made technical and clarifying amendments to section 802 of act Sept. 2, 1976, D.C. Law 1-79, cited as a source credit. See below.

1976—Subsec. (b). Act Sept. 2, 1976, D.C. Law 1-79, as amended by act Apr. 23, 1977, D.C. Law 1-126, amended subsec. (b) by deleting provisions following par. (6).

Subsec. (d). Such act amended subsec. (d) by redesignating subsec. (d)(1) as subsec. (d) and omitting subssecs. (d) (2), (3), and (4).

1975—Act Oct. 30, 1975, D.C. Law 1-27, § 3(a), (b), amended subssecs. (a) and (b) by striking out "Advisory Neighborhood Council" and inserting in lieu thereof "Advisory Neighborhood Commission".

Act Oct. 10, 1975, D.C. Law 1-21, amended the second sentence of the second par. of subsec. (b) by inserting at the end thereof "and a candidate for member of an Advisory Neighborhood Council may contribute \$50 to his own campaign".

Act Sept. 23, 1975, D.C. Law 1-16, amended the third sentence of second par. of subsec. (b), by substituting "July 1, 1976" for "July 1, 1975".

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of sec. 802 of D.C. Law 1-79, see sec. 104 of the Elections and Latino Community Development Emergency Amendments Act of 1976 (D.C. Act 1-215, Jan. 12, 1977, 23 DCR 5095).

1976—For temporary amendment of subsec. (b), see sec. 2 of the District of Columbia Campaign Finance Reform and Conflict of Interest Act Emergency Amendment of 1976 (D.C. Act 1-139, July 19, 1976, 23 DCR 4197).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 808 of act Sept. 2, 1976, D.C. Law 1-79, set out as a note under § 1-1121.

EFFECTIVE DATE OF 1975 AMENDMENTS

For effective date of act Oct. 30, 1975, D.C. Law 1-27, see note under § 1-171.

For effective date of act Oct. 10, 1975, D.C. Law 1-21, see note under § 1-171a.

Section 3 of act Sept. 23, 1975, D.C. Law 1-16, provided: "This [amending § 1-1161(b)] act shall take effect at the end of the 30 day period provided for Congressional review of acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

EFFECTIVE DATE OF SUBCHAPTER

See note under § 1-1121.

SHORT TITLE

The first section of act Sept. 23, 1975, D.C. Law 1-16, provided "That this act [amending § 1-1161(b)] may be cited as the 'Corporations and Labor Unions Campaign Finance Act of 1975'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1135, 1-1162.

§ 1-1162. Constituent services.

(a) Each member of the Council elected by ward may establish citizen-service activities within his/her ward. Each member of the Council elected by ward may finance the operation of such activities with contributions from persons, *Provided*, That contributions received by each such member do not exceed an aggregate amount of \$10,000 in any one calendar year. Each member of the Council elected by ward may expend a maximum of \$10,000 in any one calendar year for such programs. No persons shall make any contribution which, and no member of the Council elected by ward shall receive any contribution from any person which, when aggregated with all other contributions received from that person, exceeds \$50 per calendar year, *Provided*, That such \$50 limitation shall not apply to contributions made by any member of the Council elected by ward for the purpose of funding citizen-service programs within his/her ward. Each member of the Council elected by ward shall file with the Director of Campaign Finance, a quarterly report of all contributions received and monies expended in accordance with this subsection. No campaign activities shall be conducted nor shall campaign literature or paraphernalia be distributed as part of citizen-service programs conducted pursuant to this subsection.

(b) The Mayor, the Chairman of the Council, and each member of the Council elected at large may establish citizen-service programs within the District of Columbia. The Mayor, the Chairman of the Council, and each member of the Council elected at large may finance the operation of such programs with contributions from persons, *Provided*, That contributions received by the Mayor, the Chairman of the Council, and each member of the Council elected at large do not exceed an aggregate amount of \$20,000 in any one calendar year. The Mayor, Chairman of the Council, and each member of the Council elected at large may expend a maximum of \$20,000 in any one calendar year for such programs. No person shall make any contribution which, and neither the Mayor, Chairman of the Council, or any member of the Council elected at large shall receive any contribution from any person which, when aggregated with all other contributions received from such person, exceeds \$100 per calendar year, *Provided*, That such \$100 limitation shall not apply to contributions made by the Mayor, the Chairman of the Council, or any member of the Council elected at large for the purpose of funding his/her own citizen-service programs within the District of Columbia. The Mayor, the Chairman of the Council, and each member of the Council elected at large shall file a quarterly report of all contributions received and monies expended in accordance with this subsection with the Director of Campaign Finance. No campaign activities shall be conducted nor shall campaign literature or paraphernalia be distributed as part of citizen-service programs conducted pursuant to this subsection.

(c) Contributions of personal property from persons to the Mayor or to any members of the Council or contributions of the use of personal property shall be valued, for purposes of this section, at the

fair market value of such property at the time of the contribution. Contributions made or received pursuant to this section shall not be applied against the limitation on political contributions established in section 1-1161.

(d) All contributions and expenditures made by persons to the Mayor, Chairman of the Council, and each Member of the Council as provided by subsection (a) of this section, and all expenditures made by the Mayor, Chairman of the Council, and each Member of the Council as provided by subsection (a) of this section, shall be reported to the Director of Campaign Finance quarterly on forms which the Director shall prescribe. All of the record keeping requirements of this chapter shall apply to contributions and expenditures made under this section. At the time a program of services as authorized in subsection (a) of this section is terminated, any excess funds shall be used to retire the debts of the program, or shall be donated to an organization operating in the District of Columbia as a not-for-profit organization within the meaning of Section 501(c) of the Internal Revenue Code of 1954, as amended [26 U.S.C. 501(c)]. (Aug. 14, 1974, Pub. L. 93-376, title IV, § 402, 88 Stat. 461; Oct. 10, 1975, D.C. Law 1-21, § 7(b), 22 DCR 2069; Oct. 30, 1975, D.C. Law 1-27, § 3(c), 22 DCR 2471; Sept. 2, 1976, D.C. Law 1-79, title VII, § 702, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title I, § 102(d), 24 DCR 2372.)

AMENDMENTS

1977—Act Apr. 23, 1977, D.C. Law 1-126, amended section heading by substituting "Constituent services" for "Limitation on expenditures".

1976—Act Sept. 2, 1976, D.C. Law 1-79, amended section generally. Prior to amendment, section provided limitations for campaign expenditures.

1975—Act Oct. 30, 1975, D.C. Law 1-27, amended subsec. (a) (1) by substituting "Advisory Neighborhood Commission" for "Advisory Neighborhood Council".

Act Oct. 10, 1975, D.C. Law 1-21, amended subsec. (a) (1) by substituting "\$200" for "\$500".

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of section, see sec. 102(d) of the Elections and Latino Community Development Emergency Amendments Act of 1976 (D.C. Act 1-215, Jan. 12, 1977, 23 DCR 5095).

EFFECTIVE DATES OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

EFFECTIVE DATES OF 1975 AMENDMENTS

For act Oct. 30, 1975, D.C. Law 1-27, see note under § 1-171.

For act Oct. 10, 1975, D.C. Law 1-21, see note under § 1-171a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1192.

SUBCHAPTER V.—LOBBYING

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1-1191.

§ 1-1171. Definitions.

As used in this subchapter, unless the context requires otherwise—

(a) The term "administrative decision" means any activity directly related to action by an executive agency to issue a Mayor's Order, to promulgate an issuance within the Administrative Issuance Sys-

tem (except individual personnel matters), to undertake a rule making proceeding (which does not include a formal public hearing) under the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.), or to propose legislation or make nominations to the Council, the President, or the Congress.

(b) The term "compensation" means money or any exchange of value in excess of \$25 received or to be received from a person acting as a lobbyist, whether in the form of a fee, income, forbearance, forgiveness, reimbursement, or any other form of recompense, or any combination thereof, except where compensation is to be reported by or for a person whose lobbying is incidental to his or her regular employment it shall be sufficient to report a prorated amount based on the percentage of the time devoted to lobbying.

(c) The term "executive agency" means a department, agency or office in the executive branch of the District of Columbia government under the direct administrative control of the Mayor; the Board of Education or any of its constituent elements; the University of the District of Columbia or any of its constituent elements; the Board of Elections and Ethics; and any District of Columbia professional licensing and examining board under the administrative control of the executive branch.

(d) The term "gift" means a payment, subscription, advance, forbearance, rendering or deposit of money, services or anything of value, unless consideration of equal or greater value is received, for the purpose of influencing the actions of a public official in making or influencing the making of an administrative decision or legislative action; and shall not include a political contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a member of the person's household as defined by section 1-1181(i) (4).

(e) The term "legislative action" includes any activity conducted by an official in the legislative branch in the normal course of carrying out his or her duties as such an official, and relating to the introduction, passage or defeat of any legislation in the Council.

(f) (1) The term "lobbying" means communicating directly with any official in the legislative or executive branch of the District of Columbia government with the purpose of influencing any legislative action or an administrative decision.

(2) As used in this subchapter, the term "lobbying" shall not include: (A) the appearance or presentation of written testimony by a person in his or her own behalf, or representation by an attorney on behalf of any such person in a rule making (which includes a formal public hearing), rate making, or adjudicatory hearing before an executive agency or the tax assessor; (B) information supplied in response to written inquiries by an executive agency or the Council of the District of Columbia or any public official; (C) inquiries concerning only the status of specific actions by an executive agency or the Council of the District of Columbia; (D) testimony given before a committee of the Council of the District of Columbia or before the Council of the

District of Columbia, during which a public record is made of such proceedings or testimony submitted for inclusion in such a public record; (E) a communication made through the instrumentality of a newspaper, television or radio of general circulation; and (F) communications by a bona fide political party as defined in section 1-1121(j).

(g) The term "lobbyist" means any person who engages in lobbying. Public officials communicating directly or soliciting others to communicate with other public officials shall not be deemed lobbyists for the purposes of this chapter, so long as such public officials do not receive compensation in addition to their salary for such communications or solicitations and made such communications and solicitations in their official capacity.

(h) The term "official in the executive branch" means any public official as defined in section 1-1181 (i) (1) and officers and employees who make field decisions as defined in section 1-1182(b) (2) (A) who are members, officers, or employees of an executive agency.

(i) The term "official in the legislative branch" means any candidate for Chairman or member of the Council in a primary, special, or general election, the Chairman or Chairman-elect or any member or member-elect of the Council, officers and employees who hold an appointment in the General Service schedule as grade GS-15 or higher, and employees who make field decisions as defined in section 1-1182 (b) (2) (A) who are employed by the Council of the District of Columbia.

(j) The term "public official" means any official in the executive, judicial, or legislative branch of the District of Columbia government.

(k) Repealed. Apr. 23, 1977, D.C. Law 1-126, title III, § 302(i), 23 DCR 2372.

(Aug. 14, 1974, Pub. L. 93-376, title V, § 501, 88 Stat. 462; Sept. 2, 1976, D.C. Law 1-79, title III, § 302, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title III, § 302(b)-(i), title IV, § 402, 24 DCR 2372.)

REFERENCE IN TEXT

The General Service schedule, referred to in subsec. (i), is probably a reference to the General Schedule which is set out under section 5332 of title 5, U.S. Code.

AMENDMENTS

1977—Subsec. (a). Section 302(b) of act Apr. 23, 1977, D.C. Law 1-126, amended subsec. (a) generally.

Subsec. (b). Section 302(c) of such act amended subsec. (b) by substituting "money or any exchange of value in excess of \$25" for "any money or thing of value".

Subsec. (c). Section 302(d) of such act amended subsec. (c) generally.

Subsec. (e). Section 302(e) of such act amended subsec. (e) by striking from the end thereof ", or to any action with respect to a matter which is within the jurisdiction of the Council".

Section 402 of such act amended subsec. (e) by substituting "his or her" for "his".

Subsec. (f). Section 302(f) of such act amended subsec. (f) generally.

Section 402 of such act amended subsec. (f) (2) by substituting "his or her" for "his".

Subsec. (h). Section 302(g) of such act amended subsec. (h) generally.

Subsec. (i). Section 302(h) of such act amended subsec. (i) by substituting "officers and employees who hold an appointment in the General Service schedule as grade GS-15 or higher, and employees who make field decisions as defined in section 1-1182(b) (2) (A) who are employed by the Council of the District of Columbia." for "any

member of a commission established by and responsible to the Council, and any officer, staff person, assistant, or employee of the Council whether or not he receives remuneration and regardless of the source of the income received."

Subsec. (k). Section 302(i) of such act repealed subsec. (k).

1976—Act Sept. 2, 1976, D.C. Law 1-79, amended section generally.

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of section, see sec. 302(b)-(i) of the Elections and Latino Community Development Emergency Amendments Act of 1976 (D.C. Act 1-215, Jan. 12, 1977, 23 DCR 5102-5105).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 303 of act Sept. 2, 1976, D.C. Law 1-79, title III, provided: "The provisions of this title [amending this subchapter] shall take effect at the end of the thirty day period of Congressional review provided for acts of the Council in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act, (D.C. Code, sec. 1-147(c))."

EFFECTIVE DATE OF SUBCHAPTER

See note under § 1-1121.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1172.

§ 1-1172. Persons required to register.

Except as provided in section 1-1171, a person shall register with the Director pursuant to section 1-1174 if such person—

(a) receives compensation of \$250 or more in any three consecutive calendar month period for lobbying, whether that compensation is solely for lobbying or the lobbying is incidental to that person's regular employment, except the provisions of this paragraph shall not apply if the person required to file hereunder is the only person required to file under paragraph (b) of this section and the person only receives compensation of \$250 or more in any such period for lobbying from the person filing under paragraph (b) of this section; or

(b) expends \$250 or more in any three consecutive calendar month period for lobbying unless such funds are expended as bona fide political contributions authorized under this chapter. (Aug. 14, 1974, Pub. L. 93-376, title V, § 502, 88 Stat. 462; Sept. 2, 1976, D.C. Law 1-79, title III, § 302, 23 DCR 2050.)

AMENDMENT

1976—Act Sept. 2, 1976, D.C. Law 1-79, amended section generally. Prior to amendment, section related to accounts of contributions and retention of receipted bills of expenditures which is now generally covered by § 1-1175.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 303 of act Sept. 2, 1976, D.C. Law 1-79, set out as a note under § 1-1171.

§ 1-1173. Exceptions.

A person need not register with the Director pursuant to section 1-1174 if such person is—

(a) a public official, or an employee of the United States acting in his or her official capacity;

(b) a publisher or working member of the press, radio, or television who in the ordinary course of business disseminates news or editorial comment to the general public;

(c) any candidate, member, or member-elect of an Advisory Neighborhood Commission. (Aug. 14, 1974, Pub. L. 93-376, title V, § 503, 88 Stat. 462; Sept. 2, 1976, D.C. Law 1-79, title III, § 302, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title III, § 302(j), title IV, § 402, 24 DCR 2372.)

AMENDMENTS

1977—Par. (a). Section 402 of act Apr. 23, 1977, D.C. Law 1-126, amended par. (a) by substituting "his or her" for "his".

Par. (c). Section 302(j) of such act repealed par. (c) and redesignated par. (d) as par. (c).

Par. (d). Section 302(j) of such act redesignated par. (d) as par. (c).

1976—Act Sept. 2, 1976, D.C. Law 1-79, amended section generally.

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subsecs. (c) and (d), see sec. 302(j) of the Elections and Latino Community Development Emergency Amendments Act of 1976 (D.C. Act 1-215, Jan. 12, 1977, 23 DCR 5105).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 303 of act Sept. 2, 1976, D.C. Law 1-79, set out as a note under § 1-1171.

§ 1-1174. Registration.

(a) Each registrant shall file a registration form with the Director, signed under oath, on or before January 15 of each year, or not later than fifteen days after becoming a lobbyist (and on or before January 15, of each year thereafter). If the registrant is not an individual, an authorized officer or agent of the registrant shall sign the form. A registrant must file a separate registration form for each person from whom he or she receives compensation.

(b) Such registration shall be on a form prescribed by the Director and shall include—

(1) the registrant's name, permanent address, and temporary address while lobbying;

(2) the name and address of each person who will lobby on the registrant's behalf;

(3) the name, address, and nature of the business of any person who compensates the registrant and the terms of the compensation; and

(4) the identification, by formal designation if known, of matters on which the registrant expects to lobby. The Director shall publish on or before February 15 and on or before August 15 of each year a summary of all information required to be submitted under this subsection in the District of Columbia Register.

(Aug. 14, 1974, Pub. L. 93-376, title V, § 504, 88 Stat. 463; Sept. 2, 1976, D.C. Law 1-79, title III, § 302, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title III, § 302(k), title IV, § 402, 24 DCR 2372.)

AMENDMENTS

1977—Subsec. (a). Section 402 of act Apr. 23, 1977, D.C. Law 1-126, amended subsec. (a) by substituting "he or she" for "he".

Subsec. (b) (4). Section 302(k) of such act amended subsec. (b) (4) by substituting "on or before February 15 and on or before August 15 of each year a summary of" for "quarterly".

1976—Act Sept. 2, 1976, D.C. Law 1-79, amended section generally. Prior to amendment, section related to the filing of statements of contributions and expenditures

by lobbyists which is now generally covered by §§ 1-1174 and 1-1175.

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subsec. (b) (4), see sec. 302(k) of the Elections and Latino Community Development Emergency Amendments Act of 1976 (D.C. Act 1-215, Jan. 12, 1977, 23 DCR 5105).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 303 of act Sept. 2, 1976, D.C. Law 1-79, set out as a note under § 1-1171.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1172, 1-1173, 1-1175.

§ 1-1175. Activity reports.

(a) Each registrant shall file with the Director between the first and tenth day of July and January of each year a report signed under oath concerning his or her lobbying activities during the previous six month period. If the registrant is not an individual, an authorized officer or agent of the registrant shall sign the form. A registrant must file a separate activity report for each person from whom he or she receives compensation. Such reports shall be public documents and shall be on a form prescribed by the Director and shall include the following:

(A) A complete and current statement of the information required to be supplied pursuant to section 1-1174.

(B) Total expenditures on lobbying broken down into the following categories:

(i) office expenses.

(ii) advertising and publications.

(iii) compensation to others.

(iv) personal sustenance, lodging, and travel, if compensated.

(v) other expenses.

Each expenditure of \$50 or more shall also be itemized by the date, name, and address of the recipient, and the amount and purpose of such expenditure.

(C) Each political expenditure, loan, gift, honorarium, or contribution of \$50 or more made by the registrant or anyone acting on behalf of the registrant to benefit an official in the legislative or executive branch, a member of his or her staff or household or a campaign or testimonial committee established for the benefit of the official, and shall be itemized by date, beneficiary, amount, and circumstances of the transaction; including the aggregate of all such expenditures that are less than \$50.

(D) Each official in the executive or legislative branch and any member of such official's personal staff who receives compensation in any manner by the registrant shall be identified by name and nature of his or her employment with the registrant.

(E) Each official in the executive or legislative branch with whom the registrant has had written or oral communications (during the reporting period) related to lobbying activities conducted by the registrant shall also be included in such report, identifying the official with whom the communica-

tion was made and the nature of the communication.

(F) Each person whom the registrant has given compensation to lobby on his or her behalf shall also be listed in such report.

(b) Each registrant shall obtain and preserve all accounts, bills, receipts, books, papers, and documents necessary to substantiate the activity reports required to be made pursuant to this section for five years from the date of filing of the report containing such items. These materials shall be made available for inspection upon requests by the Director after reasonable notice.

(c) Each registrant who does not file a report required by this section for a given period is presumed not to be receiving or expending funds which are required to be reported under this subchapter. (Aug. 14, 1974, Pub. L. 93-376, title V, § 505, 88 Stat. 463; Sept. 2, 1976, D.C. Law 1-79, title III, § 302, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title III, § 302 (l)-(p), title IV, § 402, 24 DCR 2372.)

AMENDMENTS

1977—Subsec. (a). Section 302(l)-(o) of act Apr. 23, 1977, D.C. Law 1-126, amended subsec. (a) by striking par. (D) and redesignating pars. (E), (F), and (G) as pars. (D), (E), and (F), respectively; by inserting in par. (D), as redesignated, "personal" immediately following "such official's"; substituting in par. (D), as redesignated, "receives compensation" and "nature of his employment with the registrant" for "is compensated" and "nature or employment", respectively; and substituting in par. (F), as redesignated, "given compensation" for "asked".

Section 402 of such act amended subsec. (a) by substituting in the material preceding par. (A) "his or her" for "his" and "he or she" for "he" and in pars. (C), (D), and (F) "his or her" for "his."

Subsec. (c). Section 302(p) of such act repealed subsec. (c) and redesignated subsec. (d) as subsec. (c).

Subsec. (d). Section 302(p) of such act redesignated subsec. (d) as subsec. (c).

1976—Act Sept. 2, 1976, D.C. Law 1-79, amended section generally. Prior to amendment, section related only to preservation of statements.

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subsecs. (a), (c), and (d), see sec. 302(l)-(p) of the Elections and Latino Community Development Emergency Amendments Act of 1976 (D.C. Act 1-215, Jan. 12, 1977, 23 DCR 5106).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 303 of act Sept. 2, 1976, D.C. Law 1-79, set out as a note under § 1-1171.

§ 1-1176. Restricted activities.

(a) No registrant or anyone acting on behalf of a registrant shall offer, give, or cause to be given a gift to an official in the legislative or executive branch or a member of his or her staff, that exceeds \$100 in value in the aggregate in any calendar year.

(b) No official in the legislative or executive branch or a member of his or her staff shall solicit or accept anything of value in violation of subsection (a) of this section.

(c) No person shall knowingly or willfully make any false or misleading statement or misrepresentation of the facts (relating to pending administrative decisions or legislative actions) to any official in the legislative or executive branch, or knowing a document to contain a false statement (relating to

pending administrative decisions or legislative actions), cause a copy of such document to be transmitted to an official in the legislative or executive branch without notifying such official in writing of the truth.

(d) No information copied from registration forms and activity reports required by this chapter or from lists compiled from such forms and reports shall be sold or utilized by any person for the purpose of soliciting campaign contributions or selling tickets to a testimonial or similar fund raising affair or for any commercial purpose.

(e) No public official shall be employed a¹ lobbyist while acting as a public official. (Aug. 14, 1974, Pub. L. 93-376, title V, § 506, 88 Stat. 463; Sept. 2, 1976, D.C. Law 1-79, title III, § 302, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title III, § 302(q), title IV, § 402, 24 DCR 2372.)

AMENDMENTS

1977—Section 302(q) of act Apr. 23, 1977, D.C. Law 1-126, amended subsecs. (a) and (b) by striking "or household" immediately following "staff".

Section 402 of such act amended subsecs. (a) and (b) by substituting "his or her" for "his".

1976—Act Sept. 2, 1976, D.C. Law 1-79, amended section generally. Prior to amendment, section related to applicability of lobbying provisions which is now generally covered by § 1-1172.

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of section, see sec. 302(q) of the Elections and Latino Community Development Emergency Amendments Act of 1976 (D.C. Act 1-215, Jan. 12, 1977, 23 DCR 5106).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 303 of act Sept. 2, 1976, D.C. Law 1-79, set out as a note under § 1-1171.

§ 1-1177. Penalties—Prohibitions—Citizen suits.

(a) Any person who willfully and knowingly violates any of the provisions of this subchapter, except as provided in subsection (c) of this section, shall be fined not more than \$5,000 or imprisoned for not more than twelve months, or both.

(b) In addition, the penalties provided for in subsection (a) of this section, any person convicted of the misdemeanor specified therein may be prohibited, for a period of three years from the date of such conviction, from serving as a lobbyist.

(c) Any person who files a report or registration form required under this subchapter, in other than a timely manner, shall be assessed a civil penalty of \$10 per day up to 30 days (excluding Saturdays, Sundays, and holidays) the report or registration form is late. The Board may waive the penalty imposed under this section for good cause shown.

(d) Should any provision of this subchapter not be enforced by the Board, a citizen of the District of Columbia may bring suit in the nature of mandamus in the Superior Court of the District of Columbia, directing the Board, to enforce the provisions of this subchapter. Reasonable attorneys fees may be awarded to the citizen against the District should he or she prevail in this action, or if it is settled in

¹ So in original. Probably should be "as a".

substantial conformity with the relief sought in the petition, prior to order by the Court. (Aug. 14, 1974, Pub. L. 93-376, title V, § 507, 88 Stat. 464; Sept. 2, 1976, D.C. Law 1-79, title III, § 302, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title III, § 302(r), (s), title IV, § 402, 24 DCR 2372.)

AMENDMENTS

1977—Section 302(r), (s), of act Apr. 23, 1977, D.C. Law 1-126, amended subsecs. (a) and (c) generally.

Section 402 of such act amended subsec. (d) by substituting "he or she" for "he".

1976—Act Sept. 2, 1976, D.C. Law 1-79, amended section generally. Prior to amendment, section related to registration of lobbyists and information required to be filed which is now generally covered by §§ 1-1174 and 1-1175.

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subsecs. (a) and (c), see sec. 302 (r) and (s) of the Elections and Latino Community Development Emergency Amendments Act of 1976 (D.C. Act 1-215, Jan. 12, 1977, 23 DCR 5107).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 303 of act Sept. 2, 1976, D.C. Law 1-79, set out as a note under § 1-1171.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1102.

§§ 1-1178 to 1-1180. Repealed. Sept. 2, 1976, D.C. Law 1-79, title III, § 302, 23 DCR 2050.

Section 1-1178, Act Aug. 14, 1974, Pub. L. 93-376, title V, § 508, 88 Stat. 464, required reports and statements to be made under oath.

Section 1-1179, Act Aug. 14, 1974, Pub. L. 93-376, title V, § 509, 88 Stat. 464, provided penalties for violations of this subchapter and prohibitions for persons convicted of violations of this subchapter. This subject is now generally covered by § 1-1177.

Section 1-1180, Acts Aug. 14, 1974, Pub. L. 93-376, title V, § 510, 88 Stat. 465; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472, provided exemptions from the application of this subchapter. This subject is now generally covered by § 1-1173.

SUBCHAPTER VI.—CONFLICT OF INTEREST AND DISCLOSURE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1-215c.

§ 1-1181. Conflict of interest.

(a) The Congress declares that elective and public office is a public trust, and any effort to realize personal gain through official conduct is a violation of that trust.

(b) No public official shall use his or her official position or office to obtain financial gain for himself, any member of his or her household, or any business with which he or she or a member of his or her household is associated, other than that compensation provided by law for said public official.

(c) No person shall offer or give to a public official or a member of a public official's household, and no public official shall solicit or receive anything of value, including a gift, favor, service, loan, gratuity, discount, hospitality, political contribution, or promise of future employment, based on any understanding that such public official's official actions or judgment or vote would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the public

official in the discharge of his or her duties, or as a reward, except for political contributions publicly reported pursuant to section 1-1136 and transactions made in the ordinary course of business of the person offering or giving the thing of value.

(d) No person shall offer or pay to a public official, and no public official shall solicit or receive any money, in addition to that lawfully received by the public official in his or her official capacity, for advice or assistance given in the course of the public official's employment or relating to his or her employment.

(e) No public official shall use or disclose confidential information given in the course of or by reason of his or her official position or activities in any way that could result in financial gain for himself or for any other person.

(f) No member or employee of the Council of the District of Columbia or Board of Education of the District of Columbia shall accept assignment to serve on a committee the jurisdiction of which consists of matters (other than of a de minimis nature) in which he or she or a member of his or her family or a business with which he or she is associated, has financial interest.

(g) Any public official who, in the discharge of his or her official duties, would be required to take an action or make a decision that would affect directly or indirectly his or her financial interests or those of a member of his or her household, or a business with which he or she is associated, or must take an official action on a matter as to which he or she has a conflict situation created by a personal, family, or client interest, shall—

(1) prepare a written statement describing the matter requiring action or decision, and the nature of his or her potential conflict of interest with respect to such action or decision;

(2) cause copies of such statement to be delivered to the District of Columbia Board of Elections and Ethics (referred to in this subchapter as the "Board"), and to his or her immediate superior, if any;

(3) if he or she is a member of the Council of the District of Columbia or member of the Board of Education of the District of Columbia, or employee of either, deliver a copy of such statement to the Chairman thereof, who shall cause such statement to be printed in the record of proceedings, and, upon request of said member or employee, shall excuse the member from votes, deliberations, and other action on the matter on which a potential conflict exists;

(4) if he or she is not a member of the Council of the District of Columbia, his or her superior, if any, shall assign the matter to another employee who does not have a potential conflict of interest, or, if he or she has no immediate superior, he or she shall take such steps as the Board prescribes through rules and regulations to remove himself from influence over actions and decisions on the matter on which potential conflict exists; and

(5) during a period when a charge of conflict of interest is under investigation by the Board, if he or she is not a member of the Council of the District of Columbia or a member of the Board

of Education, his or her superior, if any, shall have the arbitrary power to assign the matter to another employee who does not have a potential conflict of interest, or if he or she has no immediate superior, he or she shall take such steps as the Board shall prescribe through rules and regulations to remove himself from influence over actions and decisions on the matter on which there is a conflict of interest.

(h) Neither the Mayor nor any member of the Council of the District of Columbia may represent another person before any regulatory agency or court of the District of Columbia while serving in such office. The preceding sentence does not apply to an appearance by such an official before any such agency or court in his or her official capacity.

(i) As used in this section, the term—

(1) "public official" means (A) the Mayor of the District of Columbia, a member or the Chairman of the Council of the District of Columbia, or a member of the District of Columbia Board of Education; (B) an officer or employee of the District of Columbia government who holds an appointment in the General Service schedule classified as a GS-15 or higher; and (C) any person holding an appointment of the District of Columbia Board of Education as a Class 3 or higher.

(2) "business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock, trust, and any legal entity through which business is conducted for profit;

(3) "business with which he or she is associated" means any business of which the person or member of his or her household is a director, officer, owner, employee, or holder of stock worth \$1,000 or more at fair market value, and any business which is a client of that person;

(4) "household" means the public official and his or her immediate family; and

(5) "immediate family" means the public official's spouse and any parent, brother, or sister, or child of the public official, and the spouse of any such parent, brother, sister, or child.

(Aug. 14, 1974, Pub. L. 93-376, title VI, § 601, 88 Stat. 465; Jan. 3, 1975, Pub. L. 93-635, § 14(b), 88 Stat. 2178; Sept. 2, 1976, D.C. Law 1-79, title II § 202, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title I, § 102(b), title IV, § 402, 24 DCR 2372.)

REFERENCE IN TEXT

The General Service schedule, referred to in subsec. (i) (1), is probably a reference to the General Schedule which is set out under section 5332 of title 5, U.S. Code.

AMENDMENTS

1977—Section 102(b) of act Apr. 23, 1977, D.C. Law 1-126, amended subsec. (i) (1) by striking "; or (D) any person who is otherwise employed by the District of Columbia government entitled to receive compensation at an annual rate of \$29,813, or more" from the end thereof and by inserting "and" immediately before (C).

Section 402 of such act amended subsecs. (b), (f), (g), and (i) by substituting "his or her" for "his" and "he or she" for "he" and subsecs. (c), (d), (e), and (h) by substituting "his or her" for "his".

1976—Subsec. (c). Act Sept. 2, 1976, D.C. Law, 1-79, amended subsec. (c) by striking out "or which would cause the total value of such things received from the same person not a member of such public official's house-

hold to exceed \$100 during any single calendar year," immediately following "or as a reward,".

Subsec. (i) (1). Such act amended subsec. (i) (1) generally.

1975—Section 14(b) of Act Jan. 3, 1975, Pub. L. 93-635, amended subsec. (c) by inserting immediately before the period at the end thereof a comma and the following: "except for political contributions publicly reported pursuant to section 1-1136 and transactions made in the ordinary course of business of the person offering or giving the thing of value".

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subsec. (i) (1), see sec. 102(b) of the Elections and Latino Community Development Emergency Amendments Act of 1976 (D.C. Act 1-215, Jan. 12, 1977, 23 DCR 5094).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 204 of act Sept. 2, 1976, D.C. Law 1-79, title II, provided: "The provisions of this title [amending this section and § 1-1182] shall take effect at the end of the thirty day period of review provided for acts of the Council in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 1-147(c)), *Provided*, that the provisions of section 203(8) of this act [adding subsec. 1-1182(b) (3)] shall not become effective until thirty days after the provisions of the amendment made by that section are implemented.

EFFECTIVE DATE OF SUBCHAPTER

See note under § 1-1121.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1171.

NOTES TO DECISIONS

Board of Zoning Adjustment

Thrust of Conflict of Interest and Disclosure Act is directed at individual government official, and onus is on him to decide whether action he is to take would affect directly or indirectly his financial interests or those of member of his household; Act does not authorize or require Board of Zoning Adjustment to compel disclosure of partners or financial backers of parties before it. *Dupont Circle Citizens Association v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 364 A.2d 610).

§ 1-1182. Disclosure of financial interest.

(a) Any candidate for nomination for election, or election, to public office at the time he or she becomes a candidate, does not occupy any such office, shall file within one month after he or she becomes a candidate for such office, and the Mayor, and the Chairman and each member of the Council of the District of Columbia holding office under the District of Columbia Self-Government and Governmental Reorganization Act, and the Chairman and each member of the Board of Education, shall file annually, with the Board a report containing a full and complete statement of—

(1) the amount and source of each item of income, each item of reimbursement for any expenditure, and each gift or aggregate of gifts from one source (other than gifts received by him or by him and his or her spouse jointly during the preceding calendar year) which exceeds \$100 in amount or value, including any fee or other honorarium received by him for or in connection with the preparation or delivery of any speech or address, attendance at any convention or other assembly of individuals, or the preparation of any article or other composition for publication,

and the monetary value of subsistence, entertainment, travel, and other facilities received by him in kind;

(2) the identity of each asset held by him, or by him and his or her spouse jointly which has a value in excess of \$1,000, and the identity and amount of each liability owned by him, or by him and his or her spouse jointly, which is in excess of \$1,000 as of the close of the preceding calendar year;

(3) any transactions in securities of any business entity by him, or by him and his or her spouse jointly, or by any person acting on his or her behalf or pursuant to his or her direction during the preceding calendar year if the aggregate amount involved in transactions in the securities of such business entity exceeds \$5,000 during such year;

(4) all transactions in commodities by him, or by him and his or her spouse jointly, or by any person acting on his or her behalf, or pursuant to his or her direction during the preceding calendar year if the aggregate amount involved in such transactions exceeds \$5000;

(5) any purchase or sale, other than the purchase or sale of his or her personal residence, of real property or any interest therein by him, or by him and his or her spouse jointly, or by any person acting on his or her behalf or pursuant to his or her direction, during the preceding calendar year if the value of property involved in such purchase or sale exceeds \$5,000; and

(6) the amount of each tax paid by the individual, or by the individual and the individual's spouse filing jointly, for the preceding calendar year, except in the case of candidates filing reports during calendar year 1974, who shall file reports for the preceding three calendar years.

(b) (1) Any candidate for nomination for, or election to, office who at the time he or she becomes a candidate, does not occupy any such office, shall file within one month after he or she becomes a candidate for such office, and the Mayor, and the Chairman and each member of the Council of the District of Columbia holding office under the District of Columbia Self-Government and Governmental Reorganization Act, and the Chairman and each member of the Board of Education, and each officer or employee of the District of Columbia government who occupies a position which is classified as a grade GS-15 or higher of the General Schedule under section 5332 of title 5, United States Code, and any officer or employee of the District of Columbia government who the Board determines performs the duties generally performed by a GS-15 or higher of the General Schedule under section 5332 of title 5, United States Code, or any officer or employee who makes field decisions as provided in subsection (b) (2) of this section (as determined by the Board regardless of the rate of compensation of such individual), shall file with the Board in a sealed envelope marked "Confidential Personal Financial Disclosure of (name)", before the fifteenth day of May in each year, the following reports of his or her personal financial interests:

(A) a copy of the returns of taxes, declarations, statements, or other documents which he or she, or he or she and his or her spouse jointly, made for the preceding year in compliance with the income tax provisions of the Internal Revenue Code of 1954 [title 26, U.S. Code];

(B) the name and address of each business or professional corporation, firm, or enterprise in which he or she was an officer, director, partner, proprietor, or employee who received compensation during the preceding year and the amount of such compensation;

(C) the identity of each trust or other fiduciary relation in which he or she held a beneficial interest having a value of \$10,000 or more, and the identity, if known, of each interest of the other fiduciary relation in real or personal property in which the candidate, officer, or employee held a beneficial interest having a value of \$10,000 or more, at any time during the preceding year. If he or she cannot obtain the identity of the fiduciary interests, the candidate, officer, or employee shall request the fiduciary to report that information to the Board in the same manner that reports are filed under this rule.

(2) (A) Any District of Columbia government employee who makes decisions in areas of contracting, procurement, administration of grants or subsidies, planning or developing policies, inspecting, licensing, regulating, auditing, or acting in areas of responsibility involving any potential conflict of interest as the Board may determine, shall also file a Confidential Financial Statement containing the information specified in paragraph (1) of this subsection, *Provided*, that the Board of Elections and Ethics shall cause to be printed in the District of Columbia Register a list of all positions by job classification involving field decisions, as defined in this subsection, within one hundred twenty days of the effective date of this act, and that no person shall be required to file under the provisions of this paragraph until ninety days after the list has been published in the District of Columbia Register.

(B) An individual or class of individuals may be exempted from the filing requirements of subsection (b) (1) only upon a determination by the Board that the duties of the individual or class of individuals do not involve decisions in areas specified in paragraph (2) (A) of this subsection.

(3) Before the first day of February of each year, the chief executive of the Executive Branch of the District of Columbia Government, the District of Columbia Court of Appeals, the District of Columbia Superior Court, the Council of the District of Columbia, the Board of Education, and any independent agency or instrumentality of the District of Columbia shall submit on behalf of their respective agency, the names and current mailing addresses of all persons required to file a Confidential Personal Financial Disclosure Statement with the Director of Campaign Finance. It shall be the responsibility of each chief executive to maintain the currency of the names and current mailing addresses of all persons required to file under this chapter, and to advise the Director of Campaign Finance within twenty-one

days of such person's appointment, election, resignation, termination, or death.

(c) Except as otherwise provided by this section, all papers filed under this section shall be kept by the Board in the custody of the Director for not less than seven years, and while so kept shall remain sealed. Upon receipt of a request by any member of the Board adopted by a recorded majority vote of the full Board requesting the examination and audit of any of the reports filed by any individual under section (b) of this title,¹ the Director shall transmit to the Board the envelopes containing such reports. Within a reasonable time after such recorded vote has been taken, the individual concerned shall be informed of the vote to examine and audit, and shall be advised of the nature and scope of such examination. When any sealed envelope containing any such report is received by the Director, such envelope may be opened and the contents thereof may be examined only by members of the Board in executive session. If, upon such examination, the Board determines that further consideration by the Board is warranted and within the jurisdiction of the Board, it may make the contents of any such envelope available for any use by any member of the Board, or the Director or General Counsel of the Board which is required for the discharge of his or her official duties. The Board may receive the papers as evidence, after giving to the individual concerned due notice and opportunity for hearing in a closed session. The Board shall publicly disclose not later than the first day of June each year the names of the candidates, officers, and employees who have filed a report. Any paper which has been filed with the Board for longer than seven years, in accordance with the provisions of this section, shall be returned to the individual concerned or his legal representative. In the event of the death or termination of the service of the Mayor or Chairman or member of the Council of the District of Columbia or Chairman or member of the Board of Education, or officer or employee of the District of Columbia, such papers shall be returned unopened to such individual, or to the surviving spouse or legal representative of such individual within one year of such date or termination of service.

(d) Reports required by this section (other than reports so required by candidates) shall be filed not later than sixty days following August 14, 1974, and not later than May 15 of each succeeding year. In the case of any person who ceases, prior to such date in any year, to occupy the office or position the occupancy of which imposes upon him the reporting requirements contained in subsection (a) shall file such report on the last day he or she occupies such office or position, or on such later date, not more than three months after such last day, as the Board may prescribe. The Board shall publish, in the District of Columbia Register, not later than the first day of June each year, the names of the candidates, officers, and employees who have filed a report under this section. Any paper which has been filed with the Board for longer than seven years,

in accordance with the provisions of this section, shall be returned to the person who filed it or his or her legal representative. In the event of the death or termination of service of the Mayor, Chairman or member of the Council of the District of Columbia, or Chairman or member of the Board of Education of the District of Columbia, or officer or employee of the District of Columbia, such papers shall be returned unopened to such individual, or to the surviving spouse or legal representative of such individual within one year after such death or termination of service.

(e) Reports required by this section shall be in such form and detail as the Board may prescribe. The Board may provide for the grouping of items of income, sources of income, assets, liabilities, dealings in securities or commodities, and purchases and sales of real property, when separate itemization is not feasible or is not necessary for an accurate disclosure of the income, net worth, dealing in securities and commodities or purchases, and sales of rental property of any individual.

(f) All public reports filed under this section shall be maintained by the Board as public records which, under such reasonable regulations as it shall prescribe, shall be available for inspection by members of the public.

(g) For the purposes of any report required by this section, an individual shall be considered to have been a public official, if he or she has served as a public official for more than thirty days during any calendar year in a position for which financial disclosure reports are required under this subchapter.

(h) For purposes of this section, the term—

(1) "income" means gross income as defined in section 61 of the Internal Revenue Code of 1954 [26 U.S.C. 61];

(2) "security" means security as defined in section 2 of the Securities Act of 1933, as amended (15 U.S.C. 77b);

(3) "commodity" means commodity as defined in section 2 of the Commodities Exchange Act, as amended (7 U.S.C. 2);

(4) "transactions in securities or commodities" means any acquisition, holding, withholding, use, transfer, or other disposition involving any security or commodity;

(5) "immediate family" means the child, parent, grandparent, brother, or sister of an individual, and the spouse of such person; and

(6) "tax" means the taxes imposed under chapter 1 of the Internal Revenue Code of 1954 [title 26, U.S. Code], under the District of Columbia Revenue Act of 1947 [subchapter II of chapter 15 of title 47], and under the District of Columbia Public Works Act of 1954 and any other provision of law relating to the taxation of property within the District of Columbia.

(7) "gift" means a payment, subscription, advance, forbearance, rendering or deposit of money, services or any thing of value, unless consideration of equal or greater value is received, for the purpose of influencing the actions of a public official in making or influencing the making of

¹So in original. Probably should be "this section".

an administrative decision or legislative action; and shall not include a political contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a member of the person's immediate family.

(i) This section shall not apply to any candidate for nomination for election, or election, as a member of an Advisory Neighborhood Commission, or to any member of an Advisory Neighborhood Commission, except to the extent that such section applies to such candidate or member because of his or her status other than as such candidate or member.

(j) No person shall unlawfully disclose or use for any purpose other than in accordance with the terms of this chapter any information contained in financial statements required by this chapter. (Aug. 14, 1974, Pub. L. 93-376, title VI, § 602, 88 Stat. 467; Oct. 10, 1975, D.C. Law 1-21, § 7(c), 22 DCR 2069; Oct. 30, 1975, D.C. Law 1-27, § 3(d), 22 DCR 2471; Sept. 2, 1976, D.C. Law 1-79, title II, § 203, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title I, § 102 (a), (c), title IV, § 402, 24 DCR 2372.)

REFERENCES IN TEXT

The effective date of this act, referred to in subsec. (b) (2)(A), is probably a reference to the effective date of title II of act Sept. 2, 1976, D.C. Law 1-79. See Effective Date of 1976 Amendment note set out below.

The District of Columbia Self-Government and Governmental Reorganization Act, referred to in subssecs. (a) and (b), is the Act of Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 774. For classification of the Act to the Code, see the Parallel Reference Tables.

The District of Columbia Public Works Act of 1954, referred to in subsec. (h) (6), is the Act of May 18, 1954, ch. 218, 68 Stat. 101. For classification of the Act to the Code, see the Parallel Reference Tables.

CODIFICATION

In subsec. (d), "August 14, 1974" was substituted for "the enactment of this Act".

AMENDMENTS

1977—Subsec. (a). Section 402 of act Apr. 23, 1977, D.C. Law 1-126, amended subsec. (a) by substituting "he or she" for "he" and "his or her" for "his".

Subsec. (b). Section 102(a) of such act amended subsec. (b)(1) by substituting "and each officer or employee of the District of Columbia government who occupies a position which is classified as a grade GS-15 or higher of the General Schedule under section 5332 of title 5, United States Code, and any officer or employee of the District of Columbia government who the Board determines performs the duties generally performed by a GS-15 or higher of the General Schedule under section 5332 of title 5, United States Code, or any officer or employee who makes field decisions as provided in subsection (b)(2) of this section" for "and each officer and employee of the District of Columbia government who performs duties of the type generally performed by an individual occupying grade GS-15 of the General Schedule under section 5332 of title 5, United States Code, or any higher grade or position or any other employee who makes field decisions listed in subsection (b)(2) of this section".

Section 402 of such act amended subsec. (b) by substituting "he or she" for "he" and "his or her" for "his".

Subsecs. (c), (d). Section 402 of such act amended subssecs. (c) and (d) by substituting "his or her" for "his" and subsec. (d) by substituting "he or she" for "he".

Subsec. (g). Section 102(c) of such act amended subsec. (g) generally.

Section 402 of such act amended subsec. (g) by substituting "he or she" for "he".

Subsec. (i). Section 402 of such act amended subsec. (i) by substituting "his or her" for "his".

1976—Subsec. (b). Act Sept. 2, 1976, D.C. Law 1-79, amended subsec. (b) by (1) inserting "(1)" immediately after "(b)" and redesignating pars. (1), (2), and (3) as (A), (B), and (C) respectively; (2) inserting "or any other employee who makes field decisions listed in subsection (b)(2) of this section" immediately after "or any higher grade or position"; and (3) adding pars. (2) and (3).

Subsec. (d). Such act amended subsec. (d) by adding the last three sentences.

Subsec. (g). Such act amended subsec. (g) generally.

Subsec. (h). Such act amended subsec. (h) by adding par. (7).

Subsec. (j). Such act added subsec. (j).

1975—Act Oct. 30, 1975, D.C. Law 1-27, amended subsec. (i) by substituting "Commission" for "Council".

Act Oct. 10, 1975, D.C. Law 1-21, added subsec. (1).

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subssecs. (b) and (g), see sec. 102 (a) and (c) of the Elections and Latino Community Development Emergency Amendments Act of 1976 (D.C. Act 1-215, Jan. 12, 1977, 23 DCR 5093, 5094).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 204 of act Sept. 2, 1976, D.C. Law 1-79, set out as a note under § 1-1102.

EFFECTIVE DATES OF 1975 AMENDMENTS

For act Oct. 30, 1975, D.C. Law 1-27, see note under § 1-171.

For act Oct. 10, 1975, D.C. Law 1-21, see note under § 1-171a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1171.

NOTES TO DECISIONS

Construction

Where statutory reporting requirements of this section are applicable to district employees serving in certain grades or positions "for more than six months" during a calendar year, District of Columbia Board of Elections and Ethics does not have power by regulation to require reports from employees of lesser tenure. *C. W. Hanke v. District of Columbia Board of Elections and Ethics* (D.C. App. 1976, 353 A. 2d 301).

Under provision of this section that each officer and employee of district in certain grades or positions should file certain enumerated tax and other personal financial data for the preceding calendar year in which he served "for more than six months" during such calendar year, employee who was employed exactly six months in a calendar year is not required to file. *Id.*

Judicial review—Exhaustion of administrative remedies

Plaintiffs' failure to pursue their administrative remedy by requesting Board of Elections and Ethics to grant them exemptions from requirement of filing enumerated tax and financial data with Board precludes their initiating judicial action to have statute imposing such requirement declared unconstitutional and to enjoin its enforcement. *H. T. Foley et al. v. District of Columbia Board of Elections and Ethics* (D.C. App. 1976, 358 A. 2d 305).

SUBCHAPTER VII.—MISCELLANEOUS PROVISIONS

§ 1-1191. Penalties and enforcement.

(a) Except as provided in subsection (b), any person or political committee who violates any of the provisions of this chapter shall be fined not more than \$5,000, or shall be imprisoned for not longer than six months, or both.

(b) Any person who knowingly files any false or misleading statement, report, voucher, or other

paper, or makes any false or misleading statement to the Board, shall be fined not more than \$10,000, or shall be imprisoned for not longer than five years, or both.

(c) The penalties provided in this section shall not apply to any person or political committee who, before August 14, 1974, during calendar year 1974, makes political contributions or receives political contributions or makes any political campaign expenditures, in excess of any limitation placed on such contributions or expenditures by this chapter, except such person or political committee shall not make any further such contributions or expenditures during the remainder of calendar year 1974.

(d) Prosecutions of violations of this chapter shall be brought by the United States Attorney for the District of Columbia in the name of the United States.

(e) The provisions of this section shall not apply to violations of subchapter V of this chapter. (Aug. 14, 1974, Pub. L. 93-376, title VII, § 701, 88 Stat. 470; Apr. 23, 1977, D.C. Law 1-126, title III, § 302 (t), 24 DCR 2372.)

CODIFICATION

In subsec. (c), "August 14, 1974" was substituted for "the date of enactment of this Act".

AMENDMENT

1977—Act Apr. 23, 1977, D.C. Law 1-126, added subsec. (e).

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subsec. (e), see sec 302(t) of the Elections and Latino Community Development Emergency Amendments Act of 1976 (D.C. Act 1-215, Jan. 12, 1977, 23 DCR 5107).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

EFFECTIVE DATE OF SUBCHAPTER

See note under § 1-1121.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1102.

§ 1-1192. Use of surplus campaign funds.

Within the limitations specified in this chapter, any surplus, residual, or unexpended campaign funds received by or on behalf of an individual who seeks nomination for election, or election to office shall be contributed to a political party for political purposes, used to retire the proper debts of his or her political committee which received such funds, or returned to the donors as follows:

(1) in the case of an individual defeated in an election, within six months following such election;

(2) in the case of an individual elected to office, within six months following such election; and

(3) in the case of an individual ceasing to be a candidate, within six months thereafter.

An individual defeated or elected to office as Member of the Board of Education under this chapter shall be authorized to transfer any surplus, residue, or unexpended campaign funds to any charitable, scientific, literary, or educational organization or organizations which meet the requirements of section 47-1557b(a) (8); and an individual elected to an office under this chapter and authorized to establish a program of constituent services under section 1-

1162 shall be authorized to transfer any surplus, residue, or unexpended campaign funds to his or her program of constituent services. (Aug. 14, 1974, Pub. L. 93-376, title VII, § 703, 88 Stat. 471; Sept. 2, 1976, D.C. Law 1-79, title VIII, § 805, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372.)

AMENDMENTS

1977—Act Apr. 23, 1977, D.C. Law 1-126, amended section by substituting "his or her" for "his".

1976—Act Sept. 2, 1976, D.C. Law 1-79, amended section by inserting provisions following par. (3).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 808 of act Sept. 2, 1976, D.C. Law 1-79, set out as a note under § 1-1121.

§ 1-1193. Authority of Council.

Notwithstanding any other provision of law, or any rule of law, nothing in this chapter shall be construed as limiting the authority of the District of Columbia Council to enact any act or resolution, after January 2, 1975, pursuant to the District of Columbia Self-Government and Governmental Reorganization Act with respect to any matter covered by this chapter. (Aug. 14, 1974, Pub. L. 93-376, title VII, § 707, 88 Stat. 472.)

REFERENCE IN TEXT

The District of Columbia Self-Government and Governmental Reorganization Act, referred to in text, is the Act of Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 774. For classification of the Act to the Code, see the Parallel Reference Tables.

Chapter 12.—PRESIDENTIAL INAUGURAL CEREMONIES

§ 1-1201. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-1202. Regulations—Special registration tags for certain motor vehicles.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EMERGENCY ACT AMENDMENT

1976—For temporary regulations for the 1977 inauguration, see the Emergency Special Regulations Inaugural Period 1977 Act (D.C. Act 1-182, Dec. 16, 1976, 23 DCR 4209).

NOTES TO DECISIONS

Regulations, validity

Affidavit asserting that regulations which were promulgated by the District of Columbia under this chapter and which provided for temporary closing of certain streets were not published in accordance with section 1-1208 requiring publication in one or more of daily newspapers in area is insufficient to overcome presumptive validity of regulations, in light of admission in affidavit of in-

ability to examine five daily issues of area newspapers during relevant time period. *E. Saffron v. J. V. Wilson et al.* (1975, 70 F.R.D. 51).

§1-1203. Appropriations—Expenses for which same may be used.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§1-1204. Permits for use of grounds and reservations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§1-1205. Installation of electrical facilities.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§1-1207. Permission for installation of communication facilities—When to be removed.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§1-1208. Regulations and licenses to be in force only during inaugural period—Publication of regulations—Penalties for violations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Regulations, validity

Affidavit asserting that regulations which were promulgated by the District of Columbia under this chapter and which provided for temporary closing of certain streets were not published in accordance with this section requiring publication in one or more of daily newspapers in area is insufficient to overcome presumptive validity of regulations, in light of admission in affidavit of inability to examine five daily issues of area newspapers during relevant time period. *E. Saffron v. J. V. Wilson et al.* (1975, 70 F.R.D. 51).

§1-1211. "Commissioners" deemed to refer to Commissioner of the District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 13.—WASHINGTON METROPOLITAN REGION DEVELOPMENT

§1-1302. Policy—Exercise of functions of all governmental authorities to be coordinated.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§1-1304. All agencies of federal, district and regional governments are invited to make intensive study of final report of Joint Committee on Washington Metropolitan Problems.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 13A.—BUSINESS AND ECONOMIC DEVELOPMENT

Sec.

1-1351. Findings and purpose.

1-1352. Establishment of Office of Business and Economic Development.

1-1353. Functions of Office.

1-1354. Staffing of Office.

1-1355. Funding of Office.

§1-1351. Findings and purpose.

(a) The Council finds that:

(1) There exists in the District of Columbia a substantial problem of chronic unemployment and underemployment.

(2) In the last two decades, growth in employment, new business development, and commercial development in the District of Columbia has failed to keep pace with employment growth and commercial expansion in neighboring jurisdictions.

(3) During the same period, the District has experienced a substantial loss in retail businesses and other commercial enterprises which contributed significantly to local employment and the city's tax base.

(4) Expansion of the tax base in the District of Columbia has, in recent years, lagged significantly behind the rate of inflation and the rate of increase in District of Columbia government expenditures.

(5) Substantial expansion of the tax base is necessary to help avert future governmental fiscal crises, prevent ever-increasing individual business and professional tax levels, and assure provision of necessary public services.

(6) The District of Columbia government lacks an organized capacity or comprehensive strategy to assess its economic needs, encourage business retention, attract commercial enterprises, or otherwise promote and stimulate economic growth.

(7) The absence of such a capacity and strategy has been a significant factor in the District's inability to compete with neighboring jurisdictions

in the retention of existing businesses and the attraction of new enterprises.

(8) Direct and continuing active participation of all levels of the business community is essential to carrying out the objectives of this chapter.

(b) The purposes of this chapter are—

(1) to establish an office with ongoing responsibility to assess the economic needs of the city; stimulate new employment opportunities; assist existing businesses; promote the city as a location for businesses and investment to priority city locations in accordance with the city's comprehensive plan and its economic development objectives; and

(2) to centralize the economic development functions in the District of Columbia government in a single agency devoted solely to these tasks.

(Mar. 29, 1977, D.C. Law 1-97, § 2, 23 DCR 9532b.)

EFFECTIVE DATE

Section 7 of act Mar. 29, 1977, D.C. Law 1-97, provided: "This act [enacting this chapter] shall take effect upon the expiration of the period for Congressional review provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)(1)]."

SHORT TITLE

The first section of act Mar. 29, 1977, D.C. Law 1-97, provided "That this act [enacting this chapter] may be cited as the 'District of Columbia Business and Economic Development Act of 1976'."

§ 1-1352. Establishment of Office of Business and Economic Development.

There is established within the Executive Office of the Mayor an Office of Business and Economic Development (hereinafter in this chapter referred to as the "Office"). The Office shall provide within the District government a single administrative unit, responsible to the Mayor, to serve as a focal point for planning, implementing and administering programs for promotion of economic activities in the District. The economic development functions, excluding business and professional licensing and regulation, staff to examining boards, enforcement of the District's housing, building, mechanical, electrical, and zoning codes, vested in the Department of Economic Development pursuant to Order of the Commissioner No. 69-96 shall be transferred to the Office. (Mar. 29, 1977, D.C. Law 1-97, § 3, 23 DCR 9532b.)

REFERENCE IN TEXT

Order of the Commissioner No. 69-96, referred to in text, is set out under the heading "Organization Actions of the Commissioner of the District of Columbia" in the Appendix to this title.

MAYOR'S ORDER ESTABLISHING OFFICE OF BUSINESS AND ECONOMIC DEVELOPMENT

(Mayor's Order No. 77-62, Apr. 13, 1977.)

By virtue of the authority vested in me by the District of Columbia Self-Government and Governmental Reorganization Act (P.L. 93-198), and in accordance with the provisions of D.C. Law 1-97, (District of Columbia Business and Economic Development Act of 1976) dated, March 25, 1977 it is hereby ORDERED THAT:

I. *Establishment and purpose:* There is established within the Executive Office of the Mayor an Office of Business and Economic Development responsible for assessing the economic needs of the District of Columbia, assisting existing businesses and promoting the City as a suitable location for business and financial investment in accordance with the City's economic development ob-

jectives, and administering programs for the promotion of economic development objectives and activities in the District.

II. *Functions:* Major functions of the Office are to carry out the Business and Economic Development Act of 1976 and to undertake a program of activities to stimulate employment, to provide for the retention and expansion of existing businesses and attract new commercial and industrial enterprises to the District. In accordance with this program, the Office will:

Serve as a primary point of government contact, liaison and support for the business and commercial community for Washington, D.C.,

Promote tourism and assist in identifying and resolving problems in the development of new businesses and the retention and expansion of existing businesses, particularly with respect to the responsibilities of the District Government,

Develop new programs and support existing programs to ensure minority business development and minority participation in public and private economic development,

Propose changes in policies, procedures and practices including proposals for legislative actions to improve the climate for business activity in the District of Columbia,

Monitor through an on-going survey and other appropriate means business migration, business and commercial expansion, new business opportunities, and other factors related to the promotion of economic development, and Commercial Neighborhood Revitalization.

Provide information, data and related services to assist existing businesses and those desiring to establish new businesses in the District of Columbia.

III. *Advisory Committee:* The Director of the Office shall be an ex-officio member of the Mayor's Economic Development Advisory Committee established by Mayor's Order 76-87. Jointly with the Director of the Municipal Planning Office, the Director of the Office of Business and Economic Development shall:

Arrange to provide the Committee with staff support, information and consultation,

Assist in the development of the District's overall economic development plan and the economic development element of the Comprehensive Plan, and

Convene as a special coordination task force the ex-officio members of the Committee as required.

IV. *Transfers:* The Department of Housing and Community Development shall transfer to the Office of Business and Economic Development no less than \$300,000 in Community Development Block Grant funds including Funds made available or to be made available to the department under the Community Development Block Grant program for the purpose of supporting Economic Development activities.

V. *Rescission:* Previous orders or sections of previous orders establishing in the Department of Economic Development those functions placed in the Executive Office of the Mayor by this Order are hereby rescinded.

VI. *Effective date:* The provisions of this Order shall take effect immediately.

§ 1-1353. Functions of Office.

The Office shall give priority to activities, including economic research and analysis, to stimulate employment, promote tourism and business retention, and to attract new commercial and industrial enterprises. Long range priorities shall include development and implementation with the Municipal Planning Office of an economic development plan for the District of Columbia.

(a) Pursuant to these priorities, the Office shall:

(1) Initiate and implement an ongoing economic and commercial survey including data to monitor business migration, business and commercial expansion, business opportunities, manpower availability, manpower needs, and other factors relevant to promotion of economic development.

(2) Assist businessmen and developers in securing research data needed for feasibility and market studies.

(3) Initiate and implement programs aimed at stimulating employment opportunities in the District of Columbia; retaining existing businesses in the District and attracting new commercial and industrial enterprises to the District, as well as, locating and encouraging investors for these enterprises.

(4) Develop and support programs to ensure minority business development and minority participation in public and private economic development activities.

(5) Coordinate the economic development functions of other District of Columbia Offices and Departments.

(6) Coordinate economic development activities and projects within the District of Columbia government pursuant to the priorities established in the comprehensive plan and through other actions taken by the District of Columbia government.

(7) Act as ongoing District of Columbia liaison with the business and commercial community and as a vehicle to assist existing businesses in their procedural relationships with the District Government, including but not limited to, the expediting of administrative processes such as approval of necessary permits, zoning actions, street closings and other relevant District Government administrative actions.

(8) Serve as liaison with pertinent Federal Government agencies and conduit for Federal economic development funding.

(9) Stimulate development or expansion of neighborhood commercial facilities and centers.

(10) Develop financial and technical assistance programs.

(11) Initiate and stimulate public investment as a catalyst to private investment in commercial and industrial enterprises otherwise unavailable to the District of Columbia.

(12) Recommend various types of commercial industrial development, incentives appropriate for certain development projects.

(b) Basic research and statistical programs would be undertaken in the following areas:

(1) Land use studies of urban renewal, housing, and industrial sites, with emphasis on the disposition of idle industrial land, factories and commercial properties.

(2) Taxes, including such matters as determining new areas for new revenue for the city and possible tax incentives to encourage development; an examination of the affect of the District tax structure on certain industries; assessing the comparability of the tax structure.

(3) An examination of the District Government powers, organization and practices as they affect economic development;

(4) Special industry problems, including the District's mature and declining industries.
(Mar. 29, 1977, D.C. Law 1-97, § 4, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1354.

§ 1-1354. Staffing of Office

(a) The Office shall be headed by an Executive Director (hereinafter in this chapter referred to as the "Director"), who shall be appointed by the Mayor. The Director shall devote his full-time to the duties of his Office, and shall appoint qualified staff including a "Business Ombudsman" charged primarily with the implementation of the functions provided in section 1-1353 (g).¹ The annual compensation of the Director shall be determined in accordance with chapter 51 of title 5, U.S. Code (relating to the classification of government employees and related matters), but shall be no less than a GS-16, step one.

(b) In order to best carry out his duties and responsibilities and to serve the people of the District of the promotion of business economic development, the Director may engage in programs and projects jointly with a private person, firm, corporation or association, and may enter into contracts under terms to be mutually agreed upon to carry out such programs and projects not including acquisition of land or buildings. Such contracts may be negotiated and shall not be subject to the provisions of section 1-808, insofar as such provisions relate to competitive bidding. (Mar. 29, 1977, D.C. Law 1-97, § 5, 23 DCR 9532b.)

REFERENCE IN TEXT

GS-16, step one, referred to in subsec. (a), is contained in the General Schedule which is set out under section 5332 of title 5, United States Code.

§ 1-1355. Funding of Office.

The Office shall be funded by a variety of sources currently available or potentially available in the future, including, but not limited to, Federal loans and grant funds, Community Development Block Grant funds, District of Columbia government appropriated or borrowed funds, and private endowments. Sources of funding for the Office shall include no less than \$300,000 in Community Development Block Grant funds conditionally approved by the United States Department of Housing and Urban Development for Business and Economic Development Programs, pursuant to the Department's approval on June 24, 1975 of the District of Columbia "Application for Federal Assistance for a Community Development Block Grant Program—1975". (Mar. 29, 1977, D.C. Law 1-97, § 6, 23 DCR 9532b.)

Chapter 14.—NATIONAL CAPITAL REGION TRANSPORTATION

SUBCHAPTER IV.—WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY COMPACT

Sec.

1-1431-1. Authority of Council to enact acts adopting compact amendments.

1-1431-1a. Consent of Council to compact amendments—Metro transit police force.

1-1431c. Consent of Congress to compact amendments—Metro transit police force.

SUBCHAPTER V.—ADOPTED REGIONAL SYSTEM

1-1442a. Same—Accessibility to the handicapped.

1-1443a. District of Columbia contributions—Financing by general obligation bonds.

1-1443b. Repealed.

¹ So in original. There is no subsection (g).

SUBCHAPTER I.—NATIONAL CAPITAL TRANSPORTATION PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1-1421.

PART I.—SHORT TITLE, STATEMENT OF FINDINGS AND POLICY, AND DEFINITIONS

§ 1-1401. Repealed. Dec. 9, 1969, Pub. L. 91-143, § 8(a)(1), 83 Stat. 322.

Section, Act July 14, 1960, Pub. L. 86-669, title I, § 102, 74 Stat. 537, stated Congressional findings and policy. Section was formerly classified to 40 U.S.C. § 651.

SHORT TITLE

Section 101 of Act July 14, 1960, Pub. L. 86-669, title I, 74 Stat. 537, provided that such act which enacted this subchapter may be cited as the "National Capital Transportation Act of 1960".

§ 1-1401a. Agreements with Maryland and Virginia to develop continuing comprehensive transportation planning process.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was not a part of the National Capital Transportation Act of 1960, which constituted this subchapter.

§ 1-1402. Repealed. Dec. 9, 1969, Pub. L. 91-143, § 8(a)(1), 83 Stat. 322.

Section, Act July 14, 1960, Pub. L. 86-669, title I, § 103, 74 Stat. 537, contained definitions. Section was formerly classified to 40 U.S.C. § 652.

PART II.—CREATION OF NATIONAL CAPITAL TRANSPORTATION AGENCY

§ 1-1403. Repealed. Dec. 9, 1969, Pub. L. 91-143, § 8(a)(1), 83 Stat. 322.

Section, Acts July 14, 1960, Pub. L. 86-669, title II, § 201, 74 Stat. 538; Aug. 14, 1964, Pub. L. 88-426, title III, § 305(32), 78 Stat. 426, established the National Capital Transportation Agency. Section was formerly classified to 40 U.S.C. § 661.

§ 1-1404. Repealed. Nov. 6, 1966, 80 Stat. 1353, Pub. L. 89-774, § 5(b).

Section, Acts July 14, 1960, 74 Stat. 538, Pub. L. 86-669, title II, § 202; Sept. 8, 1965, 79 Stat. 666, Pub. L. 89-173, § 7, provided for establishment of an Advisory Board of the National Capital Transportation Agency, and the composition and duties thereof. See § 1-1431 et seq. Section was formerly classified to 40 U.S.C. § 662.

§§ 1-1405 to 1-1407. Repealed. Dec. 9, 1969, Pub. L. 91-143, § 8(a)(1), 83 Stat. 322.

Section 1-1405, Act July 14, 1960, Pub. L. 86-669, title II, § 203, 74 Stat. 539, authorized the Administrator to establish advisory and coordinating committees. Section was formerly classified to 40 U.S.C. § 663.

Section 1-1406, Acts July 14, 1960, Pub. L. 86-669, title II, § 204, 74 Stat. 539; Aug. 30, 1964, Pub. L. 88-503, § 21, 78 Stat. 634, directed the agency to prepare for approval a Transit Development Program. Section was formerly classified to 40 U.S.C. § 664.

Section 1-1407, Acts July 14, 1960, Pub. L. 86-669, title II, § 205, 74 Stat. 541; Oct. 4, 1961, Pub. L. 87-367, title I, § 103(4), 75 Stat. 787, outlined the functions and duties of the agency. Section was formerly classified to 40 U.S.C. § 665.

PART III.—AUTHORIZATION FOR NEGOTIATION OF INTERSTATE COMPACT

§§ 1-1408, 1-1409. Repealed. Dec. 9, 1969, Pub. L. 91-143, § 8(a)(1), 83 Stat. 322.

Section 1-1408, Act July 14, 1960, Pub. L. 86-669, title III, § 301, 74 Stat. 544, authorized the negotiation of compact between Virginia, Maryland, and the District of Columbia. Section was formerly classified to 40 U.S.C. § 671.

Section 1-1409, Act July 14, 1960, Pub. L. 86-669, title III, § 302, 74 Stat. 545 contained severability provisions. Section was formerly classified to a note under 40 U.S.C. § 651.

SUBCHAPTER II.—COMPACT FOR MASS TRANSPORTATION

§ 1-1410. Consent of Congress given for Virginia, Maryland and District of Columbia to enter into compact for regulation of mass transportation in Washington metropolitan area.

NOTES TO DECISIONS

Considerations in making fare adjustments

Transit Commission in exercising its rate-making function was under obligation to take into account any economy that transit company could effect, and any that were probable from decreased ridership. *Democratic Central Committee et al. v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 847, 158 U.S. App. D.C. 68).

— Appreciation

Where in-service appreciation of transit company's below-the-line lands was not depleted by disposition in another rate case, Transit Commission was required to consider appreciation-allocation when it undertook to revise fares and failure to do so rendered order establishing fares fatally defective. *Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 886, 158 U.S. App. D.C. 107; cert. denied 94 S. Ct. 1451, 415 U.S. 935).

Capital gains realized on disposition of depreciable assets while in service do not automatically flow to transit company's investors, although extraordinary circumstances may enable them to share therein, and transit company's farepayers have protectible interest in such gains which extends to amount of depreciation which has been charged to farepayers and may extend beyond. *Democratic Central Committee of the District of Columbia et al. v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 786, 158 U.S. App. D.C. 7; cert. denied 94 S. Ct. 1451, 415 U.S. 935).

Where risk of loss of value of lands was unlikely, farepayers had shouldered significant financial onus with respect to such lands, and transit company investors benefited uniquely in their ownership of lands, farepayers were entitled to all appreciations in value of properties which transit company transferred from operating to nonoperating status and which had appreciated in value while in service. *Id.*

— Economical transit

In appraising whether transit operation is economical, account must also be taken of relationship between level of fares and worth of services rendered to riders. *Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 886, 158 U.S. App. D.C. 107; cert. denied 94 S. Ct. 1451, 415 U.S. 935).

Transit service is not economical simply because it is honest, mechanically efficient, and as thrifty as it can be under circumstances. *Id.*

Transit system is not economical if charge for service must be set at inordinately high levels in order for transit company to obtain profit. *Id.*

— Efficiency of management

Transit Commission, in rate-fixing proceeding, was under affirmative duty to give due consideration to efficiency of transit company's management and could not fail to investigate such management because of failure of formal parties to produce evidence of bad management.

Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission (1973, 485 F. 2d 886, 158 U.S. App. D.C. 107; cert. denied 94 S. Ct. 1451, 415 U.S. 935).

— Impact of higher fares

In considering bus company's application for rate increase, it was the Transit Commission's responsibility to minimize the impact of higher fares on bus company's patrons. *D. K. Powell v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 1080, 158 U.S. App. D.C. 301).

— Increased labor costs

Possible increased labor costs attributable to changes in cost-of-living index are properly to be taken into account in establishing bus fares whenever they can be predicted with reasonable accuracy. *D.C. Transit System, Inc. v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 881, 158 U.S. App. D.C. 102).

— Profitability

Evidence in rate-fixing proceeding for transit company was sufficient to indicate to Transit Commission that it should investigate extent that company would have been able to make profit if there were no regulation at all and extent to which company could earn sufficient return to make it attractive investment at any level of fares which could have been deemed reasonable. *Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 886, 158 U.S. App. D.C. 107; cert. denied 94 S. Ct. 1451, 415 U.S. 935).

— Rate of return

Rate of return on equity of 5.33% allowed to bus company in connection with approved rate increases was not immodest. *D. K. Powell v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 1080, 158 U.S. App. D.C. 301).

Bus company's debt-equity ratio was a factor to be taken into account in ascertaining a fair return, in connection with application for rate increases. *Id.*

One of the factors which may be taken into consideration in calculating the rate of return to a public utility is the degree of risk to which its capital is put. *Id.*

Interim rate increase

Under the circumstances, Transit Commission which found that existing fares were unjust and which heard conflicting testimony as to whether decrease in passengers resulting from fare increase would result in cost savings, acted properly in ordering temporary fare increase without delving deeper into cost savings. *Democratic Central Committee et al. v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 847, 158 U.S. App. D.C. 68).

In fashioning interim fare orders, Transit Commission was not required to make full and complete findings that must accompany exercise of its authority to prescribe permanent rates. *Id.*

Notwithstanding likelihood that transit company would be obligated to make substantial refunds under decisions affecting other fare orders, Transit Commission which found that existing fares were unjust properly granted temporary increase in fares to enable transit company to operate at break-even point. *Id.*

Judicial review

Destruction of business in current form as a provider of bus tours, together with absence of harm to other parties or public interest from issuance of stay, militated in favor of grant of a stay, pending appeal, of permanent injunction restraining operator of tour service from operating a motor coach sight-seeing service without a certificate of public convenience and necessity. *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., et al.* (1977, 559 F. 2d 841, 182 U.S. App. D.C. 220).

"Federal interest" in the Washington Metropolitan Area Transit Authority Compact calls for application of General standing criteria to the case, a test which was easily met by plaintiff elevator company which sought a temporary restraining order to prevent WMATA from awarding certain elevator construction contract to the intervenor on the ground that plaintiff's low bid was allegedly "non-responsive". *Otis Elevator Company v.*

Washington Metropolitan Area Transit Authority (1976, 432 F. Supp. 1089).

Where petitioner who sought review of Transit Commission order authorizing bus company to increase its fares did not raise any question, in her application to the Commission for reconsideration, as to the propriety of recognizing bus company's position as a component of a corporate conglomerate in connection with analyzing risk factor, such issue could not be litigated in court in review proceedings. *D. K. Powell v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 1080, 158 U.S. App. D.C. 301).

For purpose of judicial review, request that Transit Commission postpone further consideration of fare increase until final determination by court, in another case, of credit properly to be allowed bus riders for appreciation in value of transit company's land withdrawn from public use adequately presented claim that Commission, in rate-fixing case, should have considered appreciation in value of certain of transit company's landholdings occurring while lands were in service and prior to their transfer from operating to nonoperating status. *Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 886, 158 U.S. App. D.C. 107; cert. denied 94 S. Ct. 1451, 415 U.S. 935).

Where issue of failure of Transit Commission to include income from transit company subsidiaries in its computation of new fares was not presented to Transit Commission in proceeding for establishment of fares, court, on petition to review Commission's order, would not consider claims relating thereto. *Id.*

Reasonable fare

It cannot be said that any transit fare is reasonable no matter how high it was or how few riders were able to pay fare, so long as transit company was able to show technical excess of gross income over expenses. *Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 886, 158 U.S. App. D.C. 107; cert. denied 94 S. Ct. 1451, 415 U.S. 935).

Reasonableness of fare entails consideration of value of service to riders, numbers who can use service at fare set, and burden of those fares on riding public or important segments of it. *Id.*

Remedial orders

In view of defects in rate orders issued by Transit Commission, and fact that there had been public takeover of transit company's transportation assets and operations, restitution was appropriate avenue of relief. *Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 886, 158 U.S. App. D.C. 107; cert. denied 94 S. Ct. 1451, 415 U.S. 935).

Where prior decision in rate case directed that transit company restore all amounts collected as result of illegal fare increase and monies transferred to transit company from court-ordered reserve, and protestants had conceded certain dollar figures for gross revenues sufficient to provide transit with return on its equity capital after allowing for operating expenses and interest on company's debt, Commission in determining conceded return should have multiplied dollar amounts by number of years without substituting for test-year estimates of interest and equity the actual figures which the company logged during each year in question. *L. N. Bebachick et al. v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 858, 158 U.S. App. D.C. 79).

Where court declared Transit Commission's rate-making order invalid, restitution was proper remedy. *Democratic Central Committee of the District of Columbia et al. v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 786, 158 U.S. App. D.C. 7; cert. denied 94 S. Ct. 1451, 415 U.S. 935).

Procedure to be followed by Transit Commission to assist court in determining amount of restitution to be paid by transit company as a result of declaration of invalidity of rate-fixing order set forth. *Id.*

Transfer of transit company from private to public company did not affect private company's obligation to make refund under invalid rate-fixing order. *Id.*

Requirements of Commission

In dealing with bus company's application for leave to elevate its fares, Transit Commission was called upon to balance the interest of both company and the public. *D. K. Powell v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 1080, 158 U.S. App. D.C. 301).

Transit Commission, in rate-fixing proceeding, was not at liberty to sit back and place responsibility for initiating or carrying through essential inquiries on private parties. *Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 886, 158 U.S. App. D.C. 107; cert. denied 94 S. Ct. 1451, 415 U.S. 935).

§ 1-1410a. Consent of Congress given to make certain amendments to mass transportation compact.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1421, 1-1431.

§ 1-1411. Commissioner authorized and directed to enter into compact and carry out terms thereof—Appropriations authorized for District of Columbia—Commissioner may not adopt amendment to compact without prior approval of Congress.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-1412. Suspension of certain laws for duration of compact—Reinstatement of laws upon termination of compact—Certain police powers of parties to compact and Director of National Park Service not affected—Franchise rights and obligations of D.C. Transit System, Inc., not impaired—"Public Interest" includes interest of carrier employees—Laws relating to carrier employee benefits, wages, hours and working conditions, collective bargaining rights, rights to self organization continue in force—Jurisdiction of Public Service Commission and Interstate Commerce Commission transferred to Washington Metropolitan Area Transit Commission.**NOTES TO DECISIONS****Construction**

Bus drivers who were engaged in interstate commerce and who regularly spent more than 50% of their work week in District of Columbia were entitled to benefits of District of Columbia Minimum Wage Act [§ 46-301 et seq.]. *K. C. Williams et al. v. W. M. A. Transit Company* (1972, 472 F.2d 1258, 153 U.S. App. D.C. 183; rev'g 268 A.2d 261).

Statutory interpretations by D.C. Minimum Wage Board and Corporation Counsel were entitled to weight as construction of D.C. code unless plainly unreasonable or contrary to ascertainable legislative intent. *Id.*

§ 1-1416. Reservation of right to alter, amend or repeal—Submission of periodic report to Congress—Disclosure of information—Access to books and records.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER III.—RAIL RAPID TRANSIT**SUBCHAPTER REFERRED TO IN U.S. CODE**

This subchapter is referred to in 42 U.S.C. 4151.

§ 1-1421. Statement of findings and purpose.

To further the objectives of subchapter I of this chapter, the Congress hereby finds and declares that—

* * * * *

(c) Various steps have already been taken to bring such a system into being, including the preparation by the National Capital Transportation Agency (hereinafter referred to as the "Agency") of a Transit Development Program for the National Capital region, and authorization of the negotiation by the Commissioner of the District of Columbia, the State of Maryland and the Commonwealth of Virginia of an interstate compact to establish a regional transportation organization under the terms of sections 1-1408 and 1-1409, and approval by the Congress of the Washington Metropolitan Area Transit Regulation Compact (sections 1-1410 and 1-1410a). Nothing in this subchapter shall be construed as altering or amending the Washington Metropolitan Area Transit Regulation Compact.

(d) While the negotiation of an interstate compact to establish a regional transportation organization has not been completed, and plans for the development of improved mass transit facilities throughout the National Capital region are still being developed, the Agency has prepared a satisfactory Transit Development Program for the establishment, principally within the District of Columbia, of a system of rail rapid transit lines and related facilities which are capable of being extended to serve other parts of the region, and the design and construction of such facilities should now proceed as contemplated by subchapter I of this chapter.

* * * * *

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section is set out in this supplement to correct translations appearing in this section in the main edition.

CROSS REFERENCES

Blind and physically disabled persons, equal access to public conveyances, see § 6-1502.

Handicapped persons, accessibility to subway and rapid rail transit system, Federal contribution, see § 1-1442a.

§§ 1-1422, 1-1423. Repealed. Dec. 9, 1969, Pub. L. 91-143, § 8(a)(2), 83 Stat. 323.

Sections are sections 3 and 4 of the Act of Sept. 8, 1965, Pub. L. 89-173, 79 Stat. 664-665, as amended by Pub. L. 90-220, section 1. Section 1-1422 outlined the actions the agency was authorized to take in connection with the rapid rail transit system and section 1-1423 authorized the former commissioners to provide relocation assistance to those who were displaced as a result of the acts of the agency. See § 5-732a. Sections were formerly classified to 40 U.S.C. §§ 682 and 683.

§ 1-1426. Separability.

If any part of this subchapter is declared unconstitutional the constitutionality of no other part of

the subchapter shall be affected thereby. (Sept. 8, 1965, 79 Stat. 666, Pub. L. 89-173, § 8.)

CODIFICATION

Section is set out in this supplement to correct trans-
lations appearing in this section in the main edition.

Section was formerly classified to a note under 40 U.S.C. § 681.

SUBCHAPTER IV.—WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY COMPACT

§ 1-1431. Consent of Congress given for, and adoption of, compact amending compact set out under section 1-1410.

The Congress hereby consents to, adopts and enacts for the District of Columbia an amendment to the Washington Metropolitan Area Transit Regulation Compact, for which Congress heretofore has granted its consent (sections 1-1410 and 1-1410a) by adding thereto title III, known as the Washington Metropolitan Area Transit Authority Compact (referred to in this subchapter as title III), substantially as set out below. (Nov. 6, 1966, 80 Stat. 1324, Pub. L. 89-774, § 1.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

The Washington Metropolitan Area Transit Authority Compact, referred to in text, is set out under this section in the 1973 ed. of the Code.

CODIFICATION

Section is set out in this supplement to correct translations appearing in this section in the main edition.

AMENDMENTS

1976—Act June 4, 1976, Pub. L. 94-306, 90 Stat. 672, amended Articles I and XVI of title III of the Washington Metropolitan Area Transit Regulation Compact as follows: (1) by striking out "and" at the end of section 1(g); (2) by amending section 1(h) generally to add definitions of "Transit Zone" or "Zone"; (3) by adding section 1(i) containing the definition of "WMATC" which had appeared in section 1(h); and (4) by amending section 76 generally.

Act June 11, 1976, D.C. Law 1-67, 23 DCR 501, enacted amendments to Articles I and XVI of title III of the Compact identical to those enacted by Act June 4, 1976, Pub. L. 94-306, cited above.

PREAMBLE

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY COMPACT

The Washington Metropolitan Area Transit Authority Compact, referred to in this section, and constituting title III of the Washington Metropolitan Area Transit Regulation Compact of which titles I and II are set out as a note under § 1-1410, constituted the remainder of this section. The compact is as follows:

"TITLE III

"ARTICLE I

"DEFINITIONS

"1. As used in this Title, the following words and terms shall have the following meanings, unless the context clearly requires a different meaning:

"(g) 'Transit services' means the transportation of persons and their packages and baggage by means of transit facilities between points within the Zone including the transportation of newspapers, express, and mail between

such points, and charter service which originates within the Zone but does not include taxicab service or individual-ticket-sales sightseeing operations;

"(h) 'Transit Zone' or 'Zone' means the Washington Metropolitan Area Transit Zone created by and described in section 3, as well as any additional areas that may be added pursuant to section 83(a); and

"(i) 'WMATC' means Washington Metropolitan Area Transit Commission.

"ARTICLE XVI

"GENERAL PROVISIONS

"Police

"76. (a) The Authority is authorized to establish and maintain a regular police force, to be known as the Metro Transit Police, to provide protection for its patrons, personnel, and transit facilities. The Metro Transit Police shall have the powers and duties and shall be subject to the limitations set forth in this section. It shall be composed of both uniformed and plainclothes personnel and shall be charged with the duty of enforcing the laws of the signatories, the laws, ordinances, and regulations of the political subdivisions thereof in the Transit Zone, and the rules and regulations of the Authority. The jurisdiction of the Metro Transit Police shall be limited to all the transit facilities owned, controlled, or operated by the Authority, but this shall not limit the power of the Metro Transit Police to make arrests in the Transit Zone for violations committed upon, to, or against such transit facilities committed from within or outside such transit facilities while in hot or close pursuit, or to execute traffic citations and criminal process in accordance with subsection (c). The members of the Metro Transit Police shall have concurrent jurisdiction in the performance of their duties with the duly constituted law enforcement agencies of the signatories and of the political subdivisions thereof in which any transit facility of the Authority is located or in which the Authority operates any transit service. Nothing contained in this section shall either relieve any signatory or political subdivision or agency thereof from its duty to provide police, fire, and other public safety service and protection, or limit, restrict, or interfere with the jurisdiction of or the performance of duties by the existing police, fire, and other public safety agencies.

"(b) Except as otherwise provided in this section, a member of the Metro Transit Police shall have the same powers, including the power of arrest, and shall be subject to the same limitations, including regulatory limitations, in the performance of his duties as a member of the duly constituted police force of the political subdivision in which the Metro Transit Police member is engaged in the performance of his duties. However, a member of the Metro Transit Police is authorized to carry and use only such weapons, including handguns, as are issued by the Authority, and only in the performance of his duties or while on the transit facilities owned, controlled, or operated by the Authority in direct transit to and from a duty assignment. A member of the Metro Transit Police is authorized to carry such weapons only while in direct transit to and from a duty assignment and is subject to such additional limitations in the use of weapons as are imposed on the duly constituted police force for the political subdivision in which he is engaged in the performance of his duties.

"(c) Members of the Metro Transit Police shall have power to execute on the transit facilities owned, controlled, or operated by the Authority any traffic citation or any criminal process issued by any court of any signatory or of any political subdivision of a signatory, for any felony, misdemeanor, or other offense against the laws, ordinances, rules, or regulations specified in subsection (a). However, with respect to offenses committed upon, to, or against the transit facilities owned, controlled, or operated by the Authority, the Metro Transit Police shall have power, except in the State of Maryland, to execute criminal process within the Transit Zone.

"(d) Upon the apprehension or arrest of any person by a member of the Metro Transit Police pursuant to the provisions of subsection (b), the officer, as required by

the law of the place of apprehension or arrest, shall either issue a summons or a citation against the person, book the person, or deliver the person to the duly constituted police or judicial officer of the signatory or political subdivision where the apprehension or arrest is made, for disposition as required by law.

"(e) The Authority shall have the power to adopt rules and regulations for the safe, convenient, and orderly use of the transit facilities owned, controlled, or operated by the Authority, including the payment and the manner of the payment of fares or charges therefore, the protection of the transit facilities, the control of traffic and parking upon the transit facilities, and the safety and protection of the riding public. In the event that any such rules and regulations contravene the laws, ordinances, rules or regulations of a signatory or any political subdivision thereof which are existing or subsequently enacted, these laws, ordinances, rules, or regulations of the signatory or the political subdivision shall apply and the conflicting rule or regulation, or portion thereof, of the Authority shall be void within the jurisdiction of that signatory or political subdivision. In all other respects the rules and regulations of the Authority shall be uniform throughout the Transit Zone. The rules and regulations established under this subsection shall be adopted and published in accordance with all standards of due process, including, but not limited to, the publishing or otherwise circulating of a notice of the intended action of the Authority and the affording to interested persons the opportunity to submit data or views orally or in writing, and the holding of a public hearing. Any person violating any rule or regulation of the Authority shall, upon conviction by a court of competent jurisdiction, pay a fine of not more than \$250 and costs.

"(f) With respect to members of the Metro Transit Police, the Authority shall—

"(1) establish classifications based on the nature and scope of duties and fix and provide for their qualifications, appointment, removal, tenure, term, compensation, pension, and retirement benefits;

"(2) provide for their training and for this purpose, the Authority may enter into contracts or agreements with any public or private organization engaged in police training, and this training and the qualifications of the uniformed and plainclothes personnel shall at least equal the requirements of each signatory and of the political subdivisions therein in the Transit Zone for their personnel performing comparable duties; and

"(3) prescribe distinctive uniforms to be worn.

"(g) The Authority shall have the power to enter into agreements with the signatories, the political subdivisions thereof in the Transit Zone, and public safety agencies located therein, including those of the Federal Government, for the delineation of the functions and responsibilities of the Metro Transit Police and the duly constituted police, fire, and other public safety agencies, and for mutual assistance.

"(h) Before entering upon the duties of office, each member of the Metro Transit Police shall take or subscribe to an oath or affirmation, before a person authorized to administer oaths, faithfully to perform the duties of that office.

NOTES TO DECISIONS

Administrative Procedure Act

Administrative Procedure Act does not apply to Washington Metropolitan Area Transit Authority inasmuch as Authority is not a federal agency. *R. Birnberg et al. v. Washington Metropolitan Area Transit Authority* (1975, 389 F. Supp. 340).

Condemnation

Whether or not Congress explicitly or implicitly authorized the Washington Metropolitan Area Transit Authority to condemn cemetery property, the Authority could condemn a property interest in the cemetery for the limited purpose of making eight test borings to determine feasibility of tunnel under the cemetery where, inter alia, taking would be limited to 30 days, borings would be made in roadway so that no grave would be physically disturbed, and access to all graves would be maintained at all times.

Washington Metropolitan Area Transit Authority v. One Parcel of Land, etc., et al. (1975, 514 F. 2d 1350, 169 U.S. App. D.C. 109).

Contracts

Plaintiff's bid on elevator construction contract for the Washington Metropolitan Area Transit Authority could not reasonably have been declared to be nonresponsive by WMATA simply because it failed to specify percentages for a trade category, ironworkers, which WMATA deemed to be necessary to the performance of the contract. *Otis Elevator Company v. Washington Metropolitan Area Transit Authority* (1976, 432 F. Supp. 1089).

Decisions of Transit Authority

Transit Authority board of directors is not required to make statement of findings or reasons to support its decisions, since board is a quasi-legislative body engaged in planning and construction of rapid rail transit system and, as such, its decisions are not subject to any constitutional or statutory due process requirement mandating findings or reasons. *R. Birnberg et al. v. Washington Metropolitan Area Transit Authority* (1975, 389 F. Supp. 340).

Employees—Benefits

Bonus sought under employment contract by sales director for the Washington Metropolitan Area Transit Authority is not contrary to public policy on theory that it contravenes public policy for public employee to receive a bonus, where legislature had mandated such bonus under section of the Authority's compact obligating it to maintain all employee benefits so that no employee transferred from predecessor was put in a worse position than he was prior to his move. *H. Vogel v. Washington Metropolitan Area Transit Authority* (1976, 533 F. 2d 13, 174 U.S. App. D.C. 345).

In the context of a move which disrupted the smooth functioning of employee's department, employee of the Washington Metropolitan Area Transit Authority was not discharged for cause so as to lose his right to a bonus under the terms of his employment contract, either by advocating a "sickout," which did not cause any employee to violate company's sick leave policy, or by use of profane word in phrase "to teach those bastards a lesson." *Id.*

Under terms of "Employee Handbook," providing for severance pay only for those persons separated due to a reduction in force, employee of the Washington Metropolitan Area Transit Authority is not entitled to severance pay upon dismissal, though dismissal did not meet standards for discharge for cause. *Id.*

— Employment contract

Presumption that original employment contract has been renewed from year to year if parties continue the employment relationship without a new agreement was properly applied to support conclusion that contract of an employee of predecessor of the Washington Metropolitan Area Transit Authority, which contained an integration clause providing that contract could not be modified, extended or varied except in writing signed by both parties, was extended by the Authority after acquiring predecessor's assets. *H. Vogel v. Washington Metropolitan Area Transit Authority* (1976, 533 F. 2d 13, 174 U.S. App. D.C. 345).

Environmental impact

In absence of showing that Washington Metropolitan Area Transit Authority had become a federal agency, there was no requirement for an environmental impact statement in connection with construction of subway route. *J. J. Saunders v. Washington Metropolitan Area Transit Authority* (1973, 359 F. Supp. 457; rem'd 486 F. 2d 1315, 159 U.S. App. D.C. 55).

Public hearing

It is not necessary that quorum of board of directors of Transit Authority be present at public hearings on transit system alignment nor that members of board of directors who attend public hearings on transit system alignment be same board members who ultimately vote to adopt alignment discussed at public hearings. *R. Birnberg et al. v. Washington Metropolitan Area Transit Authority* (1975, 389 F. Supp. 340).

In action to enjoin construction subway segment area in which plaintiffs were residents on ground that hearing

held by Washington Metropolitan Area Transit Authority was too broad to suffice as public hearing required by law, evidence established that, with exception of question of design and location of vent shafts, all aspects of segment had been previously accorded due consideration and opportunity for public comments and that there was no likelihood that those other aspects could be so affected by public hearing on location and design of vent shafts as to warrant a full hearing de novo on all aspects of the segment. *J. J. Saunders v. Washington Metropolitan Area Transit Authority* (1973, 359 F. Supp. 457; rem'd 486 F.2d 1315, 159 U.S. App. D.C. 55).

There is no need for public hearing on each minor detail of plan for construction of subway by Washington Metropolitan Area Transit Authority, but only on major elements, such as stations, routes, station access points and planned vent shafts, but word "major" is not to be defined by arguments over semantics, cost of construction or size of facility, and real public interest in opportunity to be heard should be measured by impact of facility on people affected, whether by actual displacement, taking of property, removal of trees or altering character of neighborhood. *Id.*

Residents had no absolute right to block subway through their area or its vent shafts but had right to be heard on design and location of those facilities. *Id.*

Washington Metropolitan Area Transit Authority had burden, in connection with public hearings to be held concerning construction of subway facilities, to provide adequate notice concerning items which were likely to be focus of interest on part of persons affected. *Id.*

Review

"Federal interest" in the Washington Metropolitan Area Transit Authority Compact calls for application of general standing criteria to the case, a test which was easily met by plaintiff elevator company which sought a temporary restraining order to prevent WMATA from awarding certain elevator construction contract to the intervenor on the ground that plaintiff's low bid was allegedly "non-responsive". *Otis Elevator Company v. Washington Metropolitan Area Transit Authority* (1976, 432 F. Supp. 1089).

Decision of board of directors of Washington Metropolitan Area Transit Authority to build segment of rapid rail transit system under certain street was not arbitrary, capricious, or irrational. *R. Birnberg et al. v. Washington Metropolitan Area Transit Authority* (1975, 389 F. Supp. 340).

§ 1-1431-1. Authority of Council to enact acts adopting compact amendments.

The Council of the District of Columbia shall have authority to enact any act adopting on behalf of the District of Columbia amendments to the Washington Metropolitan Area Transit Regulation Compact, but in no case shall any such amendment become effective until after it has been approved by Congress. (June 4, 1976, Pub. L. 94-306, § 4, 90 Stat. 675.)

§ 1-1431-1a. Consent of Council to compact amendments—Metro transit police force.

(a) The District of Columbia hereby consents to, adopts, and enacts amendments to articles I and XVI of title III of the Washington Metropolitan Area Transit Regulation Compact as set out in the note below section 1-1431.

(b) The Mayor of the District of Columbia is authorized and directed to enter into and execute on behalf of the District of Columbia amendments, substantially as set forth in subsection (a), to title III of the Washington Metropolitan Area Transit Regulation Compact with the Commonwealth of Virginia and the State of Maryland, which amendments shall become effective immediately upon execution of same. (June 11, 1976, D.C. Law 1-67, §§ 2, 3, 23 DCR 501, 510.)

CODIFICATION

In subsec. (a), the words "as set out in the note below section 1-1431" have been substituted for "(D.C. Code, sec. 1-1431 note) as follows".

REFERENCE IN TEXT

The cited amendments are to sections 1 and 76 of the Compact.

SHORT TITLE

The first section of act June 11, 1976, D.C. Law 1-67, provided "That this act [amending § 1 of article I and § 76 of article XVI of title III of the Washington Metropolitan Area Transit Authority Compact] may be cited as the 'Metro Transit Police Force Act of 1975'."

§ 1-1431a. Consent of Congress to compact amendments.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-1431b. Consent of Congress to compact amendments—Acquisition of mass transit bus systems.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-1431c. Consent of Congress to compact amendments—Metro transit police force.

(a) The Congress hereby consents to, and adopts and enacts for the District of Columbia, amendments to articles I and XVI of title III of the Washington Metropolitan Area Transit Regulation Compact as set out in the note below section 1-1431, which amendments have been adopted substantially by the Commonwealth of Virginia and the State of Maryland.

(b) The Mayor of the District of Columbia is authorized and directed to enter into and execute on behalf of the District of Columbia amendments, substantially as set forth in subsection (a), to title III of the Washington Metropolitan Area Transit Regulation Compact with the State of Maryland and the Commonwealth of Virginia, which amendments shall become effective immediately upon execution of same. (June 4, 1976, Pub. L. 94-306, §§ 1, 2, 90 Stat. 672, 674.)

CODIFICATION

In subsec. (a), the words "as set out in the note below section 1-1431" have been substituted for "(D.C. Code, sec. 1-1431 note) as follows".

REFERENCE IN TEXT

The cited amendments are to sections 1 and 76 of the Compact.

RESERVATION OF AUTHORITY

Section 5 of Act June 4, 1976, Pub. L. 94-306, provided: "The right of Congress to alter, amend, or repeal this Act [enacting this section and section 11-924, and amending the Compact set out as a note under section 1-1431] is hereby expressly reserved."

§ 1-1432. Authority and duty of Commissioner to execute and carry out compact.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-1436. Reservation of right to alter, amend or repeal—Submission of reports to Congress—Disclosure of information—Access to books and records—Audits.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER V.—ADOPTED REGIONAL SYSTEM

§ 1-1441. Definitions.

STUDY AND DEMONSTRATION PROGRAM OF HIGH-SPEED TRANSPORTATION TO DULLES AIRPORT

Section 146 of Act Aug. 13, 1973, Pub. L. 93-87, provided: "The Secretary [of Transportation] is authorized to undertake a study and demonstration program for high-speed bus service from collection points in the Washington, District of Columbia area to Dulles International Airport, Virginia. Such study and demonstration shall utilize exclusive bus transportation lanes between points of origin and termination of such service, and include, where necessary, the construction of such exclusive bus transportation lanes as well as terminal and parking facilities. Such study and demonstration shall also include the purchase of high-speed buses. As necessary to implement this section, the Secretary shall undertake research into the development of buses designed to maintain high-speed, safe transportation. Not to exceed \$10,000,000 of the amount authorized to be apportioned under section 104(b) (6) of title 23, United States Code, for the fiscal year ending June 30, 1975, shall be available to the Secretary to carry out this section and such sum shall be set aside for such purpose prior to the apportionment of such amount for such fiscal year."

§ 1-1442. Authorization of Federal contributions.

(a) To provide the Federal share of the cost of the Adopted Regional System, which system supersedes that heretofore authorized by the Congress in subchapter III of this chapter, the Secretary of Transportation is authorized to make annual contributions to the Transit Authority in amounts sufficient to finance in part the cost of the Adopted Regional System; except that the aggregate amount of Federal contributions for the Adopted Regional System, including the \$100,000,000 authorized to be appropriated by section 1-1424(1), shall not exceed the lower amount of \$1,147,044,000 or two-thirds of the net project cost of the Adopted Regional System.

* * * * *

CODIFICATION

Section is set out in this supplement to correct translations appearing in this section in the main edition.

§ 1-1442a. Same—Accessibility to the handicapped.

The Secretary of Transportation is authorized to make payments to the Washington Metropolitan Area Transit Authority in amounts sufficient to finance 80 per centum of the cost of providing such facilities for the subway and rapid rail transit system authorized in this subchapter as may be necessary to make such subway and system accessible by the handicapped through implementation of Public

Laws 90-480 and 91-205 (chapter 51 of title 42, United States Code). There is authorized to be appropriated, to carry out this section, not to exceed \$65,000,000. (Aug. 13, 1973, Pub. L. 93-87, title I, § 140, 87 Stat. 271.)

CODIFICATION

Section was enacted as part of the Federal-Aid Highway Act of 1973, and not as part of the National Capital Transportation Act of 1969 which comprises this subchapter.

CROSS REFERENCE

Equal access to public conveyances, see § 6-1502.

§ 1-1443. Authorization of District of Columbia contributions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 672.

§ 1-1443a. District of Columbia contributions—Financing by general obligation bonds.

Notwithstanding any provision of law to the contrary, beginning with fiscal year 1976 the District share of the cost of the Adopted Regional System described in this subchapter, may be payable from the proceeds of the sale of District general obligation bonds issued pursuant to this title. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 489, 87 Stat. 808.)

REFERENCE IN TEXT

"This title", referred to in text, is title IV (consisting of sections 401 to 495) of the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 88 Stat. 785-811). For classification of title IV to the Code, see Parallel Reference Tables.

CODIFICATION

Section was enacted as part of the District of Columbia Self-Government and Governmental Reorganization Act, and not as part of the National Capital Transportation Act of 1969 which comprises this subchapter.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

CROSS REFERENCE

General obligation bonds, see § 47-241 et seq.

§ 1-1443b. Repealed. Jan. 22, 1976, D.C. Law 1-42, § 7(a), 22 DCR 6317.

Section, act Oct. 21, 1975, D.C. Law 1-23, title I, § 103, 22 DCR 2094, created a special fund known as the Metrobus Fund.

EFFECTIVE DATE OF REPEAL

See sec. 10 of act Jan. 22, 1976, D.C. Law 1-42, set out as a note under § 47-130c.

§ 1-1444. Construction approvals.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the

District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-1446. Guarantee of obligations.

FINANCIAL AGREEMENT BETWEEN SECRETARY OF TRANSPORTATION AND TRANSIT AUTHORITY

Title II of Act Aug. 2, 1977, Pub. L. 95-85, 91 Stat. 415, provided in part "That the Secretary of Transportation shall execute an agreement with the Authority whereby the Authority agrees to (1) issue no additional bonds under title I of Public Law 92-349 [enacting §§ 1-1446 to 1-1449 and 1-1441 note], (2) provide a minimum of 20 percent of the Authority's unreimbursed debt service costs under title I of Public Law 92-349, and (3) develop and execute a plan, with the participating local governments, that will provide for the Authority to be financially responsible for the remaining capital and operating costs of the rail transit system in a manner consistent with the Urban Mass Transportation Act of 1964, as amended [49 U.S.C. 1601 et seq.], the Federal-Aid Highway Act of 1973, as amended [Aug. 13, 1973, Pub. L. 93-87, 87 Stat. 250], and the terms and conditions the Secretary may require."

SECTION REFERRED TO IN U.S. CODE

This section is referred to in section 24 of title 12, U.S. Code.

SUBCHAPTER VI.—ACQUISITION OF MASS TRANSIT BUS SYSTEMS

§ 1-1462. District of Columbia authorizations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 15.—ADMINISTRATIVE PROCEDURE

SUBCHAPTER I.—ADMINISTRATIVE PROCEDURE

Sec.

- 1-1503a. Open meetings and hearings—Transcripts—Availability to the public.
- 1-1507. Compilation of rules.

SUBCHAPTER II.—FREEDOM OF INFORMATION

- 1-1521. Public policy.
- 1-1522. Right of access to public records—Allowable costs—Time limits.
- 1-1523. Letters of denial.
- 1-1524. Exemptions.
- 1-1525. Recording of final votes.
- 1-1526. Information which must be made public.
- 1-1527. Administrative appeals and enforcement.
- 1-1528. Oversight.
- 1-1529. Definitions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1-1105, 1-1156, 1-1171, 1-1704, 2-123, 2-129, 2-312, 2-406, 2-407, 2-492, 2-708, 2-1235, 2-1236, 2-1238, 2-1809, 3-115, 5-1272, 5-1276, 6-1820, 6-1846, 6-1879, 6-1945, 6-2112, 6-2116, 6-2202, 6-2281, 6-2292, 11-722, 11-1525, 29-417, 35-427, 35-1709, 35-1913, 36-130, 36-409, 40-302, 40-420, 40-603, 45-1409, 45-1652, 46-303, 46-312, 47-636, 47-2101, 49-402.

SUBCHAPTER I.—ADMINISTRATIVE PROCEDURE

§ 1-1501. Other authority.

This subchapter shall supplement all other provisions of law establishing procedures to be observed by the Mayor and agencies of the District government in the application of laws administered by them, except that this subchapter shall supersede

any such law and procedure to the extent of any conflict therewith. (Oct. 21, 1968, Pub. L. 90-614, title I, § 101, formerly § 2, 82 Stat. 1204; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(a) 22 DCR 2048; renumbered and amended Mar. 29, 1977, D.C. Law 1-96, § 3(a), (c), 23 DCR 9532b.)

AMENDMENTS

1977—Act Mar. 29, 1977, D.C. Law 1-96, amended section by substituting "subchapter" for "chapter".

1975—Act Oct. 8, 1975, D.C. Law 1-19, amended section by substituting "Mayor" for "Commissioner, the Council,".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 5 of act Mar. 29, 1977, D.C. Law 1-96, set out as a note under § 1-1521.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 104 of act Oct. 8, 1975, D.C. Law 1-19, provided: "This Title [amending §§ 1-1501 to 1-1503 and §§ 1-1504 to 1-1510 and enacting material set out as notes under this section and § 1-1507] shall take effect upon becoming law by operation of subsection (c) of section 602 of the District of Columbia Self-Government and Governmental Reorganization Act (87 Stat. 814) [§ 1-147(c)]."

EFFECTIVE DATE

Section 111, formerly section 12, Act Oct. 21, 1968, Pub. L. 90-614, title I, renumbered and amended Mar. 29, 1977, D.C. Law 1-96, § 3(a), (c), 23 DCR 9532b, provided: "This title [enacting this subchapter] shall become effective one year after the date of its enactment [Oct. 21, 1968]."

SHORT TITLES

The first section of act Apr. 19, 1977, D.C. Law 1-120, provided "That this act [amending §§ 1-1711 and 1-1504] may be cited as the 'D.C. Register Publication Act of 1976'."

The first section of act Mar. 29, 1977, D.C. Law 1-96, provided "That this act [enacting subchapter II and amending this subchapter] may be cited as the 'Freedom of Information Act of 1976'."

Section 101 of Title I of act Oct. 8, 1975, D.C. Law 1-19, provided "That this act [enacting subchapter II and 1-1504 to 1-1510 and enacting material set out as notes under this section and § 1-1507] may be cited as the 'District of Columbia Administrative Procedure Act Amendments act of 1975'."

PROCEEDINGS COMMENCED BEFORE 1975 AMENDMENTS BY D.C. LAW 1-19

Section 103(a) of act Oct. 8, 1975, D.C. Law 1-19, provided: "The amendments made by this Title [amending §§ 1-1501 to 1-1503 and §§ 1-1504 to 1-1510] shall not be construed as abrogating any right vested or affecting or terminating any suit or other proceeding commenced before the effective date of those amendments. Any such suit or other proceeding may be continued or maintained to its conclusion as if those amendments had not been enacted."

NOTES TO DECISIONS

Applicability to Joint Committee on Landmarks

Joint Committee on Landmarks of the National Capital as an intergovernmental agency is not an agency of the District of Columbia, and the Court of Appeals lacks jurisdiction to entertain petition for review of its action under this chapter. *J. W. Latimer, Jr., et al. v. The Joint Committee on Landmarks of the National Capital* (D.C. App. 1975, 345 A.2d 484).

Applicability to National Capital Housing Authority

The National Capital Housing Authority is not an "agency of the District of Columbia" within this chapter which establishes procedures to be observed by the commissioner, the council, and agencies of the District government. *R. L. Coleman et al. v. United States* (D.C. App. 1973, 311 A. 2d 496).

Applicability to Public Service Commission

Provision of section 11-722 that Court of Appeals has jurisdiction to review orders and decisions of any agency of the District in accordance with Administrative Proce-

cedure Act (§§ 1-1501 et seq.), and may review orders or decision of the Public Service Commission in accordance with Commission's organic act (chapters 1-10 of title 43), carves out only a limited area in which Administrative Procedure Act is inapplicable to the Commission, that being in the area of standard and scope of review, rather than a wholesale exemption from Administrative Procedure Act coverage. *Chesapeake and Potomac Telephone Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1975, 339 A.2d 710).

Applicability to Zoning Commission proceedings

Controversy which arose out of Zoning Commission's actions in granting change in zoning so as to permit townhouse development, which action followed an adjudicatory hearing, is a "contested case" so that Court of Appeals has jurisdiction to review the action. *Palisades Citizens Assoc., Inc., et al., v. District of Columbia Zoning Commission* (D.C. App. 1977, 368 A.2d 1143).

Proceedings before District of Columbia Zoning Commission are quasi-legislative in character, not adjudicative in nature, and strictures of this chapter and full range of due process protections necessary to an adversary adjudication are not applicable. *R. Ruppert et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 686; aff'd 543 F.2d 416, 417, 177 U.S. App. D.C. 269, 270).

Construction

Decision of Public Service Commission in telephone rate proceeding to furnish transcripts to intervenors at telephone company's expense does not constitute a proper exercise of Commission's delegated powers to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it, since any procedure established by the Commission must conform with the minimum requirements set forth in Administrative Procedure Act (§§ 1-1501 et seq.), and since Commission's rule that transcripts be furnished to intervenors at telephone company's expense was a mere nullity because it contravened express language of section 1-1509. *Chesapeake and Potomac Telephone Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1975, 339 A.2d 710).

§ 1-1502. Definition.

As used in this subchapter—

(1) (a) the term "Mayor" means the Mayor of the District of Columbia, or his or her designated agent;

(b) the term "Council" means the Council of the District of Columbia established by section 1-141(a) unless the term "District of Columbia Council" is used in which event it shall mean the District of Columbia Council established by subsection (a) of section 201 of Reorganization Plan No. 3 of 1967 (81 Stat. 948);

(2) the term "District" means the District of Columbia;

(3) the term "agency" includes both subordinate agency and independent agency;

(4) the term "subordinate agency" means any officer, employee, office, department, division, board, commission, or other agency of the government of the District, other than an independent agency or the Mayor or the Council, required by law or by the Mayor or the Council to administer any law or any rule adopted under the authority of a law;

(5) the term "independent agency" means any agency of the government of the District with respect to which the Mayor and the Council are not authorized by law, other than this subchapter, to establish administrative procedures, but does not include the several courts of the District and the District of Columbia Tax Court;

(6) the term "rule" means the whole or any part of any Mayor's or agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of the Mayor or of any agency;

(7) the term "rulemaking" means Mayor's or agency process for the formulation, amendment, or repeal of a rule;

(8) the term "contested case" means a proceeding before the Mayor or any agency in which the legal rights, duties, or privileges of specific parties are required by any law (other than this subchapter), or by constitutional right, to be determined after a hearing before the Mayor or before an agency, but shall not include (A) any matter subject to a subsequent trial of the law and the facts de novo in any court; (B) the selection or tenure of an officer or employee of the District; (C) proceedings in which decisions rest solely on inspections, tests, or elections; and (D) cases in which the Mayor or an agency act as an agent for a court of the District;

(9) the term "person" includes individuals, partnerships, corporations, associations, and public or private organizations of any character other than the Mayor, the Council, or an agency;

(10) the term "party" includes the Mayor and any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any proceeding before the Mayor or an agency, but nothing herein shall be construed to prevent the Mayor or an agency from admitting the Mayor or any person or agency as a party for limited purposes;

(11) the term "order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of the Mayor or of any agency in any matter other than rulemaking, but including licensing;

(12) the term "license" includes the whole or part of any permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission granted by the Mayor or any agency;

(13) the term "licensing" includes process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license by the Mayor or an agency;

(14) the term "relief" includes the whole or part of any Mayor's or agency (A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy; (B) recognition of any claim, right, immunity, privilege, exemption, or exception; and (C) taking of any other action upon the application or petition of, and beneficial to, any person;

(15) the term "proceeding" means any process of the Mayor or an agency as defined in paragraphs (6), (11), and (12) of this section; and

(16) the term "sanction" includes the whole or part of any Mayor's or agency (A) prohibition, requirement, limitation, or other condition affecting the freedom of any person; (B) withholding of re-

lief; (C) imposition of any form of penalty or fine; (D) destruction, taking, seizure, or withholding of property; (E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees; (F) requirement, revocation, or suspension of a license; and (G) taking of other compulsory or restrictive action.

(17) the term "regulation" means the whole or any part of any District of Columbia Council statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of the Mayor, District of Columbia Council, or any agency.

(18) the term "public record" includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by the Mayor and agencies.

(19) the term "adjudication" means the agency process, other than rulemaking, for the formulation, issuance, and enforcement of an order.

(Oct. 21, 1968, Pub. L. 90-614, title I, § 102, formerly § 3, 82 Stat. 1204; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(b)-(q), 22 DCR 2048; renumbered and amended Mar. 29, 1977, D.C. Law 1-96, § 3(a), (c), (d), 23 DCR 9532b.)

REFERENCE IN TEXT

"Reorganization Plan No. 3 of 1967", referred to in par. 1(b), is set out in the Appendix to this title in the main edition.

AMENDMENTS

1977—Act Mar. 29, 1977, D.C. Law 1-96, amended section by adding pars. (18) and (19) and by substituting "subchapter" for "chapter".

1975—Par. (1). Section 102 (b), (c) of act Oct. 8, 1975, D.C. Law 1-19, amended par. (1) generally. Prior to amendment, par. (1) read:

"(1) (a) the term 'Commissioner' means the Commissioner of the District of Columbia, or his designated agent;

"(b) the term 'Council' means the District of Columbia Council;".

Pars. (4), (5). Section 102 (d), (e) of such act amended pars. (4) and (5) by substituting "Mayor" for "Commissioner".

Par. (6). Section 102(f) of such act amended par. (6) by substituting "Mayor's" and "Mayor" for "Commissioner's, Council's," and "Commissioner, Council," respectively.

Par. (7). Section 102(g) of such act amended par. (7) by substituting "Mayor's" for "Commissioner's, Council's".

Par. (8). Section 102(h) of such act amended par. (8) by substituting "Mayor" for "Commissioner, the Council," and "Commissioner or the Council".

Par. (9). Section 102(i) of such act amended par. (9) by substituting "Mayor" for "Commissioner".

Par. (10). Section 102(j) of such act amended par. (10) by substituting "Mayor" for "Commissioner, the Council,".

Par. (11). Section 102(k) of such act amended par. (11) by substituting "Mayor" for "Commissioner or Council"

Par. (12). Section 102(l) of such act amended par. (12) by substituting "Mayor" for "Commissioner, the Council,".

Par. (13). Section 102(m) of such act amended par. (13) by substituting "Mayor" for "Commissioner or the Council".

Par. (14). Section 102(n) of such act amended par. (14) by substituting "Mayor's" for "Commissioner's or Council's".

Par. (15). Section 102 (o) of such act amended par. (15) by substituting "Mayor" for "Commissioner or Council".

Par. (16). Section 102(p) of such act amended par. (16) by substituting "Mayor's" for "Commissioner's or Council's".

Par. (17). Section 102(q) of such act added par. (17).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 5 of act Mar. 29, 1977, D.C. Law 1-96, set out as a note under § 1-1521.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1529.

NOTES TO DECISIONS

Contested case

Agencies in passing on amendment to project area redevelopment plan under the District of Columbia Redevelopment Act were not required to follow the contested case procedure of the Administrative Procedure Act with respect to owners and lessees of property in affected renewal project area, contrary to their claim that they were entitled to a public hearing, since administrative decisions dealing with land use control questions involved general matters of public policy. *L'Enfant Plaza Properties, Inc., et al. v. District of Columbia Redevelopment Land Agency et al.* (1977, 564 F.2d 515, 184 U.S. App. D.C. 30; rev'g 412 F. Supp. 211).

Controversy which arose out of Zoning Commission's actions in granting change in zoning so as to permit townhouse development, which action followed an adjudicatory hearing, is a "contested case" so that Court of Appeals has jurisdiction to review the action. *Palisades Citizens Assoc., Inc., et al. v. District of Columbia Zoning Commission* (D.C. App. 1977, 368 A.2d 1143).

A discriminatory employment practices proceeding brought by a District of Columbia employee is not a "contested case" within meaning of this chapter and, hence, is not subject to direct review by Court of Appeals; following enactment of Equal Employment Opportunity Act of 1972 to include government employees a District employee has the right to bring a civil action in federal court following pursuit of his administrative remedies through the appropriate local and federal commissions. *H. O'Neill et ano. v. District of Columbia Office of Human Rights* (D.C. App. 1976, 355 A. 2d 805).

"Contested case standard" is inapplicable to hearing required to be held before license can be suspended under chapter 4 of title 40 on issue whether there is reasonable possibility of liability by uninsured, and thus, in proceedings under chapter 4 of title 40, type of hearing required does not include right to compel attendance of witnesses for cross-examination. *H. Thomas et al. v. District of Columbia Board of Appeals and Review* (D.C. App. 1976, 355 A. 2d 789).

When Zoning Commission exercised its authority to determine needs of area by denying without public hearing a proposed amendment to zoning maps to change zoning classification of property, the Commission was acting legislatively and was not subject to the "contested case" provisions of this chapter, with the result that such decision is not subject to direct review by the Court of Appeals, despite contention of property owner that mere submission of proposed amendment, and the subsequent rejection of same, constituted a "hearing" required by law, and thus is subject to review. *W. C. & A. N. Miller Development Company v. District of Columbia Zoning Commission* (D.C. App. 1975, 340 A. 2d 420).

An administrative proceeding is primarily adjudicatory and therefore governed by "contested case" procedural requirements if it is concerned basically with weighing particular information and arriving at a decision directed at the rights of specific parties; on the other hand, an administrative proceeding is not subject to "contested case" procedural requirements if the administrative body is acting in a legislative capacity, making policy decisions directed toward general public. *Chevy Chase Citizens Association et al. v. District of Columbia Council* (D.C. App. 1974, 327 A. 2d 310).

Phrase "after a hearing" as used in statute defining a "contested case" as meaning a proceeding in which the legal rights and privileges of specific parties are required to be determined after a hearing means after a trial-type hearing where such is implicitly required by either the organic act or constitutional right. *Id.*

Where a proceeding by a quasi-legislative body is concerned primarily with the immediate rights, duties, or privileges of specific parties instead of with general policy of future applicability, such proceeding falls within the "contested case" provisions of the Administrative Procedure Act. *Id.*

— Environmental protection

Controversy over refusal of Mayor-Commissioner and his designated agents to grant petitioners' request to take immediate steps to correct by appropriate action an alleged air pollution emergency in District of Columbia was not a "contested case" within purview of this chapter granting limited judicial review to District of Columbia Court of Appeals in respect to orders or decisions of a District of Columbia agency made "after a hearing before the Commissioner or the Council or before an agency" in a "contested case." *Environmental Defense Fund, Inc., et al. v. Mayor-Commissioner of the District of Columbia et al.* (D.C. App. 1974, 317 A. 2d 515).

— Minimum wages

Public hearing preliminary to revision of Minimum Wage and Industrial Safety Board's order with regard to persons employed in hotel, restaurant and allied occupations was not a "contested case" within purview of notice provisions of this chapter. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

Application for special exception to allow construction in residential zone of private school for kindergarten and elementary school age children resulted in a "contested case" within meaning of this chapter. *Rose Lees Hardy Home and School Association et ano. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 324 A. 2d 701).

— Street closings

Decision of District of Columbia Council, pursuant to the Street Readjustment Act, to close portion of street and, once closed, to authorize the surveyor to convey title to the abutting landowners for development purposes did not constitute a "contested case" within meaning of the Administrative Procedure Act; in determining whether it should close the street the Council was exercising legislative discretion based on primarily legislative facts; also, Council's decision regarding compensation, though primarily adjudicatory, did not fall within the "contested case" definition since it was subject to trial de novo in Superior Court. *Chevy Chase Citizens Association et al. v. District of Columbia Council* (D.C. App. 1974, 327 A. 2d 310).

— Zoning

For purpose of judicial review, proceeding resulting in rezoning of 2.2-acre tract of land is a "contested case" where not only did the Zoning Commission treat the proceeding as such under its own rules but in an earlier case involving precisely the same applicant and the same parcel the court specifically held that proceeding before the Commission constituted a contested case and matter involved specific evidence concerning a single parcel of property and resolution did not depend on broad legislative policy judgments. *Capitol Hill Restoration Society et al. v. The Zoning Commission of the District of Columbia* (D.C. App. 1977, 380 A. 2d 174).

Proceedings held under the District of Columbia zoning commission's rules of practice, resulting in down-zoning of area, were not a "contested case" within meaning of Administrative Procedure Act, but were adversary in nature and equity could be invoked. *R. Ruppert et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 683).

Joint Committee on Landmarks

Joint Committee on Landmarks of the National Capital as an intergovernmental agency is not an agency of the District of Columbia, and the Court of Appeals lacks

jurisdiction to entertain petition for review of its action under this chapter. *J. W. Latimer, Jr., et al. v. The Joint Committee on Landmarks of the National Capital* (D.C. App. 1975, 345 A. 2d 484).

National Capital Housing Authority

The National Capital Housing Authority is not an "agency of the District of Columbia" within this chapter which establishes procedures to be observed by the commissioner, the council, and agencies of the District government. *R. L. Coleman et al. v. United States* (D.C. App. 1973, 311 A. 2d 496).

Party

Where one partner was never named as a party in tenants' petition charging exaction of excessive rent in violation of subchapter III of chapter 16, title 45 and was not given notice of hearing on the petition or an opportunity to be heard in his own behalf, imposition of \$50 fine was improper; provision of section 41-311 relating to partnerships is inapplicable since neither the partnership nor general partner was named as a party to the proceeding. *H. M. Ammerman et al. v. District of Columbia Rental Accommodations Commission* (D.C. App. 1977, 375 A. 2d 1060).

Rulemaking

District's letter to senator, in which District outlined its reading of regulations relevant to repair of water pipes is not "rulemaking" within meaning of Administrative Procedure Act. *District of Columbia, etc. v. North Washington Neighbors, Inc., et al.* (D.C. App. 1976, 367 A. 2d 143; cert. denied 98 S.Ct. 68, —U.S.—).

Administrative Procedure Act envisions rule making as a quasi-legislative process, and where government agency performs no legislative function but only describes or refers to regulation as it is written, procedural formalities of Administrative Procedure Act are unnecessary. *Id.*

Interpretation or implementation by taxing authorities of words "full and true value" by changing debasement factor for taxation of single-family residences from 55 percent of estimated market value to 60 percent is, within meaning of this chapter, "rulemaking" such as to require publication of notice despite contention that change was part of effort to equalize District of Columbia tax assessments as required by Constitution. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A. 2d 848).

§ 1-1503. Establishment of general procedures.

(a) The Mayor and the Council shall for the Mayor and for each subordinate agency, establish or require each subordinate agency to establish procedures in accordance with this subchapter.

(b) Each independent agency shall establish procedures in accordance with this subchapter.

(c) The procedures required to be established by subsections (a) and (b) of this section shall include requirements of practice before the Mayor and each agency. (Oct. 21, 1968, Pub. L. 90-614, title I, § 103, formerly § 4, 82 Stat. 1205; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(r), (s), 22 DCR 2051; renumbered and amended Mar. 29, 1977, D.C. Law 1-96, § 3(a), (c), 23 DCR 9532b.)

AMENDMENTS

1977—Act Mar. 29, 1977, D.C. Law 1-96, amended section by substituting "subchapter" for "chapter".

1975—Subsec. (a). Section 102(r) of act Oct. 8, 1975, D.C. Law 1-19, amended subsec. (a) by substituting "The Mayor and the Council shall for the Mayor and" for "The Commissioner and the Council shall, for themselves and".

Subsec. (c). Section 102(s) of such act amended subsec. (c) by substituting "Mayor" for "Commissioner and the Council".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 5 of act Mar. 29, 1977, D.C. Law 1-96, set out as a note under § 1-1521.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33-831; section 4 of title 28 Appendix.

NOTES TO DECISIONS

Delay

Complaint charging discrimination against minority groups depriving them of equal employment opportunities, and amendment to the complaint, and a subpoena duces tecum were not invalid based on failure of Human Relations Commission to promulgate rules of procedure as required by District of Columbia Administrative Procedure Act, where Commission promulgated and published rules of procedure during pendency of proceedings, and defendant had not been prejudiced by delay in the publication. *D.C. Human Relations Commission v. National Geographic Society* (1973, 475 F. 2d 366, 154 U.S. App. D.C. 255).

§ 1-1503a. Open meetings and hearings—Transcripts—Availability to the public.

(a) All meetings (including hearings) of any department, agency, board, or commission of the District government, including meetings of the District Council, at which official action of any kind is taken shall be open to the public. No resolution, rule, act, regulation or other official action shall be effective unless taken, made, or enacted at such meeting.

(b) A written transcript or a transcription shall be kept for all such meetings and shall be made available to the public during normal business hours of the District government. Copies of such written transcripts or copies of such transcriptions shall be available upon request to the public at reasonable cost. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 742, 87 Stat. 831.)

CODIFICATION

Section was enacted as part of the District of Columbia Self-Government and Governmental Reorganization Act, and not as part of the District of Columbia Administrative Procedure Act which comprises this chapter.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

SHORT TITLE

This section is popularly known as the Sunshine Act.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-171j, 2-123; section 4 of title 28 Appendix.

NOTES TO DECISIONS

Adjudicatory proceedings

Deliberative process incident to Board of Appeals and Review's final orders in regard to application for license to carry concealed pistol is not covered by "Sunshine Act"; thus, Board's orders, which affirmed Metropolitan Police Department's denial of application, are not defective either because Board members arrived at their decision at nonpublic conference after public hearing in which applicant and others testified or because no transcript of such conference was made. *A. F. Jordan, Jr. v. District of Columbia et al.* (D.C. App. 1976, 362, A. 2d 114).

Applicability

Where decision of Board of Zoning Adjustment was made in executive session which was quasi-judicial action

in which historically only voting members play role, this section is not applicable. *Dupont Circle Citizens Association v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 364 A.2d 610).

Board of Education meetings

Given the express intent of Congress to allow certain meetings of the Board of Education to be closed and the embodiment of that intent in a specific statute (§ 31-101), that prior statute remains in effect as a qualification of this section requiring meetings of the District government to be open to the public. *R. Goodwin et al. v. District of Columbia Board of Education et al.* (D.C. App. 1975, 343 A. 2d 63).

§ 1-1504. Official publication.

(a) The Mayor shall publish on at least each Friday, or if Friday is a holiday on the next working day, a bulletin to be known as the "District of Columbia Register" in which shall be set forth the full text of all rules filed in the office of the Mayor during the period covered by such issue of such bulletin, except that the Mayor may exercise the discretion of omitting from the District of Columbia Register rules the publication of which would be unduly cumbersome or¹ expensive, if, in lieu of such publication there is included in the District of Columbia Register a notice stating the general subject matter of any rule so omitted and stating the manner in which a copy of such rule may be obtained. The Mayor shall also publish quarterly an annual index of all matters published in the District of Columbia Register.

Each entry in the District of Columbia Register shall contain the date upon which such entry was submitted to the Mayor for circulation in the District of Columbia Register.

Each District of Columbia Register shall contain on its cover the actual date such issue was generally circulated to the public for review and comment, provided that, should the Register be circulated after the cover date shown, a notice stating the correct date shall be attached thereto. All time computations based on the District of Columbia Register shall commence from the cover date, or if amended, the date of notice thereof. The provisions of this subsection shall also apply to any and all supplemental additions to the District of Columbia Register.

(b) All courts within the District shall take judicial notice of rules, regulations, and Council acts and resolutions published or of which notice is given in the District of Columbia Register pursuant to this section.

(c) Publication in the District of Columbia Register of Council acts and resolutions, regulations adopted, amended, or repealed by the District of Columbia Council and rules adopted, amended, or repealed by the Mayor or by any agency shall not be considered as a substitute for publication in one or more newspapers of general circulation when such publication is required by statute.

(d) The Mayor shall publish in the District of Columbia Register all acts, resolutions, and notices of the Council and shall publish such other matters as requested by the Chairman of the Council or his designee.

¹ So in original. Probably should be "or".

(e) The Mayor is authorized to publish in the District of Columbia Register, in addition to rules published under authority contained in subsection (a) of this section and matters published under authority contained in subsection (d) of this section, (1) cumulative indexes to rules, regulations, and Council acts and resolutions which have been adopted, amended, or repealed; (2) information on changes in the organization of the District Government; (3) notices of public hearings; (4) codifications of rules, regulations, and Council acts and resolutions; and (5) such other matters as the Mayor may from time to time determine to be of general public interest. (Oct. 21, 1968, Pub. L. 90-614, title I, § 104, formerly § 5, 82 Stat. 1206; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(t)-(x), 22 DCR 2051; renumbered Mar. 29, 1977, D.C. Law 1-96, § 3(a), 23 DCR 9532b; Apr. 19, 1977, D.C. Law 1-120, § 2, 23 DCR 9924.)

AMENDMENTS

1977—Act Apr. 19, 1977, D.C. Law 1-120, amended subsec. (a) generally. For prior provisions, see the 1973 edition of the Code.

1975—Subsec. (a). Section 102(t) of act Oct. 8, 1975, D.C. Law 1-19, amended subsec. (a) by substituting "Mayor" for "Commissioner".

Subsec. (b). Section 102(u) of such act amended subsec. (b) by inserting ", regulations, and Council acts and resolutions" immediately after "rules".

Subsec. (c). Section 102(v) of such act amended subsec. (c) by inserting "Council acts and resolutions, regulations adopted, amended, or repealed by the District of Columbia Council and" immediately preceding "rules"; and substituted "Mayor" for "Commissioner or Council".

Subsec. (d). Section 102(x) of such act added a new subsec. (d). Former subsec. (d) was amended and redesignated subsec. (e) by section 102(w).

Subsec. (e). Section 102(w) of such act redesignated subsec. (d) as subsec. (e) and amended the subsection generally.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 4 of act Apr. 19, 1977, D.C. Law 1-120, set out as a note under § 1-171i.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-1501.

CROSS REFERENCES

Availability of D.C. Register to Advisory Neighborhood Commissions, without cost, see § 1-171i.

Official information, availability to public, see §§ 1-1521 et seq.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1601, 2-103, 33-831; section 4 of title 28 Appendix.

NOTES TO DECISIONS

Indexing of public records

Applicant for certificate of occupancy to use building in specified zoning district as private club is not entitled to receive from Board Zoning Adjustment list of all Board decisions from preceding 15 years dealing with question of what constitutes a "private club" within meaning of zoning regulations, in absence of statute requiring Board to maintain index of Board decisions. *Legislative Study Club, Inc. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 359 A. 2d 153).

Publication

A police regulation of the District of Columbia pertaining to equal employment opportunities even if not published in a compilation was properly published where a special edition of the District of Columbia Register incorporated District of Columbia police regulations and such regulations were available for purchase at District of Columbia publications office. *D.C. Human Relations Commission v. National Geographic Society* (1973, 475 F. 2d 366, 154 U.S. App. D.C. 255).

§ 1-1505. Public notice and participation in rulemaking.

(a) The Mayor and each independent agency shall, prior to the adoption of any rule or the amendment or repeal thereof, publish in the District of Columbia Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) notice of the intended action so as to afford interested persons opportunity to submit data and views either orally or in writing, as may be specified in such notice. The publication or service required by this subsection of any notice shall be made not less than thirty days prior to the effective date of the proposed adoption, amendment, or repeal, as the case may be, except as otherwise provided by the Mayor or the agency upon good cause found and published with the notice.

(b) Any interested person may petition the Mayor or an independent agency, requesting the promulgation, amendment, or repeal of any rule. The Mayor and each independent agency shall prescribe by rule the form for such petitions, and the procedure for their submission, consideration, and disposition. Nothing in this subchapter shall make it mandatory that the Mayor or any agency promulgate, amend, or repeal any rule pursuant to a petition therefor submitted in accordance with this section.

(c) Notwithstanding any other provision of this section, if, in an emergency, as determined by the Mayor or an independent agency, the adoption of a rule is necessary for the immediate preservation of the public peace, health, safety, welfare, or morals, the Mayor or such independent agency may adopt such rules as may be necessary in the circumstances, and such rule may become effective immediately. Any such emergency rule shall forthwith be published and filed in the manner prescribed in section 1-1506. No such rule shall remain in effect longer than one hundred and twenty days after the date of its adoption. (Oct. 21, 1968, Pub. L. 90-614, title I, § 105, formerly § 6, 82 Stat. 1206; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(y), 22 DCR 2053; renumbered and amended Mar. 29, 1977, D.C. Law 1-96, § 3(a), (c), (e), 23 DCR 9532b.)

AMENDMENTS

1977—Act Mar. 29, 1977, D.C. Law 1-96, amended section by substituting "subchapter" for "chapter" and making technical changes to reflect the renumbering of section 1-1506.

1975—Act Oct. 8, 1975, D.C. Law 1-19, amended section as follows: (A) by striking out "Commissioner and Council" each place it appears and inserting in lieu thereof "Mayor" in each such place; and (B) by striking out "Commissioner and Council" each place it appears and inserting in lieu thereof "Mayor" in each such place.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 5 of act Mar. 29, 1977, D.C. Law 1-96, set out as a note under § 1-1521.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-1501.

CROSS REFERENCE

Publication of rules and regulations relating to adoption subsidy payments, see § 3-115.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-171i, 2-103, 3-115, 33-831; section 4 of title 28 Appendix.

¹ So in original. Probably should be "or".

NOTES TO DECISIONS

Department of Corrections

Where United States Attorney General's order curtailing furlough privileges previously available to certain inmates held in District of Columbia's corrections system merely placed eligibility restrictions on persons convicted of crime of violence, leaving eligibility criteria lines to be established by local officials, District of Columbia defendants retained significant rulemaking responsibilities which could have substantial impact upon inmates, and District of Columbia was therefore improperly dismissed as party to inmates' suit questioning whether furloughs could be curtailed without compliance with District of Columbia Administrative Procedure Act. *L. D. Milhouse et al. v. E. H. Levi, United States Attorney General, et al.* (1976, 548 F.2d 357, 179 U.S. App. D.C. 1).

Emergency regulations

Evidence concerning refusal of some patrons to pay established bus fare immediately after judicial decision that transit commission's bus fare regulation was invalid and results which were likely to flow from the decision sustained determination of District of Columbia Council that emergency existed and justified invocation of council's emergency procedures for purpose of enacting bus fare regulation. *J. W. Hobson v. District of Columbia* (D.C. App. 1973, 304 A. 2d 637).

District of Columbia Council's interpretation of its regulation pertaining to adoption of emergency measures as requiring council to examine and discuss regulations before them in detail but not requiring that entire regulation, including all of its "whereases" and all of its sections be orally read to council was reasonable. *Id.*

District of Columbia Council's emergency procedure regulations do not require that an emergency regulation be published in District of Columbia register before becoming effective. *Id.*

Minimum wages

Public hearing preliminary to revision of Minimum Wage and Industrial Safety Board's order with regard to persons employed in hotel, restaurant and allied occupations was not a "contested case" within purview of notice provisions of this chapter. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A.2d 294).

Rulemaking

Interpretation or implementation by taxing authorities of words "full and true value" by changing debasement factor for taxation of single-family residences from 55 percent of estimated market value to 60 percent is, within meaning of this chapter, "rulemaking" such as to require publication of notice despite contention that change was part of effort to equalize District of Columbia tax assessments as required by Constitution. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A. 2d 848).

§ 1-1506. Filing and publishing of rules.

(a) Each agency, within thirty days after the effective date of this subchapter, shall file with the Mayor a certified copy of all of its rules in force on such effective date.

(b) The Mayor shall keep a permanent register open to public inspection of all rules.

(c) Except in the case of emergency rules, each rule adopted after the effective date of this subchapter by the Mayor or by any agency, shall be filed in the office of the Mayor. No such rule shall become effective until after is publication in the District of Columbia Register, nor shall such rule become effective if it is required by law, other than this subchapter, to be otherwise published, until such rule is also published as required in such law. (Oct. 21, 1968, Pub. L. 90-614, title I, § 106, formerly § 7, 82 Stat. 1207; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(z)-(bb), 22 DCR 2053; renumbered and

amended Mar. 29, 1977, D.C. Law 1-96, § 3 (a), (c) 23 DCR 9532b.)

AMENDMENTS

1977—Act Mar. 29, 1977, D.C. Law 1-96, amended section by substituting "subchapter" for "chapter".

1975—Act Oct. 8, 1975, D.C. Law 1-19, amended section by substituting "Mayor" for "Commissioner" and "Commissioner or Council".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 5 of act Mar. 29, 1977, D.C. Law 1-96, set out as a note under § 1-1521.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-1501.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-808.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-103, 33-831; section 4 of title 28 Appendix.

NOTES TO DECISIONS

Publication

Police regulation governing repair of water pipes was published in accordance with Administrative Procedure Act when such regulation was incorporated into special edition of District of Columbia Register. *District of Columbia, etc. v. North Washington Neighbors, Inc., et al.* (D.C. App. 1976, 367 A. 2d 143; cert. denied 98 S.Ct. 68, —U.S.—).

Council is not required to reenact regulations existing prior to time that power to issue regulations was transferred from Commissioner to Council in order to maintain validity of such regulations. *Id.*

Where regulation governing taxicab drivers was validly enacted, properly published in District of Columbia register and accessible to driver, it would not be declared invalid because of inadvertent omission in its compilation resulting from typographical error. *E. J. Pillis v. District of Columbia Hackers' License Appeal Board* (D.C. App. 1976, 366 A.2d 1094; cert. denied 97 S. Ct. 1566, 430 U.S. 937).

Whatever rule is used in District of Columbia to determine eligibility for a license to carry a handgun, it must be adopted, published, and applied according to law, and remain consistent with congressional policy. *A. F. Jordan, Jr. v. District of Columbia Board of Appeals and Review* (D.C. App. 1974, 315 A.2d 153).

Fact that certain of the police regulations governing applications for license to carry concealed weapon in District of Columbia had not been compiled and published as required by statute did not require blind issuance of such a license to petitioner, who failed to satisfy such regulations. *Id.*

A police regulation of the District of Columbia pertaining to equal employment opportunities even if not published in a compilation was properly published where a special edition of the District of Columbia Register incorporated District of Columbia police regulations and such regulations were available for purchase at District of Columbia publications office. *D.C. Human Relations Commission v. National Geographic Society* (1973, 475 F. 2d 366, 154 U.S. App. D.C. 255).

§ 1-1507. Compilation of rules.

(a) As soon as practicable after the effective date of this subchapter, the Mayor shall have compiled, indexed, and published in the District of Columbia Register all regulations adopted by the District of Columbia Council and rules adopted by the Mayor and District of Columbia Council and each agency and in effect at the time of such compilation. Such compilations shall be promptly supplemented or re-

vised as may be necessary to reflect new regulations and rules and changes in regulation¹ and rules.

(b) Compilations shall be made available to the public at a price fixed by the Mayor.

(c) The Mayor must publish the first compilation required by subsection (a) of this section within one year after the effective date of this subchapter and no regulations adopted by the District of Columbia Council nor rule adopted by the Mayor or by an agency before the date of such first publication which has not been filed and published in accordance with this subchapter and which is not set forth in such compilation shall be in effect after one year after the effective date of this subchapter.

(d) Repealed. Oct. 8, 1975, D.C. Law 1-19, title II, § 203, 22 DCR 2058.

(Oct. 21, 1968, Pub. L. 90-614, title I, § 107, formerly § 8, 82 Stat. 1207; Aug. 21, 1974, Pub. L. 93-379, § 5(a), 88 Stat. 483; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(cc)-(ee), title II, § 203, 22 DCR 2053, 2058; renumbered and amended Mar. 29, 1977, D.C. Law 1-96, § 3 (a), (c), 23 DCR 9532b.)

CODIFICATION

Section 203 of act Oct. 8, 1975, D.C. Law 1-19, provided for the repeal of section 7(d) of the District of Columbia Administrative Procedure Act (§ 1-1506), relating to the District of Columbia Municipal Code. Since section 1-1506 does not have a subsec. (d) and this section relates to the Municipal Code, section 203 was executed to this section of the Code as the probable intent of the Council.

AMENDMENTS

1977—Act Mar. 29, 1977, D.C. Law 1-96, amended section by substituting "subchapter" for "chapter".

1975—Subsec. (a). Section 102(cc) of act Oct. 8, 1975, D.C. Law 1-19, amended subsec. (a) by (A) inserting the words "regulations adopted by the District of Columbia Council and" between the words "all" and "rules"; (B) striking out "Commissioner" and inserting in lieu thereof "Mayor"; (C) striking out "Commissioner and Council" and inserting in lieu thereof "Mayor and District of Columbia Council"; (D) inserting the words "regulations and" between the words "new" and "rules"; and (E) inserting the words "regulation and" between the words "in" and "rules".

Subsec. (b). Section 102(dd) of such act amended subsec. (b) by striking out "Commissioner" and inserting in lieu thereof "Mayor".

Subsec. (c). Section 102(ee) of such act amended sec. (b) by striking out "Commissioner" and inserting in lieu thereof "Mayor"; (B) inserting the words "regulations adopted by the District of Columbia Council nor" between the words "no" and "rule"; and (C) striking out "Commissioner or by the Council" and inserting in lieu thereof "Mayor".

Subsec. (d). Section 203 of such act repealed subsec. (d) which related to the codification of regulations in the Municipal Code.

1974—Aug. 21, 1974, Pub. L. 93-379, added subsec. (d).

EMERGENCY ACT AMENDMENT

1975—For temporary suspension of the effect of subsec. (d), see sec. (2) of the Temporary Municipal Code Suspension Act of 1975 (D.C. Act 1-41, Aug. 13, 1975, 22 DCR 1090).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 5 of act Mar. 29, 1977, D.C. Law 1-96, set out as a note under § 1-1521.

EFFECTIVE DATES OF 1975 AMENDMENTS

For title I of act Oct. 8, 1975, D.C. Law 1-19, see note under § 1-1501.

For title II of act Oct. 8, 1975, D.C. Law 1-19, see note under § 1-1601.

CERTAIN RULES NOT GIVEN RENEWED EFFECT BY 1975 AMENDMENTS, D.C. LAW 1-19

Section 103(b) of act Oct. 8, 1975, D.C. Law 1-19, provided: "The amendments [to this section] made by subsections (cc), (dd) and (ee) of section 102 of this Title shall not give renewed effect to any rule (as defined by subsection 6 of section 3 of the District of Columbia Administrative Procedure Act [§ 1-1502] before the effective date of this act) which was not compiled, indexed and published on or before October 21, 1970."

NOTES TO DECISIONS

Publication

A police regulation of the District of Columbia pertaining to equal employment opportunities even if not published in a compilation was properly published where a special edition of the District of Columbia Register incorporated District of Columbia police regulations and such regulations were available for purchase at District of Columbia publications office. *D.C. Human Relations Commission v. National Geographic Society* (1973, 475 F. 2d 366, 154 U.S. App. D.C. 255).

Violations

If Council violated this section in failing to compile rules and regulations for the closing of street and alleys, such violation is of no help to plaintiff property owners who sought to recover money paid for closing of certain portions of original alleys and original street in absence of allegations and proof that such a violation denied plaintiffs a right to which they were entitled under the law. *Washington Medical Center, Inc., et al. v. United States* (1976, 545 F.2d 116, 211 Ct. Cl. 145; cert. denied 98 S.Ct. 296, — U.S. —).

§ 1-1508. Declaratory orders.

On petition of any interested person, the Mayor or an agency, within their discretion, may issue a declaratory order with respect to the applicability of any rule, regulation, Council act or resolution, or statute enforceable by them or by it, to terminate a controversy (other than a contested case) or to remove uncertainty. A declaratory order, as provided in this section, shall be binding between the Mayor or the agency, as the case may be, and the petitioner on the state of facts alleged and established, unless such order is altered or set aside by a court. A declaratory order is subject to review in the manner provided in this subchapter for the review of orders and decisions in contested cases, except that the refusal of the Mayor or of an agency to issue a declaratory order shall not be subject to review. The Mayor and each agency shall prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition. (Oct. 21, 1968, Pub. L. 90-614, title I, § 108, formerly § 9, 82 Stat. 1207; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(ff), 22 DCR 2054; renumbered and amended Mar. 29, 1977, D.C. Law 1-96, § 3 (a), (c), 23 DCR 9532b.)

AMENDMENTS

1977—Act Mar. 29, 1977, D.C. Law 1-96, amended section by substituting "subchapter" for "chapter".

1975—Act Oct. 8, 1975, D.C. Law 1-19, amended section by substituting "Mayor" for "Commissioner or Council" and "Commissioner and the Council"; and by inserting "regulation, Council act or resolution," immediately after "the applicability of any rule".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 5 of act Mar. 29, 1977, D.C. Law 1-96, set out as a note under § 1-1521.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-1501.

NOTES TO DECISIONS

Exclusive remedy

Exclusive remedy of petitioner, which was denied ex-

¹ So in original, probably should be "regulations".

emption as an institution and assessed taxes due by the District of Columbia Department of Finance and Revenue, Property Assessment Division and which then sought review in the District of Columbia Court of Appeals under the District of Columbia Administrative Procedure Act, lay in the Tax Division of the Superior Court. *The Washington Theater Club, Inc. v. District of Columbia Department of Finance and Revenue, Property Assessment Division* (D.C. App. 1973, 302 A. 2d 231; cert. denied 94 S. Ct. 63, 414 U.S. 831).

Judicial review

Refusal of Minimum Wage and Industrial Safety Board to issue declaratory order requested by employer was not subject to review. *Sonderling Broadcasting Corporation v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 315 A.2d 828).

§ 1-1509. Contested cases.

(a) In any contested case, all parties thereto shall be given reasonable notice of the afforded hearing by the Mayor or the agency, as the case may be. The notice shall state the time, place, and issues involved, but if, by reason of the nature of the proceeding, the Mayor or the agency determine that the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect thereto. Unless otherwise required by law, other than this subchapter, any contested case may be disposed of by stipulation, agreed settlement, consent order, or default.

(b) In contested cases, except as may otherwise be provided by law, other than this subchapter, the proponent of a rule or order shall have the burden of proof. Any oral and any documentary evidence may be received, but the Mayor and every agency shall exclude irrelevant, immaterial, and unduly repetitious evidence. Every party shall have the right to present in person or by counsel his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Where any decision of the Mayor or any agency in a contested case rests on official notice of a material fact not appearing in the evidence in the record, any party to such case shall on timely request be afforded an opportunity to show the contrary.

(c) The Mayor or the agency shall maintain an official record in each contested case, to include testimony and exhibits, but it shall not be necessary to make any transcription unless a copy of such record is timely requested by any party to such case, or transcription is required by law, other than this subchapter. The testimony and exhibits, together with all papers and requests filed in the proceeding, and all material facts not appearing in the evidence but with respect to which official notice is taken, shall constitute the exclusive record for order or decision. No sanction shall be imposed or rule or order or decision be issued except upon consideration of such exclusive record, or such lesser portions thereof as may be agreed upon by all the parties to such case. The cost incidental to the preparation of a copy or copies of a record or portion thereof shall be borne equally by all parties requesting the copy or copies.

(d) Whenever in a contested case a majority of those who are to render the final order or decision did not personally hear the evidence, no order or decision adverse to a party to the case (other than the Mayor or an agency) shall be made until a proposed order or decision, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of those who are to render the order or decision, who, in such case, shall personally consider such portions of the exclusive record, as provided in subsection (c) of this section, as may be designated by any party.

(e) Every decision and order adverse to a party to the case, rendered by the Mayor or an agency in a contested case, shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Findings of fact and conclusions of law shall be supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision and order and accompanying findings and conclusions shall be given by the Mayor or the agency, as the case may be, to each party or to his attorney of record. (Oct. 21, 1968, Pub. L. 90-614, title I, § 109, formerly § 10, 82 Stat. 1208; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(gg)-(kk), 22 DCR 2054; renumbered and amended Mar. 29, 1977, D.C. Law 1-96, § 3 (a), (c), 23 DCR 9532b.)

AMENDMENTS

1977—Act. Mar. 29, 1977, D.C. Law 1-96, amended section by substituting "subchapter" for "chapter".

1975—Act Oct. 8, 1975, D.C. Law 1-19, amended section by substituting "Mayor" for "Commissioner or Council", "Commissioner and Council", and "Commissioner".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 5 of act Mar. 29, 1977, D.C. Law 1-96, set out as a note under § 1-1521.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-123, 2-1236, 40-302, 40-420, 47-1567g; section 6 of title 28 Appendix.

NOTES TO DECISIONS

Burden of proof

Where application for license to carry concealed pistol made no allegations of threats to applicant's person or property and he had not made any timely reports of any alleged threats and where the pistol, for which a license was applied, was an automatic pistol, application was fatally defective under regulations in effect; applicant, who was given opportunity to correct such infirmities in his application but did not do so, is not entitled to relief from denial of application on theory that he need only allege suitability and that police then have burden of going forward to disprove applicant's claims. *A. F. Jordan, Jr. v. District of Columbia et al.* (D.C. App. 1976, 362 A. 2d 114).

While in some circumstances, a petitioner seeking to establish that administrative agency failed to distribute to him funds properly his might have burden of proof, where two of the three petitioning operators of vending stands at District of Columbia hospital were not notified of change in allocation of income until some four years after it occurred and subsequently their request for hearing was not honored for some two and one-half years, elementary fairness required that at the further hearing below the affirmative action taken by Department of Human Resources in reallocating vending machine in-

come be regarded as the order under consideration, thus placing burden of proof upon Department to supply substantial evidence in support of its action. *M. E. Perry et al. v. District of Columbia Department of Human Resources* (D.C. App. 1974, 326 A. 2d 249).

If, on remand, Department of Human Resources failed to meet its burden of supplying substantial evidence in support of its action in reallocating income of operators of vending stands at District of Columbia Hospital, principal task of hearing officer would be to make accurate determination of amount by which operators were underpaid. *Id.*

Contested case

Agencies in passing on amendment to project area redevelopment plan under the District of Columbia Redevelopment Act were not required to follow the contested case procedure of the Administrative Procedure Act with respect to owners and lessees of property in affected renewal project area, contrary to their claim that they were entitled to a public hearing, since administrative decisions dealing with land use control questions involved general matters of public policy. *L'Enfant Plaza Properties, Inc., et al. v. District of Columbia Redevelopment Land Agency et al.* (1977, 564 F. 2d 515, 184 U.S. App. D.C. 30; rev'g 412 F. Supp. 211).

For purpose of judicial review, proceeding resulting in rezoning of 2.2-acre tract of land is a "contested case" where not only did the Zoning Commission treat the proceeding as such under its own rules but in an earlier case involving precisely the same applicant and the same parcel the court specifically held that proceeding before the Commission constituted a contested case and matter involved specific evidence concerning a single parcel of property and resolution did not depend on broad legislative policy judgments. *Capitol Hill Restoration Society et al. v. The Zoning Commission of the District of Columbia* (D.C. App. 1977, 380 A. 2d 174).

"Contested case standard" is inapplicable to hearing required to be held before license can be suspended under chapter 4 of title 40 on issue whether there is reasonable possibility of liability by uninsured, and thus, in proceedings under chapter 4 of title 40, type of hearing required does not include right to compel attendance of witnesses for cross-examination. *H. Thomas et al. v. District of Columbia Board of Appeals and Review* (D.C. App. 1976, 355 A. 2d 789).

Driver's license revocation proceeding is a "contested case" and, therefore, is controlled by this chapter. *A. Quick v. Department of Motor Vehicles of the District of Columbia* (D.C. App. 1975, 331 A. 2d 319).

Evidence

In proceeding on application for liquor license, District of Columbia Alcoholic Beverage Control Board did not abuse its discretion in refusing to consider hearsay summaries of residents' views about proposed license and information concerning potential congestive impact of metro station under construction nearby. *G. Kopff et al. v. District of Columbia Alcoholic Beverage Control Board et al.* (D.C. App. 1977, 381 A. 2d 1372).

Where unemployment compensation appeals examiner gave full consideration to employer's unsworn comment given by telephone, he deprived plaintiff of right to cross-examine on issues of company rules and misconduct. *E. Hawkins v. District Unemployment Compensation Board* (D.C. App. 1977, 381 A. 2d 619).

At disability hearing before Police and Firemen's Retirement and Relief Board at which Board needed to determine not only whether police officer was permanently disabled but also whether the disability was caused or aggravated in the line of duty, testimony bearing on relationship between officer's depressive mental state and his service-related injuries was essential to proper assessment of question of causation and, therefore, it was error for Retirement Board hearing officer to refuse to allow either testimony about the police officer's physical ailments or cross-examination of witnesses as to the officer's claimed physical injuries. *A. G. Kirven, Jr. v. Police and Firemen's Retirement and Relief Board et al.* (D.C. App. 1977, 379 A. 2d 1186).

Where counsel for citizens association urging rejection of application for planned unit development withdrew from participation in Zoning Commission hearing

which resulted in final approval of PUD, citizens association could not complain on appeal that it was denied right to present evidence, cross-examine witnesses, and to make argument. *Dupont Circle Citizens Association v. District of Columbia Zoning Commission* (D.C. App. 1976, 355 A. 2d 550; cert. denied 97 S. Ct. 396, 429 U.S. 966).

In driver's license revocation proceedings, motorist was entitled to opportunity to rebut any inaccuracy in his traffic record or to show that traffic record was not relevant or material or was otherwise admissible. *A. Quick v. Department of Motor Vehicles of the District of Columbia* (D.C. App. 1975, 331 A.2d 319).

— Substantial

Conclusion of District of Columbia Commission on Human Rights that employee was discriminated against on basis of sex when promotion offered to her was withdrawn because she would be absent from work due to pregnancy was not supported by and in accordance with reliable, probative and substantial evidence. *Group Hospitalization, Inc. v. District of Columbia Commission on Human Rights* (D.C. App. 1977, 380 A. 2d 170).

District Unemployment Compensation Board's decision, reversing appeals examiner's decision against claimant, is not supported by "reliable, probative, and substantial evidence," where the Board ruled out as hearsay the sworn testimony given by employer at hearing before the examiner, where the main thrust of the employer's testimony was, however, not based on hearsay but on company records which, if accepted as true, would upset the Board's premise that claimant was making a bona fide effort to obtain employment, and where the Board, without scheduling or hearing oral argument, deemed controlling a series of unsworn, self-serving statements made by claimant. *General Railway Signal Company v. District Unemployment Compensation Board* (D.C. App. 1976, 354 A. 2d 529).

Unless the persons who supply the answers to questionnaires are available for cross-examination by the adverse party, such documents do not meet the requirements of "reliable, probative, and substantial evidence" in an administrative proceeding where impeaching evidence has been introduced. *Id.*

Final decision

Decision of Board of Zoning Adjustment on application for special exception must not be controlled by head count as in a political election, but by evidence adduced as it relates to requirements for special exception. *N. K. Dietrich et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 320 A. 2d 28).

—Amendment or modification

Where Board of Zoning Adjustment granted university's application for exception to permit university uses in residential district, contingent upon university's fulfillment of certain conditions, including requirement that university construct free lane at-grade intersection at specified location, memorandum subsequently issued by Board interpreting such condition as contingent upon widening of street by Department of Highways and Traffic was contrary to plain meaning of original order and resulted in material revision of terms under which exception was granted, and, in absence of proper notice and opportunity to be heard, such action is invalid. *Citizens Association of Georgetown et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 365 A.2d 372).

Findings of fact

In view of record indicating that unemployment compensation claimant's failure to return to work was an entirely voluntary decision by claimant who chose to comply with his union's directive to honor another union's picket lines at place of employment and he had been receiving strike benefits, evidence was insufficient to support finding of Unemployment Compensation Board that claimant was eligible for unemployment compensation benefits because he was not unemployed as direct result of labor dispute still in active progress or in participation therein. *The Washington Post Company v. District Unemployment Compensation Board* (D.C. App. 1977, 379 A. 2d 694).

In pressmen's action for unemployment compensation, record did not support findings of the District Unemploy-

ment Compensation Board that newspaper informed union that due to economic conditions there would not be sufficient presses working to support the list of full-time regular employees and that general manager of newspaper made public announcement that reduction in number of regular full-time employees was in anticipation of a reduction in size of paper. *The Washington Post Company v. District Unemployment Compensation Board* (D.C. App. 1977, 377 A. 2d 436).

"Findings" in which the Commission on Human Rights merely set forth what complainant's testimony was or what other witnesses said, without stating it found statements to be factual or testimony credible, did not constitute findings of fact by Commission and could not be treated as such by appellate court. *Newsweek Magazine, et al. v. District of Columbia Commission on Human Rights* (D.C. App. 1977, 376 A. 2d 777; cert. denied 98 S.Ct. 729, — U.S. —).

Commission of Human Rights' findings as to sex discrimination complaint were inadequate for meaningful review by the Court of Appeals because they did not, as they should have, resolve basic issues of fact raised by evidence adduced at hearing and, accordingly, case would be remanded for further findings and conclusions. *Communications Workers of America, AFL-CIO v. District of Columbia Commission on Human Rights* (D.C. App. 1976, 367 A. 2d 149).

Findings of Commission on Human Rights, which dismissed tenant's complaint charging that attempt to evict him constituted discriminatory retaliation, were not sufficiently specific to satisfy requirements of this section, which are to effect that Commission's order must contain findings of fact consisting of a concise statement of conclusions on each contested issue of fact, merely on basis of assertion that when Commission's findings are read together with relevant testimony adduced at hearing, there can be no doubt about basis of Commission's ruling. *G. Miller, Jr. v. District of Columbia Commission on Human Rights* (D.C. App. 1975, 339 A. 2d 715).

Board of Zoning Adjustment's findings of fact which were devoid of any delineation of factors weighed in reaching its conclusions of law thereby precluding determination on review as to which factors or considerations influenced Board's decision are inadequate and require remand to Board for proper entry of findings of fact and conclusions of law. *E. A. Shay et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 334 A. 2d 175).

Board of Appeals and Review with regard to order of Police and Firemen's Retirement and Relief Board involuntarily separating member of police department from the department for disability not contracted in or aggravated by performance of duty had to make basic findings which were supported by substantial evidence in record before stating ultimate facts and conclusions and there had to be a demonstration in the findings of a rational connection between the facts found and the choice made. *M. E. Brewington v. District of Columbia Board of Appeals and Review* (D.C. App. 1973, 299 A. 2d 145).

— Necessity

No written findings were required for disposition of petition for reconsideration of transfer order entered by Alcoholic Beverage Control Board. *Palisades Citizens Association v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 324 A. 2d 692).

— Sufficiency

Where Zoning Commission's findings of fact and conclusions of law in final decision approving planned unit development are legally adequate and sufficient to support order approving application, any deficiencies in preliminary decision rendered by Commission are remedied by final order. *Dupont Circle Citizens Association v. District of Columbia Zoning Commission* (D.C. App. 1976, 355 A. 2d 550; cert. denied 97 S. Ct. 396, 429 U.S. 966).

Evidence in proceeding by tenant in which he charged retaliatory and racially prejudiced eviction sustains finding that tenant made threats of violence to resident manager and his wife and sustains determination in favor of landlord. *G. Miller, Jr. v. District of Columbia Commission on Human Rights* (D.C. App. 1976, 352 A. 2d 387).

Findings and conclusions of law by Alcoholic Beverage Control Board that there were sufficient off-street parking facilities to serve patrons of applicant for retailer's class C liquor license, that adequate valet service for parking would be available, that it was not shown that issuance of license would cause increase in trash and litter in the area and that premises were appropriate for issuance of license were supported by substantial evidence. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 323 A. 2d 715).

Detailed recitation of testimony and conclusory statements of District of Columbia Alcoholic Beverage Control Board's view of such testimony as establishing entitlement to retailer's class C alcoholic beverages license were too inadequate to permit review, and remand was necessary. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 316 A. 2d 865).

Hearing

Where only two working days before date scheduled for hearing on petition charging excessive rent the landlord requested a continuance to a date near expiration of 60-day statutory deadline for acting on such petitions and only reason given was that counsel would be in New York on scheduled hearing date and Rent Administrator was not informed of possibility that the landlord might also be unavailable, denial of continuance was not abuse of discretion, absent consent of the tenants; furthermore, landlord acted at his own risk in relying on assurances of attorney, who he assumed represented the tenants, that a continuance would be arranged. *H. M. Ammerman et al. v. District of Columbia Rental Accommodations Commission* (D.C. App. 1977, 375 A. 2d 1060).

Petitioner had a "fair hearing" on its petition challenging validity of Council regulation reducing and, in some cases, terminating payments in form of aid to families with dependent children to those recipients without outside income and resources to extent that Department of Human Resources ruled that it lacked authority to invalidate regulation. *L. Archer et al. v. District of Columbia Dept. of Human Resources* (D.C. App. 1977, 375 A. 2d 523).

Procedure followed in connection with 1964 decision to reallocate vending stand operators' income from vending machines at District of Columbia hospital under vending stand program for the blind was defective in that no opportunity for a hearing was afforded and aggrieved operators were not even informed of the change. *M. E. Perry et al. v. District of Columbia Department of Human Resources* (D.C. App. 1974, 326 A. 2d 249).

Issuance of decision or order

Although formally issued findings of fact and conclusions of law of Zoning Commission were not made available to the parties until date, i.e., January 2, after which two of the three Commissioners who approved rezoning order ceased being members by operation of law, the order is not invalid for want of proper issuance where decision and related order were previously signed and order was previously published in two newspapers, notwithstanding that publications did not include findings of facts and conclusions of law; even if order did not become "final" before January 2, it took effect and was "issued" when it was published on December 28. *Capitol Hill Restoration Society et al. v. The Zoning Commission of the District of Columbia* (D.C. App. 1977, 380 A. 2d 174).

"Issuance" of order of administrative agency requires public knowledge of substance of the order. *Palisades Citizens Association v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 324 A. 2d 692).

Notice

Where one partner was never named as a party in tenants' petition charging exaction of excessive rent in violation of subchapter III of chapter 16, title 45 and was not given notice of hearing on the petition or an opportunity to be heard in his own behalf, imposition of \$50 fine was improper; provision of section 41-311 relating to partnerships is inapplicable since neither the partnership nor general partner was named as a party to the proceeding. *H. M. Ammerman et al. v. District of Colum-*

bia Rental Accommodations Commission (D.C. App. 1977, 375 A. 2d 1060).

Notice of nature and extent of hearing on final application for approval of planned unit development did not deprive party of due process of law in not specifying that final hearing would include presentation of additional evidence relating to issues that had already been aired at preliminary stage, and Zoning Commission was not precluded from reexamining at final hearing matters that had been dealt with at preliminary application. *Dupont Circle Citizens Association v. District of Columbia Zoning Commission* (D.C. App. 1976, 355 A. 2d 550; cert. denied 97 S. Ct. 396, 429 U.S. 966).

Operator of vending stand at District of Columbia hospital under vending stand program for the blind was entitled to notice of so important a matter as method by which his income was determined. *M. E. Perry et al. v. District of Columbia Department of Human Resources* (D.C. App. 1974, 326 A. 2d 249).

Official notice

Agency must notify the parties to an administrative proceeding that a material fact is being officially noticed so that the parties have an opportunity to rebut that fact. *P. E. Carey v. District Unemployment Compensation Board* (D.C. App. 1973, 304 A. 2d 18).

Proposed findings and decision of District Unemployment Compensation Board denying unemployment compensation benefits on ground, inter alia, that claimant was not available for work due to her refusal to accept the aid of the United States Employment Service did not notify claimant that the Board was invoking its prerogative to take official notice of a nonrecord fact consisting of agency record, and thus claimant did not waive her right to contest that fact by failing to request an opportunity to rebut the evidence. *Id.*

Proposed decision

Absence of one member of Zoning Commission from session at which rezoning order was signed did not trigger application of provision of this section requiring that a majority of those who are to render the final order personally hear the evidence where no evidence was introduced at such meeting and purpose thereof was merely to review the findings of fact and conclusions of law and sign order which had previously been approved by voice vote. *Capitol Hill Restoration Society et al. v. The Zoning Commission of the District of Columbia* (D.C. App. 1977, 380 A. 2d 174).

Where a decision rendered by acting rent administrator as to permissible rent was based on evidence presented before hearing examiner, and where hearing examiner did not issue to the parties a proposed order, including findings of fact and conclusions of law, nor did parties have opportunity to file exceptions, present arguments, and direct the acting rent administrator's attention to designated portions of record prior to entry by him of his "decision", rent administrator's decision is a "final order" entered without compliance with procedural requirements of the Administrative Procedure Act which requires reversal. *L. L. Meier, Jr. v. District of Columbia Rental Accommodations Commission et ano.* (D.C. App. 1977, 372 A.2d 566).

Where only designated representative for citizens association objecting to application for planned unit development withdrew from hearing before Zoning Commission on application, Commission is not required to serve proposed findings on citizens association. *Dupont Circle Citizens Association v. District of Columbia Zoning Commission* (D.C. App. 1976, 355 A. 2d 550; cert. denied 97 S. Ct. 396, 429 U.S. 966).

Where majority of three Zoning Commissioners heard all evidence at hearing on final application for approval of planned unit development, rule regarding service of proposed findings and conclusions on each party is inapposite and fact that only two of three Commissioners present at hearing and one of the other Commissioners signed the findings of fact and conclusions is irrelevant. *Id.*

District Unemployment Compensation Board is authorized to provide by a procedural rule that appeals examiner's decision constitutes the proposed findings and decision of the Board and in so doing the Board should at

the same time the appeals examiner's decision is issued provide a time limit in which to file with the Board objections to the appeals examiner's decision with a date for oral argument before the Board or any such objections set at that time or at a later date. *P. E. Carey v. District Unemployment Compensation Board* (D.C. App. 1973, 304 A. 2d 18).

Reasons for decision

Where Board of Zoning Adjustment's reasons for denying area variance merely quoted pertinent standards in subsection of code without explaining how proposed variance would violate such standards, except for one terse sentence dealing with property owner's alleged self-imposition of hardship, Board's conclusions and findings are insufficient. *A. L. W., Inc. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 338 A. 2d 428).

Fact that Administrative Procedure Act expressly imposes a statement of reasons requirement only in contested cases does not bar imposing a requirement of stated reasons in other contexts; The Act was meant only to prescribe minimum procedures. *Citizens Association of Georgetown, Inc. v. Zoning Commission of the District of Columbia* (1973, 477 F. 2d 402, 155 U.S. App. D.C. 233).

Transcripts

Decision of Public Service Commission in telephone rate proceeding to furnish transcripts to intervenors at telephone company's expense does not constitute a proper exercise of Commission's delegated powers to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it, since any procedure established by the Commission must conform with the minimum requirements set forth in Administrative Procedure Act (§§ 1-1501 et seq.), and since Commission's rule that transcripts be furnished to intervenors at telephone company's expense was a mere nullity because it contravened express language of this section. *Chesapeake and Potomac Telephone Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1975, 339 A. 2d 710).

On appeal to director of Department of Motor Vehicles from decision of examiner revoking motorist's operator's permit, motorist was entitled to transcript of hearing before the examiner where motorist had made timely request to be provided with transcript and had offered to bear whole cost thereof. *A. Quick v. Department of Motor Vehicles of the District of Columbia* (D.C. App. 1975, 331 A. 2d 319).

§ 1-1510. Judicial review.

Any person suffering a legal wrong, or adversely affected or aggrieved, by an order or decision of the Mayor or an agency in a contested case, is entitled to a judicial review thereof in accordance with this subchapter upon filing in the District of Columbia Court of Appeals a written petition for review. If the jurisdiction of the Mayor or an agency is challenged at any time in any proceeding and the Mayor or the agency, as the case may be, takes jurisdiction, the person challenging jurisdiction shall be entitled to an immediate judicial review of that action, unless the court shall otherwise hold. The reviewing court may by rule prescribe the forms and contents of the petition and, subject to this subchapter, regulate generally all matters relating to proceedings on such appeals. A petition for review shall be filed in such court within such time as such court may by rule prescribe and a copy of such petition shall forthwith be served by mail by the clerk of the court upon the Mayor or upon the agency, as the case may be. Within such time as may be fixed by rule of the court the Mayor or such agency shall certify and file in the court the exclusive record for decision and any supplementary proceedings, and the clerk of the court shall immediately notify the petitioner of the filing thereof.

Upon the filing of a petition for review, the court shall have jurisdiction of the proceeding, and shall have power to affirm, modify, or set aside the order or decision complained of, in whole or in part, and, if need be, to remand the case for further proceedings, as justice may require. Filing of a petition for review shall not in itself stay enforcement of the order or decision of the Mayor or the agency, as the case may be. The Mayor or the agency may grant, or the reviewing court may order, a stay upon appropriate terms. The court shall hear and determine all appeals upon the exclusive record for decision before the Mayor or the agency. The review of all administrative orders and decisions by the court shall be limited to such issues of law or fact as are subject to review on appeal under applicable statutory law, other than this subchapter. In all other cases the review by the court of administrative orders and decisions shall be in accordance with the rules of law which define the scope and limitations of review of administrative proceedings. Such rules shall include, but not be limited to, the power of the court—

(1) so far as necessary to decision and where presented, to decide all relevant questions of law, to interpret constitutional and statutory provisions, and to determine the meaning or applicability of the terms of any action;

(2) to compel agency action unlawfully withheld or unreasonably delayed; and

(3) to hold unlawful and set aside any action or findings and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations or short of statutory jurisdiction, authority, or limitations or short of statutory rights; (D) without observance of procedure required by law, including any applicable procedure provided by this subchapter; or (E) unsupported by substantial evidence in the record of the proceedings before the court.

In reviewing administrative orders and decisions, the court shall review such portions of the exclusive record as may be designated by any party. The court may invoke the rule of prejudicial error. (Oct. 21, 1968, Pub. L. 90-614, title I, § 110, formerly § 11, 82 Stat. 1209; July 29, 1970, Pub. L. 91-358, § 162, title I, 84 Stat. 582; Oct. 8, 1975, D.C. Law 1-19, title I, § 102 (II), 22 DCR 2055; renumbered and amended Mar. 29, 1977, D.C. Law 1-96, § 3(a),(c), 23 DCR 9532b.)

AMENDMENT

1977—Act Mar. 29, 1977, D.C. Law 1-96 amended section by substituting "subchapter" for "chapter".

1975—Act Oct. 8, 1975, D.C. Law 1-19, amended section by substituting "Mayor" for "Commissioner or Council".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 5 of act Mar. 29, 1977, D.C. Law 1-96, set out as a note under § 1-1521.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-123, 6-2294, 17-303, 17-305, 35-1808, 40-1007; section 6 of title 28 Appendix.

NOTES TO DECISIONS

Appealable order

Since order of Minimum Wage and Industrial Safety Board advising employer that it owed and should pay a former employee all commissions earned prior to termination of his employment was enforceable only through criminal prosecution or civil litigation in which issues of fact or law would be determined entirely upon the pleadings and trial record, and not upon the proceedings before the Board, Board's order was not an "appealable order" under the Administrative Procedure Act. *Sonderling Broadcasting Corporation v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 315 A. 2d 828).

Contested case

For purpose of judicial review, proceeding resulting in rezoning of 2.2-acre tract of land is a "contested case" where not only did the Zoning Commission treat the proceeding as such under its own rules but in an earlier case involving precisely the same applicant and the same parcel the court specifically held that proceeding before the Commission constituted a contested case and matter involved specific evidence concerning a single parcel of property and resolution did not depend on broad legislative policy judgments. *Capitol Hill Restoration Society et al. v. The Zoning Commission of the District of Columbia* (D.C. App. 1977, 380 A. 2d 174).

Controversy which arose out of Zoning Commission's actions in granting change in zoning so as to permit townhouse development, which action followed an adjudicatory hearing, is a "contested case" so that Court of Appeals has jurisdiction to review the action. *Palisades Citizens Assoc., Inc., et al. v. District of Columbia Zoning Commission* (D.C. App. 1977, 368 A.2d 1143).

A discriminatory employment practices proceeding brought by a District of Columbia employee is not a "contested case" within meaning of this chapter and, hence, is not subject to direct review by Court of Appeals; following enactment of Equal Employment Opportunity Act of 1972 to include government employees a District employee has the right to bring a civil action in federal court following pursuit of his administrative remedies through the appropriate local and federal commissions. *H. O'Neill et uno. v. District of Columbia Office of Human Rights* (D.C. App. 1976, 355 A. 2d 805).

Absent "contested case" status under Administrative Procedure Act (this chapter), Court of Appeals does not have jurisdiction to directly review Zoning Commission's order amending zoning regulations under this section relating to review by Court of administrative orders including power to hold unlawful and set aside findings and conclusions in enumerated instances, as this section does not denote a grant of jurisdiction but is a plain statement of scope of judicial review applicable only to contested cases. *Dupont Circle Citizen's Association et al. v. District of Columbia Zoning Commission* (D.C. App. 1975, 343 A. 2d 296).

When Zoning Commission exercised its authority to determine needs of area by denying without public hearing a proposed amendment to zoning maps to change zoning classification of property, the Commission was acting legislatively and was not subject to the "contested case" provisions of this chapter, with the result that such decision is not subject to direct review by the Court of Appeals, despite contention of property owner that mere submission of proposed amendment, and the subsequent rejection of same, constituted a "hearing" required by law, and thus is subject to review. *W. C. & A. N. Miller Development Company v. District of Columbia Zoning Commission* (D.C. App. 1975, 340 A.2d 420).

Decision of District of Columbia Council, pursuant to the Street Readjustment Act, to close portion of street and, once closed, to authorize the surveyor to convey title to the abutting landowners for development purposes did not constitute a "contested case" within meaning of the Administrative Procedure Act; in determining whether it should close the street the Council was exercising legislative discretion based on primarily legislative facts; also, Council's decision regarding compensation, though primarily adjudicatory, did not fall within the "contested case" definition since it was subject to trial de novo in Superior Court. *Chevy Chase Citizens Association et al. v.*

District of Columbia Council (D.C. App. 1974, 327 A. 2d 310).

Court costs

Length of delay in implementing retroactive payment order of Commissioner of Department of Human Resources justifies an assessment of costs in form of a \$25 filing fee against administrative officers in their official capacity once petition in nature of mandamus to compel agency action was dismissed as moot after officers tardily performed requested action. *B. Dillard et al. v. J. P. Yeldell et al.* (D.C. App. 1975, 334 A. 2d 578).

Exhaustion of administrative remedy

Where Board of Elections and Ethics would have been unable to grant exemption to employee performing duties of petitioner, so that application for exemption would have been futile, and where to require him to seek exemption presupposed that he was required to file in the first place, doctrine of exhaustion of administrative remedies is inapplicable. *C. W. Hanke v. District of Columbia Board of Elections and Ethics* (D.C. App. 1976, 353 A. 2d 301).

Joint Committee on Landmarks

Joint Committee on Landmarks of the National Capital as an intergovernmental agency is not an agency of the District of Columbia, and the Court of Appeals lacks jurisdiction to entertain petition for review of its action under this chapter. *J. W. Latimer, Jr., et al. v. The Joint Committee on Landmarks of the National Capital* (D.C. App. 1975, 345 A. 2d 484).

Jurisdiction

Neither subsequently enacted Administrative Procedure Act nor District of Columbia Court Reform and Criminal Procedure Act of 1970 change method of seeking review under section 40-420 which makes review in safety responsibility cases discretionary on application for allowance of appeal, and thus, the Court of Appeals is not required to accept safety responsibility case on petition for review as matter of right from contested case determination under this section but rather, review is discretionary on application for allowance of appeal. *H. Thomas et al. v. District of Columbia Board of Appeals and Review* (D.C. App. 1976, 355 A. 2d 789).

Practitioner of 14 years, who subsequent to passage of District of Columbia Practice of Psychology Act [§ 2-481 et seq.] applied for license, and whose application was denied by Board of Psychologist Examiners because of his lack of required academic degrees, can properly avail himself of statutory review procedure outlined in the Act in order to prosecute constitutional challenge that the Board's refusal to test his professional competence by some standard other than his academic credentials constituted a violation of fundamental due process, and not limited to interposing his constitutional claims as a defense to criminal proceedings for violating licensure requirement. *J. R. Berger v. Board of Psychologist Examiners* (1975, 521 F. 2d 1056, 172 U.S. App. D.C. 396; rem'g 313 A. 2d 602).

Congress, by vesting review of Housing Rent Commission decisions in the Superior Court, intended that review provisions of this section not apply to the Commission. *Columbia Realty Venture v. District of Columbia Housing Rent Commission* (D.C. App. 1975, 350 A. 2d 120).

Moot question

Validity of action of District of Columbia Alcoholic Beverage Control Board in issuing liquor license was not mooted as issue by virtue of fact that, after license was initially issued and before court review of Board's action was completed, license was renewed and renewal was not contested. *G. Kopff et al. v. District of Columbia Alcoholic Beverage Control Board et al.* (D.C. App. 1977, 381 A. 2d 1372).

Claim of petitioner, who filed application for emergency assistance to cover her past-due rent the day after she received eviction notice but who was evicted some four days later before any definitive action could be taken on her application by Department of Human Resources, for past-due rent is moot. *M. Barber v. District of Columbia Department of Human Resources* (D.C. App. 1976, 361 A. 2d 194).

Where more than three years had elapsed since date of conviction on which rejection of application for taxi-

cab driver's license was predicated and, under pertinent regulation, applicant was eligible for consideration after lapse of three years since his conviction, petition for review of decision of District of Columbia Hackers' License Appeal Board which denied the application is moot. *A. Richards v. District of Columbia Hackers' License Appeal Board* (DC. App. 1976, 357 A. 2d 439).

Prejudicial error

Record on review established no prejudicial error in Alcoholic Beverage Control Board's compliance with court's prior decision, amounting to substantial compliance with order that Board take further proceedings and enter into record all information which would be relevant and material to statutory criteria for issuance or denial of license and which would be relied upon in any degree by the Board. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1973, 305 A. 2d 861).

Scope of review

Provisions of section 11-722 that Court of Appeals has jurisdiction to review orders and decisions of any agency of the District in accordance with Administrative Procedure Act (§§ 1-1501 et seq.), and may review orders or decisions of the Public Service Commission in accordance with Commission's organic act (chapters 1-10 of title 43), carves out only a limited area in which Administrative Procedure Act is inapplicable to the Commission, that being in the area of standard and scope of review, rather than a wholesale exemption from Administrative Procedure Act coverage. *Chesapeake and Potomac Telephone Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1975, 339 A. 2d 710).

On review of decision of Board of Zoning Adjustment, Court of Appeals could not consider new issues raised by petitioners concerning parking requirements with respect to operation of private high school but would look to the exclusive record or portions of it designated by parties. *N. K. Dietrich et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 320 A. 2d 282).

Standing

Advisory neighborhood commission has no capacity to seek court review of action of District of Columbia Alcoholic Beverage Control Board in issuing liquor license; area residents who were commission members, however, have standing to initiate such review and to assert rights of commission itself. *G. Kopff et al. v. District of Columbia Alcoholic Beverage Control Board et al.* (D.C. App. 1977, 381 A. 2d 1372).

Substantial evidence rule

Court's review of decision of Alcoholic Beverage Control on liquor license application is limited to determination of whether Board decision is supported by substantial evidence which is more than a mere scintilla and is such relevant evidence as reasonable minds might accept as adequate to support conclusion. *Vestry of Grace Parish et al. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1976, 366 A.2d 1110).

On review of order of Board of Zoning Adjustment, Court of Appeals must determine whether findings made are supported and in accordance with reliable, probative and substantial evidence in the whole administrative record and whether conclusions of Board flow rationally from these findings. *N. K. Dietrich et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 320 A. 2d 282).

Review by Court of Appeals of decision of Board of Zoning Adjustment is limited to a determination of whether the decision reached follows as a matter of law from facts stated as its basis, and also whether facts so stated have any substantial support in the evidence; if Board's decision follows from its findings and those findings are supported by substantial evidence, Court of Appeals must affirm even though it might have reached another result. *D.C. Stewart et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1973, 305 A. 2d 516).

On petition for review of order of Alcoholic Beverage Control Board granting application for transfer of alcoholic beverage retailer's license, Court of Appeals may not disturb any action of Board in exercise of its statutory powers unless such action is plainly wrong or without

support in substantial evidence in administrative record. *R. F. Schiffmann et al. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1973, 302 A. 2d 235).

SUBCHAPTER II.—FREEDOM OF INFORMATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 32-1322.

§ 1-1521. Public policy.

Generally the public policy of the District of Columbia is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, provisions of this chapter shall be construed with the view toward expansion of public access and the minimization of costs and time delays to persons requesting information. (Oct. 21, 1968, Pub. L. 90-614, title II, § 201, as added Mar. 29, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b.)

EFFECTIVE DATE

Section 5 of act Mar. 29, 1977, D.C. Law 1-96, provided: "This act [enacting this subchapter and amending subchapter I] shall take effect pursuant to the provisions of section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)(1)]."

§ 1-1522. Right of access to public records—Allowable costs—Time limits.

(a) Any person has a right to inspect, and at his or her discretion, to copy any public record of the Mayor or an agency, except as otherwise expressly provided by section 1-1524, in accordance with reasonable rules that shall be issued by the Mayor or an agency after notice and comment, concerning the time and place of access.

(b) The Mayor or an agency may establish and collect fees not to exceed the actual cost of searching for or making copies of records, but in no instance shall the total fee for searching exceed 10 dollars for each request. For purposes of this subsection "request" means a single demand for any number of documents made at one time to an individual agency. Documents may be furnished without charge or at a reduced charge where the Mayor or agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Notwithstanding the foregoing, fees shall not be charged for examination and review by the Mayor or an agency to determine if such documents are subject to disclosure.

(c) The Mayor or an agency, upon request reasonably describing any public record, shall within 10 days (except Saturdays, Sundays, and legal public holidays) of the receipt of any such request either make the requested public record accessible or notify the person making such request of its determination not to make the requested public record or any part thereof accessible and the reasons therefor.

(d) In unusual circumstances, the time limit prescribed in subsection (c) of this section may be extended by written notice to the person making such request setting forth the reasons for extension

and expected date for determination. Such extension shall not exceed 10 days (except Saturdays, Sundays and legal public holidays). For purposes of this subsection, and only to the extent necessary for processing of the particular request, "unusual circumstances" are limited to:

(1) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(2) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(e) Any failure on the part of the Mayor or an agency to comply with a request under subsection (a) of this section within the time provisions of subsections (c) and (d) of this section shall be deemed a denial of the request, and the person making such request shall be deemed to have exhausted his administrative remedies with respect to such request, unless such person chooses to petition the Mayor pursuant to section 1-1527 to review the deemed denial of the request. (Oct. 21, 1968, Pub. L. 90-614, title II, § 202, as added Mar. 29, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1527, 1-1528.

§ 1-1523. Letters of denial.

(a) Denial by the Mayor or an agency of a request for any public record shall contain at least the following:

(1) the specific reasons for the denial, including citations to the particular exemption(s) under section 1-1524 relied on as authority for the denial;

(2) the name(s) of the public official(s) or employee(s) responsible for the decision to deny the request; and

(3) notification to the requester of any administrative or judicial right to appeal under section 1-1527.

(b) The Mayor and each agency of the District of Columbia shall maintain a file of all letters of denial of requests for public records. This file shall be made available to any person on request for purposes of inspection and/or copying. (Oct. 21, 1968, Pub. L. 90-614, title II, § 203, as added Mar. 29, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b.)

§ 1-1524. Exemptions.

(a) The following matters may be exempt from disclosure under the provisions of this subchapter:

(1) Trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained;

(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

(3) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would—

(A) interfere with enforcement proceedings,

(B) deprive a person of a right to a fair trial or an impartial adjudication,

(C) constitute an unwarranted invasion of personal privacy,

(D) disclose the identity of a confidential source and, in the case of a record compiled by a law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(E) disclose investigative techniques and procedures not generally known outside the government,

(F) endanger the life or physical safety of law enforcement personnel;

(4) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(5) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon;

(6) Information specifically exempted from disclosure by statute (other than this section), provided that such statute—

(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(B) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

(7) Information specifically authorized by Federal law under criteria established by a Presidential Executive order to be kept secret in the interest of national defense or foreign policy which is in fact properly classified pursuant to such Executive order.

(b) Any reasonably segregable portion of a public record shall be provided to any person requesting such record after deletion of those portions which may be withheld from disclosure under subsection (a) of this section.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from the Council of the District of Columbia. This section shall not operate to permit non-disclosure of information of which disclosure is authorized or mandated by other law. (Oct. 21, 1968, Pub. L. 90-614, title II, § 204, as added Mar. 29, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1522, 1-1523, 1-1527, 1-1528.

§ 1-1525. Recording of final votes.

Each agency having more than one member shall maintain and make available for public inspection

a record of the final votes of each member in each proceeding of that agency. (Oct. 21, 1968, Pub. L. 90-614, title II, § 205, as added Mar. 29, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b.)

§ 1-1526. Information which must be made public.

Without limiting the meaning of other sections of this subchapter, the following categories of information are specifically made public information:

(a) the names, salaries, title, and dates of employment of all employees and officers of the Mayor and an agency;

(b) administrative staff manuals and instructions to staff that affect a member of the public;

(c) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(d) those statements of policy and interpretations of policy, acts, and rules which have been adopted by the Mayor or an agency;

(e) correspondence and materials referred to therein, by and with the Mayor or an agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public, or any private party;

(f) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies; and

(g) the minutes of all proceedings of all agencies.

(Oct. 21, 1968, Pub. L. 90-614, title II, § 206, as added Mar. 29, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b.)

§ 1-1527. Administrative appeals and enforcement.

(a) Any person denied the right to inspect a public record of a public body may petition the Mayor to review the public record to determine whether it may be withheld from public inspection. Such determination shall be made in writing with a statement of reasons therefor in writing within 10 days (excluding Saturdays, Sundays, and legal holidays) of the submission of the petition.

(1) If the Mayor denies the petition or does not make a determination within the time limits provided in this subsection, or if a person is deemed to have exhausted his or her administrative remedies pursuant to subsection (e) of section 1-1522, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the Superior Court for the District of Columbia.

(2) If the Mayor decides that the public record may not be withheld, he shall order the public body to disclose the record immediately. If the public body continues to withhold the record, the person seeking disclosure may bring suit in the Superior Court for the District of Columbia to enjoin the public body from withholding the record and to compel the production of the requested record.

(b) In any suit filed under subsection (a) of this section, the Superior Court for the District of Co-

lumbia may enjoin the public body from withholding records and order the production of any records improperly withheld from the person seeking disclosure. The burden is on the Mayor or the agency to sustain its action. In such cases the court shall determine the matter de novo, and may examine the contents of such records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in section 1-1524.

(c) If a person seeking the right to inspect or to receive a copy of a public record prevails in whole or in part in such suit, he or she may be awarded reasonable attorney fees and other costs of litigation. (Oct. 21, 1968, Pub. L. 90-614, title II, § 207, as added Mar. 29, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1522, 1-1523, 1-1528.

§ 1-1528. Oversight.

On or before the 30th day of June of each calendar year, the Mayor shall compile and submit to the Council of the District of Columbia a report covering the public-record-disclosure activities of each agency and of Executive Branch as a whole during the preceding calendar year. The report shall include:

- (1) The number of determinations made by each agency not to comply with requests for records made to such agency under this subchapter and the reasons for each such determination;
- (2) The number of appeals made by persons under section 1-1527(a), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;
- (3) The names and titles or positions of each person responsible for the denial of records requested under this subchapter, and the number of instances of participation for each such person;
- (4) A copy of the fee schedule and the total amount of fees collected by each agency for making records available under this subchapter;
- (5) Such other information as indicates efforts to administer fully this subchapter; and
- (6) For the prior calendar year, a listing of the total number of cases arising under this subchapter, the total number of cases in which a request was denied in whole or in part, the total number of times in which each exemption provided under section 1-1524 was cited as a reason for denial of a request, and the total amount of fees collected under section 1-1522(b). Such report shall also include a description of the efforts undertaken by the Mayor to encourage agency compliance with this subchapter.

(Oct. 21, 1968, Pub. L. 90-614, title II, § 208, as added Mar. 29, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b.)

§ 1-1529. Definitions.

For purposes of this subchapter, the terms "Mayor", "Council", "District", "agency", "rule", "rulemaking", "person", "party", "order", "relief", "proceeding", "public record", and "adjudication" shall have the meaning as provided in section 1-1502.

(Oct. 21, 1968, Pub. L. 90-614, title II, § 209, as added Mar. 29, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b.)

Chapter 16.—CODIFICATION AND PUBLICATION OF ACTS, RESOLUTIONS, RULES, AND ORDERS

Sec.

1-1601. Definitions.

1-1602. Municipal Code—Contents—Publication—Supplements—Distribution—Publication of Council acts and resolutions.

1-1603. Statutes-at-Large—Contents—Distribution.

1-1604. Enrollment of Council acts and resolutions—Filing.

1-1605. Judicial notice.

§ 1-1601. Definitions.

For the purpose of this chapter:

(1) The term "act" shall have the same meaning as is ascribed to it in section 1-122(7).

(2) The term "agency" means any officer, employee, office, department, division, board, commission or other agency of the Government of the District of Columbia including both those which are independent of and those which are subordinate to the Mayor and Council but not including the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

(3) The term "Board of Commissioners" means the Board of Commissioners of the District of Columbia established by Act of June 11, 1878 (20 Stat. 102).

(4) The term "Commissioner" means the Commissioner of the District of Columbia established by subsection (a) of section 301 of Reorganization Plan No. 3 of 1967 (81 Stat. 949).

(5) The term "Council" means the Council of the District of Columbia created by section 1-141(a) unless the phrase "District of Columbia Council" is used in which event the term shall mean the District of Columbia Council created by subsection (a) of section 201 of Reorganization Plan No. 3 of 1967 (81 Stat. 948).

(6) The term "Council year" means the legislative period of the Council beginning on January 2 of each year and ending on January 1 of the following year.

(7) The term "District of Columbia Code" means the Code of the District of Columbia as provided for in the Act of July 30, 1947 (61 Stat. 638) and any continuations, supplements, or revisions thereof authorized by Act, Congressional resolution, or act.

(8) The term "District of Columbia Register" means the District of Columbia Register mandated by section 1-1504.

(9) The term "Mayor" means the Mayor of the District of Columbia created by section 1-161(a) or his or her designated agent.

(10) The term "rule" means the whole or any part of any Board of Commissioners', Commissioner's, District of Columbia Council's, Mayor's, or agency's statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or designed to describe organization, procedure, or practice requirements.

(11) The term "regulation" shall have the same meaning as the term "rules".

(12) The term "resolution" means a resolution of the Council unless the term "Congressional resolu-

tion" is used in which case it shall mean a resolution of the Congress of the United States or either house thereof. (Oct. 8, 1975, D.C. Law 1-19, title II, § 202, 22 DCR 2056.)

REFERENCES IN TEXT

"Act of June 11, 1878", referred to in par. (3), is also known as the Organic Act of 1878. Section 2 of the Act, establishing the Board of Commissioners, is set out as a note under section 1-102 in the main edition.

"Reorganization Plan No. 3 of 1967", referred to in pars. (4), (5) is set out in the Appendix of this title in the main edition.

Provisions of the Act of July 30, 1947, relating to the District of Columbia Code, referred to in par. (7), appear in chapter 3 of title 1, United States Code.

EFFECTIVE DATE

Section 208 of Act Oct. 8, 1975, D.C. Law 1-19, provided: "This Title [enacting this chapter and repealing § 1-1507 (d)] shall take effect upon becoming law by operation of subsection (1)¹ of section 602 of the District of Columbia Self-Government and Governmental Reorganization Act (81 Stat. 814) [§ 1-147(c)(1)]."

SHORT TITLES

The first section of act Apr. 7, 1977, D.C. Law 1-115, provided "That this act [amending § 1-1602] may be cited as the 'District of Columbia Codification Amendment act of 1976'."

Section 201 of title II of Act Oct. 8, 1975, D.C. Law 1-19, provided: "This Title [enacting this chapter and repealing § 1-1507(d)] may be cited as the 'District of Columbia Codification Act of 1975'."

§ 1-1602. Municipal Code—Contents—Publication—Supplements—Distribution—Publication of Council acts and resolutions.

(a) On or before January 10, 1976, unless the Council extends such date by resolution, the Mayor shall submit to the Council a proposed District of Columbia Municipal Code which shall contain the following: (1) all rules adopted by the Mayor, the District of Columbia Council, the Commissioner, and the Board of Commissioners which are in force as of June 30, 1975; (2) all acts and resolutions of the Council which are in the nature of a municipal ordinance which are in force as of June 30, 1975 or which the Council may direct to be included in the proposed District of Columbia Municipal Code; and (3) all rules of each and every agency of the Government of the District of Columbia which are in force as of June 30, 1975. In preparing the proposed District of Columbia Municipal Code the Mayor shall take care to insure that there is included: (A) the full text of each rule, act and resolution in the proposed Code without any incorporation by reference; (B) a citation to the original rule, act, or resolution from which each section of the proposed District of Columbia Municipal Code was taken which citation shall appear in a parallel reference table or tables and/or at the end of that section of the proposed code; (C) a statement in the first portion of each title of the proposed District of Columbia Municipal Code specifying where a certified copy of each original rule, act, or resolution may be obtained; (D) a citation to the applicable section of the District of Columbia Code which each section of the proposed District of Columbia Municipal Code implements or upon which the proposed section is based, if any, which citation shall appear in a parallel reference

table or tables and/or at the end of that section of the proposed District of Columbia Municipal Code; and (E) a parallel reference table, indexed by District of Columbia Code section, indicating each section of the proposed District of Columbia Municipal Code which implements or is based upon that section of the District of Columbia Code.

(b) On or before February 27, 1976 the Council shall approve by resolution the District of Columbia Municipal Code after making such editorial additions and revisions as it may deem necessary and that which it approves shall be published, *Provided* That approval by the Council shall not constitute enactment of the Code. The Council may extend by resolution the final date for its revision, approval and/or publication.

(c) From time to time, but no less than once each three months per Council year, the Mayor shall prepare such supplements and/or revisions of the District of Columbia Municipal Code as may be necessary to reflect new rules, acts, and/or resolutions and shall transmit the same to the Council which within forty-five (45) days of its receipt, shall make such editorial additions and revisions by resolution as it may deem necessary after which the supplements and/or revisions shall be published, *Provided* That Council action shall not constitute enactment of the supplements and/or revisions.

(d) The Mayor shall make copies of the District of Columbia Municipal Code and any supplement or revisions thereof available to the public at a reasonable cost in its entirety and by title.

(e) The Mayor shall make available a copy of the entire District of Columbia Municipal Code including revisions and supplements thereto at each regular branch of the District of Columbia Public Library System and to each Advisory Neighborhood Commission which shall be established by the Council.

(f) (1) Unless adopted pursuant to the emergency circumstances provision of section 1-146(a), no Council act or resolution shall be effective unless it has been published in the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Code.

(2) Except where the Council may direct for its acts and resolutions and except for acts and resolutions codified or to be codified in the District of Columbia Code, (A) any rule, act, or resolution which is not published in the District of Columbia Municipal Code at the time of the Code's original publication shall not thereafter be in effect unless it became law after June 30, 1975 and (B) any rule, act, or resolution becoming law after June 30, 1975, which is not published in the District of Columbia Municipal Code within eighteen (18) months of its adoption or within eighteen (18) months of the original publication of the District of Columbia Municipal Code, whichever occurs later, shall not thereafter be in effect. (Oct. 8, 1975, D.C. Law 1-19, title II, § 204, 22 DCR 2058; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; Apr. 7, 1977, D.C. Law 1-115, § 2, 23 DCR 8744.)

AMENDMENTS

1977—Act Apr. 7, 1977, D.C. Law 1-115, amended subsec. (f) (2) (B) by inserting "or within eighteen (18) months of the original publication of the District of Columbia

¹So in original. Probably should be "(c)(1)".

Municipal Code, whichever occurs later, shall not thereafter be in effect" immediately after "of its adoption".

1975—Act Oct. 30, 1975, D.C. Law 1-27, amended subsec. (e) by substituting "Advisory Neighborhood Commission" for "Advisory Neighborhood Council".

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subsec. (f) (2), see sec. 2 of the Emergency District of Columbia Codification Amendment act of 1976 (D.C. Act 1-212, Jan. 12, 1977, 23 DCR 5077).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 3 of act Apr. 7, 1977, D.C. Law 1-115, provided: "This act [amending § 1-1602] shall take effect upon becoming law pursuant to the provisions of section 602 of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147]."

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-171.

CROSS REFERENCES

District of Columbia Code, see § 49-112.

Publication and codification of acts of Council becoming law as it directs, see § 1-144.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1605.

§ 1-1603. Statutes-at-Large—Contents—Distribution.

(a) Within forty-five days of the end of each Council year, the Mayor shall compile and publish the District of Columbia Statutes-at-Large which shall include in separate chronological order:

(1) Council acts which become law during that Council year;

(2) Council resolutions adopted during that Council year; and

(3) Mayor's orders issued during that Council year.

(b) The first publication of the District of Columbia Statutes-at-Large shall also contain in a separate part each regulation and resolution of the District of Columbia Council in chronological order.

(c) The Mayor shall make copies of the District of Columbia Statutes-at-Large available to the public at a reasonable cost calculated to cover the costs of its compilation, publication and distribution. (Oct. 8, 1975, D.C. Law 1-19, title II, § 205, 22 DCR 2062.)

§ 1-1604. Enrollment of Council acts and resolutions—Filing.

After enactment by the Council, but before any presentation to the Mayor, each act and resolution of the Council shall be set forth on parchment or other such suitable paper. Each parchment or other suitable paper which is an adopted resolution or is an act which becomes law shall be filed with the Archives of the United States not more than five (5) years after its adoption. (Oct. 8, 1975, D.C. Law 1-19, title II, § 206, 22 DCR 2062.)

CROSS REFERENCE

Adoption of acts by Council, see § 1-146.

§ 1-1605. Judicial notice.

All courts within the District of Columbia shall take notice of the acts, rules, and resolutions published in the District of Columbia Municipal Code in accordance with this chapter, and said courts shall also take notice of the acts and resolutions published in the District of Columbia Statutes-at-

Large to the extent that they are in force in accordance with section 1-1602(f). (Oct. 8, 1975, D.C. Law 1-19, title II, § 207, 22 DCR 2063.)

EFFECTIVE DATE

See note under § 1-1601.

Chapter 17.—OFFICIAL CORRESPONDENCE

Sec.

- 1-1701. Definitions.
- 1-1702. Use of official mail by government employees.
- 1-1703. Marking requirements for envelopes for official mail.
- 1-1704. Expedited services prohibited—Use of officially marked envelopes—Exceptions to marking requirements—Inspection and return of mail—Designation of persons to certify compliance with requirements—Promulgation of regulations.
- 1-1705. Use of official mail by officials—elect.
- 1-1706. Prohibited uses of official mail by elected officials.
- 1-1707. Authorized uses of official mail by elected officials.
- 1-1708. Penalties.
- 1-1709. Unintentional violations—Penalties.
- 1-1710. Deposit of fines.

§ 1-1701. Definitions.

For the purpose of this chapter, the term—

(a) "Agency" includes all departments, entities, agencies, offices or other subdivisions of the executive and legislative branches of the government of the District of Columbia as well as all independent boards, commissions, agencies, or other independent entities;

(b) "Director" means the director or head of the D.C. Department of General Services, or its successor agency; or his or her designated agent;

(c) "Government employee" includes members of any board or commission appointed by the Mayor or Council, officers or employees paid by appropriated or grant funds authorized for expenditure by the District of Columbia government, or an officer or employee of any agency when acting in an official capacity;

(d) "Mass mailing" means the transmission through the mail during any 30-day period of more than 100 newsletters or similar types of materials which contain substantially identical contents;

(e) "Elected official" includes the Mayor, the Chairman of the Council, members of the Council and Chairman and members of the Board of Education; and

(f) "Official mail" means the mail which is either prepaid or postpaid by any branch, division or other agency of the government of the District of Columbia.

(Apr. 7, 1977, D.C. Law 1-118, § 2, 23 DCR 8746.)

EFFECTIVE DATE

Section 12 of act Apr. 7, 1977, D.C. Law 1-118, provided: "This act [enacting this chapter] shall become effective on July 1, 1977."

SHORT TITLE

The first section of act Apr. 7, 1977, D.C. Law 1-118, provided "That this act [enacting this chapter] may be cited as the 'Official Correspondence Regulations'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1705.

§ 1-1702. Use of official mail by government employees.

Except as otherwise provided in this chapter, a government employee may not mail, as official mail, any matter, article, material or document for any reasons other than the following:

- (a) A request for the matter, article, material or document has been previously received by the agency;
- (b) The mailing of the document is required by law;
- (c) The material or matter requests information pertinent to the conduct of the official business of the agency;
- (d) The material contains information relating to the activities of the agency or to the availability of agency publications or other documents;
- (e) The enclosures are forms, blanks, cards, or other documents necessary or beneficial to the administration of the agency;
- (f) The materials are copies of federal, state or local laws, rules, regulations, orders, instructions, or interpretations thereto; or
- (g) The materials are being mailed to federal, state or other public authorities.

(Apr. 7, 1977, D.C. Law 1-118, § 3, 23 DCR 8746.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1704.

§ 1-1703. Marking requirements for envelopes for official mail.

Envelopes or other materials which are used to enclose official mail shall bear upon its facing, in addition to the name and address of the agency mailing the official mail, the words "official business". (Apr. 7, 1977, D.C. Law 1-118, § 4, 23 DCR 8746.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1704.

§ 1-1704. Expedited services prohibited—Use of officially marked envelopes—Exceptions to marking requirements—Inspection and return of mail—Designation of persons to certify compliance with requirements—Promulgation of regulations.

(a) Funds administered by District agencies whether appropriated funds, or grant funds may not be used to pay for the use of telegrams, night letters, mailgrams or similar types of mail, except in emergency circumstances and as provided by regulations promulgated pursuant to subsection (f) of this section.

(b) Envelopes or other materials described by section 1-1703 may not be used to enclose materials, documents or other articles except those enumerated¹ in sections 1-1702 and 1-1707 or other materials not prohibited by section 1-1706.

(c) Funds administered by District agencies may not be used to pay the postage of materials whose enclosures do not conform to the requirements set forth in section 1-1703 unless the head of the agency mailing the material certifies to the Director of the Department of General Services that there are circumstances, which shall be made known to the Director prior to the mailing, which preclude the observance of the requirements.

¹ So in original. Probably should be "enumerated".

(d) The Director shall maintain the certifications required in subsection (c) of this section for a period of three years.

(e) The Director may inspect and return to the agency any mail which, in his or her judgment, fails to meet the requirement of the act or the regulations promulgated pursuant to this chapter. Under regulations promulgated pursuant to subsection (f) of this section, the Director shall provide for the designation of a person within each agency, department, commission, or other office to assist him or her to certify compliance with the provisions of this chapter.

(f) The Director is hereby authorized to promulgate rules and regulations, in the manner prescribed by the Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.) to carry out the provisions and intent of this chapter within sixty days after July 1, 1977. (Apr. 7, 1977, D.C. Law 1-118, § 5, 23 DCR 8746.)

REFERENCE IN TEXT

The act, referred to in subsec. (e), is probably a reference to the act of Apr. 7, 1977, D.C. Law 1-118, which is classified to this chapter.

CODIFICATION

In subsec. (f), "July 1, 1977" has been substituted for "its effective date".

§ 1-1705. Use of official mail by officials—elect.

In addition to government employees and elected officials as defined in section 1-1701, the following officials may mail materials as official mail:

- (a) The Mayor-Elect;
- (b) The Chairman-Elect and members-elect of the Council¹ (Apr. 7, 1977, D.C. Law 1-118, § 6, 23 DCR 8746.)

§ 1-1706. Prohibited uses of official mail by elected officials.

² An elected official may not mail, as official mail, any mass mailing within the 90-day period that immediately precedes a primary, special, or general election in which such official is a candidate for office.

(b) An elected official may mail, as official mail, news releases or newsletters; *Provided*, That such materials do not contain any of the following:

- (1) Autobiographical articles;
- (2) Political cartoons;
- (3) References to past or future campaigns;
- (4) Announcements of filings for re-election;
- (5) Announcements of campaign schedules;
- (6) Announcements of political or partisan meetings;
- (7) Reports on family life; or
- (8) Pictures of the official members with any partisan label such as "Democrat", "Republican", "Statehood Party" or any other label which purports to advertise the member rather than to illustrate the accompanying text.

(c) An elected official may not use official mail to solicit directly or indirectly funds for any purpose.

¹ So in original. There probably should be a period.

² So in original. Paragraph probably should be designated as subsec. (a).

(d) An elected official may not use official mail for transmission of matter which is purely personal to the sender or to any other person and is unrelated to the official business, activities, and duties of the member.

(e) An elected official may not mail, as official mail, cards or other materials which express holiday greetings from the member or his or her family. (April 7, 1977, D.C. Law 1-118, § 7, 23 DCR 8746.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1704, 1-1707.

§ 1-1707. Authorized uses of official mail by elected officials.

The provisions of section 1-1706 do not prohibit an elected official or his or her staff from mailing, as official mail, any of the following:

(a) The whole or part of any record, speech, debate or report of the Council or any committee thereof;

(b) The tabulation of an official's vote or explanation thereof;

(c) Matter which expresses condolences to a person who has suffered a loss or congratulations to a person who has achieved some person¹ or public distinction *Provided*, That mass mailings of a congratulatory nature which are substantially the same except for individualized addresses are not authorized;

(d) Information concerning the officials schedule of meeting constituents;

(e) Information concerning the meeting schedule and agenda for committee and subcommittees upon which the official serves;

(f) Information concerning financial disclosure information, whether or not required by law;

(g) Matter which consists of federal, state, or local laws, regulations or publications paid for by public funds;

(h) Questionnaires which relate to matters respecting public policy or administration; and

(i) Matter which contains pictures of the member or biographical or autobiographical data

whenever such matter is mailed in response to a specific request therefor.

(Apr. 7, 1977, D.C. Law 1-118, § 8, DCR 8746.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1704.

§ 1-1708. Penalties.

(a) Except as otherwise provided in this chapter, a person who, at the time of the mailing, is not a government employee and who mails or attempts to mail materials, documents, or other items as official mail shall be fined an amount not exceeding \$100 or confined for a term not exceeding one year.

(b) Any person who willfully violates any provision of this chapter shall be subject to a fine not exceeding \$1,000 or confined for a term not exceeding one year, plus double the amount of money incidental to the unlawful mailing. (Apr. 7, 1977, D.C. Law 1-118, § 9, 23 DCR 8746.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1710.

§ 1-1709. Unintentional violations—Penalties.

(a) Any person who by reason of ignorance, forgetfulness, or misunderstanding improperly or unlawfully uses official mail shall be liable to the District for double the cost of the postage.

(b) Any person who willfully violates provisions of this chapter shall be subject to a fine not exceeding \$1,000 or imprisonment not exceeding one year plus double the amount of money incidental to the unlawful mailing. (Apr. 7, 1977, D.C. Law 1-118, § 10, 23 DCR 8746.)

§ 1-1710. Deposit of fines.

Money inuring to the District as a result of the fines imposed under sections 1-1708¹ shall be deposited in the Treasury of the United States to the credit of the District of Columbia or in any other depository designated by the Council. (Apr. 7, 1977, D.C. Law 1-118, § 11, 23 DCR 8746.)

¹ So in original. Probably should be "personal".

¹ So in original.

TITLE 1.—ADMINISTRATION, APPENDIX

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REORGANIZATION PLAN NO. 3 OF 1967

(32 F.R. 11669, F.R. Doc. 67-9507; Filed, Aug. 11, 1967, 8:45 a.m.; 81 Stat. 948)

GOVERNMENT OF THE DISTRICT OF COLUMBIA

PART IV. TRANSFERS OF FUNCTIONS

SEC. 402. *Transfer of functions to Council.* The following regulatory and other functions now vested in the Board of Commissioners of the District of Columbia are hereby transferred to the Council (subject to the provisions of section 406 of this reorganization plan):

31. Miscellaneous

(430) Prescribing regulations for the destruction of animals or live poultry affected with contagious, infectious, or communicable disease, and for the proper disposition of their hides and carcasses, and prescribing regulations for disinfection and other regulations, under section 8 of the Act of May 29, 1884, c. 60, 25 Stat. 33, as amended (21 U.S.C. 130) [D.C. Code, sec. 1-230a].

REORGANIZATION PLAN NO. 2 OF 1975

(21 DCR 3198; 22 DCR 961; Effective July 25, 1975)

Prepared by the Mayor and transmitted to the Council of the District of Columbia April 29, 1975, pursuant to the provisions of Section 422(12) of the District Charter [D.C. Code, § 1-162(12)].

DEPARTMENT OF TRANSPORTATION

I. ESTABLISHMENT

There is established, under the direction and control of the Mayor, a Department of Transportation headed by a Director. The Director shall have full authority over such Department and all functions and personnel assigned thereto, including the power to redelegate to other employees and officials of the Department such powers as in the Director's judgment are warranted in the interest of efficiency and good administration. All authority vested in the Director shall be exercised in accordance with applicable laws, rules and regulations.

II. PURPOSE

The Department of Transportation is charged with assisting the Mayor to assure the provision of a safe and adequate transportation system for residents and visitors to the District of Columbia.

III. FUNCTIONS

The Director of the Department of Transportation shall:

A. Plan, program, construct, operate and maintain public transportation facilities and systems to meet transportation needs within the District of Columbia.

B. Identify financial resources to be applied to transportation programs, and develop a plan for allocation of those resources among those programs.

C. Develop policies relating to transportation facilities not owned by the District of Columbia, e.g., mass transit,

taxicab, aviation, transportation terminals; and coordinate those policies with agencies, public and private, which operate and regulate those facilities.

D. Analyze transportation programs for their impact on the social and physical environment, including land use and development; develop ways and means to mitigate undesirable impact and implement environmental programs.

E. Promulgate safety standards relating to the licensing and inspection of vehicles, including aircraft and watercraft, and licensing, testing and training of vehicle operators, to the extent those matters fall within the jurisdiction of the District of Columbia; and the operation of programs for the administration of those standards.

F. Develop highway safety standards, including those relating to bicyclists and pedestrians, and implement safety standards in the District of Columbia streets and highways program.

G. Cooperatively with the Municipal Planning Office, coordinate District of Columbia transportation plans and programs and maintain liaison with metropolitan area governments, the Council of Government, the Washington Metropolitan Area Transit Authority, Federal agencies, and appropriate public and private groups involved in transportation.

H. Cooperatively with the Municipal Planning Office, coordinate transportation plans and programs with the programs of other District of Columbia departments and agencies to assure consistency with all appropriate goals and objectives of the government.

I. Develop parking policies and the operation of parking programs assigned to the department.

IV. TRANSFER OF FUNCTIONS

The following are hereby transferred to the Department of Transportation:

A. The functions related to the Department of Motor Vehicles as set forth in C.O. 73-238, Replacement of Organizational Order No. 105, dated October 12, 1973.

B. The functions related to the Department of Motor Vehicles as set forth in C.O. 73-144, Delegation of Authority Regarding Regulation Providing Special Parking Privileges for Handicapped Drivers, dated June 15, 1973.

C. The functions related to the Department of Motor Vehicles as set forth in C.O. 74-77, Delegation of Authority Regarding Development of a Plan to Implement the Provisions of Highway Safety Standard 316, Debris Hazard Control and Cleanup, dated May 10, 1974.

D. The functions related to the Department of Motor Vehicles as set forth in C.O. 74-172, Delegation of Authority Regarding the Regulation of Slow-Moving Vehicles, dated August 1, 1974.

E. The functions related to the Department of Highways and Traffic as set forth in Order No. 59-33, Department of Highways and Traffic Organization Order No. 122 (Reorganization), dated January 8, 1959, as Amended.

F. The functions related to the Department of Highways and Traffic as set forth in Order of the Commissioner 68-236, Delegation of Authority to Establish Flat Rate Charges for Street Repairs, dated March 20, 1968.

G. The functions related to the Department of Highways and Traffic as set forth in Order of the Commissioner 68-554, Delegation of Authority to Establish and Administer Traffic Rules and Regulations, dated August 16, 1968.

H. The functions related to the Department of Highways and Traffic as set forth in Order of the Commissioner

69-615, Organization Order No. 9, as Amended, Contracting Officer, dated November 4, 1969.

I. The functions related to the Department of Highways and Traffic as set forth in C.O. 70-151, Delegation of Authority for Final Approval of License Bonds, dated April 22, 1970.

J. The functions related to the Department of Highways and Traffic as set forth in C.O. 71-75, Annual Hauling Permit Fee for a Self-Unloading, Single Unit Motor Vehicle by Weight Class with three or more Axles, dated March 18, 1971.

K. The functions related to the Department of Highways and Traffic as set forth in C.O. 71-354, Delegation of Authority to Administer City Council Regulation 71-25 Prohibiting Left Turns into Parking Lots and Garages, dated September 10, 1971.

L. The functions related to the Department of Highways and Traffic as set forth in C.O. 72-11, General Purpose Transportation, dated January 13, 1972.

M. The functions related to the Department of Highways and Traffic as set forth in C.O. 72-107, Implementation of City Council Regulation 71-26 Governing Bicycles, dated May 4, 1972.

N. The functions related to the Department of Highways and Traffic as set forth in C.O. 72-182, Delegation of Authority to Enter into Interstate Agreement with the State of Maryland and the Commonwealth of Virginia, dated July 17, 1972.

O. The functions related to the Department of Highways and Traffic as set forth in C.O. 73-76, Delegation of Authority to Execute Downtown Bus Service Capital Grant Project No. DC-VTG-2, dated March 28, 1973.

P. The functions related to the Department of Highways and Traffic as set forth in C.O. 72-79, Delegation of Authority to Execute Downtown Bus Service Demonstration Grant Project No. DC-06-0069, as Amended and dated March 28, 1973.

Q. The functions related to the Department of Highways and Traffic as set forth in C.O. 73-168, Delegation of Authority Under the District of Columbia Public Space Utilization Act, dated July 13, 1973.

R. The functions related to the Department of Highways and Traffic as set forth in C.O. 74-207, Delegation of Authority to Apply for and Execute an Urban Mass Transportation Capital Improvement Grant for the National Visitors Center, dated September 30, 1974.

S. The functions related to the Department of Highways and Traffic as set forth in C.O. 74-54, Designation of Department of Highways and Traffic as the District Agency Responsible for Administration of Programs Under Sec. 230 Safe Roads Program—Highway Safety Act of 1973, dated March 29, 1974.

T. The functions related to the Department of Motor Vehicles as set forth in Organization Order No. 21, Order of the Commissioner 69-235, Traffic Coordinating Committee, dated May 26, 1969.

U. The functions related to the Department of Highways and Traffic as set forth in Organization Order No. 23, Order of the Commissioner 69-502, D.C. Public Space Committee, as Amended and dated September 3, 1969.

V. The functions related to the Director of the Department of Motor Vehicles in C.O. 69-234, Highway Safety Program Coordinator, dated May 26, 1969.

W. Any other functions not specifically mentioned above which are now delegated to, or vested in, the Director of the Department of Highways and Traffic and the Director of the Department of Motor Vehicles and the Transportation Systems Coordinator.

V. DELEGATIONS AND REDELEGATIONS OF AUTHORITY

A. The Director of the Department of Transportation is the successor to all authority delegated to the Director of the Department of Motor Vehicles, the Director of the Department of Highways and Traffic, and the Transportation Systems Coordinator, and is authorized to act, either personally or through a designated representative, as a member of whatever committees, commissions, boards, or other bodies which presently include as a member the Director of the Department of Motor Vehicles, the Director of the Department of Highways and Traffic, and the Transportation Systems Coordinator.

B. The Director of the Department of Transportation is designated as the Governor's Highway Safety Repre-

sentative and the Department of Transportation is designated State agency for administration of the Highway Safety Program in the District of Columbia.

VI. OTHER TRANSFERS

All positions, personnel, property, records and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the above functions, other than those resources and functions to be transferred to the Public Service Commission, are hereby transferred to the Director of the Department of Transportation.

VII. ORGANIZATION

The Director of the Department of Transportation, in the performance of his duties and functions, is authorized to establish such organizational components thereunder with such specified functions, as he deems appropriate.

VIII. RESCISSION

A. All Orders and parts of Orders in conflict with any of the provisions of this plan are, to the extent of such conflict, hereby repealed except that any municipal regulation adopted or promulgated by virtue of the authority granted by such orders shall remain in force until otherwise amended or repealed.

B. The positions of Director, Department of Motor Vehicles, Director, Department of Highways and Traffic and the Transportation Systems Coordinator are hereby abolished.

IX. EFFECTIVE DATE

The provisions of this plan shall become effective pursuant to the requirements of Section 422(12) of Public Law 93-198 [D.C. Code § 1-162(12)].

MAYOR'S STATEMENT

PRESENT PROBLEMS

District of Columbia activities and functions relating to transportation are presently fragmented among several District agencies and departments.

The Department of Highways and Traffic is responsible for planning, constructing and maintaining the District's highway system as well as for planning and controlling traffic flow. In addition, this Department maintains the District's public and metered parking facilities.

The Department of Motor Vehicles is responsible for testing and licensing operators of all powered wheeled vehicles, as well as for inspecting and registering these vehicles.

The Transportation Systems Coordinator, lodged in the Executive office of the Mayor, provides liaison to the Metro operations, evaluates transportation proposals, and advises the Mayor on transportation policy.

Each of the above entities provides specific services to the District based on valid and appropriate objectives. Taken collectively, however, these goals are not sufficiently broad to encompass the entire spectrum of District transportation needs. No single authority now exists which can perform an overview of city transportation needs and costs, balancing one mode against another or relating those needs and costs to non-transportation factors such as environmental impact and the broad economic situation.

PLAN TO ESTABLISH A DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

In order to deal more effectively with the broader issues relating to the overall transportation needs of District citizens and visitors, it is planned to combine into one organizational entity all related activities and functions now dispersed among the several offices cited above.

The reorganization presented in Reorganization Plan 2, with associated charts and tables, has been prepared with three objectives in mind:

Objective One: Capability for Broad Over-View: A Department of Transportation will be the key mechanism for addressing issues, needs and programs that extend to all transportation modes. The new department will identify rail service needs; perform analyses of the adequacy of the bus system and develop ways to improve it; develop plans and programs to integrate various methods

of transportation to expedite passenger movement; promote the development of aviation facilities and their safe use; determine the need for new and perhaps larger transportation terminal facilities; develop the means for a more efficient distribution of goods; and develop a system of bikeways and pedestrianways. In summary, it will broaden the transportation objectives of the city.

Objective Two: More Rational Allocation of Resources: The new realignment of facilities and services should reflect a more balanced approach to the transportation system. At the same time, the realignment should permit the department to obtain a better assessment of the resources needed to operate a total system.

Objective Three: Active Coordination with Independent Transportation Modes and with other Jurisdictions: While the city does not operate the METRO system or taxi companies, the city does have a responsibility to require that these transportation services be adequate, safe and economical. A Department of Transportation will provide the focal point for the city to interact with the Washington Metropolitan Area Transit Authority (WMATA), the Civil Aeronautics Board (CAB), the National Transportation Safety Board (NTSB), the taxi industry, and other owners and regulators of transportation services.

STRUCTURE AND FUNCTIONS OF THE NEW DEPARTMENT

The Functional Chart of the planned Department carries out these objectives in structural form. Eight sub-units are planned; three at the staff level, four at the operating level, and an Office of the Director. Notes on each of the eight units follow:

Office of the Director: In addition to a Director and Deputy Director, a staff for community relations is being established. The great importance of two-way communication with the community (both residents and visitors to the Nation's Capital) has led to the decision to give this function direct access to the Head of the agency by placing it in his immediate Office.

Office of Administration: The Administrative functions of the two existing departments are consolidated in this Unit. In addition to the present functions, financial resources management and regulations/legislation have been added here. The goal of financial resources management is to inventory and control all department resources within the context of one overall plan and budget. In order to permit analysis of departmental regulations, Federal requirements, and staff-level review of departmental hearing processes, a unit of regulations and legislation is also proposed.

Office of Transportation Policy and Plans: Overall program priorities will be developed here for recommendation to the Director and, through the Director, to the Mayor and Council. The economic impact of transportation decisions has long been neglected, but will find a home in this Office. Systems planning for all modes of transportation will be established to reflect general policy objectives. Traditional project oriented planning such as is now performed in the Highways and Traffic Department will take its cue and direction from the systems planning staff. Finally, establishment of a social program analytical capability will provide a planning link to community transportation needs.

Office of Safety and Environment: The existing highway safety coordination and safety education functions currently in the DMV form the nucleus for this new Office. This organization will allow for a new emphasis on safety standards for additional transport modes and for expansion of the environmental programs, including social impact and interagency cooperation.

The four operating bureaus, now identified as the Bureau of Design, Engineering and Research, Construction and Maintenance, Traffic Engineering and Operations, and Motor Vehicle Services, are based on the present operating responsibilities of the Highways and Traffic and Motor Vehicle Departments. A side benefit to be gained, however, is that better resource utilization can be made possible through implementation of intermodal transportation projects at the operating level.

EXPECTED BENEFITS OF THE CREATION OF THE DEPARTMENT OF TRANSPORTATION

Short-range:

1. Provides a central focal point within the District to deal with issues affecting overall municipal, area, and regional transportation planning.
2. Provides unified direction over all related activities in setting and achieving District-wide transportation goals, through closer coordination of the various facets of operations and programs.
3. Permits the expansion of technical and professional planning capability at the operating level without added expense to the District.
4. Permits greater flexibility for applying available resources appropriately to meet program and project priority needs.
5. Creates a more effective use of available professional, technical, and administrative staff skills through the expanded planning and resource flexibility capability.

Long-range:

1. Permits acquisition of additional and more suitable skills needed, through the normal process of employee turnover, for dealing with present day long-range transportation issues.
2. Permits anticipated administrative efficiencies and economies, particularly in the areas of personnel, budget, office services, procurement, and administrative management, through the consolidation of existing administrative staffs and elimination of hierarchical structures now necessary for each of the existing independent agencies.

REORGANIZATION PLAN NO. 3 OF 1975

(21 DCR 2793; Effective July 3, 1975)

Prepared by the Mayor and transmitted to the Council of the District of Columbia on April 8, 1975, pursuant to the provisions of Section 422(12) of the District Charter [D.C. Code, § 1-162(12)].

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

1. **Establishment.** There is established, in the Executive Branch of the Government of the District of Columbia, the Department of Housing and Community Development headed by a Director who shall perform the functions herein transferred, delegated, or otherwise assigned to him, and who shall have the authority to redelegate such functions as he deems necessary.

2. **Purpose.** The Department of Housing and Community Development is established to formulate, develop and recommend housing and community development policy, plans and programs, and to accomplish the promotion, coordination and execution of policy, plans and programs, and the administration of laws, pertaining to housing and community development.

3. **Functions.** The Director of the Department of Housing and Community Development shall:

(a) Provide the Mayor information and advice on matters pertaining to public and private housing and community development plans, programs and activities in the District of Columbia.

(b) Identify the District's housing and community development needs, formulate and recommend housing and community development policy, and accomplish the planning, promotion, coordination and execution of plans, projects and activities to meet the needs.

(c) Develop annual and longer-term housing and community development priorities, goals and objectives for the District.

(d) Prepare in collaboration with the Municipal Planning Office that portion of the Comprehensive Plan that pertains to housing and community development, and recommend changes in that plan when essential to the accomplishment of housing and community development goals and objectives.

(e) Prepare for submission to the Office of Budget and Management Systems that portion of the Capital Improvement Plan and the Multi-Year Program and Financial Plan, developed by the Department, that pertains to housing and community development; and recommend changes in that plan when essential to the accomplishment of housing and community development goals and objectives.

(f) Prepare an annual housing and community development work program and budget.

(g) Ensure that housing and community development plans and plan execution are coordinated with appropriate Federal and local agencies and departments.

(h) Develop with appropriate Federal and local agencies and departments, and with private organizations, plans and programs to create and sustain private developer interest and activity in the District of Columbia.

(i) Develop policies, standards and procedures for conducting housing and community development activities, such as inspection, relocation, land acquisition and disposition, citizen participation, minority contracting, data collection and management.

(j) Evaluate the effectiveness and efficiency with which housing and community development programs, projects and activities meet specified goals and objectives.

(k) Establish and maintain a City-wide data collection and data management system pertaining to housing and community development.

(l) Conduct research, field surveys and neighborhood planning and management studies relating to land use and housing conditions, and develop and test new program concepts as demonstration or special projects.

(m) Administer and enforce to the extent authorized by this Plan the statutes, codes and regulations governing housing, and the construction, erection, maintenance, repair, alteration, inspection, zoning, occupancy, use and removal of buildings and their appurtenances and electrical and mechanical equipment.

(n) Promote the preservation and improvement of residential neighborhoods, the development of underdeveloped or inappropriately developed land, and the provision of supportive community services and economic opportunities in or near residential areas.

(o) Manage the affairs of the National Capital Housing Authority and the Model Cities Program.

(p) Provide staff support, administrative, fiscal, and housekeeping services for the Redevelopment Land Agency, National Capital Housing Authority, Board for the Condemnation of Insanitary Buildings, Condemnation Review Board, Relocation Advisory Committee (CO 73-151), Urban Renewal Operations Committee (CO 55-998), Building Code Advisory Committee (CO 72-173), and the Mayor's Advisory Committee on Fort Lincoln (CO 72-223).

(q) Review applications filed with the Board of Zoning Adjustment pursuant to Section 3105.42 of the District of Columbia Zoning Regulations and make comments and recommendations thereon to the Board.

(r) Manage the affairs of the Redevelopment Land Agency to the extent authorized by this Plan.

(s) Serve as Model Cities Administrator, State Historic Preservation Officer for the District of Columbia, Administrator of Section 109.10, D.C. Building Code, providing for delay in alteration and demolition of architecturally or historically significant properties, the Mayor's second alternate on the NCPC, the Mayor's first alternate on the NCPC's Housing and Urban Renewal Committee, member of the National Capital Planning Commission's (NCPC) Coordinating Committee, Chairman of the Relocation Advisory Committee, the Urban Renewal Operations Committee and the Building Code Advisory Committee, and Coordinator of the Fort Lincoln New Town Urban Renewal Project (CO 72-223).

(t) Present, at the direction of the Mayor, plans, budgets and proposed programs of the District pertaining to housing and community development to the Council of the District of Columbia, Congressional Committees, Federal agencies, the Metropolitan Washington Council of Governments, and other entities.

4. *Transfer of functions and delegated authorities respecting the District of Columbia Redevelopment Land Agency.* The powers, duties and functions of the District of Columbia Redevelopment Land Agency, as set forth in D.C. Code 5-701 through 5-737, are transferred to the Director of the Department of Housing and Community Development, except as herein provided.

The Board of Directors of the Agency established pursuant to D.C. Code 5-703 shall continue to have full powers and duties with respect to the selection of any lessee or purchaser of real property acquired or to be

acquired by the Agency. The Board shall also continue to have full powers and duties with respect to the adoption of resolutions and the execution of financial documents on behalf of the Agency in connection with the issuance or redemption of any bonds or notes issued or to be issued on behalf of the Agency. All proposed issuances shall be approved by the Mayor, or his designee.

The functions of adopting, prescribing, amending and repealing bylaws, rules and regulations for the exercise of the powers of the Board or governing the manner in which the Agency's business may be conducted, which have been transferred under Reorganization Plan No. 4 of 1968, are transferred to the Director of the Department of Housing and Community Development.

During the absence or disability of the Director, or in the event of a vacancy in the Office of the Director, such Acting Director as may be designated by the Mayor or such subordinate officer of the Department as may be designated by the Director, shall exercise the powers, duties and functions of the District of Columbia Redevelopment Land Agency that are transferred to the Director by this plan.

5. *Transfer of functions and delegated authorities respecting the National Capital Housing Authority.* The powers, duties and functions of the National Capital Housing Authority, as set forth in the District of Columbia Alley Dwelling Act, as amended (D.C. Code 5-103 through 5-117), are transferred to the Director of the Department of Housing and Community Development, who shall serve as the Authority. In carrying out his functions as such Authority, the Director shall be known as the "National Capital Housing Authority." Such Authority shall be deemed a continuation of the Authority designated under Presidential Executive Order 6868 of October 9, 1934, as amended. During the absence or disability of the Director, or in the event of a vacancy in the Office of the Director, such Acting Director as may be designated by the Mayor or such subordinate officer of the Department as may be designated by the Director, shall act as the Authority.

6. *Transfer of functions and delegated authorities relating to the Office of Housing and Community Development.* The powers, duties and functions of the Director of the Office of Housing and Community Development, as set forth in Commissioner's Orders No. 74-143 of June 29, 1974, [Organization Order No. 45], No. 74-182 of August 21, 1974, No. 74-189 of September 6, 1974, No. 74-201 of September 25, 1974, and No. 74-233 of November 12, 1974, are transferred to the Director of the Department of Housing and Community Development. The Office of Housing and Community Development is abolished.

7. *Transfer of functions and delegated authorities relating to the Department of Economic Development.* The powers, duties and functions of the Director of the Department of Economic Development, as set forth in Commissioner's Order No. 69-96 of March 7, 1969, as amended, relating to the administration and enforcement of the building and housing codes and the zoning laws and regulations are transferred to the Director of the Department of Housing and Community Development, except as herein provided. The functions relating to the issuance of licenses, permits and certificates in connection with the administration of such codes, laws and regulations shall remain vested in the Director of the Department of Economic Development.

In addition, the powers, duties, and functions of the Director of the Department of Economic Development relating to the provision of administrative staff for the Board for the Condemnation of Insanitary Buildings and the Condemnation Review Board, the administration and enforcement of laws and regulations governing the abatement of nuisances under D.C. Code Sections 5-313 through 5-315 (relating to unlawful conditions); Sections 5-501 through 5-508 (relating to unsafe structures); and Section 6-902 (relating to removal of weeds on residential properties in accordance with Commissioner's Order No. 73-80) are transferred to the Director of the Department of Housing and Community Development. The powers, duties, and functions of the Director of the Department of Economic Development, as set forth in Commissioner's Order No. 70-301 of August 11, 1970; No. 72-174 of July 7, 1972; No. 73-73 of March 28, 1973; No. 73-168 of July 13, 1973; and No. 73-286 of December 14,

1973, are transferred to the Director of the Department of Housing and Community Development.

8. *Services to be provided by other agencies.* The Director of the Department of Economic Development shall provide automated data processing services to the Department of Housing and Community Development for the conduct of its building and housing code enforcement activities. The Corporation Counsel shall perform the functions of general counsel for the Redevelopment Land Agency and the National Capital Housing Authority, which functions are transferred to the Corporation Counsel.

9. *Organization.* The Director of the Department of Housing and Community Development, in the performance of the functions assigned to him, is authorized to establish such organizational components with such specified functions as he deems appropriate.

10. *Repeal of previous Orders.* (a) Commissioner's Order No. 68-376 of May 22, 1968, is hereby repealed and those other Orders, or parts of Orders, in conflict with the provisions of this Plan, are to the extent of such conflict, hereby repealed.

(b) Organization Order No. 102, establishing the Board for the Condemnation of Insanitary Buildings (Commissioner's Order No. 54-2034), as amended, is further amended (1) by striking paragraph B in Part I and inserting in lieu thereof the following new paragraph B:

"B. The Board for the Condemnation of Insanitary Buildings shall consist of six members, each of whom shall serve at the pleasure of the Mayor; one representative of the Department of Housing and Community Development, who shall serve as Chairman; a representative of the Department of Economic Development; a representative of the Department of General Services; and three representatives of the Department of Environmental Services."; and,

(ii) by striking the term "Department of Licenses and Inspections" wherever it appears and inserting in lieu thereof the term "Department of Housing and Community Development".

(c) Organization Order No. 9, appointing Contracting Officers (Commissioner's Order No. 68-399), as amended, is further amended by striking clause (4) in paragraph A in Part I and inserting in lieu thereof "(4) Director, Department of Housing and Community Development";.

11. *Transfer of funds and other resources.* All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the above functions, other than the functions transferred to the Corporation Counsel, are transferred to the Director of the Department of Housing and Community Development, except that real property titled in the name of the District of Columbia Redevelopment Land Agency shall remain so vested. All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions of the General Counsel and legal staffs of the Redevelopment Land Agency and the National Capital Housing Authority are transferred to the Corporation Counsel, who is authorized to establish such organizational components within that Office with such specified functions as may be deemed appropriate. Pursuant to the provisions of Public Law 93-198, section 713 [D.C. Code, § 1-131 note], all positions and personnel transferred herein which are in the competitive service shall retain such status and continue to be subject to all rules and regulations governing the competitive service until such time as the D.C. Government merit system is established in accordance with section 422 of Public Law 93-198 [D.C. Code, § 1-162].

12. *Effective Date.* The provisions of this Plan shall become effective pursuant to the requirements of Section 422(12) of Public Law 93-198 [D.C. Code, § 1-162(12)].

MAYOR'S STATEMENT

PRESENT PROBLEM

The need for more effective coordination of the District's housing and community development functions, as well as the associated reduction in administrative costs, has long been recognized. These problems were identified by the Commission on the Organization of

the Government of the District Government (the Nelsen Commission) as well as by the Special Citizens Advisory Commission on Urban Renewal.

The *Redevelopment Land Agency (RLA)* is responsible for executing Urban Renewal Plans that have been adopted by the National Capital Planning Commission and approval by the District of Columbia Council after public hearings in accordance with the D.C. Redevelopment Act, as amended.

The *Office of Housing and Community Development* is charged with:

(A) identifying the current and future housing and community development needs of the District of Columbia;

(B) developing a strategy for best meeting those needs; and

(C) ensuring the planning and coordination of programs, projects and other activities necessary to carry out that strategy.

The *National Capital Housing Authority* is responsible for the management of the more than 11,800 dwelling units which comprise the District of Columbia's public housing stock and, in addition, is responsible for the development and identification of new housing resources.

The *D.C. Model Cities Program* carries out a combined program of housing and economic development and related social support services in a selected area (Service Area Six) of the District, as authorized and funded by the Demonstration Cities and Metropolitan Development Act of 1966.

The *Housing, Zoning and Building Code Enforcement Bureau of the Department of Economic Development* is responsible for providing community protection through an extensive program of examining buildings—structures, equipment, and plans for compliance with applicable D.C. codes.

PLAN TO ESTABLISH A DISTRICT OF COLUMBIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

This plan consolidates the activities of a number of offices and agencies: the Office of Housing and Community Development, the D.C. Redevelopment Land Agency, the National Capital Housing Authority, the Model Cities Commission, and the Housing, Building, and Zoning Divisions of the Department of Economic Development. These functions are placed in a single Department under a Director who, in addition, is designated as the National Capital Housing Authority and who is also delegated authority to prescribe the by-laws, rules, and regulations which govern the exercise of the powers of the Redevelopment Land Agency. Staff support services for the Board for the condemnation of Insanitary Buildings, the Condemnation Review Board, the Relocation Advisory Committee, the Urban Renewal Operations Committee, the Building Code Advisory Committee, and the Mayor's Advisory Committee on Fort Lincoln are also to be provided by the Department.

The need for more effective coordination and less administrative complexity is expected to be achieved by the unification of the above functions.

A) *Objective One: A consolidated housing and community development effort:* The Department of Housing and Community Development will provide the central focus for directing programs that encompass all housing and community development within the District.

B) *Objective Two: A more efficient utilization of Resources:* By consolidating presently fragmented functions, economies could be achieved by reducing overlap and duplication of effort, newly-formed functions can be funded by a redirection of present resources.

C) *Anticipated Benefits to be accrued by Reorganization Plan No. 3:*

Near-term:

1. A central entity within the District to address issues affecting overall city-wide community development.

2. Closer coordination and planning of priorities.

3. Expansion of technical and professional staff within existing resources.

4. Greater flexibility for applying available resources to program needs.

5. A more efficient utilization of available professional, technical and administrative staff skills.

Long-term:

- 1. Program expansion through redirection of existing resources and through normal employee turnover.
- 2. Cost savings by consolidating administrative functions such as personnel, finance, procurement and computer services.

ELEMENTS OF REORGANIZATION PACKAGE

The supplements of this Reorganization Plan No. 3 of 1975 are attached as follows:

- A. *Organization Chart*: This chart outlines the structure of the new Department.
- B. *Functional Statement*: A list, keyed to the chart, of the functions of the principal units.
- C. *Schedule of Existing Positions*: The first purpose of this printout is to indicate the tentative arrangement of positions along functional lines within the Department. This is not a proposed realignment. The second purpose is to list every position, filled or not, the grade, salary, job title, and the source of funding.
- D. *Reorganization Process Timetable*: The timetable for full implementation of the desired reorganization.

CONCLUSION

It is my belief that this Reorganization Plan will substantially improve the capability of the District Government to plan, coordinate, and carry out its housing and community development program.

REORGANIZATION ORDERS OF THE BOARD OF COMMISSIONERS OF THE DISTRICT OF COLUMBIA

REORGANIZATION ORDER NO. 36.—MINIMUM WAGE AND INDUSTRIAL SAFETY BOARD

Reorg. Ord. No. 36, C.O. 302,853/14, June 16, 1953, as amended Sept. 20, 1956, July 14, 1960, Sept. 20, 1960, Jan. 7, 1966, Feb. 7, 1967, and Feb. 1, 1973, ordered that:

* * * * *

PART VI

Payment and collection of wages.—A. The Board shall administer the Act to provide for the payment and collection of wages in the District of Columbia, Public Law 953, 84th Congress, 2d Session (§§ 36.601 to 36.610). This authority shall include, but not be limited to, the following functions:

- 1. To develop and propose to the Board of Commissioners any regulations that may be necessary.
- 2. To investigate and hold hearings on any alleged violations, including claims that wages have not been paid in accordance with the act, and that such unpaid wages constitute enforceable claims against employers.
- 3. In its discretion, upon request of an employee, to take an assignment in trust of wages found by the Board to be due, together with any claim for liquidated damages. Upon such assignment, the Board shall have power to settle and adjust any such claim or claims on such terms as it may deem just or to initiate appropriate legal action.
- 4. To administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceedings before it.

B. The Board shall administer and enforce the provisions of section 16-584 of the D.C. Code prohibiting the discharge from employment of an employee because of garnishment proceedings, and shall advise employees of their rights and responsibilities under the garnishment laws of the District. The Board is further delegated the authority to issue regulations establishing the maximum amounts of disposable wages earned by employees during pay periods other than weekly pay periods, pursuant to section 16-572(2) of the D.C. Code.

* * * * *

REORGANIZATION ORDER NO. 43.—DEPARTMENT OF INSURANCE

Reorganization Ord. No. 43, G. F. No. 36-000, June 23, 1953, as amended Aug. 28, 1962, Mar. 5, 1965, Aug. 12, 1968, Oct. 15, 1973, and Nov. 6, 1974, ordered that:

* * * * *

PART VIII

A. There is delegated to the Superintendent of Insurance the function, now vested in the Board of Commissioners by the Act of May 17, 1932 (47 Stat. 158, ch. 189, § 35-204, D.C. Code, 1961 ed. [now 1973 ed.]), of granting or denying to insurance companies permission to remove from the District of Columbia the principal office, books, records, and files of such companies.

B. There are delegated to the Superintendent of Insurance the functions vested in the Commissioner of the District of Columbia by the District of Columbia Insurance Placement Act (Title XII, Housing and Urban Development Act of 1968, approved August 1, 1968; Public Law 90-448) [D.C. Code, § 35-1701 et seq.].

The Superintendent of Insurance is hereby authorized to redelegate all or part of such functions as, in his judgment, may be necessary in the interests of efficient administration.

C. The Superintendent of Insurance is authorized to perform the duties and functions vested in the Commissioner of the District of Columbia by the District of Columbia Insurance Guaranty Association Act (Title I of the District of Columbia Insurance Act; Public Law 93-89) [D.C. Code, § 35-1801 et seq.].

D. The Superintendent of Insurance is authorized to perform the duties and functions vested in the Commissioner of the District of Columbia by the District of Columbia Holding Company System Regulatory Act (Pub. L. 93-388) [D.C. Code, § 35-1901 et seq.].

The Superintendent of Insurance is hereby authorized to redelegate all or part of such functions as, in his judgment may be necessary in the interest of efficient administration.

2. The function delegated by this Part may not be redelegated to other officials or employees of the Department of Insurance, and is subject to withdrawal or modification at any time.

REORGANIZATION ORDER NO. 50.—OFFICE OF THE CORPORATION COUNSEL

Reorg. Ord. No. 50, LS 4240-B, June 26, 1953, as amended June 6, 1955, Feb. 10, 1956, Aug. 30, 1956, Oct. 18, 1956, Feb. 4, 1958, Mar. 13, 1958, June 7, 1960, Nov. 3, 1967, Dec. 18, 1967, Oct. 28, 1968, May 25, 1970, Oct. 6, 1970, Oct. 23, 1970, Jan. 25, 1973, and Dec. 28, 1973, ordered that:

* * * * *

PART II

Organization.—The Office of the Corporation Counsel shall be comprised of the following organizational components, responsible for the performance of the functions outlined:

* * * * *

B. [Repealed.]

* * * * *

G. *Special Assignments Division.*—Contains the following sections:

I. *Administrative Law Section.*—Performs all legal work, except litigation in the courts, in connection with the District of Columbia Government personnel matters and in connection with contractual relationships of the District Government with the Federal and State Governments and agencies thereof, as well as with private persons and organizations.

Furnishes legal advice to the various departments, boards, commissions, committees and agencies of the District of Columbia on matters relating to their duties, powers and activities, including the trial of matters arising before boards, commissions, and committees. Collaborates with Civil Proceedings Division in court litigation arising out of any of the foregoing. Prepares formal written opinions upon any of the foregoing matters. Assists in preparing legislation, and comments and reports on legislation both pending and proposed in relation to any of the foregoing matters.

Performs such additional duties, in the nature of special assignments and otherwise, as are prescribed, from time to time, by the Corporation Council or the Principal Assistant Corporation Counsel.

II. Public Utilities Section.—Performs the function of the Corporation Counsel as General Counsel for the Public Service Commission.

Represents and appears for the Public Service Commission in all legal, administrative, and procedural matters affecting the operation and regulation of public utilities in the District of Columbia.

Advises the members of the Public Service Commission on legal, technical and procedural matters relating to their duties and powers.

Reviews and prepares reports upon proposed legislation affecting public utilities operating in the District of Columbia.

III. Environment & Consumer Section.—Performs all legal work, including preparation and trial of civil litigation, pertaining to the environment, public health, and consumer protection; assists in appeals and criminal prosecutions pertaining to the environment, public health and consumer protection.

Represents the public interest of the District of Columbia before Federal and State administrative agencies.

Initiates and conducts litigation in various courts to protect the public interests of the District of Columbia.

Assists in preparing legislation pertaining to the environment, public health, and consumer protection.

Performs such additional duties as are prescribed, from time to time, by the Corporation Counsel, Principal Assistant Corporation Counsel or the Chief, Special Assignments Division.

I. Special Litigation Division.—Prepares and tries cases, and performs related legal duties in connection with the following: injuries to wards of the Department of Human Resources; recoupment of monies paid out by that Department in the form of public assistance; matters relating to mental health and mental retardation and the collection of maintenance costs for mentally ill and mentally retarded persons committed at District expense to District institutions; and the transfer of prisoners who becomes mentally ill while serving sentence in a District facility.

Investigates and takes necessary action to collect accounts of mental health patients and District of Columbia General and Glenn Dale Hospital accounts; prosecutes minimum wage and wage collection cases; represents interest of District of Columbia in hospital liens filed by public and private hospitals.

Performs all legal work involved in representing the interests of the District of Columbia in probate and escheat cases. Applies for administration and acts as administrator on behalf of the District of Columbia in any estate in which the assets consist solely of personal property valued at more than \$500.00, but less than \$5,000.00, and in which the District of Columbia is the principal creditor of said estate by reason of services rendered or expenditures made by the District of Columbia. All funds so collected shall be deposited into Miscellaneous Trust Fund Account (by individual estate), to be thereafter disbursed by the Disbursing Officer, Finance Office, upon direction of the Administrator; provided that such disbursements, exclusive of administration expenses, shall be in accordance with the final order of the Superior Court of the District of Columbia.

Prepares and argues cases arising under the Reciprocal Enforcement of Support Act [D.C. Code, § 30-301 et seq.]; prepares and tries civil actions to establish paternity and provide support, civil actions for nonsupport, and proceedings relating to intrafamily offenses.

Assists in preparing legislation pertaining to Special Litigation Division matters.

Performs such additional duties, in the nature of special assignments and otherwise, as are prescribed from time to time by the Corporation Counsel or the Principal Assistant Corporation Counsel.

REORGANIZATION ORDER NO. 55.—DEPARTMENT OF LICENSES AND INSPECTIONS

[Functions as stated in Reorg. Ord. No. 55 were transferred to the Director of the Department of Economic

Development by Commissioner's Order (Organization Action) No. 69-96, dated Mar. 7, 1969, as amended.]

Reorganization Ord. No. 55, L.S. 4263-B, June 30, 1953, as amended Aug. 13, 1953, Dec. 17, 1953, June 30, 1954, Oct. 26, 1954, Aug. 11, 1955, Jan. 31, 1956, July 10, 1956, Oct. 2, 1956, Oct. 16, 1956, June 13, 1957, Nov. 27, 1957, July 22, 1958, June 1, 1960, Feb. 21, 1961, Nov. 7, 1961, Dec. 4, 1962, May 12, 1964, June 17, 1965, Mar. 16, 1967, Feb. 28, 1969, Oct. 3, 1973, ordered that:

PART III

Organization and functions.—There are established in the Department of Licenses and Inspections the following organizational components, responsible for the performance of the functions outlined below consistent with the purpose specified above:

G. [Rescinded. See Organization Order No. 40.]

ORGANIZATION ORDERS OF THE BOARD OF COMMISSIONERS OF THE DISTRICT OF COLUMBIA

Org. Ord.
Nos.

137. Public Welfare Advisory Committee on Day Care [Amended and redesignated as Org. Ord. No. 201].

146. Relocation Advisory Committee [Rescinded and replaced by Org. Ord. No. 39].

ORGANIZATION ORDER NO. 105.—DEPARTMENT OF MOTOR VEHICLES

[Functions related to the Department of Motor Vehicles as set forth in Org. Ord. No. 105 were transferred to the Department of Transportation by par. A of part IV of Reorg. Plan No. 2 of 1975.]

Organization Ord. No. 105, 55-885, May 17, 1955, as amended June 10, 1958, Sept. 9, 1958, May 19, 1959, Nov. 7, 1961, June 24, 1965, and Oct. 12, 1973, ordered that Organization Order No. 105, C.O. No. 65-847, June 24, 1965, be replaced and rescinded as follows:

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is hereby ordered that:

1. **Establishment.**—There is hereby established in the Government of the District of Columbia a Department of Motor Vehicles, headed by a Director, who is authorized to perform and is responsible for the functions prescribed herein. He further is authorized to redelegate all or part of each such function as, in his judgment, is in the interest of effective, efficient and economical administration. In the performance of those functions for which he is responsible, the Director is authorized to establish such organizational components with such specified functions as he deems appropriate.

2. **Purpose.**—To protect lives and property and promote highway safety in the District of Columbia in accordance with established motor vehicle and related laws, regulations, District objectives and public policy.

3. **Functions.**—The Director of the Department of Motor Vehicles shall:

a) Develop for the approval of the Mayor-Commissioner legislation regulations, programs and policies for improving highway safety; for regulation of vehicles, vehicle owners, operators and dealers, and pedestrians; and for provision of related services.

b) Act as "Governor's (Mayor-Commissioner's) Representative" to plan, coordinate and administer a District-wide highway safety program, in accordance with provisions of the Highway Safety Act of 1966, as amended (23 USC 401 et seq.), and advise and assist the Mayor-Commissioner in matters of highway safety.

c) Represent the District in organizations that initiate or influence national highway safety policies, vehicle safety standards, and traffic regulations; and in relations with other jurisdictions, agencies and organizations in matters relating to administration of departmental functions; and in negotiation of reciprocal agreements and compacts with other jurisdictions, pursuant to a provision of the District of Columbia Traffic Act of 1925, as amended (D.C. Code 40-303).

d) Administer non-resident employer process service provisions of the District of Columbia Unemployment Compensation Act, as amended (D.C. Code 46-305).

e) Direct activities of the District's Civil Defense Emergency Transportation Service.

f) Conduct traffic safety education programs, and develop and administer public support projects and activities to achieve District and departmental objectives and promote highway safety throughout the Metropolitan Area.

g) Conduct research and development activities directed toward improving highway safety in the District of Columbia (with related contributions to national highway safety), increasing the effectiveness of departmental functions, and for such other purposes as the Mayor-Commissioner may direct.

h) Establish driver qualification standards and conduct programs for driver licensing and control.

i) Administer provisions of the Owner's Financial Responsibility Act (D.C. Code 40-417 to 498) and the Motor Vehicle Safety Responsibility Act (D.C. Code 40-417 et seq.).

j) Conduct programs for vehicle titling and registration, establish criteria for proof of vehicle ownership, and exercise regulatory control of motor vehicle and trailer dealers.

k) Establish vehicle condition safety standards and conduct vehicle inspection programs.

l) Establish public-vehicle-for-hire driver qualification standards, and conduct programs for licensing and control of drivers of public-vehicle-for-hire pursuant to Commissioner's Order No. 69-670, paragraph 2, dated December 24, 1969.

m) Administer public-vehicle-for-hire licensing and insurance programs as agent for the Public Service Commission pursuant to Commissioner's Order No. 69-670, paragraph 3, dated December 24, 1969, and Public Service Commission Order Number 5415 dated December 24, 1969.

n) Conduct programs to ensure public compliance with departmental Orders and with departmental requirements related to the performance of its functions.

o) Operate and maintain permanent and seasonal special-purpose buildings and facilities—such as the District's vehicle safety inspection stations.

p) Develop and justify annual and special budgets; conduct a variety of administrative and automated data processing support services and a management improvement program; and administer management and technical activities affecting the collection of District revenue and the control of departmental resources, including appropriations, special funds, and grant and contract funds.

4. *Transfer*.—There are hereby transferred to the Department of Motor Vehicles all positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available or to be made available, relating to above functions, assigned to the Department as it existed immediately prior to the effective date of this Order.

5. *Rescission*.—Organization Order No. 105 (Commissioner's Order No. 65-847), dated June 24, 1965, is hereby replaced and rescinded.

ORGANIZATION ORDER NO. 112.—BOARD OF APPEALS AND REVIEW

Organization Ord. 112, 55-1500, dated Aug. 11, 1955, as amended July 12, 1960, Aug. 9, 1960, Dec. 15, 1960, Apr. 25, 1961, Mar. 15, 1962, Dec. 4, 1962, Apr. 13, 1965, Mar. 7, 1968, Aug. 6, 1968, Sept. 24, 1971, and Dec. 12, 1973, ordered that:

A. *Establishment and Purpose*.—Pursuant to the authority vested in the Commissioner under Reorganization Plan No. 3 of 1967 (D.C. Code, 1967, Title I, Administration, Appendix), the Board of Appeals and Review (hereinafter referred to as the "Board") is hereby established as an administrative agency in the District of Columbia Government to provide a final administrative remedy in cases under its jurisdiction.

B. *Composition, Qualifications, Tenure of Board Members*.—

1. The Board shall consist of twenty-five members appointed by the Commissioner, of which:

a. Eight shall be full-time employees of the District of Columbia Government, of Grade GS-13 or higher (here-

inafter referred to as "District Members"), but no such member shall be an employee of the Office of the Corporation Counsel. District Members shall receive no additional compensation for work performed by virtue of their appointment or service as members of the Board.

b. Sixteen shall be intermittent employees of the District of Columbia (hereinafter referred to as "Public Members"), each of whom resides in said District or owns in his own name real property therein, eight of whom shall have been admitted to the practice of law before the District of Columbia Court of Appeals and shall have had at least five years of experience in the active practice of law in the District of Columbia (hereinafter referred to as "Legal Members").

c. One shall be the Chairman of the Board, who shall possess such qualifications as the Commissioner deems appropriate for the position which shall be full-time and salaried.

2. The Commissioner shall appoint a Vice-Chairman who shall exercise the powers, authorities and functions of the Chairman whenever the Chairman is unavailable. The Vice-Chairman may be any member of the Board, or may be a District of Columbia official not otherwise a member of the Board.

3. With the exception of the Chairman, and the Vice-Chairman in the event that he is not otherwise a member of the Board, the term of each member of the Board shall be three years. Every vacancy shall be filled only for the unexpired portion of the term. After the expiration of his term, each member shall continue to serve until his successor has been appointed and has taken the oath of office. Members shall be appointed and may be removed by the Commissioner, but no person who has served continuously for six years or more as a member of the Board shall be reappointed as a member until the expiration of one year from the end of such service.

4. Every member of the Board shall take the following oath of office:

"I, -----, having been duly appointed by the Commissioner as a member of the Board of Appeals and Review, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of the said Board to the best of my ability without fear or favor; that I will administer justice without respect to persons, or to their race, creed, color, national origin, religion, sex, or age; that I will do equal right to the poor and to the rich; and, that I will well and faithfully discharge said duties, so help me God."

C. *Organization of the Board*.—1. The Board shall consist of a Chairman, Vice Chairman, Hearing Committees, and such administrative, secretarial, stenographic and clerical positions and personnel as may be appropriate for the performance of the functions of the Board.

2. *Hearing Committees*.

a. *Three Member Hearing Committees*. Except as provided otherwise herein, each Hearing Committee shall consist of three members of the Board. One such member shall be a Legal Member, or in the alternative, shall be the Chairman. The Legal Member or the Chairman shall be the Presiding Member of the Committee. One such member shall be a District Member of the Board, but no such District Member shall be a member of said Committee which hears on appeal from an action by an officer or employee or any department or office in which he is employed. Except in the case of a Single Member Hearing Committee as designated in C, 2, b herein, a quorum of a Hearing Committee shall be all three members thereof, but decisions and other actions of the Committee may be by majority vote.

b. *Single Member Hearing Committees*.

[1] In "Class A cases," and in "Class B cases," as designated in Section D herein, the Chairman may designate and assign to Single Member Hearing Committees such cases as he deems, in the public interest, to require a decision on an expedited or emergency basis. Such Committee shall consist of a Legal Member, or in the alternative, the Chairman.

[2] Upon the agreement by and between the Chairman and all the parties to a case before the Board, not assigned to a Single Member Hearing Committee, such case may be

heard by a Single Member Hearing Committee consisting of a Legal Member, or in the alternative, the Chairman.

D. Functions of the Board.—

1. Except as provided otherwise herein, all powers, functions, and authority of the Board shall be exercised by the Hearing Committees of the Board, whose decisions and other actions shall be deemed actions of the Board.

2. Subject to the provisions of the second paragraph of paragraph II(a) of Reorganization Order No. 50, as amended, each Hearing Committee shall exercise the following functions:

a. Conduct proceedings, make decisions and take other action as is appropriate in cases assigned to it, to include sustaining, reversing, or modifying the action from which an appeal is taken, and when appropriate, dismissing the appeal or remanding the case for further consideration. Such proceedings shall be governed by the District of Columbia Administrative Procedure Act (D.C. Code, sections 1-1501 to 1-1510).

b. File with the Chairman correspondence, pleadings, documents, findings of fact, conclusions of law, and decisions or other actions which it takes in the cases before it.

c. When it desires in any case before it, request through its Presiding Member, directly of the Corporation Counsel, his opinion in any question of law, or his assistance in putting into proper form its findings of fact, conclusions of law, and decision.

d. Affirmatively respond to the request of the Chairman to expedite or to hear and decide on an emergency basis any case designated to it by the Chairman.

e. In appropriate cases, request the Chairman to issue subpoenas or to direct a witness to testify, as provided for in F, 3 herein.

f. Through its Presiding Member, administer oaths to witnesses testifying in cases before it as provided in F, 3 herein.

3. Subject to the provisions of paragraph II(a) of Reorganization Order No. 50, as amended, the Chairman shall exercise the following functions:

a. Supervise the flow, and insure the prompt disposition of cases before the Board, and expedite or have heard and decided on an emergency basis, those cases which he deems it appropriate to so do.

b. Designate the members of the Hearing Committees. Where Single Member Hearing Committees are utilized under C, 2b, (2) herein, designate the members of such Committees only after the agreement thereunder to use such Committees has been entered into, and without prior disclosure of the members to be so designated.

c. Act for the Board in matters arising prior to hearings before the Hearing Committees.

d. Upon the request of the Presiding Member of a Hearing Committee, but only when he deems it appropriate, require the attendance and testimony of witnesses, and the production of documents, as provided for in F, 3 herein.

e. Administer oaths to witnesses in cases before the Board as provided in F, 3 herein.

f. Transmit to the parties in cases before the Board all appropriate correspondence, pleadings, documents, and actions of the Board.

g. Be responsible for the overall administrative, fiscal and housekeeping functions of the Board.

h. Perform any and all other functions which the Commissioner may assign to him.

E. Jurisdiction of the Board.—

1. The Board, through the Hearing Committees, shall consider appeals from decisions in the following types of cases in which error is alleged, and make a final administrative determination sustaining, reversing, or modifying the action from which the appeal is taken or, when appropriate, dismiss the appeal or remand the case for further consideration:

Class A cases. Appeals from decisions of the Director of the Department of Economic Development under the Housing Regulations; and, appeals by persons directed by responsible officials of such Department to act or refrain from acting in accordance with inspectional or regulatory requirements (excluding dangerous and unsafe structures and excavations).

Class B cases. The Board, in its consideration of appeals from decisions of the Director of the Department

of Economic Development under the Housing Regulations and under Section 640 of Article 6 of the Building Code may in its discretion grant variances as authorized by the Housing Regulations and Section 640 of Article 6 of the Building Code and shall, in addition, consider and make final decisions on cases under consideration for the granting of a variance as authorized under the Housing Regulations and under Section 640 of Article 6 of the Building Code that may be referred without final determination by the Director of the Department of Economic Development.

Class C cases. Appeals submitted by applicants for or holders of licenses, permits and certificates, from actions taken by responsible officials of the Department of Economic Development with respect to denial, suspension or revocation of a license, permit, or certificate: Provided, that in any case in which a license may issue only with the approval of the Chief of Police, the Board of Appeals and Review shall have authority to set aside the decision of the Department of Economic Development whenever such decision is based upon an adverse recommendation of the Chief of Police, which recommendation the Board of Appeals and Review finds is arbitrary, capricious, or not supported by substantial evidence.

Class D cases. Applications for review, pursuant to the Motor Vehicle Safety Responsibility Act of the District of Columbia (D.C. Code, Sections 40-401 through 40-498), of orders issued or actions taken under such Act.

Class E cases. Appeals from decisions of the Police and Firemen's Retirement and Relief Board filed with the Board of Appeals and Review on or before May 31, 1974, after which date the decisions of the Police and Firemen's Retirement and Relief Board will constitute final administrative action.

Class F cases. Such other matters as the Commission may assign to the Board.

2. The Board shall not have jurisdiction to review and comment upon the recommendation of any agency subject to subsequent agency action, and shall not have jurisdiction to render advisory opinions to such agency.

F. Procedure.—

1. Except as provided otherwise herein, the Corporation Counsel shall prescribe and amend the rules governing the practice and procedure of the Board, including the establishment of the limitations where not otherwise set forth, and the method by which appeals are to be noted with the Board.

2. Upon the request of an agency from whose decision or other action, or proposed decision or other action, an appeal from which is within the jurisdiction of the Board, the Corporation Counsel or one of his assistants may represent such agency before the Board.

3. The Board, through the Chairman, shall have the power to require, by the issuance of subpoena or otherwise, the attendant and testimony of persons and the production of books and papers, in any and all matters within its jurisdiction. Upon the failure of any such person to attend as a witness when subpoenaed or otherwise directed by the Chairman, or to testify or to produce documents when subpoenaed or otherwise directed by the Chairman, the Chairman shall have the power to refer the respective matter to the Superior Court of the District of Columbia for such relief as the Court may deem appropriate. The Board, through its Chairman or through the presiding member of any Hearing Committee, shall have the power to administer oaths to witnesses testifying in cases before it.

4. Where the Board has not decided an appeal from the denial of a license application by the end of the license year for which the application was made, and the appellant has made timely application for a license for the new license year, the pending appeal shall not become moot at the end of the license year for which the earlier application was made, but shall be deemed also to be an appeal from the denial of an application for a license for the new license year.

G. *Repeal of Previous Orders.*—All Commissioner's Orders, and other regulatory provisions promulgated by the Commissioner, or parts thereof in conflict with the provisions herein to the extent of such conflict herewith, are hereby repealed.

ORGANIZATION ORDER NO. 122.—DEPARTMENT OF HIGHWAYS AND TRAFFIC

[Functions related to the Department of Highways and Traffic as set forth in Org. Ord. No. 122 were transferred to the Department of Transportation by par. E of part IV of Reorg. Plan No. 2 of 1975.]

ORGANIZATION ORDER NO. 134.—ADVISORY COUNCIL ON VOCATIONAL REHABILITATION

The Advisory Council on Vocational Rehabilitation established by Organization Order No. 134, dated Oct. 11, 1962, has been replaced by the Mayor's Committee on the Handicapped established by Organization Order No. 208, dated Oct. 15, 1976.

ORGANIZATION ORDER NO. 137.—PUBLIC WELFARE ADVISORY COMMITTEE ON DAY CARE

Organization Order No. 137, 63-999, Apr. 18, 1963, as amended May 14, 1963, which established a Public Welfare Advisory Committee on Day Care, was amended in its entirety and redesignated as Organization Order No. 201, dated Apr. 18, 1975.

ORGANIZATION ORDER NO. 146.—RELOCATION ADVISORY COMMITTEE

Organization Order No. 146, 65-339, Mar. 16, 1965, as amended Dec. 21, 1965, and May 19, 1966, which established a Relocation Advisory Committee, was rescinded and replaced by Organization Order No. 39, dated June 26, 1973.

ORGANIZATION ORDERS OF THE COMMISSIONER OF THE DISTRICT OF COLUMBIA

Org. Ord.
Nos.

12. Police and Firemen's Retirement and Relief Board [Repealed and replaced by Org. Ord. No. 48].
15. District of Columbia Commission on Academic Facilities [Rescinded and replaced by Org. Ord. No. 205].
16. Commission on the Arts and Humanities [Repealed].
20. Advisory Committee on the Aging [Abolished].
26. D.C. Spanish Community Advisory Committee [Repealed].
28. Manpower Advisory Committee [Redesignated as Org. Ord. No. 44].
31. Investment Advisory Committee [Rescinded].
34. Mayor's Committee on Nelsen Commission Coordination [Rescinded].
36. Mayor's Policy Coordination Group.
37. Space Management—Space Review Committee.
38. Commission on the Status of Women.
39. Relocation Advisory Committee.
40. Office of Consumer Affairs [Repealed].
41. Cooperative Area Manpower Planning System (CAMPS) Staff.
42. Office of Petroleum Allocation—Departmental Energy Group—Citizens Fuel Conservation Committee.
43. State Advisory Committee for Drug Abuse.
44. Manpower Services Planning Advisory Committee.
45. Office of Housing and Community Development.
46. District of Columbia Department of Manpower.
47. Interdepartmental Committee on Adult Literacy.
48. Police and Firemen's Retirement and Relief Board.
49. Board of Consumer Goods Repair Services.
50. Office of Budget and Management Systems—Municipal Planning Office.
51. Office of Civil Defense.

ORGANIZATION ORDER NO. 2.—EXECUTIVE OFFICE OF THE COMMISSIONER

(Organization Ord. No. 2, Commissioner's Order No. 67-23, Dec. 13, 1967 as further amended Mar. 7, 1968, June 6, 1968, Sept. 30, 1968, Jan. 12, 1970, Mar. 23, 1970, Oct. 25, 1972, Nov. 20, 1972, Nov. 1, 1973.)

PART III

Mayor-Commissioner's Correspondence Unit.—There is also established in the Executive Office of the Commissioner, the Mayor-Commissioner's Correspondence Unit, heretofore a part of the staff of the Secretariat, and there is hereby transferred to the Executive Office of the Commissioner the functions including the duties, powers

and authorities of all officers and employees assigned to, and all positions, personnel, property, records and expended balances of appropriations, allocations and other funds available to the Secretariat for this purpose, as it existed immediately prior to the effective date of this Order.

PART IV

C. Personnel Office.

1. The Personnel Office is responsible for:

b. With respect to all departments of the District of Columbia Government, but consistent with the authority vested by law in the Commissioner, D.C., developing and administering all aspects of a complete personnel management program, including, but not limited to, those relating to position classification, pay administration; employment and placement; separations; training; employee relations; employee management cooperation; performance evaluation; safety; disability compensation; equal employment opportunity programs; special economic opportunity programs; retirement; incentive awards; records and reports. With respect to the responsibility assigned herein the Personnel Officer is delegated specific authority to:

(11) Exercise centralized administrative direction and control of the District Government Unemployment Compensation Program, including the establishment of uniform agency procedures relative thereto, which shall be in consonance with procedures utilized by the District Unemployment Compensation Board in its administration of the District of Columbia Unemployment Compensation Act.

ORGANIZATION ORDER NO. 9.—CONTRACTING OFFICERS

[Functions related to the Department of Highways and Traffic as set forth in Org. Ord. No. 9 were transferred to the Department of Transportation by par. H of part IV of Reorg. Plan No. 2 of 1975.]

(Organization Order No. 9, Commissioner's Order No. 68-399, June 6, 1968, as amended by C.O. No. 68-760, Dec. 4, 1968; C.O. No. 69-184, Apr. 24, 1969; C.O. No. 69-615, Nov. 14, 1969; C.O. No. 71-82, Mar. 16, 1971; C.O. No. 71-293, Aug. 5, 1971; C.O. No. 72-30, Jan. 31, 1972; C.O. No. 72-97, Apr. 18, 1972; C.O. No. 72-176, July 7, 1972; C.O. No. 74-99, June 4, 1974; Mayor's Order No. 75-27, Feb. 5, 1975; Reorg. Plan No. 3 of 1975; M.O. No. 75-261, Dec. 19, 1975; M.O. No. 76-155, Aug. 12, 1976; M.O. No. 76-231, Nov. 10, 1976; M.O. No. 76-232, Nov. 10, 1976; M.O. No. 77-68, Apr. 22, 1977; M.O. No. 77-201, Dec. 8, 1977.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, IT IS ORDERED:

Organization Order No. 9 of June 6, 1968, as subsequently amended, is hereby further amended and reissued in its entirety to read as follows:

PART I

Appointment of contracting officers.—A. The officials occupying each of the following positions are hereby appointed Contracting Officers for the District of Columbia, subject to all applicable laws, rules, regulations, policies, standards, systems and procedures, and such instructions as the Mayor or his designee may from time to time give:

- (1) Director, Department of General Services;
- (2) Director, Department of Transportation;
- (3) Director, Department of Environmental Services;
- (4) Director, Department of Housing and Community Development;
- (5) Chairman of the Board for the Condemnation of Insanitary Buildings;
- (6) Director, Department of Human Resources;
- (7) Director, Department of Corrections;
- (8) Director, Department of Recreation; and
- (9) Director, Department of Manpower.

B. Each Contracting Officer is authorized to redelegate such of the authorities herein delegated to him to other officials under his administrative control to act as Contracting Officers for such purposes and subject to such limitations as he may designate in writing, a copy of

which writing shall be filed in his office and in the office of the Director of the Office of Budget and Management Systems. The Contracting Officer designated in part I, A (1) is authorized to redelegate portions of the authorities herein delegated to him to departments and agencies as in his judgment are warranted for reasons of administrative efficiency and effective management subject to such criteria, standards, and restrictions as he may determine.

PART II

Authority of contracting officers.—A. Each Contracting Officer is authorized to enter into and administer contracts and issue change orders under such contracts on behalf of the District of Columbia, including approval of performance bonds when required, as follows:

(1) The Contracting Officer designated in Part I, A(1) with respect to (a) all supplies, materials, equipment and services for all departments and agencies of the District except as provided elsewhere herein; (b) the acquisition by purchase of real property, demolition of improvements on real property, managing, leasing, outleasing or disposing of real property, and the installation of snack bars and vending facilities on District-owned or leased properties except as provided elsewhere herein; (c) the sale of surplus personal property, supplies, equipment and scrap materials, except as provided elsewhere herein.

(2) Each Contracting Officer designated in Part I, A(1); Part I, A(2); Part I, A(3); and Part I, A(4) with respect to (a) consulting, architect-engineer and construction contracts (including alteration and repair) determined to be necessary for the proper performance of all types or classes of work now and hereafter placed under his supervision; and (b) supplies, materials or equipment, the furnishing of services, or the performance of construction, in amounts not exceeding \$50,000 when the public exigencies require the immediate delivery, furnishing or performance of the same, *Provided* That a certification as to the nature of the emergency and justification for such purchase or contract be made in writing and filed with the Contract Review Committee within seventy-two (72) hours after said purchase or award of said contract.

(3) The Contracting Officer designated in Part I, A(4) with respect to (a) taking down, removing or otherwise making safe unsafe structures or excavations in accordance with the Unsafe Structures Act of March 1, 1899, as amended, Secs. 5-501 to 5-508, D.C. Code, 1973 ed.; (b) construction or installation of means of egress or other appliances in accordance with the provisions of the Means of Egress Act of December 24, 1942, Secs. 5-317 to 5-323, D.C. Code, 1973 ed.; and (c) causing correction of conditions which exist on or have arisen from property in violation of law or any regulation made by authority of law in accordance with Sec. 5-313, D.C. Code, 1973 ed., as amended.

(4) The Contracting Officer designated in Part I, A(5) with respect to repairs, changes or demolition and removal of insanitary buildings in accordance with the Act to Create a Board for the Condemnation of Insanitary Buildings of May 1, 1906, as amended, Secs. 5-616 to 5-631, D.C. Code 1973 ed.

(5) The Contracting Officer designated in Part I, A(6) with respect to contract hospitals and medical vendors and services under the Medical Assistance Program for the District of Columbia (Medicare and Medicaid, Titles XVIII and XIX, Social Security Act).

(6) The Contracting Officer designated in Part I, A(6) with respect to (a) services of a professional, technical and scientific nature provided by institutions or individuals to physically handicapped persons participating in the programs of the department; and (b) appliances or such other specialized items as may be peculiar to the vocational rehabilitation program.

(7) The Contracting Officer designated in Part I, A(7) only with respect to the sale to the various departments of the District of Columbia and Federal Governments, to any State or sub-division of a State, or any Commonwealth, Territory or Possession of the United States, of products and services produced by the Industries Division of the Department of Corrections.

(8) The Contracting Officer designated in Part I, A(6) with respect to small purchases of \$5,000 or less in a

single day from a single open market (non-contract supplier), and \$10,000 or less in a single day from District and Federal schedules, and the installation of snack bars and vending facilities on District-owned or leased properties.

(9) The Contracting Officer designated in Part I, A(8) with respect to contracts with Neighborhood Planning Councils and other community organizations providing maximal community participation in decision-making, in regard to youth programs financed by grant contract, private funds or donations, or funds appropriated for this purpose; provided that the amount of such contract does not exceed \$25,000.

(10) The Director of the Department of Human Resources with respect to those negotiated services which are within the functional responsibility of the Department of Human Resources; to include Determinations and Findings involving Quantum Meruit and Quantum Valebat authorizations.

(11) The Contracting Officer designated in Part I, A. (9) with respect to development, operation, administration and maintenance of comprehensive program of employment and training opportunities under the Comprehensive Employment and Training Act of 1973 (CETA) and under Title IV of the Social Security Act (the WIN Program) provided the amount of the contract does not exceed \$25,000.

(12) The Contracting Officer designated in Part I, A(7) with respect to construction and repair of District Government owned buildings provided the building is under their exclusive control, and the amount of the contract does not exceed \$5,000.00.

B. (1) All contracts and change order shall be subject to the following:

(a) Certification by the Director of the Office of Budget and Management Systems or his designee, that they are correct and proper for payment in the verified amount;

(b) Determination as to legal sufficiency in such manner as meets the requirements of the Corporation Counsel, D.C., and

(c) In the case of each contract in excess of \$5,000,000, approval of the executed formal contract by the Mayor or his designee.

(2) Bids, proposed contracts and proposed change orders coming within the criteria in Part IV (B) (1), (2), (3) and (4) shall be submitted to the Contract Review Committee for review and recommendations as provided in Part IV hereof.

C. (1) The Contracting Officer designated in Part I, A(1) is authorized to determine that capital outlay funds appropriated for public building construction services may be utilized to pay for services by architect-engineer contracts or by departmental personnel, except as elsewhere provided herein.

(2) Each Contracting Officer designated in Part I, A(1); Part I, A(2); Part I, A(3) and Part I, A(4) is authorized to determine whether repair and improvements projects shall be performed under contracts or by department personnel (force account).

(3) The Director of Corrections, D.C., in collaboration with the Director, Department of General Services, or his designee, is authorized to determine the fair market prices to be charged by the Department of Corrections for products and services of the Industrial Enterprises of the D.C. Workhouse and Reformatory. Should the Director of Corrections and the Director of General Services fail to agree as to the fair market price of any such product or services, their respective recommendations, with reason therefor, shall be submitted to the Contract Review Committee for decision.

(4) Whenever 50 per centum of the work required under a contract for construction has been completed and payments therefor have been made, the Contracting Officer may authorize subsequent payments to be made to the Contractor without withholding from such subsequent payments 10 per centum thereof as required by Section 1-807, D.C. Code, 1973 ed. or the said Contracting Officer may authorize retention from such subsequent payments of less than 10 per centum thereof and whenever the work is substantially complete, the Contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the

District of Columbia, may, in his discretion, release to the contractor all or a portion of such excess amount; and the said Contracting Officer may further authorize payment in full, including retained percentages for each separate building or public work on which the price is stated separately in the contract upon completion and acceptance of such building or work.

PART III

The Director of General Services.—The Director of General Services or his designee shall:

A. Collaborate with Contracting Officers in developing and implementing effective contracting procedures which are designed to expedite the work of the Contracting Officers.

B. Perform centralized services in connection with contract administration for departments and offices of the District of Columbia Government, such as advertising for competitive bids, opening and tabulating bids, preparing formal contracts and bonds after awards are made by the authorized Contracting Officer, and assisting in the preparation of all types of contractual documents, except as provided elsewhere herein.

C. Obtain necessary wage rate schedules from the U.S. Department of Labor and notify all Contracting Officers of changes when and as they occur.

D. Represent the District of Columbia Government in all relationships with Federal Agencies concerning procurement matters, including negotiations or agreements for cooperative procurement programs except as provided elsewhere herein.

PART IV

Contract Review Committee.—A. There is hereby established a Contract Review Committee consisting of the following: (1) an Assistant Corporation Counsel and an alternate to be designated by the Corporation Counsel, who shall serve as Chairman; (2) a representative and an alternate representative of the Office of Budget and Management Systems to be appointed by the Director, and (3) one Contracting Officer appointed or provided for herein to be designated by the Chairman. The Chairman of the Contract Review Committee shall select, on a rotating basis, one Contracting Officer or his designated Alternate Contracting Officer, other than the Contracting Officer negotiating the contract or change order under consideration to serve as the third member of the Committee. Whenever the Contract Review Committee is to consider a contract for construction or architect-engineer services, the third member shall be one of the Contracting Officers listed in Part I, A(1); Part I, A(2); Part I, A(3); or Part I, A(6). The Committee shall develop its own procedures for the conduct of business.

B. The Contract Review Committee shall review and make recommendations to Contracting Officers on the following:

(1) Bids regardless of dollar amount where a Contracting Officer proposes to award a contract to a bidder other than the bidder submitting the lowest bid.

(2) Bids regardless of dollar amount where a Contracting Officer proposes to award a contract of a nature which involves a payment to the District where it is proposed to accept other than the highest bid.

(3) Negotiated contracts (except those designated in Part II (A) (1) (b), (A) (4) and A (5) in excess of \$25,000 where such contracts cover personal services, consultant services, architect-engineer services, and any other forms of contract involving negotiations as to price between the Contracting Officer and the Contractor. The Committee shall develop and issue standards and procedures for negotiated contracts and shall review such contracts to assure compliance with established negotiated procedures.

(4) Proposed contract change orders in excess of \$100,000.

(5) Plea of error made by bidder.

(6) Requests of bidders who wish to withdraw bids.

(7) All protests received from bidders or prospective bidders.

C. In those instances where the Committee does not concur in the action recommended by a Contracting Officer and the Contracting Officer concerned does not agree with the recommendations of the Committee, the matter shall be presented by the Committee to the Mayor

or his designee for determination. This procedure shall not be construed to relieve the Contracting Officer of his responsibility for entering into and administering the contract involved.

PART V

Contract Advisory Committee.—A. There is hereby established a Contract Advisory Committee consisting of (1) the Director, Department of General Services, or his designee, who shall serve as Chairman; (2) the Director, Department of Transportation, or his designee, who shall serve as Alternate Chairman; (3) Director, Department of Human Resources and for such other members as the Chairman from time to time shall select from among the various District Government Contracting Officers designated or provided for in Part I hereof. Any three members of the said Committee shall constitute a quorum for the transaction of business. The Committee shall develop its own procedures for the conduct of business.

B. The purpose of the Contract Advisory Committee is to make available to the Mayor, or his designee, and the Contracting Officers appointed by the Mayor, assistance and advice on contracting matters, including the area of contracting authority herein delegated to each Contracting Officer. The Contract Advisory Committee is authorized to make any change in the basic language of the standard contract by a majority vote of such Committee, subject to the approval of the Corporation Counsel.

PART VI

Contract Appeals Board, D.C.—A. There is established a Contract Appeals Board, D.C., consisting of one or more active or retired Assistant Corporation Counsel designated by the Corporation Counsel, one of whom shall serve as Chairman of the Board, and two or more persons appointed or designated by the Mayor from among officers assigned to the Corps of Engineers and detailed to assist the Mayor pursuant to Sec. 503(b) of Reorganization Plan No. 3 of 1967, or from among active or retired District of Columbia officers and employees who have had practical experience in the administration of government contracts. Except as otherwise provided by its rules, all business of the Board shall be conducted by panels of not less than three members at least one of whom shall be active or retired Assistant Corporation Counsel member, but any two members of a panel shall constitute a quorum for the transaction of any business of the Board.

No person shall serve as a member of a panel in the decision of any case in which the appeal has been taken from the action of a Contracting Officer or Alternate Contracting Officer of the department of which he is, or at the time of his retirement was, the Director or an employee, or in which he has participated directly in any aspect of the award or administration of the contract involved.

B. The functions of the Contract Appeals Board shall be to hear, to review, and to decide upon all protests and appeals from actions by Contracting Officers where the Contracting Officer is unable to satisfy the Contractor that the action taken was a proper action, and such other contractual appeals, or classes thereof, as the Mayor may from time to time order. Upon request of the Contractor or of the Contracting Officer, and with the consent of the other, the subject matter of an appeal be remanded to the Contracting Officer, who shall thereupon reconsider his appealed decision, and upon such remand the appeal shall be dismissed. The decision of the Contract Appeals Board in every case shall be final subject to such limitations and review as may be provided by law.

C. The Contract Appeals Board is authorized to prescribe rules of practice and procedure, including the establishment of time limitations and the development of methods of perfecting appeals to it.

D. The Chairman of the Contract Appeals Board shall, from time to time, assign members to panels of the Board, shall be responsible for obtaining the necessary secretarial assistance for the Board and for maintaining centralized custody over all records of the Board, and may, from time to time, designate a member to serve as acting Chairman during his own absence, disqualification or disability.

E. The activities of the Board shall be considered investigations or examinations of municipal matters within the meaning of the Act of July 1, 1902 (D.C. Code, 1973 ed., Sec. 1-237), and the members of said Board shall possess the power vested in the Mayor by said Act of July 1, 1902.

PART VII

Effective date.—The provisions of this Order shall become effective immediately.

ORGANIZATION ORDER NO. 12.—POLICE AND FIREMEN'S RETIREMENT AND RELIEF BOARD

Organization Order No. 12, Commissioner's Order No. 68-531, Aug. 6, 1968, establishing the Police and Firemen's Retirement and Relief Board, was repealed and replaced by Organization Order No. 48, Commissioner's Order No. 74-199, Sept. 29, 1974, to the extent the provisions thereof are in conflict with the latter order.

ORGANIZATION ORDER NO. 15.—DISTRICT OF COLUMBIA COMMISSION ON ACADEMIC FACILITIES

Organization Order No. 15, Commissioner's Order No. 68-617, Sept. 20, 1968, as amended Mar. 7, 1969, establishing the District of Columbia Commission on Academic Facilities, was rescinded and replaced by Organization Order No. 205, Mayor's Order No. 75-23a, Feb. 1, 1975.

ORGANIZATION ORDER NO. 16.—COMMISSION ON THE ARTS AND HUMANITIES

Organization Order No. 16, Commissioner's Order No. 68-737, Nov. 29, 1968, as amended by Comm. Ord. No. 74-4, Jan. 7, 1974, establishing the Commission on the Arts and Humanities, was repealed by section 8 of Act Oct. 21, 1975, D.C. Law 1-22, and replaced by sections 1-7 of that Act which are classified to § 31-1901 et seq.

ORGANIZATION ORDER NO. 18.—CRIMINAL JUSTICE COORDINATING BOARD

(Organization Order No. 18, Commissioner's Order No. 69-135, Mar. 24, 1969, as amended May 14, 1970; Sept. 8, 1970; Sept. 14, 1970; Dec. 14, 1970; July 22, 1971; Mayor's Order No. 77-52, Apr. 1, 1977; M.O. No. 77-52A, Apr. 19, 1977; M. O. No. 78-64, Mar. 16, 1978.)

By virtue of the authority vested in me by Public Law 93-198, 87 Stat. 774, as amended, it hereby is ordered that:

The Criminal Justice Coordinating Board created by Organization Order No. 18, dated March 24, 1969, and amendments thereto, is abolished.

For the purpose of serving the objectives set forth in the Acts of Congress described in Part I hereof, there hereby is re-established as a successor organizational unit in the Government of the District of Columbia a Criminal Justice Coordinating Board (the "Board").

PART I. FUNCTIONS

The Board shall have a supervisory relationship over the State Planning Agency contemplated by the referenced Acts [which shall continue to be known as the Office of Criminal Justice Plans and Analysis ("OCJPA")] and shall review the policies and needs of law enforcement agencies that are responsible for the enforcement of the criminal and the juvenile justice laws applicable in the District of Columbia, advise the Mayor on long-range and immediate law enforcement objectives, goals, policies, and programs, including those under the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 91-644 [42 U.S.C. 3701 et seq.], and the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415 [42 U.S.C. 5601 et seq.], the Crime Control Acts of 1973 and 1976, Pub. Laws 93-83 and 94-503, and amendments thereto, recommend to the Mayor general priorities for the criminal and the juvenile justice systems in the District of Columbia, define, develop, evaluate, correlate, review, and supervise the implementation of programs and projects (including a comprehensive state plan for criminal and juvenile justice) for the purpose of improving the criminal and juvenile justice systems for the District of Columbia, and assist in such other ways as may be necessary and proper to assure the coordination of programs that affect the criminal and juvenile justice systems in the District of Columbia by, inter

alia, assuring the participation of citizens and community organizations, the Judicial Planning Committee and the Juvenile Justice Advisory Group as required by applicable law and coordinating its efforts with those of the Municipal Planning Office with respect to the latter's preparation of the comprehensive plan required by Pub. Law 93-198.

PART II. COMPOSITION AND MEMBERSHIP

The Board shall consist of the following members:

A. *Ex officio members*

1. Corporation Counsel, District of Columbia
2. Chairperson, Committee on Public Safety and Judiciary of the Council of the District of Columbia
3. Chief Judge, District of Columbia Court of Appeals
4. The Executive Officer of the District of Columbia Courts
5. U.S. Attorney for the District of Columbia
6. Chief, Metropolitan Police Department
7. Director, Office of Budget and Management Systems
8. Director, Department of Human Resources
9. Director, Office of Youth Advocacy
10. Director, D.C. Department of Corrections
11. Chairperson, D.C. Board of Parole
12. Director, Public Defender Service
13. Director, D.C. Bail Agency
14. Director, Municipal Planning Office
15. Chairperson of the Juvenile Justice Advisory Group
16. Chief of the Criminal Division, Office of the Corporation Counsel

An alternate may be designated, in writing, for each ex officio member of the Board to act as a member of the Board only in the absence of the ex officio member. Each person designated as an alternate of an ex officio member of the Executive Branch of the District of Columbia shall be the ranking subordinate of the designating member.

B. *Appointed members*

In addition to the above, the membership of the Board shall include at least one judge of the District of Columbia Superior Court and no fewer than eight (8), nor more than twelve (12), citizens of the District of Columbia who are not employed by the government of the District of Columbia. Each such member shall serve for a term of three (3) years pursuant to appointment by the Mayor, except that as to the persons first appointed, the terms of at least two (2) shall be for one (1) year, and as to the remainder the terms of at least three (3) shall be for two (2) years.

Alternates of appointed members shall not be considered Board members, nor shall they be permitted to vote at Board meetings. In the event that an appointed member is absent from three consecutive meetings of the Board the position of that member shall be deemed to be vacant as of the conclusion of the third meeting, and a successor shall be appointed to fill the unexpired term of that member.

PART III. ORGANIZATION

Unless otherwise provided by Order of the Mayor, the Corporation Counsel for the District of Columbia shall serve as Chairman of the Board and may establish such ad hoc committees of the Board as he deems necessary and appropriate. The Vice-Chairman shall be selected by the Board.

There are hereby created an Executive Committee, comprised of nine (9) members of the Board designated by the Mayor, a Planning Committee and a Grants Committee as standing committees of the Board. The Chairman of the Board shall serve as Chairman of the Executive Committee and shall designate the Chairmen and all members of all other committees of the Board, and the Vice-Chairman of the Executive Committee. Between meetings of the Board the Executive Committee may perform such functions for the Board as may be duly authorized by law.

The Planning Committee shall define, develop and evaluate proposed criminal and juvenile justice planning concepts, prepare the proposed comprehensive plan, establish standards for the selection of recipients of such funds and assistance as the Board may be authorized to provide, and perform such other duties as shall be designated by the Chairman of the Board.

The Grants Committee shall develop procedures and standards for the obtaining and the awarding of funds and assistance by the Board, establish and implement standards for and evaluate the use of all funds and assistance provided by or through the Board, recommend to the Board the allocation of funds and assistance, and perform such other duties as shall be designated by the Chairman of the Board.

With the exception of the Executive Committee, membership on committees and subcommittees shall consist of Board members and such other persons as the Chairman of the Board may designate, and each member of the Board may designate a single alternate to serve and vote in that member's stead on each such committee or subcommittee.

PART IV. MEETINGS

The Board shall meet no less frequently than quarterly and at such times as may be decided upon by its Executive Committee or its Chairman. A quorum for the purpose of conducting any business by the Board or any one of its committees or subcommittees shall be a simple majority.

PART V. COMPENSATION

Members of the Board shall serve without additional compensation. However, appropriate expenses may be reimbursed as indicated in Part VI of this Order.

PART VI. ADMINISTRATION

Paragraph 3 of Commissioner's Order No. 70-355 (September 14, 1970) is hereby rescinded and the following is substituted:

The Director of the Office of Criminal Justice Plans and Analysis, subject to the supervision and direction of the Corporation Counsel, shall assure the providing of necessary staff services to the Board, and shall serve as its Executive Director.

Expenses incurred by the Board, or by any of its members, when duly authorized in accordance with District of Columbia regulations and procedures relating to the approval of such funds shall become an obligation against funds designated for that purpose.

Paragraph 3r of Mayor's Order 75-42 [Organization Order No. 50 (Supplement No. 2)] hereby is rescinded. The Office of Criminal Justice Plans and Analysis (the "Office") shall remain as a unit in the Executive Office of the Mayor, but shall no longer be a part of the Municipal Planning Office; and all positions, personnel, property, records, and unexpended funds assigned, available or allocated, respectively, to the Municipal Planning Office with respect to the functions and responsibilities to which paragraph 3r pertained henceforth shall be subject solely to the supervision and control of the Corporation Counsel, and all administrative and personnel support services required with respect to the Office shall be provided by the Executive Secretariat.

PART VII. RESCISSION

Organization Order No. 18 of March 24, 1969, as amended, is rescinded.

PART VIII. EFFECTIVE DATE

This Order shall take effect immediately.

ORGANIZATION ORDER NO. 20.—ADVISORY COMMITTEE ON THE AGING

Organization Order No. 20, Commissioner's Order No. 69-212, May 12, 1969, as amended by Mayor's Order No. 75-67, Mar. 20, 1975, established the Advisory Committee on the Aging. The Committee was abolished by D.C. Law 1-24, Oct. 29, 1975.

ORGANIZATION ORDER NO. 21.—TRAFFIC COORDINATING COMMITTEE

[Functions related to the Department of Motor Vehicles as set forth in Org. Ord. No. 21 were transferred to the Department of Transportation by par. T of part IV of Reorg. Plan No. 2 of 1975.]

ORGANIZATION ORDER NO. 23.—D.C. PUBLIC SPACE COMMITTEE

[Functions related to the Department of Highways and Traffic as set forth in Org. Ord. No. 23 were transferred

to the Department of Transportation by par. U of part IV of Reorg. Plan No. 2 of 1975.]

(Organization Order No. 23, Commissioner's Order No. 69-502, Sept. 3, 1969, as amended Oct. 6, 1971; Dec. 20, 1972; July 13, 1973; Jan. 30, 1975; Mayor's Order No. 77-150, Aug. 31, 1977.)

By virtue of the authority vested in me as Mayor of the District of Columbia, it is hereby ordered that Order of the Commissioner No. 69-502, dated September 3, 1969 (Organization Order No. 23) as amended, is amended to read as follows:

A. Establishment: There is established in the Government of the District of Columbia a D.C. Public Space Committee.

B. Purpose and functions: (1) The Committee is established for the purpose of making final determinations in cases involving the use of public space, exclusive of those involving the permanent closing of streets and alleys, those which have been delegated to the Director, Department of Economic Development in Commissioner's Orders Nos. 72-174 and 68-144, and those involving the use of air space above or below a street or alley under the jurisdiction of the Mayor.

(2) All final determinations by the Committee shall be by a majority of the members present and voting.

(3) The Chairman may take final action on certain routine applications for the use of public space, including but not limited to temporary street closings, use of public space for television or radio purposes, or filming activities, in those instances where because of the circumstances it is not practicable to convene the full Committee in time to take such action, provided, that the Chairman shall report all such actions to the full Committee at its next regularly convened meeting.

C. Composition: (1) The D.C. Public Space Committee shall be composed of the following members:

Director, Department of Transportation, D.C. (who shall serve as Chairman of the Committee).

Director, Department of Environmental Services, D.C.

Director, Department of Economic Development, D.C.

Director, Department of Housing and Community Development, D.C.

Director, Municipal Planning Office, D.C.

An Assistant Corporation Counsel to be designated by the Corporation Counsel, D.C.

(2) Each member of the Committee may be represented at a meeting of the Committee by an alternate designated by him from among his senior assistants to serve on said Committee and such alternate is authorized to exercise at meetings of said Committee all of the powers vested in the member whom the alternate represents.

D. Administration: The Director, Department of Transportation, D.C. shall provide the necessary administrative and staff services required by the Committee.

E. Repeal of previous orders: All Orders of the Commissioner, or parts of such Orders, in conflict with the provisions of this Order, are, to the extent of such conflict, hereby repealed.

F. Effective date: This Order shall be effective immediately.

ORGANIZATION ORDER NO. 24.—ADVISORY COMMITTEE ON EMERGENCY MEDICAL SERVICES

(Organization Order No. 24, Commissioner's Order No. 69-591, Oct. 14, 1969, as amended by C.O. No. 74-137, June 18, 1974; Mayor's Order No. 77-172, Oct. 20, 1977.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, IT IS HEREBY ORDERED:

That Organization Order No. 24, dated October 14, 1969 (Commissioner's Order No. 69-591), is hereby amended and reissued in its entirety to read as follows:

There is hereby established in the Government of the District of Columbia the Advisory Committee on Emergency Medical Services.

PART I

Purpose.—The Advisory Committee on Emergency Medical Services shall advise and assist the Commissioner in preparing an Emergency Medical Services Plan and in developing standards and regulations governing ambulances, equipment and supplies, personnel and training, communications, and the emergency care and treatment of the injured or suddenly-ill at the scene of their injury

or illness, in transport, or at the emergency treatment facility in accordance with the provisions of Public Law 89-564 (80 Stat. 731; 23 U.S.C. Sec. 401, et seq.) and other applicable legislation.

PART II

Functions.—The Committee shall advise and assist, through the Director of the Department of Human Resources, the Commissioner for the District of Columbia in:

1. Developing a comprehensive plan for emergency medical services to serve the residents of the District of Columbia.
2. Coordinating the activities of lay and professional groups and organizations essential to the improvement of the District of Columbia's emergency medical services program.
3. Coordinating the requirements for contract agreements between the District of Columbia and surrounding state jurisdictions to insure reciprocity of standards and regulations in the Washington metropolitan area.
4. Reviewing the needs of the community on a continuing basis, including the need for further technological training.
5. Performing such other functions as the Commissioner or the Director of the Department of Human Resources may assign to the Committee relative to emergency medical services.

PART III

Composition and membership.—a. The Committee shall be composed of representatives to be named by the Commissioner from the following organizations and agencies:

1. Medical Society, District of Columbia.
2. American Academy of Orthopaedic Surgeons on Trauma, District of Columbia.
3. Medico-Chirurgical Society.
4. American College of Surgeons.
5. District of Columbia Council.
6. Department of Human Resources, District of Columbia.
7. Department of Motor Vehicles, District of Columbia.
8. Metropolitan Police Department, Traffic Division, District of Columbia.
9. Fire Department, Emergency Ambulance Service, District of Columbia.
10. Board of Police and Fire Surgeons, District of Columbia.
11. Corporation Counsel, District of Columbia.
12. Medical Examiner, District of Columbia.
13. American Red Cross, District of Columbia.
14. Hospital Council of the National Capital Area.
15. Ambulance Association of the District of Columbia.
16. Member-at-large.
17. Cado Lanco.
18. Federation of Civic Associations.
19. CECO (Capitol East Community Organization).
20. Parent-Teacher's Congress, District of Columbia.
21. Metropolitan Washington Board of Trade.
22. An emergency room representative from—
 - a. one community-based hospital in the District
 - b. one university-affiliated hospital in the District
 - c. the D.C. General Hospital
23. Health and Welfare Council.
- b. The Chairman shall be elected from the membership. The term of office shall be established by the membership. The Director of the Department of Human Resources is authorized to designate a member of his staff to serve as an executive secretary for the Committee.
- c. An alternate member may be appointed upon the request of an organization or agency and concurrence of the Committee. The alternate shall serve for the duration of the term for the regular member unless otherwise provided by the Committee. In the absence at any Committee meeting of the regular member, his alternate is authorized to exercise all powers vested in the respective regular member.

PART IV

Terms of office.—Members, other than those representing agencies of the District of Columbia Government who

shall be permanent, shall serve for three years, except for initial appointments, as follows: Of the persons first appointed as members of the Committee, one-third shall be appointed for three years, one-third for two years, and, the remainder for one year. Should a vacancy occur through death, incapacity, removal, or resignation of a member, a successor shall be appointed to complete the unexpired term of that member. After expiration of his term, each member shall continue to serve until his successor is appointed and qualified. Members shall serve for not longer than two full consecutive terms.

PART V

Organization.—The Committee shall establish work groups structured as deemed necessary to accomplish its mission. The members of such work groups shall elect their own chairmen. The Committee shall meet at least once each quarter at the call of the Chairman; the work groups, as required at the call of each elected work-group chairman. The Committee shall determine its own procedures consistent with this Order to implement the performances of its functions.

PART VI

Compensation.—Members shall serve without compensation but appropriate expenses will be reimbursed as indicated in Part VII of this Order.

PART VII

Administration.—The Executive Secretary to the Committee shall be responsible for Committee administration and shall provide it with the necessary staff services. Expenses incurred by the Committee as a whole, or its individual members, when authorized by the Director of the Department of Human Resources, will become an obligation against funds designated for that purpose.

PART VIII

Reports.—Reports and recommendations of the Committee for standards, regulations, and studies as set forth in this Order shall be forwarded to the Commissioner, through the Director of Department of Human Resources for consideration. Release of reports and recommendations shall be at the discretion of the Commissioner, or his designee.

PART IX

Effective date.—The provisions of this Order shall become effective immediately.

ORGANIZATION ORDER NO. 26.—D.C. SPANISH COMMUNITY ADVISORY COMMITTEE

Organization Order No. 26, Commissioner's Order No. 70-284, July 30, 1970, establishing the D.C. Spanish Community Advisory Committee, was repealed by D.C. Law 1-86, title III, § 306, Sept. 29, 1976, and is now covered by D.C. Law 1-86 which is classified to chapter 19 of title 6, Health and Safety.

ORGANIZATION ORDER NO. 28.—MANPOWER ADVISORY COMMITTEE

Organization Order No. 28, Commissioner's Order No. 71-30, Feb. 10, 1971, as amended April 2, 1971, Oct. 19, 1971, Mar. 8, 1972, Sept. 28, 1973, was redesignated Organization Order No. 44 and reissued by Commissioner's Order No. 74-84, May 24, 1974.

ORGANIZATION ORDER NO. 30.—OFFICE OF BUDGET AND FINANCIAL MANAGEMENT

[The Office of Budget and Financial Management was replaced by the Office of Budget and Management Systems, see Org. Ord. No. 50.]

[Functions of the Office of Budget and Financial Management set forth in Organization Order No. 30, Commissioner's Order No. 72-80, Apr. 5, 1972, were transferred to the Office of Budget and Management Systems by Organization Order No. 50 (Supplement No. 1), Mayor's Order No. 75-41, Feb. 26, 1975.]

ORGANIZATION ORDER NO. 31.—INVESTMENT ADVISORY COMMITTEE

Organization Order No. 31, Commissioner's Order No. 70-181, as amended by Commissioner's Order No. 72-147,

June 7, 1972, establishing the Investment Advisory Committee, was rescinded and replaced by Organization Order No. 217, Mayor's Order No. 77-151, Aug. 31, 1977.

ORGANIZATION ORDER NO. 33.—OFFICE OF MUNICIPAL AUDIT AND INSPECTION

[Functions of the Office of Municipal Audit and Inspection set forth in Organization Order No. 33, Commissioner's Order No. 72-177, July 14, 1972, were transferred to the Office of Budget and Management Systems by Organization Order No. 50 (Supplement No. 1), Mayor's Order No. 75-41, Feb. 26, 1975.]

ORGANIZATION ORDER NO. 34.—MAYOR'S COMMITTEE ON NELSEN COMMISSION COORDINATION

Organization Order No. 34, Commissioner's Order No. 72-193, July 26, 1972, establishing the Mayor's Committee on Nelsen Commission Coordination, was rescinded by Organization Order No. 36, Commissioner's Order No. 73-60, Mar. 9, 1973.

ORGANIZATION ORDER NO. 36.—MAYOR'S POLICY COORDINATION GROUP

(Organization Order No. 36, Commissioner's Order No. 73-60, Mar. 9, 1973.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, Commissioner's Order No. 72-234 [Org. Action], September 13, 1972, and Commissioner's Order No. 72-193 [Org. Ord. No. 34], July 26, 1972, is hereby rescinded, and it is ORDERED THAT:

1. *Establishment.*—There is established in the Government of the District of Columbia the Mayor's Policy Coordination Group.

2. *Purpose.*—The Mayor's Policy Coordination Group shall assist the Mayor to develop and implement executive policies affecting a better physical, social and economic environment for the residents of the city.

The Group will have jurisdiction over such matters as: the District of Columbia's participation in the National Bicentennial Observance; interagency concerns with intergovernmental policies and relations; policy matters affecting implementation of the Nelsen Commission's recommendations to improve government operations; government-wide planning questions and such other issues as may be identified by the Mayor-Commissioner.

Appropriate subcommittees may be created to carry out its responsibilities.

3. *Composition.*—The Mayor-Commissioner shall serve as Chairman of the Policy Coordination Group. Other members are to be selected by the Mayor from among department and agency heads.

Public and private advisors may be added to the Policy Coordination Group, or its subcommittees. Members and staff of the City Council may be invited to participate when appropriate.

4. *Administration.*—The Office of Planning and Management shall provide the Policy Committee with administrative staff services and coordinate this program.

The provisions of this Order shall take effect immediately.

ORGANIZATION ORDER NO. 37.—SPACE MANAGEMENT—SPACE REVIEW COMMITTEE

(Organization Order No. 37, Commissioner's Order No. 73-104, Apr. 26, 1973.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is hereby ordered that:

1. *Policy.*—It is the policy of the Mayor-Commissioner that all space and facilities for use by the Government of the District of Columbia be procured and utilized with maximum efficiency and economy. All space and facilities used by departments and agencies shall be periodically surveyed for utilization and, as necessary, be reassigned by the Director of General Services, subject to review by the Mayor-Commissioner.

2. *Responsibilities.*—A. Heads of Departments and Agencies and all supervisors are responsible for:

i. Implementing the policies, procedures, and criteria prescribed for the management of space.

ii. Managing assigned space to achieve maximum economy consistent with maximum program effectiveness.

iii. Keeping the Department of General Services advised of new and changing space requirements for submission in budget requests.

B. The Director of the Office of Budget and Financial Management is responsible for coordinating procedures with the Director of General Services to insure an economical space budget for the District Government.

C. The Director of General Services is responsible for:

i. Providing the Mayor-Commissioner annually with a space budget which describes use made of existing space and additional space requirements. This includes space to be acquired by lease, direct construction through the Capital Improvements Program, or by any other source. Recommendations will include the collocation of agencies to consolidated facilities whenever appropriate.

ii. Promulgating space management standards and criteria to be applied by all elements of the District Government, including special standards and allowances. These standards will be enforced by periodic surveys conducted in conjunction with the using departments.

iii. Procuring, assigning, reassigning and modifying space for the departments and agencies to achieve maximum efficiency and effectiveness at minimum cost.

iv. Reviewing the space expansion plans of departments and agencies as contained in their budget requests, and making recommendations to the Director of the Office of Budget and Financial Management for necessary budgetary action.

3. *Space Review Committee establishment.*—There is established in the Government of the District of Columbia a Space Review Committee, which is responsible for:

(a) Advising the Director of General Services on appeals against specific space management actions he proposes;

(b) Assisting and advising the Director of General Services, on his request, in executing the function specified in this Order.

4. *Committee composition.*—The Committee will be convened by the Director, Office of Planning and Management, and will include the D.C. Personnel Officer and the Directors of the Department of General Services, the Department of Economic Development, and the Office of Budget and Financial Management.

ORGANIZATION ORDER NO. 38.—COMMISSION ON THE STATUS OF WOMEN

(Organization Order No. 38, Commissioner's Order No. 73-94a, Apr. 24, 1973.)

By virtue of the authority vested in me by Reorganization Plan 3 of 1967, it is hereby ordered that:

1. *Establishment.*—There is established in the Government of the District of Columbia a Commission on the Status of Women.

2. *Functions.*—The Commission may conduct studies; review progress, develop, recommend and undertake constructive action; and initiate and conduct programs directed toward improving the status of women in the District of Columbia, particularly in the following areas:

a. Elimination of discrimination based on sex.

b. Public and private employment practices, including matters pertaining to hours, wages and working conditions.

c. Education at every stage of life.

d. Equality of rights and responsibilities of men and women under the law in regard to political, civil and property rights as well as family relations.

e. New and expanded services for women to facilitate their optimal functioning as homemakers, breadwinners, and citizens; including mental and physical health care, and improvement of facilities for child care and youth development.

3. *Composition.*—The Commission shall be composed of not less than 15 nor more than 21 members appointed for three-year terms by the Mayor-Commissioner from among citizens of the District of Columbia with experience in the area of public affairs and women's activities. None shall serve for a period of more than two full terms consecutively. The Commission shall designate annually from among its members a Chairman, a Vice-Chairman

and a Secretary. The Officers shall not serve in the same office more than three consecutive terms.

4. *Administration.*—An Executive Director shall work in conjunction with the Chairman to provide leadership in carrying out policies, programs and projects approved by the Commission. The Executive Secretary shall furnish the Commission with administrative, fiscal and house-keeping services. In addition, the District of Columbia departments and agencies shall cooperate with the Commission and its committees in furtherance of the Commission's objectives, upon direction of the Mayor-Commissioner.

5. *Procedure.*—The Commission shall draw up its own rules and procedures. The Commission shall designate such committees as it deems necessary to accomplish the purposes of the Commission. The Commission shall meet at least three times a year at the call of the Chairman.

6. *Grants.*—The Commission is authorized to apply for and receive grants to fund its program activities, in accordance with established procedures relating to grants management coordinated through the Office of Budget and Financial Management.

7. *Annual report.*—The Commission shall submit an annual report to the Commissioner.

8. Commissioner's Order 67-38 of January 10, 1967, is rescinded.

ORGANIZATION ORDER NO. 39.—RELOCATION ADVISORY COMMITTEE

(Organization Order No. 39, Commissioner's Order No. 73-151, June 26, 1973, as amended by Mayor's Order No. 77-139, Aug. 17, 1977.)

By virtue of the authority vested in me by the District of Columbia Self-Government and Governmental Reorganization Act (P.L. 93-198), it is hereby ordered that Organizational Order No. 39 dated June 26, 1973 is hereby amended and reissued in its entirety to read as follows:

1. *Establishment.*—There is hereby established in the Government of the District of Columbia a permanent Relocation Advisory Committee.

2. *Purpose and function.*—The Committee shall be guided by Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601 et seq.]; Public Law 88-629, the District of Columbia Relocation Act of 1964 [D.C. Code, secs. 5-728 to 5-732], (herein referred to as "the Acts"); and all applicable District relocation regulations.

The functions of the Committee are as follows:

A. To advise the Mayor, the General Manager of WMATA, or the appropriate heads of Federal Agencies on the priorities of public works projects within the District necessitating the provision of relocation services and payments.

B. To develop and recommend to the Mayor, the General Manager of WMATA, or the appropriate heads of Federal agencies the priority guidelines for relocation assistance to: individuals, families and businesses to be displaced by the acquisition of real property by the District of Columbia, the D.C. Redevelopment Land Agency, the United States, or the Washington Metropolitan Area Transit Authority; and individuals, families and businesses who may be displaced by condemnation of unsafe and insanitary buildings or enforcement of the laws or regulations relating to housing.

C. With respect to the Mayor's responsibility to determine the availability of housing for displaced individuals and families as required by Section 210 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4630] and applicable District relocation regulations; to review and advise the Mayor regarding reports submitted by the Department of Housing and Community Development which pertain to:

(1) Housing needs of those residing in each site to be acquired.

(2) Availability of relocation housing to meet the needs of those to be displaced.

(3) Availability of funds to carry out relocation activities in a timely manner.

D. At the direction of the Mayor or the Director, Department of Housing and Community Development to perform such other related tasks as are deemed pertinent.

3. *Composition and Membership.*—The Relocation Advisory Committee shall consist of the following members ex officio:

Director, Department of Housing and Community Development, who shall serve as Chairman. In his absence or unavailability, he shall designate a staff member of the Department of Housing and Community Development as his representative who shall be acting Chairman.

Director, Department of General Services, or his designated representative.

D.C. Corporation Counsel, or his designated representative.

Superintendent, D.C. Public Schools, or his designated representative.

General Manager, Washington Metropolitan Area Transit Authority, or his designated representative.

Director, D.C. Department of Transportation, or his designated representative.

Director, Office of Budget and Management Systems, or his designated representative.

Director, Municipal Planning Office, or his designated representative.

Administrator, General Services Administration, or his designated representative.

4. *Administration.*—The Director, Department of Housing and Community Development is authorized to provide administrative services to the Committee.

5. *Rescission.*—Commissioner's Orders 65-339 (Organization Order 146) of March 16, 1965, and 73-151 (Organization Order 39) of June 26, 1973 are rescinded.

6. This Order is effective immediately.

ORGANIZATION ORDER NO. 40.—OFFICE OF CONSUMER AFFAIRS

Organization Order No. 40, Commissioner's Order No. 73-225, Oct. 3, 1973, as amended by C.O. No. 74-156, July 17, 1974, establishing the Office of Consumer Affairs, was repealed by D.C. Law 1-76, § 3(f), July 22, 1976, and is now covered by D.C. Law 1-76 which is set out in the appendix to title 28, Commercial Instruments and Transactions.

ORGANIZATION ORDER NO. 41.—COOPERATIVE AREA MANPOWER PLANNING SYSTEM (CAMPS) STAFF

(Organization Order No. 41, Commissioner's Order No. 73-223, Sept. 28, 1973.)

By virtue of the authority vested in me by Reorganization Plan 3 of 1967, it is hereby ordered that:

I. *Establishment and purpose.*—There shall be established in the Government of the District of Columbia, within the Office of the Mayor-Commissioner, the Cooperative Area Manpower Planning System (CAMPS) Staff, which shall provide support to the Mayor-Commissioner, through his Special Assistant for Manpower, to enable the District of Columbia to carry out the functions required for District participation in the Cooperative Area Manpower Planning System established by the President's Executive Order No. 11422.

II. *Functions.*—The CAMPS Staff shall:

A. Prepare for approval of the Mayor, and eventual submission to the Federal Regional Manpower Coordinating Committee (RMCC), the Annual CAMPS Plan, incorporating the recommendations of the Manpower Advisory Committee (MAC) and utilizing the technical assistance provided by the District of Columbia Manpower Administration (DCMA).

B. Periodically review the implementation by DCMA and other agencies of the CAMPS Program to assure conformity with the Plan, and prepare assessments for review by the MAC and appropriate action by the Mayor-Commissioner.

C. Prepare, for approval by the Mayor-Commissioner, revisions to the CAMPS Plan, as recommended by the MAC and/or the CAMPS Staff, DCMA, and other operating agencies, utilizing the technical assistance of DCMA.

D. Participate with DCMA in its responsibility to:

1. Review and evaluate proposals designed to implement appropriate segments of the CAMPS Plan, and

2. Monitor executed contracts.

E. Promote the coordination of the numerous manpower planning efforts within the D.C. Metropolitan Area.

III. Organization.—

A. *Special assistant.* In order more effectively to carry out the objectives of Executive Order 11422, the position of Special Assistant to the Mayor-Commissioner for Manpower is hereby established in the Office of the Mayor-Commissioner. The Special Assistant for Manpower shall serve as Chairman of the Manpower Advisory Committee and provide overall leadership and direction to the CAMPS Staff.

B. *Staff director.* The primary responsibility, within the CAMPS Staff, for implementing policy and program activities as directed by the Special Assistant for Manpower shall be vested in a position to be entitled CAMPS Staff Director. In addition to directly supervising the daily activities of the CAMPS Staff, and monitoring all administrative functions, the CAMPS Staff Director shall attend all MAC meetings and, in the absence of the Special Assistant for Manpower, report directly to the Mayor-Commissioner on matters necessitating an immediate line of communication.

ORGANIZATION ORDER NO. 42.—OFFICE OF PETROLEUM ALLOCATION—DEPARTMENTAL ENERGY GROUP—CITIZENS FUEL CONSERVATION COMMITTEE

(Organization Order No. 42, Commissioner's Order No. 74-6, Jan. 7, 1974.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, the following is hereby ordered:

I. *Purpose.*—To maintain essential services and to protect the health and welfare of the residents of the District of Columbia, and to exercise District Government responsibilities with respect to the consumption in the District of Columbia of motor vehicle and heating fuels which are under federal allocation.

This directive establishes the Office of Petroleum Allocation, the Departmental Energy Group, and the Citizens Fuel Conservation Committee. It also sets forth a number of energy conservation measures relating to the exercise of authority and responsibility for the control and use of all petroleum, oil and lubricant products by the District of Columbia Government and establishes a local board for hardship situations.

II. *Office of Petroleum Allocation.*—Pursuant to Section 5(b) of the Emergency Petroleum Allocation Act of 1973, there is established in the District of Columbia an Office of Petroleum Allocation as a unit of the Office of Civil Defense which will provide staff services for it. In order to execute on behalf of the Mayor-Commissioner the responsibilities delegated by the Federal Energy Office for mandatory fuel allocation, this Office of Petroleum Allocation shall serve as a point of contact for appropriate requests and petitions received by the District Government with respect to petroleum allocations. This office shall be administered by an Administrator appointed by the Mayor-Commissioner.

III. Departmental Energy Group.—

There is established a Departmental Energy Group whose duties and functions shall be as follows:

A. To assist the Mayor in formulating District-wide policies regarding fuel energy allocation,

B. To receive and resolve appeals of District agencies with respect to fuel allocations,

C. To recommend measures for energy conservation within the District Government,

D. To develop contingency plans to meet foreseeable community problems,

E. To maintain liaison with the Metropolitan Council of Governments and other governmental jurisdictions throughout the local metropolitan area,

F. Under the Chairmanship of the Mayor, the Departmental Energy Group shall be composed of the following ex-officio members:

Director, Office of Civil Defense, (Convenor)
The Corporation Counsel
The Superintendent of Public Schools
Representative of the City Council
Director, Department of Economic Development
Chief, Fire Department
Chief, Metropolitan Police Department
Director, Department of Human Resources

Director, Department of General Services

Director, Department of Highways and Traffic

Director, Office of Planning and Management

Director, Department of Environmental Services

Director, Office of Consumer Affairs

Representative of the Washington Metropolitan Area Transit Authority

Representative of the Public Service Commission, District of Columbia Transportation Systems Coordinator

Special Assistant for Housing Programs

Director, Personnel Office

G. Representatives of other District Government departments and agencies may be invited to participate in the meetings and work of the Departmental Energy Group as appropriate. By assignment, panels made up of members of the Departmental Energy Group or their alternates may be convened to hear appeals or for other purposes.

IV. *Citizens Fuel Conservation Committee.*—There is also established a Citizens Fuel Conservation Committee with the following duties and functions:

A. To assist the Mayor-Commissioner in carrying out the President's energy programs within the District of Columbia,

B. To recommend to the Mayor actions which the Committee feels, are necessary to achieve conservation of energy,

C. To advise government, business, and private citizens on actions which will mitigate the impact of possible local energy shortages,

D. The Committee, which shall be convened by the Director of the Office of Civil Defense, shall be composed of the following:

President, Federation of Civic Associations, Inc.

President, Federation of Citizens Association of the District of Columbia

President, Greater Washington Labor Council, AFL-CIO

President, Metropolitan Washington Board of Trade

Archbishop of the Catholic Archdiocese of Metropolitan Washington

Coordinator of Ministries, Council of Churches of Greater Washington

Executive Director, Jewish Community Council of Greater Washington

President, Oil Heat Institute of Greater Washington

President, Potomac Electric Power Company

Executive Director, Metropolitan Washington Council for Clean Air

President, Building Owners and Managers Association of Greater Washington

President, D.C. Congress of Parents and Teachers

President, Washington Gas Light Company

President, D.C. Chamber of Commerce

E. Representatives of additional bodies, governmental and nongovernmental, may be invited to participate in the meetings and work of the Committee as appropriate.

V. *Conservation Responsibilities within the District Government.*—A. The Department of General Services, in accordance with established policies and in consultation with departments and agencies concerned, is directed to:

1. Develop and carry out appropriate measures for conservation of energy in District of Columbia physical facilities including the issuance of technical guidance to all D.C. agencies for facilities operation in the interest of energy conservation.

2. Set standards for heating and lighting levels in various facilities.

3. Recommend conversion of heating plants from scarce to more plentiful fuels where necessary and appropriate.

4. Establish programs to insure that heating, air conditioning, and ventilating systems are operated efficiently and economically.

5. Recommend maintenance procedures and construction practices to minimize energy loss.

6. Survey the use of buildings and recommend changes in use of buildings to conserve energy resources.

7. Establish a central Commodity Managership for (POL) Petroleum, Oils, Lubricants and Heating Oil products for the District of Columbia. The POL Commodity Manager will be responsible for all D.C. Government requirements, acquisition, and distribution of gasoline, diesel fuel, and heating oil products.

8. Establish contact with Energy Conservation Officers designated by agencies having a facility responsibility to develop and implement energy conservation procedures.

B. The Personnel Office (Division of Occupational Safety and Health) will, in cooperation with the Department of General Services, provide for the maintenance of health and safety standards and assist in the education and instruction of D.C. personnel in the matter of energy conservation.

VI. *Local Board.*—To respond to appropriate requests and petitions by consumers for relief based on exceptional hardships, there is established a Petroleum Allocation Board. This action is in compliance with section 200.16(b) of the proposed mandatory fuel allocation regulations issued by the Federal Energy Office dated December 13, 1973. The Board will function through three member panels composed as follows:

Designee, Office of Petroleum Allocation,
Designee, Office of Consumer Affairs, and
A citizen member appointed by the Mayor

The Chairman shall be the designee of the Office of Petroleum Allocation. The Administrator of the Office of Petroleum Allocation shall set up as many three person panels as the volume of appeals requires.

ORGANIZATION ORDER NO. 43.—STATE ADVISORY COMMITTEE FOR DRUG ABUSE

(Organization Order No. 43, Commissioner's Order No. 74-12, Jan. 2, 1974.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, and by Public Law 92-255, The Drug Abuse Office and Treatment Act of 1972, it is hereby ordered that:

Commissioner's Order No. 71-4 which established the District of Columbia's Advisory Committee on Narcotics Addiction, Prevention and Rehabilitation is hereby rescinded. There is hereby established in the District of Columbia a State Advisory Committee for Drug Abuse.

I. *Functions and Scope of Authority.*—

A. The State Advisory Committee shall advise the Single State Agency Director, Department of Human Resources, in developing and implementing the State Plan for Drug Abuse in the District of Columbia.

B. Recommend courses of action to the Single State Agency and any appropriate organizations on any matters concerning problems and programs related to drug abuse, prevention and rehabilitation.

C. Promote communication between the Single State Agency and any other governmental or voluntary agency involved in programs related to drug dependency and narcotics addiction.

D. Advise the Commissioner through the Director of the Department of Human Resources, on the nature and extent of narcotics addiction and drug dependency, quality of prevention and rehabilitation programs, and prepare periodic reports reviewing the adequacy of existing rehabilitation and prevention programs.

II. *Composition and Membership.*—

The State Advisory Committee shall be comprised of thirty-three (33) members which include representatives of the City Council, Criminal Justice System, Corrections personnel, Welfare, Vocational Rehabilitation, Veterans Mental Health, Public Schools and individuals or organizations concerned with the prevention and treatment of drug abuse and drug dependence. Membership will also include representation from the community at large. The Mayor will appoint a Chairman and Vice-Chairman.

Members shall serve terms of two years, except for initial appointments which shall be as follows: approximately one-half shall serve for one year, and the balance shall serve for two years. The Mayor shall determine initial appointments in order to establish the staggered terms as indicated above. If a vacancy occurs through death, incapacity, removal or resignation of a member, a successor shall be appointed to complete the unexpired term of the member. Upon expiration of his term, a member may continue to serve until his successor is appointed.

III. *Compensation.*—Members of this Committee shall serve without compensation; however, appropriate expenses may be reimbursed when authorized by the Director of the Department of Human Resources. Expenditures so authorized shall become an obligation against funds so designated.

IV. *Organization and Administration.*—The Committee shall determine its own Officers, other than the Chairman, who shall be appointed by the Mayor. The Director of the Department of Human Resources shall provide the Committee with necessary staff support and space as needed, and assist the Committee in matters of administration. Other District of Columbia Departments and Agencies shall provide full cooperation and assistance as called upon by the Director of the Department of Human Resources.

V. *Effective date.*—The provisions of this Order shall become effective immediately.

ORGANIZATION ORDER NO. 44.—MANPOWER SERVICES PLANNING ADVISORY COMMITTEE

(Organization Order No. 44, Commissioner's Order No. 74-84, May 24, 1974, as amended by Mayor's Order No. 76-235, Nov. 10, 1976.)

By virtue of the authority vested in me as Mayor, and the District of Columbia Self-Government and Governmental Reorganization Act, it is hereby ordered that:

Organization Order No. 44, establishing the Manpower Services Planning Advisory Committee (MSPAC) is hereby amended by rescinding Commissioner's Order No. 74-84, dated May 24, 1974, and replacing it in its entirety as follows:

I. *Establishment and purpose.*—There is hereby established in the Government of the District of Columbia an advisory body of persons to be known as the Manpower Services Planning Advisory Committee (MSPAC). The Committee shall provide advice and guidance to the Mayor on matters pertaining to manpower and related activities in Washington, D.C. As such, it is designed to meet the requirements of Sections 104 and 107 of the Comprehensive Employment and Training Act (CETA) and of Section 95.13 of the Regulations promulgated thereunder.

II. *Functions.*—The Committee shall:

A. Submit, for each fiscal year, to the Mayor, recommendations embodying basic goals, policies and procedures, representing the most effective coordination of resources to meet the continuing manpower needs of the City, and to review and make recommendations regarding the Prime Sponsor's plans to meet these needs.

B. Monitor the performance rendered under the D.C. wide manpower plan(s) and make recommendations for more effective coordination of efforts and changes in policy and/or goals.

C. Assess the availability, responsiveness and adequacy of D.C. Government services in support of manpower objective and make recommendations to the Mayor, with respect to methods of improving effectiveness of programs and/or services in accomplishing the purpose of CETA.

D. Make an annual manpower report to the Mayor of the District of Columbia.

III. *Composition and membership.*—

A. Membership will be representative of the broadest spectrum of manpower and related interests in the District of Columbia, shall be selected by the Mayor, and consist of representation from the following: vocational education, public Employment Service, other relevant District agencies, organized labor, business, the general public, community-based organizations, and public interest groups and the client population.

B. The chairperson shall be appointed by and serve at the pleasure of the Mayor.

IV. *Compensation.*—Members shall serve without compensation except that reasonable expenses for transportation may become an obligation against funds designated for that purpose.

V. *Organization.*—The MSPAC shall determine its own officers, other than the chairperson.

VI. *Support.*—The D.C. Department of Manpower shall provide labor market data, employment and unemployment statistics, and information regarding CETA program activities and progress, as well as provide appropriate professional, technical and clerical staff support called for by Section 95.13 of the CETA Regulations.

ORGANIZATION ORDER NO. 45.—OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT

[The powers, duties, and functions of the Director of the Office of Housing and Community Development

as set forth in Org. Ord. No. 45, were transferred to the Director of the Department of Housing and Community Development, and the Office of Housing and Community Development was abolished, by part 6 of Reorg. Plan No. 3 of 1975, which is set out in this appendix.]

(Organization Order No. 45, Commissioner's Order No. 74-143, June 29, 1974.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is hereby ordered that:

1. *Establishment.*—There is established in the Government of the District of Columbia, in the Executive Office of the Mayor-Commissioner, an Office of Housing and Community Development, headed by a Director, appointed by the Mayor-Commissioner. The Director shall perform the functions delegated, transferred or otherwise assigned to him in this Order, and shall have the authority to redelegate such functions as he deems necessary.

2. *Purpose.*—The Office of Housing and Community Development shall identify the current and future housing and community development needs of the District of Columbia; develop a strategy for best meeting those needs; and ensure the planning and coordination of programs, projects and other activities necessary to carry out that strategy.

3. *Functions.*—The Director of the Office of Housing and Community Development shall:

A. Provide the Mayor-Commissioner information and advice on matters pertaining to public and private housing and community development plans, programs, and activities in the District of Columbia.

B. Identify the District's housing and community development needs; recommend to the Mayor-Commissioner plans for meeting those needs. Under the direction of the Mayor-Commissioner establish policies to guide the planning, coordination, and execution of public or joint public-private programs and projects necessary to carry out those plans.

C. Recommend to the Mayor-Commissioner annual and longer-term housing and community development priorities, goals, and objectives for the District.

D. Coordinate the preparation of the District's submissions for funding housing and community development activities from Federal, District and private sources; recommend to the Mayor-Commissioner the allocation of all non-categorical housing and community development funds provided to support housing and community development activity in the District of Columbia.

E. Coordinate the preparation of that portion of the Comprehensive Plan for the District involving Housing and Community Development, the Capital Improvements Plan, and the Multi-Year Program and Financial Plan and recommend to the Mayor-Commissioner changes in these plans when such changes are deemed essential to the accomplishment of housing and community development goals and objectives.

F. Coordinate and prepare the annual consolidated housing and community development plan and budget for approval by the Mayor-Commissioner.

G. Ensure that all housing and community development plans are coordinated with appropriate Federal and local agencies and departments.

H. Develop with appropriate D.C. Departments and private organizations plans and programs to create and sustain private developer interest and activity in the District of Columbia.

I. Recommend to the Mayor-Commissioner standard policies and procedures for conducting housing and community development activities in the District—e.g., for relocation, land acquisition and disposition and citizen participation.

J. Monitor the implementation and execution of housing and community development programs and projects by the operating units, including regular reports to the Mayor-Commissioner for appropriate action.

K. Evaluate at the direction of the Mayor-Commissioner the effectiveness and efficiency with which housing and community development programs and projects are being carried out to meet the specified goals and objectives as set out by the Mayor-Commissioner.

L. Perform research and collect data and statistics in support of the overall functions of the Office; conduct special planning and management studies; develop and

test new program concepts as demonstration or special projects as approved by the Mayor-Commissioner.

M. Serve as the Mayor-Commissioner's representative or alternate as housing and community development member on local interagency committees, task forces and coordinating committees.

N. Coordinate and review at the direction of the Mayor-Commissioner, the presentation of plans, budgets, and proposed programs of the District with regard to housing and community development programs before Congressional committees, Federal bodies, and other government entities—e.g., the Metropolitan Washington Council of Governments.

4. *Transfers of functions and delegated authorities.*—The position of the Assistant to the Mayor-Commissioner and the Office of Housing Programs is abolished and the functions and delegated authorities of the Assistant to the Commissioner for Housing Programs as set forth in the Commissioner's Order No. 69-182 of April 25, 1969, and as amended by Commissioner's Orders 69-546 of October 3, 1969; 71-307 of August 13, 1971; 71-357 of September 20, 1971; 71-392 of November 1, 1971; and 72-223 of August 18, 1972 are transferred to the Office of Housing and Community Development.

5. *Transfers of funds and other resources.*—All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the above functions are transferred to the Director of the Office of Housing and Community Development.

6. *Organization.*—The Director of the Office of Housing and Community Development, in the performance of the functions for which he is responsible, is authorized to establish such organizational components thereunder with such specified functions as he deems appropriate. The officers or employees of the offices whose functions were transferred under paragraph 4, above, shall continue to exercise their existing duties, powers, and authorities until such time as the Director of the Office of Housing and Community Development shall otherwise provide.

7. *Effective date.*—The provisions of the Order shall take effect as of June 30, 1974.

ORGANIZATION ORDER NO. 46.—DISTRICT OF COLUMBIA DEPARTMENT OF MANPOWER

(Organization Order No. 46, Commissioner's Order No. 74-144, June 29, 1974, as amended by Mayor's Order No. 76-234, Nov. 10, 1976; Mayor's Order No. 77-141a, Aug. 22, 1977.)

By virtue of the authority vested in me as Mayor, and the District of Columbia Self-Government and Governmental Reorganization Act, it is hereby ordered that:

Commissioner's Order 74-144, District of Columbia Department of Manpower, dated June 29, 1974, be rescinded and replaced in its entirety by the following:

I. *Establishment.*—There is established, under the direction and control of the Mayor of the District of Columbia, a District of Columbia Department of Manpower, headed by a Director, appointed by the Mayor, who is authorized to establish such organizational components thereunder as he deems appropriate to carry out the purpose of the Department.

II. *Purpose.*—The Department of Manpower will provide manpower services designed: to improve the capability of the work force to participate in the labor market, by providing assistance in attaining gainful and satisfying employment; to aid in upgrading those in the labor force who are underemployed; and to provide aid to local employers in fulfilling their manpower requirements.

III. *Functions.*—The Director of the Department of Manpower will:

A. Carry out the following responsibilities:

1. Under the provisions of the Comprehensive Employment and Training Act of 1973, as amended (Public Law 93-203), the Department shall develop and prepare for approval of the Mayor an Annual Comprehensive Manpower Plan (or as appropriate, component plans by title of the Act).

2. The Department shall develop, operate, administer including the allocation of positions and providing of financial management for all Public Service Employment Programs and maintain a comprehensive program of employment and training opportunities for residents

of the District of Columbia. Manpower services under this program will be provided by the Department in accordance with Sections B and C below.

Pursuant to Congressional identification of the District as a state for purposes of the enabling legislation, these activities will be performed by the Department in the capacity of a State agency.

3. Administer a State Public Employment Agency as described in Public Law 73-30, as amended (The Wagner-Peyser Act) and as it is from time to time augmented by other related Federal Manpower legislation, directives or programs, such as the Title IV of the Social Security Act (The WIN Program).

4. A voluntary state apprenticeship program as prescribed by Public Laws 75-303 and 79-387, as amended.

5. Other programs as the Mayor deems appropriate to carry out the mission of the Department.

B. Represent the District of Columbia in preparing and making grant applications on behalf of the District of Columbia to, and/or negotiating with, Federal agencies for financial support of the State Agency and manpower services described above.

C. May with the approval of the Mayor and in accordance with established District regulations, and procedures, make grants (subgrants) to other units of government, public agencies, and nonprofit organizations and request and participate in the preparation of contracts (subcontracts) with profit-making organizations in the private sector. The Mayor, at his discretion, has delegated this approval power to the Director of Manpower.

D. In conjunction with the Manpower Services Planning Advisory Committee (MSPAC), the Department of Manpower will promote the cooperation, participation and acceptance of the District's manpower plans, objectives, and programs by the citizens, Government officials, community organizations, educational institutions, and employers.

E. Serve as the contact point for District of Columbia manpower matters with the Federal Government suburban jurisdictions, advisory bodies, public and private groups, and to provide such groups, including the MSPAC, assistance and information as appropriate to facilitate the utilization and coordination of manpower and manpower-related services for residents of the City.

F. Provide to the Manpower Services Planning Advisory Committee (MSPAC) as established by Organization Order No. 41, appropriate professional, technical, and clerical support described in Sections 104 and 107(2) (b) of the Comprehensive Employment and Training Act, Public Law 93-203 and Part 95.13 of the implementing regulations.

IV. *Effective date.*—This Mayor's Order shall take effect immediately [Nov. 10, 1976].

ORGANIZATION ORDER NO. 47.—INTERDEPARTMENT COMMITTEE ON ADULT LITERACY

(Organization Order No. 47, Commissioner's Order No. 74-50a, Mar. 29, 1974.)

ORDERED:

That there is hereby established in the Government of the District of Columbia an Interdepartmental Committee on Adult Literacy.

PART I

Purpose.—The purpose of the Committee shall be to serve in an advisory capacity the total adult literacy program in the various departments of the District Government and with Federal, public and private agencies involved in the program.

PART II

Functions.—The Committee shall:

(1) Assist in the continuing development, implementation and coordination of a comprehensive, long-range program to attack and reduce adult illiteracy in the District of Columbia.

(2) Through mutual effort, insure that elements of the adult literacy program are implemented in the D.C. departments and agencies on a timely basis, and coordinate the program with the work of participating Federal, public and private agencies.

(3) Participate in the preparation of applications for grants as one method of financing the adult literacy program.

(4) Participate in the development of annual budget estimates to cover the part of the adult literacy program financed from D.C. appropriated funds.

(5) Develop new ideas and new approaches to the adult literacy problem.

PART III

Composition.—(a) The Committee shall be composed of representatives of the following departments and agencies, and shall be appointed by and represent the heads of these departments and agencies in the development, implementation, and coordination of the adult literacy program:

- (1) D.C. Public Schools
- (2) Office of Budget and Financial Management
- (3) D.C. Teachers College
- (4) Washington Technical Institute
- (5) Federal City College
- (6) Department of Human Resources
- (7) Fire Department
- (8) Metropolitan Police Department
- (9) Department of Recreation
- (10) Department of Economic Development
- (11) Department of Corrections
- (12) Board of Parole
- (13) National Capital Housing Authority
- (14) D.C. Public Library

(b) In addition, members may be invited to serve from agencies under the full administrative jurisdiction of the Commissioner, and from Federal, public and private groups, as the Committee determines appropriate.

(c) Members shall serve without additional compensation.

PART IV

Organization.—The Committee shall determine its own organization. The Committee may select its own Chairman and Vice Chairman. The Committee shall meet at the call of the Commissioner or of its Chairman.

PART V

Term of appointment.—All appointments of members to the Committee shall be for a two year term. Members may be appointed to serve two consecutive terms.

ORGANIZATION ORDER NO. 48.—POLICE AND FIREMEN'S RETIREMENT AND RELIEF BOARD

(Organization Order No. 48, Commissioner's Order No. 74-199, September 25, 1974.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, and P.L. 93-407; it is ordered that there be established in the District of Columbia Government under the administrative supervision of the Director of Personnel, Executive Office of the Commissioner, a Police and Firemen's Retirement and Relief Board.

PART I. BOARD COMPOSITION

1. The Board shall be composed of—

(a) members and alternates appointed from among persons who are employees of the District of Columbia, one member and alternate each from the District of Columbia Personnel Office, Corporation Council, Department of Human Resources, Metropolitan Police Force, and the Fire Department of the District of Columbia; and

(b) two members, one of whom shall be a physician, appointed from among persons who are not officers or employees of the District of Columbia.

2. The member and alternate appointed to the Board from the Department of Human Resources shall both be medical officers.

3. The member appointed to the Board from the District of Columbia Personnel Office shall serve as Chairman of the said Board, and in his absence, such member's alternate shall serve as Chairman; and in the absence of both, the member or alternate appointed to the Board from the Corporation Counsel shall serve as Chairman.

4. All authorities and powers exercised by the members of the Police and Firemen's Retirement and Relief Board, and their alternates, shall be in accordance with applicable laws, rules and regulations.

5. The members appointed from among persons who are not officers or employees of the District of Columbia Government shall be appointed for two years and shall be entitled to receive compensation for each day they are actually engaged in carrying out duties vested in the

Board in the same manner as persons employed intermittently under Section 3109 of title 5 of the United States Code.

PART II. PURPOSE

The Police and Firemen's Retirement and Relief Board is established for the purpose of insuring that fair and equitable policies and practices are established and applied in connection with the retirement and the relief of members of the:

1. Police and Fire Departments of the District of Columbia.
2. U.S. Park Police Force.
3. Executive Protective Service.
4. U.S. Secret Service, who are subject to the provisions of the Policemen and Firemen's Retirement and Disability Act.

PART III. FUNCTIONS

The functions of the Police and Firemen's Retirement and Relief Board shall be to:

1. Consider all cases for the retirement and the relief of the members listed in Part II; consider all cases of retirees of said organizations who are seeking an increase in the pension relief allowance which they are already receiving; consider all cases of retirees of said organizations who are required to undergo periodic medical examinations in connection with determining whether the relief allowance in such cases should be continued, increased, decreased, or discontinued; consider all applications for the relief of widows, widowers and eligible children of said members; and applications for the lump sum payment benefit provided in cases of performance-of-duty death.

2. Approve, or disapprove, all such cases, and fix the amount of pension relief in each instance, as appropriate, except that proposed actions in connection with the relief or the retirement of the Chief of Police and the Fire Chief shall be submitted to the Commissioner for his approval, or disapproval; and provided that any action taken by said Board, or by the Commissioner in the case of the Chief of Police and the Fire Chief, shall constitute final administrative action.

3. Develop overall policies to insure fair and equitable treatment in the retirement and the relief of individuals coming within the purview of the Police and Firemen's Retirement and Relief Board; and serve in an advisory capacity to the Commissioner and heads of departments and offices in all matters pertaining to the retirement and the relief of such individuals.

4. Perfect and adopt rules of procedure for the conduct and guidance of the Police and Firemen's Retirement and Relief Board.

PART IV. ELIGIBILITY FOR RETIREMENT AND SURVIVOR ANNUITIES

1. The Police and Firemen's Retirement and Relief Board established herein is hereby designated as agent of the Commissioner, to make all findings of fact and conclusions of law necessary in the determination of eligibility for retirement and survivor annuities pursuant to the Policemen and Firemen's Retirement and Disability Act [D.C. Code, § 4-521 et seq.].

2. In making such findings of fact and conclusions of law, the said Board shall consider the reports or recommendations of the Board of Police and Fire Surgeons concerning the physical or mental condition, or both, of the member for whom involuntary separation or retirement is sought, together with all records and testimony of the Board of Police and Fire Surgeons relating to such member, and such records and testimony of any other person bearing on the matter.

3. The authority set forth in subsection (i) of the Policemen and Firemen's Retirement and Disability Act (D.C. Code, sec. 4-529) to express a judgment as to the disability of a member from performing further duty in his department is hereby delegated exclusively to the Police and Firemen's Retirement and Relief Board.

PART V. SUBPOENA POWERS

The Police and Firemen's Retirement and Relief Board is authorized and empowered to summon any person before it to give testimony, under oath or affirmation, as to any matter affecting retirement or relief of any in-

dividual whose retirement or relief is being considered; and any member of the said Board shall have power to administer oaths or affirmations to witnesses appearing before it. Such summons shall be served by a member of the Metropolitan Police or Fire Departments.

PART VI. SECRETARIAL ASSISTANCE

The Chairman of the Police and Firemen's Retirement and Relief Board shall be responsible for arranging for necessary secretarial assistance for the Board, and for seeing that reports and records are prepared and maintained in connection with meetings held, findings and recommendations made, and actions taken.

PART VII. REPEAL OF PREVIOUS ORDERS

All Commissioner's Orders, or parts of Commissioner's Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART VIII. EFFECTIVE DATE

The provisions of this order shall take effect immediately.

ORGANIZATION ORDER NO. 49.—BOARD OF CONSUMER GOODS REPAIR SERVICES

(Organization Order No. 49, Commissioner's Order No. 74-232, Nov. 12, 1974, as amended by Mayor's Order No. 77-102a, June 28, 1977.)

[The Board of Consumer Goods Repair Services which was established by the Consumer Goods Repair Regulation, Reg. No. 74-3, Mar. 15, 1974, was abolished and the powers, duties, and functions of the Board were transferred to the Office of Consumer Protection by section 2 of act June 11, 1977, D.C. Law 2-8, which is set out as a note under section 4 of title 28 Appendix.]

By virtue of the authority vested in me by Reorganization Plan 3 of 1967, it is hereby ordered that:

PART I. BOARD OF CONSUMER GOODS REPAIR SERVICES

1. *Establishment and purpose.*—There is hereby established, in the Government of the District of Columbia, a Board of Consumer Goods Repair which shall be responsible for the regulation of the consumer goods repair industry in the District of Columbia.

2. *Functions.*—The Board shall administer the program of licensing of consumer goods repair dealers established by City Council Regulation No. 74-3 of March 15, 1974. In pursuance of this responsibility, the Board shall:

- A. Conduct from time to time investigations and public hearings to determine the need for regulation of additional repair industry categories.

- B. Establish license classifications for consumer goods repair dealers and supervisory inspectors licensed by Regulation 74-3.

- C. Establish, in its discretion, advisory panels for each repair industry category required by this regulation to serve as technical consultant to the Board and to assist in the preparation of competency examinations.

- D. Develop, after appropriate study, a recommended fee system for repair dealer and supervisory inspector licenses to be presented to the Commissioner within twelve months after the effective date of Regulation 74-3.

- E. Devise and administer a competency examination system for the licensing of supervisory inspectors in each repair industry category or specialty covered by Regulation 74-3.

- F. Establish pursuant to the D.C. Administrative Procedure Act the necessary rules to carry out the provisions of Regulation 74-3.

- G. Issue licenses in accordance with Title III of Regulation 74-3.

3. *Advisory panels.*—Each advisory panel established by the Board under Paragraph 2 C shall consist of three members, to be appointed by the Mayor-Commissioner from recommendations submitted to him by the Board, two of whom shall be representatives of the relevant repair industry category or specialty and one of whom shall not be affiliated with any repair industry category or specialty and one of whom shall not be affiliated with any repair industry category but shall have relevant technical expertise. Tenure for panel members shall be determined by the Mayor-Commissioner.

4. *Composition of the Board.*—The Board shall comprise five members; three of whom shall have no occu-

pational affiliation with any business or industry within the scope of Regulation 74-3, and who shall represent District consumers. Members shall be appointed by the Mayor-Commissioner with the advice and consent of the Council. The term of office of Board members shall be three years, except that initial appointments shall be made as follows: of the members first appointed, two shall be appointed for three years, two shall be appointed for two years, and one shall be appointed for one year. The maximum term of office for any members shall be six years, except that members may be reappointed for an additional term or terms upon the expiration of one year following any six-year term.

Upon the expiration of a member's term, each member shall continue to serve until his or her successor is appointed. Should a vacancy occur through the death, incapacity, resignation, or removal of a member, a successor shall be appointed to complete the unexpired term of that member. The Board shall elect its own officers. The Executive Director of the Office of Consumer Affairs shall participate as an ex-officio non-voting member in all deliberations of the Board which do not conflict with his duties pursuant to Commissioner's Order 73-225.

5. *Compensation.*—Members of the Board of Consumer Goods Repair Services shall serve without compensation, but members who are not District Government employees shall receive a per diem reimbursement in the amount of \$50 per meeting. Total per diem per individual shall not exceed \$1,400 per fiscal year.

6. *Administration.*—The Director of the Office of Consumer Affairs shall assist the Board in matters of administration and shall provide it with necessary staff services. Expenses incurred by the Committee as a whole or by individual members thereof, when authorized by the Director of the Office of Consumer Affairs, will become an obligation against funds designated for that purpose.

PART II. DELEGATION OF AUTHORITY

7. The Director of the Office of Consumer Affairs is delegated authority vested in the Mayor-Commissioner by Section 309 of City Council Regulation 74-3, which concerns the appointment of resident agents to represent non-resident dealers; and shall receive such notifications and legal notices and keep such records as are required in this Section.

ORGANIZATION ORDER NO. 50.—OFFICE OF BUDGET AND MANAGEMENT SYSTEMS—MUNICIPAL PLANNING OFFICE

(Organization Order No. 50, Commissioner's Order No. 74-264, Dec. 31, 1974.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is hereby ORDERED THAT:

A. *Establishment.*—There is hereby established in the Government of the District of Columbia, in the Executive Office of the Mayor-Commissioner, the Office of Budget and Management Systems and the Municipal Planning Office. Both offices shall be headed by directors who shall perform functions transferred, delegated or otherwise assigned to their respective offices and who shall have authority to redelegate such functions as they deem necessary.

B. *Purpose.*—*Office of budget and management systems.* The office is charged with the responsibility of aiding the Mayor-Commissioner to (1) execute the budget and financial management responsibilities of the District Government, (2) improve the management and performance of programs and service operations on a District-wide basis, and (3) ensure compliance with prescribed policies, regulations, laws and procedures of the District Government through a continuous program of independent management and fiscal audits.

C. *Purpose.*—*Municipal planning office.* The office is charged with the responsibility for the development and coordination of plans and policies of the District Government and to carry out the provisions of the Self-Government Act (P.L. 93-198) with respect to municipal planning in an efficient and effective manner in accordance with the principles of sound planning with provision for the participation and consultation of residents of the District of Columbia.

D. *Functions.*—The two offices are assigned the functions and responsibilities set out in the accompanying

statement announcing their establishment. Subject to my approval, the directors of the two offices are to arrange such appropriate organizational adjustments and changes to carry out the functional assignments there described.

E. *Transfers.*—All positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available to the Office of Budget and Financial Management and to the Office of Planning and Management are transferred to the directors of the Office of Budget and Management Systems and the Municipal Planning Office in accordance with their assignments.

The directors shall make such arrangements for these transfers of funds and other resources that may be required to carry out the provisions of this order.

F. *Organization.*—The director of the Office of Budget and Management Systems and the Director of the Municipal Planning Office, in the performance of the functions for which each is responsible, are authorized to alter, modify or establish such organizational components thereunder with such specified functions as are deemed appropriate.

G. *Effective date.*—This order shall take effect on January 1, 1975.

ORGANIZATION ORDER NO. 50 (SUPPLEMENT NO. 1).—FUNCTIONS OF THE OFFICE OF BUDGET AND MANAGEMENT SYSTEMS

(Organization Order No. 50 (Supplement No. 1), Mayor's Order No. 75-41, Feb. 26, 1975, as amended by Mayor's Order No. 77-141a, Aug. 22, 1977.)

This Order is issued by virtue of Reorganization Plan No. 3 of 1967, and in accordance with Public Law 93-198, the District of Columbia Self-Government and Governmental Reorganization Act, and in accordance with Commissioner's Order No. 74-264 of December 31, 1974 (Organization Order No. 50) and Order of the Mayor No. 75-23 of February 5, 1975.

I. *Establishment.*—There is hereby established in the Government of the District of Columbia, in the Executive Office, the Office of Budget and Management Systems, to be headed by a Director who shall perform the functions herein transferred, delegated, or otherwise assigned, and who shall have the authority to redelegate such functions as he deems necessary.

II. *Purpose.*—The Office of Budget and Management Systems is charged with assisting the Mayor to maintain a fiscally sound and responsibly managed government.

III. *Functions.*—The Director of the Office of Budget and Management Systems will:

A. Execute the budget and financial management responsibilities of the District Government.

B. Analyze agency proposals for capital facilities, including program content and significance of such facilities; advise the Mayor in determining the annual capital budget; prepare the annual capital budget and the District of Columbia's Six-Year Capital Improvements Program, assisted and advised by the Capital Improvements Program-Technical Advisory Committee. (CIP-TAC).

C. Administer all borrowing programs for the issuance of long- and short-term indebtedness.

D. Administer the District Government's cash management program, including the investment of surplus funds in governmental and non-governmental interest-bearing securities and accounts.

E. Conduct multi-year analyses and planning of expenditures and projected revenues.

F. Administer the centralized District Government payroll and retirement system.

G. Govern the accounting policies and systems applying to District agencies and certain other agencies specified in the Home Rule Act, serving as the principal liaison between the D. C. Government, the U. S. Office of Management and Budget, and the U. S. General Accounting Office.

H. Conduct a continuing program of independent fiscal and management audits of District Government operations, and such other investigations and appraisals as the Mayor may direct; act as liaison representative for the Mayor for all external audits of the District Government executive branch.

I. Improve the management and performance of programs and service operations of District agencies by means of performance and productivity measurements and evaluations, contract review, and technical and other assistance to agencies, including the funding of projects requiring skills and resources not currently available within the District Government.

J. Review and coordinate all proposed organizational changes, especially with reference to their budget implications, and assist in the coordination and review of the administrative issuance system.

K. Assure the provision of effective and efficient central data processing services to agencies and programs of the District Government.

L. [Repealed.]

M. Conduct such other coordinative and special programs and projects as the Mayor shall assign.

IV. *Transfer of functions.*—The following functions are hereby transferred to the Office of Budget and Management Systems:

A. Those functions of the Office of Budget and Financial Management set forth in Commissioner's Order No. 72-80 (Organization Order 30), April 5, 1972.

B. The functions of the Office of Municipal Audit and Inspections set forth in Commissioner's Order No. 72-177 (Organization Order 33), July 14, 1972.

C. Those functions of the Office of Planning and Management set forth in paragraphs 3h, 3i, 3k, 3l, 3m, and 3n of Commissioner's Order No. 71-307, August 13, 1971.

V. *Delegations and Redelegations of Authority:*

A. The Director of the Office of Budget and Management Systems is the successor to all authority delegated to the Director of the Office of Budget and Financial Management.

B. The Director of the Office of Budget and Management Systems serves as the State Clearinghouse for Federal Assistance for the review, evaluation, and coordination of Federal programs and projects in relation to the District budget.

C. The authority delegated to the Director of the Office of Planning and Management under Commissioner's Order No. 70-230 of June 19, 1970, to enter into agreements on behalf of the District of Columbia with respect to management consulting services to be financed with funds available in the Management Improvement Account, is redelegated to the Director of the Office of Budget and Management Systems.

VI. *Other Transfers.*—All positions, personnel, property, records and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the above functions, are hereby transferred to the Director of the Office of Budget and Management Systems.

VII. *Organization.*—The Director of the Office of Budget and Management Systems, in the performance of functions for which he is responsible, is authorized to establish such organizational components thereunder with such specified functions as he deems appropriate.

ORGANIZATION ORDER NO. 50 (SUPPLEMENT NO. 2).— FUNCTIONS OF MUNICIPAL PLANNING OFFICE

(Organization Order No. 50 (Supplement No. 2), Mayor's Order No. 75-42, Feb. 26, 1975, as amended by Mayor's Order No. 77-52A, Apr. 19, 1977; M. O. No. 78-64, Mar. 16, 1978.)

This Order is issued by virtue of Reorganization Plan No. 3 of 1967, and in accordance with P.L. 93-198, the District of Columbia Self-Government and Governmental Reorganization Act and in accordance with Commissioner's Order No. 74-264, December 31, 1974, (Organization Order No. 50) and Order of the Mayor No. 75-23, February 5, 1975.

Background of Order: Title II of the Self-Government and Governmental Reorganization Act, P.L. 93-198 lodges with the Mayor responsibility to take certain actions with respect to local planning including the following:

(a) To be the central planning agency for the District of Columbia;

(b) To coordinate the planning activities of the District of Columbia;

(c) To prepare and implement the District elements of the Comprehensive Plan for the National Capital;

(d) To establish processes for citizen participation in the planning process; and

(e) To establish procedures for appropriate meaningful consultation with any state or local government or planning agency in the National Capital Region affected by any aspect of a comprehensive plan (including amendments thereto) affecting or relating to the District.

1. *Establishment.*—There is established in the Government of the District of Columbia, in the Executive Office of the Mayor, a Municipal Planning Office headed by a Director, who shall perform the functions delegated, transferred or otherwise assigned to him in this Order, and such functions as will be assigned to him from time to time, and who shall have the authority to redelegate such functions as he deems necessary.

2. *Purpose.*—The Municipal Planning Office shall, on behalf of the Mayor, provide for the development and coordination of plans and policies of the District Government and shall carry out the foregoing provisions of the Self-Government Act (P.L. 93-198) relating to municipal planning and the support of municipal planning in an efficient and effective manner. This should be done in accordance with principles of sound planning, with provision for participation and consultation of residents and for the effective coordination of municipal planning resources.

3. *Functions.*—The Director of the Municipal Planning Office shall be responsible for the following functions:

a. Providing assistance and support to the Mayor and reporting to him with respect to matters relating to his responsibility for planning in the District of Columbia, analysis and coordination of governmental plans and policies affecting the District, and initiation of new programs to meet the needs of the District.

b. Providing support for the planning activities of the municipal government.

c. Providing for the development and implementation of zoning and land use planning, policies and processes.

d. Providing, on behalf of the Mayor, for the development and implementation of the local elements of the Comprehensive Plan for the National Capital established by P.L. 93-198.

e. Developing and proposing, for the consideration of the Mayor, long-range goals, plans and policies for the District Government as a whole; evaluating plans, policies and objectives developed by Federal, regional or local government agencies as they relate to the District; coordinating the preparation of plans by District agencies, provision of technical assistance for such planning as well as development of standards and guidelines; and planning, implementing and administering projects assigned by the Mayor.

f. Promoting the development of a comprehensive and integrated planning process for the District, with particular reference to the participation of citizens in such a process.

g. Development and directing the "State Planning Agency" functions of the District of Columbia for purposes of Comprehensive Planning Assistance to the District as authorized by Section 701 of the Housing Act of 1954, as amended, and policies of the U.S. Department of Housing and Urban Development; working closely with District of Columbia Governmental entities assigned responsibility for housing and community development functions in the development and coordination of their planning activities.

h. Conducting analytical and research studies related to social, economic and environmental planning for the District.

i. Providing planning liaison for the District of Columbia Government with the National Capital Planning Commission, the Metropolitan Washington Council of Governments, the Washington Metropolitan Area Transit Authority, the planning components of the various metropolitan area jurisdictions, and other Federal regional and local agencies engaged in local, metropolitan and regional planning, representing the Mayor as his special assistant for planning before such bodies.

j. Performing the local project planning review functions formerly performed for the District by the National Capital Planning Commission.

k. Participating and assisting in the coordination of capital facilities planning throughout the District Government, and cooperating and working with the Office of

Budget and Management Systems in the preparation of the six-year Capital Improvements Program.

l. Developing and carrying out plans, programs and standards for improvement of statistical data and services; conducting a program of statistical services for the District of Columbia.

m. Directing operation of the Service Area System, planning and developing programs for the improvement of the system and encouraging citizen participation and involvement in the planning process and with respect to delivery of municipal services; providing liaison services with the Advisory Neighborhood Councils.

n. Providing ongoing liaison with and necessary staff support to the Complaint Center and through it with other District Government entities with respect to service complaints.

o. Providing customary administrative support services including grants management services for the planning activities herein described; briefing District agencies and citizen groups on planning and planning related activities of the District Government.

p. Supporting the activities of the Zoning Commission and the Board of Zoning Adjustment by providing zoning and planning services as required in accordance with policy guidelines established by the Zoning Commission.

q. Assisting the Zoning Commission and the Board of Zoning Adjustment in making arrangements for required public hearings; maintaining necessary records and files of such proceedings and providing a public information service with respect to the activities and actions of the two bodies.

r. [Rescinded.]

4. *Delegation.*—The Director of the Municipal Planning Office is hereby given responsibility to develop the required local elements of the comprehensive plan and to coordinate the planning activities of the District of Columbia Government on behalf of the Mayor in accordance with P.L. 93-198.

5. *Liaison officers.*—The directors of all departments and agencies of the District Government are directed to designate planning liaison officers to provide coordination between the planning activities of the individual departments and agencies and the Municipal Planning Office in accordance with P.L. 93-198.

6. *Citizens panel.*—A citizens panel broadly representative of all segments of the community, and of the District's various geographical areas, shall be established. It will assist the Mayor in establishing procedures for citizen participation and to advise the Director of Municipal Planning in the preparation of the comprehensive plan. Staff support for the Citizens Panel shall be provided by the Municipal Planning Office. The Director of Municipal Planning shall be an ex-officio member of the Citizens Panel.

7. *Transfer of funds and other resources.*—All positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds of the Office of Planning and Management retained in the Municipal Planning Office under Organization Order No. 50 of December 31, 1974 and those funds and positions transferred to the Municipal Planning Office under the Order of the Mayor 75-23, February 5, 1975 or otherwise made available to the above functions are transferred to the Director of the Municipal Planning Office.

8. *Organization.*—The Director of the Municipal Planning Office in the performance of the functions for which he is responsible, is authorized to alter, modify or establish such organizational components thereunder with such specified functions as he deems appropriate.

9. *Superseding.*—Previous orders establishing functions and duties of the Office of Planning and Management are hereby superseded.

10. *Effective date.*—This Order will take effect immediately.

ORGANIZATION ORDER NO. 51.—OFFICE OF EMERGENCY PREPAREDNESS

(Organization Order No. 51, Commissioner's Order No. 74-267, Dec. 27, 1974, as amended by Mayor's Order No. 76-49, Jan. 23, 1976.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is hereby ordered that Commissioner's Order 71-259 of July 26, 1971 (Replace-

ment for Reorganization Order 49) is replaced in its entirety by the following:

1. *Establishment.*—There is established in the Government of the District of Columbia, in the Executive Office of the Commissioner, the Office of Emergency Preparedness, headed by a Director. The Director of the Office of Emergency Preparedness, in the performance of the functions for which he is responsible, is hereby authorized to establish such organizational components thereunder with such specified functions as he deems appropriate.

2. *Purpose.*—The purpose of the Office of Emergency Preparedness is to assist the Commissioner to minimize and ameliorate the effects on the people, the Government, the institutions and the structures of the District of Columbia of local emergencies, natural disasters or enemy attack. The Office is directed to perform its mission by means of plans and development of systematic methods, with the assistance of other District Government agencies and officials as necessary.

3. *Functions.*—The Office of Emergency Preparedness shall:

A. coordinate the development and preparation, for approval of the Commissioner, of such District Government overall emergency plans as are necessary to minimize the effects of emergency situations on the citizens of the city. Affected District Government agencies shall prepare, and furnish to the Office of Emergency Preparedness, copies of specific emergency operating plans for carrying out assigned responsibilities under provisions of the overall emergency plans approved by the Commissioner.

B. develop and operate such executive communications, information, and warning systems as are necessary to assist the Commissioner and other key officials.

C. provide and operate an Executive Command Center, which shall be staffed 24 hours every day by members of the Office of Emergency Preparedness staff. The center staff shall be augmented by the Director as often as necessary to assist the Commissioner during emergency situations.

D. plan and administer a Disaster Preparedness Program and do all things necessary to meet the requirements of the Disaster Relief Act of 1970 (84 Stat. 1744, P.L. 91-606) as amended by the Disaster Relief Act of 1974 (88 Stat. 144, P.L. 93-288) under the administration of the Director who is hereby designated as the coordination officer for the District of Columbia for purposes of said Acts.

E. perform such other functions relating to emergencies as the Commissioner may assign.

4. Commissioner's Order 73-156, dated July 5, 1973, is hereby rescinded.

ORGANIZATION ORDERS OF THE MAYOR OF THE DISTRICT OF COLUMBIA

Org. Ord.

Nos.

201. Department of Human Resources Advisory Committee on Day Care.
202. Bicentennial Organization.
203. Citizen's Advisory Committee to Reduce Litter.
204. [Unused].
205. District of Columbia Commission on Postsecondary Education.
206. Interdepartmental and Interagency Committee for Neglected and Abused Children.
207. Juvenile Justice and Delinquency Prevention—Designation of Agency to Administer Act—Advisory Group.
208. Mayor's Committee on the Handicapped.
209. Civic Center Advisory Committee.
210. Statewide Health Coordinating Council.
211. District of Columbia Developmental Disabilities Planning Council.
212. ADP Policy Board.
213. Mayor's Ad Hoc Advisory Committee on the Education of Handicapped Children.
214. Historical Records Advisory Board.
215. Blind Vendors Committee.
216. Investment Advisory Committee for the District of Columbia Teachers' Retirement and Annuity Fund.
217. Investment Advisory Committee.
218. Mental Health Advisory Council.

ORGANIZATION ORDER NO. 201.—DEPARTMENT OF HUMAN RESOURCES ADVISORY COMMITTEE ON DAY CARE

(Organization Order No. 201, Mayor's Order No. 75-88, Apr. 18, 1975.)

By virtue of the authority vested in me by the District of Columbia Self-Government and Governmental Reorganization Act (P.L. 93-198), Organization Order #137, (Order 63-999), dated April 18, 1963 and subsequently amended by Order 63-1210, G.F.O.-016, dated May 14, 1963, is hereby amended in its entirety to read as follows:

PART I

Establishment.—There is established in the Government of the District of Columbia a Human Resources Advisory Committee on Day Care. This Committee is established to increase citizen participation in the District Government's Human Resources Department Day Care Program and to act in an advisory capacity to the Director of the Department of Human Resources on all matters of general policy involved in the provision of day care services under the District Plan.

PART II

Functions.—The Committee shall:

A. Study and make appropriate recommendation with respect to proposals for new departmental policies and programs, or changes in existing departmental policies and programs affecting provision of day care services in the District of Columbia.

B. Advise on community day care needs and the formulation and execution of long-range plans necessary to satisfy those needs.

C. Advise in coordinating the day care programs and activities of the Department of Human Resources with those of community groups and private and non-profit organizations.

D. Advise in the development of resources and the establishment of standards for day care services in the District of Columbia.

PART III

Composition and membership.—The Committee shall consist of not more than twenty-seven (27) members, appointed by the Director of the Department of Human Resources on the basis of their personal qualifications and demonstrated interest and leadership in the field of day care. One-third ($\frac{1}{3}$) of the appointed membership shall be parents of children in day care. The Committee shall include at least four (4) representatives of the Department of Human Resources—one representative of the Social Rehabilitation Administration, one representative of the Community Health and Hospitals Administration, and two representatives of the Office of Planning and State Agency Affairs (one each from the Division of Licensing and Standards and the Division of Child Development), one representative of the Board of Education, and one representative of the Department of Recreation. Such other appointment shall, to the extent possible, be made in such a manner as to provide a maximum degree of perspective on, and insight into, the day care needs of the community.

PART IV

Term of office.—The terms of office of members of the Committee shall be three years. Should a vacancy occur through the death, incapacity, removal, or resignation of a member, a successor shall be appointed to complete the unexpired term of the member. After the expiration of his term each member shall continue to serve until his successor is appointed and has qualified. No person who has served six years or more consecutively as a member, shall be reappointed as a member until after the expiration of one year from the end of such service.

PART V

Compensation.—Members shall serve without compensation.

PART VI

Organization.—The Committee shall elect its own chairman and otherwise determine its own organization and designate its own officers. Secretarial services shall be furnished by the Department of Human Resources.

ORGANIZATION ORDER NO. 202.—BICENTENNIAL ORGANIZATION

(Organization Order No. 202, Mayor's Order No. 75-106, May 21, 1975.)

By virtue of the authority vested in me by the District of Columbia Self-Government and Governmental Reorganization Act, it is hereby ORDERED THAT:

Commissioner's Order 71-443, dated December 17, 1971, and Commissioner's Order 73-275, dated December 13, 1973 are hereby rescinded and replaced by the following:

PART I

Bicentennial Commission:

1. **Establishment and Purpose.**—There is established in the District of Columbia Government the District of Columbia Bicentennial Commission which, working with foundations, corporate and business groups, and in concert with the Bicentennial Assembly, shall develop programs for the observance of the national Bicentennial in the District of Columbia and shall advise the Mayor on policies and actions which the Government of the District of Columbia may adopt as part of the Bicentennial program for the District of Columbia.

2. **Composition.**—The Commission shall comprise the Mayor, the Chairman of the Council of the District of Columbia, the D.C. Delegate to the U.S. House of Representatives, the President of the D.C. Board of Education, the immediate past Chairman of the D.C. Bicentennial Commission, and citizen members appointed by the Mayor. Citizen members shall serve for terms of one year, and the Mayor shall appoint from among them the Chairman and Vice-Chairman of the Commission.

3. **Administration and Compensation.**—Members shall serve without compensation. Appropriate expenses may be reimbursed upon authorization by the Chairman of the Commission from funds designated for that purpose, provided this is done in accordance with laws, policies and practices applicable to the District of Columbia Government. The Commission shall determine its own organization, rules and procedures, and shall establish and fill such additional officer positions from its membership as it may deem appropriate.

PART II

Bicentennial Assembly:

1. **Establishment and Purpose.**—There is established in the District of Columbia Government the District of Columbia Bicentennial Assembly, which working with neighborhood, civic and other private groups, and in concert with the Bicentennial Commission, shall develop programs for the observance of the National Bicentennial in the District of Columbia and shall advise the Mayor on policies and actions which the Government of the District of Columbia may adopt as part of the Bicentennial program for the District of Columbia.

2. **Composition.**—The Assembly shall comprise a broad cross-section of citizens of the District of Columbia. Its membership shall be appointed by the Mayor.

3. **Officers and Administration.**—Members shall serve without compensation; however, appropriate expenses may be reimbursed upon authorization by the Chairman of the Assembly from funds designated for that purpose, provided this is done in accordance with laws, policies, and practices applicable to the District of Columbia Government. The Assembly shall elect its Chairman and such other officers as it shall consider appropriate from among its members and shall establish its own rules and procedures.

PART III

Joint Executive Committee:

1. **Establishment and Purpose.**—There is established a Joint Executive Committee which shall be the policy making body for the Commission and Assembly. The Joint Executive Committee shall take policies, actions and programs as presented by the Commission and Assembly and develop coordinated programs to be recommended to the Mayor for incorporation as part of the Bicentennial Program in the District of Columbia.

2. **Composition.**—The Joint Executive Committee shall be composed of eleven representatives from both the Commission and the Assembly to be chosen by the Commission and Assembly representatives.

3. *Officers and Administration.*—The Joint Executive Committee shall be chaired by the Mayor. In his absence it shall be chaired by the Chairman of the Assembly. The Joint Executive Committee will determine its own rules and procedures, and will define policy procedures and appropriate relationships between the organization and activities of the Commission and Assembly.

PART IV

Office of Bicentennial Programs:

1. *Establishment and Purpose.*—There is established in the Executive Office of the Mayor of the District of Columbia the D.C. Office of Bicentennial Programs to assist the Mayor in acting on the advice and recommendations of the Bicentennial Commission and Assembly and to coordinate the preparations of the District of Columbia Government for the Observance of the National Bicentennial in 1976.

2. *Functions.*—The Director of the District of Columbia Office of Bicentennial Programs shall perform the following functions.

A. Coordinate the District Government's participation in the Bicentennial observance, including the preparation of the District's physical, cultural, environmental, social and economic objectives.

B. Serve as liaison between the departments and agencies of the District Government and the D.C. Bicentennial Commission and Assembly, the American Revolution Bicentennial Administration and other entities that may undertake Bicentennial programs and projects.

C. Provide liaison between the District Government, Federal agencies, international representatives, private agencies and other bodies with regard to Bicentennial programs and projects.

D. Prepare a plan, make arrangements for and coordinate the services of the several agencies and departments of the District of Columbia in carrying out the plans and arrangements as approved, to provide for the public service needs of tourists and other visitors expected during 1976 and the years immediately following. Said plans shall provide for coordination of the services of the District Government with appropriate Federal and private agencies and other bodies.

E. Assist the D.C. Bicentennial Commission and Assembly and the American Revolution Bicentennial Administration in developing and coordinating ceremonial, historical and celebrative events and in welcoming special guests to the City in 1976.

PART V

Rescission.—Commissioner's Order No. 70-186 of May 21, 1970 is hereby rescinded.

PART VI

Effective date.—This Mayor's Order is effective immediately.

ORGANIZATION ORDER NO. 203.—CITIZEN'S ADVISORY COMMITTEE TO REDUCE LITTER

(Organization Order No. 203, Mayor's Order No. 75-180, August 1, 1975.)

By virtue of the authority vested in me by the District of Columbia Self-Government and Governmental Reorganization Act (P.L. 93-198), it is hereby ORDERED THAT:

I. *Establishment.*—A Citizen's Advisory Committee to Reduce Litter is hereby established in the Executive Branch of the Government of the District of Columbia. This Committee is established to increase citizen participation in the litter reduction program, to act in an advisory and support capacity to the Director of the Department of Environmental Services, and to provide the necessary impetus to launch and sustain a vigorous attack on litter throughout the District of Columbia.

II. *Functions.*—The Committee shall:

A. Study and make appropriate recommendations with respect to proposals for new policies and programs, or changes in existing policies and programs, relating to litter and litter reduction in the District of Columbia.

B. Work with appropriate officials in the D.C. Government in effectuating recommendations of litter-control analysis.

C. Enlist the active participation of business, industry and community organizations to develop, support and implement programs to reduce litter and to change attitudes towards the generation of litter.

D. Help build municipal sanitation as a curriculum subject and encourage and assist in the development of participation projects for school children.

E. Help create a favorable public climate for effective litter control in the community.

F. Help build public support for the government in the steps it takes to strengthen ordinances, technology, and enforcement.

G. Help familiarize all citizens with the necessary practices to follow in reducing litter to a minimum.

H. Help keep citizens constantly reminded of the importance of litter control and of their individual responsibility in making it work.

I. Work with Federal government in effectuating recommendations of litter-control analysis.

III. *Composition and membership.*—Appointments to the Committee shall be made by the Director of the Department of Environmental Services on the basis of personal qualifications and demonstrated interest and leadership. Community organizations, D.C. Schools, communications media, Federal Government, citizens, business and industry shall be represented on the Committee. Other appointments shall, to the extent possible, be made in such a manner as to provide a maximum degree of perspective on, and insight into, the problems of litter in the community. A full-time staff person from the Department of Environmental Services shall coordinate the work of the Committee.

IV. *Term of Office.*—The terms of office of members of the Committee shall be three years. Should a vacancy occur through the death, incapacity, removal, or resignation of a member, a successor shall be appointed to complete the unexpired term of the member. After the expiration of his term each member shall continue to serve until his successor is appointed and has qualified. No person who has served six years or more consecutively as a member, shall be reappointed as a member until after the expiration of one year from the end of such service.

V. *Compensation.*—Members shall serve without compensation.

VI. *Organization.*—The Committee shall consist of several subcommittees, including but not limited to, a subcommittee on municipal operations, a subcommittee on business and industry, a subcommittee on community organizations, and a subcommittee on Federal Government. The Chairperson of the Committee will be appointed by the Director of the Department of Environmental Services. The Chairperson will appoint subcommittee chairpersons. Secretarial services shall be furnished by the Department of Environmental Services.

ORGANIZATION ORDER NO. 204.—[UNUSED]

ORGANIZATION ORDER NO. 205.—DISTRICT OF COLUMBIA COMMISSION ON POSTSECONDARY EDUCATION

(Organization Order No. 205, Mayor's Order No. 75-23a, Feb. 1, 1975.)

By virtue of the authority vested in me by section 422 of the District of Columbia Self-Government and Governmental Reorganization Act, and in accordance with Title XII, Section 1202 of the Higher Education Act of 1965, as amended (hereinafter referred to as the Act): it is ORDERED THAT:

Commissioner's Organization Order No. 15, which established the District of Columbia Commission on Academic Facilities, is hereby rescinded. There is hereby established a District of Columbia Commission on Postsecondary Education (hereinafter referred to as the Commission) to be composed of members of the general public, and public and private nonprofit and proprietary institutions of postsecondary education.

PART I

Purpose.—The Commission on Postsecondary Education shall act in an advisory capacity to the Director, Department of Human Resources and shall serve as the required State Commission under Title I, Section 105 (Community Services and Continuing Education), Title VIA, Section 603 (Equipment for Undergraduate Instruction), and Title

VIIA, Section 704 (Grants for Construction of Undergraduate Academic Facilities) of the Act. The Commission shall compile comprehensive inventories of, and studies with respect to, all public and private postsecondary educational resources in the District of Columbia, including planning necessary for such resources to be better coordinated, improved, or altered so that all persons within the District who desire, and who can benefit from, postsecondary education may have an opportunity to do so.

PART II

Functions.—The Commission on Postsecondary Education shall:

1. In accordance with Section 1202 of the Act, conduct comprehensive planning for postsecondary education in the District of Columbia. These planning activities shall include the regular acquisition and analysis of statistical data relating to institutions of postsecondary education, and shall augment and be in addition to the planning activities required by Title X, Parts A and B of the Act.

2. In accordance with Title X, Part A, of the Act, develop and recommend a statewide plan for the expansion or improvement of postsecondary educational programs in community colleges or both.

3. In accordance with Title X, Part B, of the Act, initiate and conduct comprehensive planning for an occupational education program for the District of Columbia.

4. In accordance with Section 404 of the Act, review and provide comment and recommendations on applications from institutions for grants for projects or programs for the improvement of postsecondary education to the Director of the Department of Human Resources for transmittal to the U.S. Office of Education.

5. In accordance with Title VIA of the Act, consider applications submitted for Federal grants for Equipment for Undergraduate Instruction and forward the recommended applications for approval to the Director, Department of Human Resources for transmittal to the U.S. Office of Education.

6. In accordance with Title VIIA of the Act, consider applications submitted for Federal grants for Construction of Undergraduate Academic Facilities and forward the recommended applications for approval to the Director, Department of Human Resources for transmittal to the U.S. Office of Education.

7. In accordance with Title I of the Act, consider applications for Federal funding under the Community Services and Continuing Education Program and submit recommendations for funding of applications for approval to the Director, Department of Human Resources for transmittal to the U.S. Office of Education.

PART III

Composition.—The Commission shall consist of not less than twenty-three (23) members appointed by the Mayor on the basis of broad and equitable representation of the general public and public and private nonprofit and proprietary institutions of postsecondary education in the District of Columbia, including community colleges, junior colleges, postsecondary vocational schools, area vocational schools, technical institutes, four-year institutions of higher education and branches thereof. The members of the Commission shall include one (1) representative from each institution of postsecondary education with an enrollment of more than 2,000 students; at least two (2) representatives from public and private nonprofit institutions with enrollments of less than 2,000 students; at least two (2) representatives from private proprietary institutions of postsecondary education; two (2) representatives from the student bodies of institutions of postsecondary education, one (1) from the public institutions and one (1) from the private institutions; two (2) representatives from the District of Columbia Government, one (1) from the legislative branch and one (1) from the executive branch; one (1) representative from the District of Columbia Public Schools; one (1) representative from the District of Columbia Advisory Council on Vocational Education; and six (6) members of the general public. A member may represent more than one of the above constituencies. Each member shall have one (1) vote. A Chairman shall be appointed by the Mayor.

PART IV

Term of office.—The term of office of representatives of institutions of postsecondary education with enrollment of more than 2,000 shall be for three (3) years, and representatives may be re-appointed indefinitely. The terms of office of representatives from institutions of postsecondary education with enrollments of less than 2,000 and from private proprietary institutions shall be for two years and shall rotate among like-governed institutions. The term of office of the representative of the legislative arm of the government shall be for two (2) years, and that of the representative of the executive branch of the Government for three (3) years, and representatives may be re-appointed indefinitely. The terms of office of the representatives of the Public Schools and the Advisory Council on Vocational Education shall be for one (1) year and the representatives may be re-appointed indefinitely. The terms of office of the representatives of the general public shall be for two (2) years, except that of the persons first appointed as members, one-half shall serve for one (1) year, such term to expire June 30, 1975; and one-half shall serve for two (2) years, such term to expire June 30, 1976; general public representatives may serve for six (6) years consecutively and are not thereafter eligible for reappointment for a further one (1) year term.

PART V

Oath of Office.—Members of the Commission shall take the following Oath of Office:

"I, _____ having been duly appointed by the Mayor as a member of the District of Columbia Commission on Postsecondary Education, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Commission to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

PART VI

Compensation.—Members of the Commission shall serve without compensation; however, appropriate expenses may be reimbursed when authorized by the Director of the Department of Human Resources. Expenditures so authorized shall become an obligation against funds so designated.

PART VII

Organization.—Upon recommendation of the Commission, the Mayor shall appoint an Executive Secretary, and a Chairman. The Executive Secretary to the Commission shall have no vote. The Commission shall determine its own organization and may name committees and such officers other than those appointed by the Mayor as it deems necessary. The Commission shall meet at the call of the Mayor, or any officer of the Commission, or at the request of five (5) members of the Commission.

PART VIII

Administration.—The Executive Secretary to the Commission shall administer the program of the Commission, and shall be responsible to the Director, Department of Human Resources. All planning programs, proposals, and reports, and applications for funding approved by the Commission, shall be submitted to the Director, Department of Human Resources for review and approval and for their submission to the U.S. Office of Education.

PART IX

The Commission shall regularly report its activities to the Director of the Department of Human Resources.

ORGANIZATION ORDER NO. 206.—INTERDEPARTMENTAL AND INTERAGENCY COMMITTEE FOR NEGLECTED AND ABUSED CHILDREN

(Organization Order No. 209, Mayor's Order No. 76-114, Apr. 30, 1976.)

By virtue of the authority vested in me by the District of Columbia Self-Government and Governmental Re-

organization Act (P.L. 93-198), it is hereby ORDERED THAT:

I. *Establishment.*—There is established in the District of Columbia a committee of representative officials of the Department of Human Resources and other public and voluntary agencies concerned with the protection of neglected children and the prevention and treatment of child abuse, to be known as the Interdepartmental and Interagency Committee for Neglected and Abused Children.

II. *Purpose.*—The committee will bring together those agencies and persons in the community whose objective is to assure that every child is guaranteed at least the minimum standards of care for his protection and maximum development, for the purpose of coordinating and improving services for abused and neglected children in the District of Columbia and making the available services known to the community.

III. *Functions.*—The committee shall be responsible for the following functions:

1. Identification of all agencies, institutions and groups within the District of Columbia which serve abused and neglected children; maintaining a work file for each that includes its mandates or charter, special responsibilities, general statement of operations and procedures, hours and places of business, and designated spokesman.

2. Providing a coordinating mechanism for the activities of these agencies which are directed toward abused and neglected children; differentiating between major, mandated responsibilities and those that provide supportive, ancillary services.

3. Identifying areas in which services are duplicated, and recommending program modifications to eliminate duplication and increase service efficiency.

4. Identifying areas in which necessary services do not exist and making recommendations for action by the Mayor; the City Council; agencies, institutions, or groups that are offering other related services for children; or the United Way of the National Capital Area.

5. Providing information on child neglect, and abuse to the community via a speaker's bureau, consultation, and other methods, as appropriate.

6. Analyzing city and federal laws that mandate reporting of abuse and neglect and follow-up services, recommending changes that will avoid duplication, eliminate gaps and ensure accountability.

7. Reviewing proposals that seek to obtain grant funding for services directed toward child abuse and neglect; advising as to their pertinence, relevance and appropriateness—particularly in regard to existing programs.

8. Recommending standards for the provision of services for abused and neglected children in the District of Columbia.

9. Advising in the development of appropriate resources to help prevent child abuse and neglect; resources that strengthen the child's own family, reduce the personal and environmental stresses which increase the incidence of abuse and neglect, and focus on helping parents to be better parents.

10. Developing, periodically revising, and requesting signatures to an agreement which specifies responsibilities of agencies for abused and neglected children; such agreement to be binding on all parties who participated in the development of, and are signatories to, the agreement.

11. Submitting annual reports to the Mayor, on October 1 of each year following its first full year of operation; summarizing deliberations of the committee and setting forth its recommendations to strengthen and improve the protection of children who may be subject to abuse and neglect.

IV. *Membership.*—The committee will include, but not be limited to, the following persons or their designates:

Director, Department of Human Resources (DHR)
Associate Director for Planning and State Agency Affairs, DHR

Administrator, Social Rehabilitation Administration, DHR

Administrator, Mental Health Administration, DHR

Administrator, Community Health and Hospitals Administration, DHR

Administrator, Narcotics Treatment Administration, DHR

Chief Judge, Superior Court of the District of Columbia

Director of Social Services, Superior Court of the District of Columbia

Corporation Counsel, District of Columbia

Chief, Metropolitan Police Department

U.S. District Attorney

Superintendent, District of Columbia Public Schools

Director, Children's Hospital

Director, Howard University Hospital

Director, Georgetown University Hospital

Executive Director, National Capital Area Child Day Care Association

Director, D.C. United Way

President, Junior League of Washington, D.C.

V. *Organization.*—The Director of the Department of Human Resources will be responsible for designating a chairman and providing clerical and other support to the committee. Members of the committee will serve without remuneration.

ORGANIZATION ORDER NO. 207.—JUVENILE JUSTICE AND DELINQUENCY PREVENTION—DESIGNATION OF AGENCY TO ADMINISTER ACT—ADVISORY GROUP

(Organization Order No. 207, Mayor's Order No. 76-112, May 11, 1976.)

PART I

The Office of Criminal Justice Plans and Analysis in the Municipal Planning Office is the sole agency responsible for carrying out the provisions of P.L. 93-415 the Juvenile Justice and Delinquency Prevention Act, in the District of Columbia.

PART II

1. *Establishment.*—There is established a Juvenile Justice Advisory Group in compliance with requirements set forth in Section 223(a) (3) of P.L. 93-415, dated September 7, 1974.

2. *Functions.*—The Juvenile Justice Advisory Group shall:

a. Provide advice and consultation to the Mayor, the Office of Criminal Justice Plans and Analysis, and the Criminal Justice Coordinating Board relative to District of Columbia juvenile justice problems and make recommendations for their solution;

b. Participate in the development of an annual Law Enforcement Assistance Administration Juvenile Justice Comprehensive Plan for the District of Columbia; and

c. Perform special work assignments related to such plan development and implementation.

3. *Membership.*—The Juvenile Justice Advisory Group shall consist of not less than twenty-one and not more than thirty-three members, appointed by the Mayor, who have training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice and represent:

a. Units of local government, law enforcement and juvenile justice agencies, public agencies concerned with delinquency prevention or treatment.

b. Private citizens including representatives of private organizations concerned with delinquency prevention or treatment, neglected or dependent children, quality of juvenile justice, education, or social services for children, volunteers who work with delinquents or potential delinquents, community-based delinquency prevention or treatment programs, and organizations which represent employees affected by P.L. 93-415.

A majority of the members (including the Chairperson) shall be other than full-time employees of Federal, State and local governments and at least one-third shall be under the age of twenty-six at the time of appointment.

4. *Term of membership and appointment of alternates.*—Ex-officio governmental members shall be members as long as they continue to hold the office or position which entitles them to such membership. All other members shall serve three-year terms and may be reappointed for no more than three additional consecutive years. Initial appointments shall be staggered over the first three years.

Ex-officio governmental members may designate an alternate from their agency for those meetings which they are unable to attend.

Such alternates shall have the same voting rights as members.

5. *Structure.*—The Juvenile Justice Advisory Group, under direction of the Chairperson appointed by the Mayor, shall organize and conduct its business in a manner which permits effective accomplishment of assigned functions.

6. *Staff assistance.*—The Office of Criminal Justice Plans and Analysis staff shall provide such technical, clerical, secretarial and related assistance as required by the Group to carry out its functions in a timely and orderly manner.

7. *Effective date.*—This Order is effective immediately.

ORGANIZATION ORDER NO. 208.—MAYOR'S COMMITTEE ON THE HANDICAPPED

(Organization Order No. 208, Mayor's Order No. 76-208, Oct. 15, 1976, as amended by M.O. No. 76-242, Dec. 6, 1976.)

By virtue of the authority vested in me by the District of Columbia Self-Government and Governmental Reorganization Act, it is hereby ORDERED THAT:

1. *Purpose.*—There is hereby established in the Executive Office of the Mayor a standing committee of citizens to be known as the Mayor's Committee on the Handicapped. This Committee replaces the Advisory Council on Vocational Rehabilitation established by Organization Order No. 134, dated October 11, 1962, and the Mayor's Committee on the Employment of the Handicapped referred to in Commissioner's Order 68-657, dated October 8, 1968. This Order supersedes Mayor's Order 76-208 dated October 15, 1976.

The Committee will act in an advisory capacity to the Mayor, on the broad human needs, including both services and employment, of the handicapped and disabled in the District of Columbia. The Committee will concern itself with issues related to employment and an integrated delivery system for providing services to eligible persons disabled by such conditions as blindness, deafness, heart disease, mental retardation, mental illness, epilepsy, paraplegia, quadriplegia and other spinal cord conditions, renal failure, orthopedic disability, respiratory or pulmonary dysfunction, etc.

To carry out the purposes of this Order, the Mayor's Committee shall work closely with the Department of Human Resources, which has been designated as the Single State Agency for the administration of the Vocational Rehabilitation State Plan for the District of Columbia in Commissioner's Order 73-142, dated June 15, 1973.

II. *Functions.*—The Mayor's Committee on the Handicapped shall act in an advisory capacity to the Mayor, in such areas as the following:

Review of and comments on the District of Columbia's Vocational Rehabilitation State Plan and the Annual Vocational Rehabilitation Program and Financial Plan.

Delineation of the special needs of the handicapped residing in the city from the vantage point of individuals, agencies, and groups represented on the Committee.

Identification of governmental and non-governmental resources for serving the disabled, including staffing levels and patterns and availability of fiscal and physical resources.

Review of the activities and programs currently conducted or planned for the disabled by public and private agencies.

The Mayor's Committee on the Handicapped may undertake such other functions as follows:

Reviewing public facilities, D.C. Government buildings and facilities, and public housing to identify, eliminate, or modify architectural barriers.

Studying recreational facilities and programs for their accessibility to handicapped persons as well as assessing the feasibility of developing special recreational activities specifically designed for the severely disabled.

Reviewing mass public transportation and taxi services to identify and eliminate structural and attitudinal barriers and investigating the possibility of establishing special low-cost transportation services for the severely physically handicapped.

Assisting in the identification of gaps in the dissemination of information on the vocational rehabilitation program to interested residents of the District.

Cooperating with the President's Committee on the Employment of the Handicapped in carrying out activities that will promote the employment of the disabled.

Planning and implementing special activities in observance of the annual National Employment of the Handicapped Week.

Making such other recommendations or engaging in such other activities as the Committee may deem appropriate with respect to matters affecting the handicapped population of our city.

III. *Composition and membership.*—The Mayor's Committee on the Handicapped shall consist of twenty-nine (29) members, including three (3) ex officio members, who shall be selected on the basis of their experience, reputation, or demonstrated interest in the field of vocational rehabilitation of the physically, mentally, and emotionally handicapped. The Committee will be composed of the following members:

one (1) member of the D.C. City Council to be designated by the Chairman;

one (1) medical consultant;

one (1) handicapped person including the working handicapped from each of the eight (8) wards in the city;

one (1) architect or builder;

three (3) individuals representing local professional organizations formulated as a result of a specific interest in serving the disabled;

three (3) individuals representing organized community agencies serving the handicapped;

three (3) individuals representing consumer disability groups;

three (3) individuals representing the business community;

one (1) individual representing the Board of Education and one (1) individual representing the vocational educational program of the local public school system; and

three (3) ex officio members to include the following officials (or their designated representatives):

1. the Director of the Department of Human Resources;

2. the Administrator of the DHR Social Rehabilitation Administration; and

3. the Director of the D.C. Department of Manpower.

Committee members shall be appointed by the Mayor, after consideration of nominations from such other sources as the Mayor may consider appropriate. The Mayor will also designate the Committee Chairperson.

IV. *Terms of appointment.*—Members shall hold office for terms of three (3) years, except that one-third of the initial appointees shall serve for one year, one-third for two years, and one-third for three years. No person shall serve more than two consecutive terms but an individual can be reappointed after a lapse of one year. Should a vacancy occur through the death, incapacity, or resignation of a member, the Mayor may appoint, in the same manner as regular appointments, a successor to complete the unexpired term.

If a Committee member is appointed more than one day after the date ending the preceding term, the term of such member shall expire three years from the preceding term rather than three years from the date of his or her appointment.

V. *Organization.*—The Mayor's Committee on the Handicapped shall determine its own organization, establishing appropriate sub-committees and determining its own rules of procedure. The Committee shall have the right to develop and issue its own by-laws, including specifications as to time, place, and frequency of meetings, sub-committee formation, etc.

Each year at the initial meeting following the appointment of new members, the Committee shall elect from among its members such officers as it deems necessary. All meetings of the Committee will be on call of the Chairperson, who shall call at least one meeting during each quarter of each year.

VI. *Staff and support services.*—Staff support to the Mayor's Committee will consist of one (1) full-time em-

ployee of the Department of Human Resources, who will function as an Executive Secretary to the Committee. The Department will provide appropriate space, materials, equipment, typing services, and supplies for the Mayor's Committee.

VII. Compensation.—Members of the Mayor's Committee shall serve without compensation, but appropriate expenses such as parking fees will be reimbursed by the Department of Human Resources.

VIII. Effective date.—The provisions of this Order shall become effective immediately.

ORGANIZATION ORDER NO. 209.—CIVIC CENTER ADVISORY COMMITTEE

(Organization Order No. 209, Mayor's Order No. 76-230, Nov. 10, 1976.)

1. Establishment.—There is established in the District Government a Civic Center Advisory Committee.

2. Functions.—

Advice on civic center.—The Committee shall advise the Mayor and Council on the preparation of plans for a civic center, including site selection, program, design, means of financing and construction, and development of adjacent areas.

Community information.—The Committee shall assist in providing information on civic center planning to community and business groups, and provide advice on community interests and concerns.

3. Composition.—The membership of the Committee shall be representative of the community and of a broad spectrum of interests in the District of Columbia. A majority of the Committee members shall be residents and shall reflect wide geographic distribution within the District of Columbia. Nonresident members shall have demonstrated a business or professional commitment within the city of depth and duration.

There shall be no fewer than forty non-governmental members, representing business, the professions, labor and community organizations. The terms of these members shall be one year.

Ex-Officio members shall comprise the members of the City Council, the City Administrator, the Corporation Counsel, and the Directors of the following District Government agencies, or their designed representatives:

- The Municipal Planning Office
- The Office of Budget and Management Systems
- The Department of Housing and Community Development
- The Department of Economic Development
- The Department of General Services
- The Department of Finance and Revenue
- The Department of Environmental Services
- The Department of Transportation
- Fire Department

4. Compensation.—Members shall serve without compensation but may be reimbursed for reasonable expenses associated with participation in Committee work from funds designated for that purpose.

5. Organization.—The Mayor shall be Chairman of the Committee, and the Chairman of the City Council shall be co-chairman of the Committee. Such subcommittees and task forces as may be necessary shall be established.

6. Administration.—The Director of the Municipal Planning Office shall provide the Committee with staff support and shall serve as the agency to receive funds made available for the work of the Committee, and shall account for such funds in accordance with established District regulations.

ORGANIZATION ORDER NO. 210.—STATEWIDE HEALTH COORDINATING COUNCIL

(Organization Order No. 210, Mayor's Order No. 77-43, Mar. 15, 1977.)

By virtue of the authority vested in me by the District of Columbia Self-Government and Governmental Reorganization Act (P.L. 93-198, 87 Stat. 774), it is ORDERED THAT:

In accordance with provisions of Section 1524 of the National Health Planning and Resources Development Act of 1974 (P.L. 93-641) and the Regulations of the Secretary, DHEW (hereinafter referred to as Secretary)

as provided for in Section 1536 of that Act (see CFR 123.307 and 42 CFR 122.109 (b)), there is established, for the District of Columbia, a Statewide Health Coordinating Council (hereinafter referred to as the SHCC).

The purpose, function and composition of the SHCC shall be as follows:

PART I

Purpose.—The District of Columbia SHCC is established to perform the functions listed in Part II of this Order.

PART II

Functions.—The SHCC shall perform the following functions:

(1) Review annually and coordinate the Health Systems Plan (hereinafter referred to as HSP) and the Annual Implementation Plan (AIP) (hereinafter referred to as AIP) of the District of Columbia and report to the Secretary, for purposes of his review, its comments on such HSP and AIP.

(2) (i) Prepare and review and revise as necessary (but at least annually) a State health plan which shall be made up of the HSP of the State. Such plan may, as found necessary by the SHCC, contain revisions of the HSP to achieve appropriate coordination or to deal more effectively with statewide health needs.

(ii) In the preparation and revision of the State health plan, the SHCC shall conduct a public hearing on the Plan as proposed and shall give interested persons an opportunity to submit their views orally and in writing. Not less than thirty days prior to any such hearing, the SHCC shall publish in at least two newspapers of general circulation in the District of Columbia a notice of its consideration of the proposed Plan, the time and place of the hearing, the place at which interested persons may consult the Plan in advance of the hearing, and the place and period during which to direct written comment to the SHCC on the Plan.

(3) Review annually the budget for the health systems functions of the District of Columbia State Agency and report to the Secretary, for purposes of his review, its comments on such budget.

(4) Review applications submitted for grants under Sections 1516 and 1640 of P.L. 93-641 and report to the Secretary its comments on such applications.

(5) Advise the District of Columbia State Agency generally on the performance of its functions.

(6) Review annually and approve or disapprove any District of Columbia State Plan and any application (and any revision of a State Plan or Application) submitted to the Secretary as a condition to the receipt of any funds under allotments made to District of Columbia under P.L. 93-641, the Community Mental Health Centers Act, or the Comprehensive Alcohol Abuse and Alcoholism Prevention Treatment, Rehabilitation Act of 1970. Notwithstanding any other provision of P.L. 93-641 or any other Act referred to in the preceding sentence, the SHCC shall be allowed sixty days to make the review required by such sentence. If the SHCC disapproves such a District of Columbia plan or application, the Secretary may not make Federal funds available under such District of Columbia plan or application until he has made, upon request of the Mayor or of the District of Columbia State Agency which submitted the Application, a review of the SHCC decision. If after such review the Secretary decides to make such funds available, the Secretary shall submit to the SHCC a detailed statement containing the reasons for his decision.

(7) The SHCC shall be afforded a reasonable opportunity to review and comment upon the following actions by the District of Columbia State Agency in the performance of its health systems functions before such actions are made final:

(i) The establishment, annual review and amendment of the Annual Implementation Plan (AIP). (42 CFR 122.107(c)(3))

(ii) The development and publication of specific plans and programs for achieving the objectives established in the AIP. (42 CFR 122.107(c)(6))

(iii) The making of grants and contracts from the Area Health Services Development Fund pursuant to Section 1640 of the Act. (42 CFR 122.107(c)(9))

(iv) The making of findings as to the need for new institutional health services proposed to be offered in the District of Columbia. (42 CFR 123.106(b)(5))

(v) The making of findings as to the appropriateness of existing institutional health services being offered in the State. (42 CFR 123.106(b)(6))

(vi) The approval or disapproval of each proposed use of Federal funds within the State as described in governing Federal Regulations. (42 CFR 122.107(c)(17))

PART III

Composition.—The Membership of the SHCC shall meet the following requirements:

(1) Members who shall be appointed by the Mayor shall number not less than 16 nor more than 30.

(2) A majority (but not more than 60 per centum of the members) shall be residents of the District who are consumers of health care and who are not (and within the twelve months preceding appointment have not been) providers of health care and who are broadly representative of the social, economic, linguistic and racial populations, geographic areas of the District and major purchasers of health care.

(3) The remainder of the members shall be District of Columbia residents who are providers of health care (of whom not less than $\frac{1}{2}$ shall be direct providers of health care) and who represent: (i) physicians (particularly practicing physicians), dentists, nurses, and other health professionals; (ii) health care institutions (particularly hospital, long-term care facilities, and health maintenance organizations); (iii) health care insurers; (iv) health professions schools (which includes schools of medicine, dentistry, osteopathy, optometry, podiatry, pharmacy or veterinary medicine and schools of nursing) and (v) the allied health professions.

(4) The total membership as described in paragraphs (1), (2) and (3) of this Part shall include: (i) (either through consumer or provider members) a number of public elected officials and other representatives of governmental authorities in the District of Columbia and representatives of public agencies concerned with health which is not more than $\frac{1}{2}$ of the total membership; (ii) representatives of private agencies in the District of Columbia concerned with health; (iii) an individual, as an ex-officio member, whom the Chief Medical Director of the Veterans Administration shall designate for such purpose; and (iv) a representative of a qualified health maintenance organization within the meaning of Section 1310 of P.L. 93-641.

PART IV

Compensation.—Members shall serve without compensation. Appropriate expenses will be reimbursed as provided in Part VI of this Order.

PART V

Organization.—The SHCC shall be established, organized and operated in accordance with bylaws or rules and regulations which shall, as a minimum set forth:

(1) Its organizational structure and relationships to the Mayor and the State Agency.

(2) Its method of operation including provisions for the scheduling and conduct of meetings which shall provide that:

(i) It will meet not less than once in each calendar quarter for the purpose of performing one or more of the functions described in Part II of this Order; and

(ii) That all of its business meetings and those of its committees, subcommittees, and special task forces (if any) shall be open to the public.

(3) Requirements for membership and procedures for the selection and replacement of members, which shall be consistent with the requirement of Section 1536 of the Act, which shall include provision for: (i) removal of members for good cause; (ii) replacement of members in the event of resignation, death, or removal; (iii) length of terms for members, which may not exceed three years; and (iv) limitations on the number of consecutive terms which any member may serve, which may not exceed two such terms.

(4) Requirements relating to conflicts of interest which shall be designed to preclude the use of member-

ship on the SHCC for purposes which are, or give the appearance of being, motivated by private gain.

(5) That the SHCC shall select from among its members a Chairman.

(6) That the terms of the members shall be staggered so that the terms of not more than one-third of the members shall expire in a single calendar year.

PART VI

Administration.—The Director of the Department of Human Resources shall assist the SHCC in matters of Administration and shall provide it with necessary staff services. Expenses incurred by the SHCC or by its members, when authorized by the Director of the Department of Human Resources, become an obligation against funds designated for this purpose.

PART VII

Reports.—Reports and recommendations of the SHCC shall be furnished as required to the Director, Department of Human Resources and/or to the Secretary, DHEW.

PART VIII

Effective date.—This Order shall become effective immediately.

ORGANIZATION ORDER NO. 211.—DISTRICT OF COLUMBIA DEVELOPMENTAL DISABILITIES PLANNING COUNCIL

(Organization Order No. 211, Mayor's Order 77-51a, Mar. 30, 1977.)

By virtue of the authority vested in me by the District of Columbia Self-Government and Governmental Reorganization Act, and in accordance with Public Law 94-103, Section 141(a) dated October 4, 1975 (hereinafter referred to as the Act), it is hereby ORDERED THAT:

A District of Columbia Developmental Disabilities Planning Council is hereby established:

PART I

Purpose.—The District of Columbia's Developmental Disabilities Council is established for the purpose of advising the Director, DHR, in accordance with the functions listed in Part II of this Order.

PART II

Functions.—The District of Columbia's Developmental Disabilities Council shall serve to alert the DHR and the Mayor of changing and emerging socio-economic and educational issues affecting the developmentally disabled population throughout the District of Columbia and shall facilitate communication and cooperation among agencies, organizations, the professions and the public in developing recommendations for solutions to these issues. In accordance with Public Law 94-103, the State Planning Council shall:

1. Supervise the development of and approve the State Plan required by this Part.

2. Monitor and evaluate the implementation of such State Plan.

3. To the maximum extent feasible, review and comment on all State plans in the District of Columbia which relate to programs affecting persons with developmental disabilities.

4. Submit to the Secretary, through the Mayor, such periodic reports on its activities as the Secretary may reasonably request.

5. Recommend measurable goals and objectives relating to Public Law 94-103.

6. Recommend special studies related to the needs of the developmentally disabled.

7. Recommend procedures and mechanisms that are necessary to assure or improve effective planning and service activities of the District of Columbia's program.

8. Facilitate communication and cooperation among District government agencies, public bodies and voluntary agencies that are providing services to the developmentally disabled population of the District.

PART III

Composition and membership.—The State Planning Council shall at all times include in its membership representatives of the principal District government agencies, local agencies, and nongovernmental agencies,

and groups concerned with services to persons with developmental disabilities. At least one-third of the membership of such a Council shall consist of persons with developmental disabilities, or their parents or guardians, who are not officers of any entity, or employees of any District government agency or of any other entity, which receives funds or provides services to developmentally disabled individuals.

PART IV

Compensation.—Members shall serve without compensation, but appropriate expenses will be reimbursed as indicated in the budget of the comprehensive State Plan for the Developmentally Disabled.

PART V

Organization.—The District of Columbia's Developmental Disabilities State Planning Council shall determine its own organizational structure, establish appropriate subcommittees and shall perfect its own rules of procedure; provided that one or more of its subcommittees shall be constituted to meet the requirements of the Developmentally Disabled Assistance and Bill of Rights Act, Public Law 94-103, Subpart A, Section III and Section 141 of Federal Regulations governing the new Act.

The Council chairperson shall be elected by the members of the State Planning Council. Subcommittees of the Council shall elect their own sub-chairpersons annually from among its own members or they may elect to have the sub-chairpersons be appointed by the Council's chairperson.

The Council shall determine the number of full Council meetings needed to carry out the duties of this Order. However, it shall hold additional meetings at the call of the Mayor or the Director, DHR, its chairperson or a majority of the Council's membership. The Mayor or his designee shall be notified of all such meetings in advance and shall have the option of attending or sending a representative to attend such meetings.

PART VI

Administration.—The Director of the Department of Human Resources shall assist the Council in matters of administration and shall provide it with the necessary staff services. Expenses incurred by the Council as a whole or by individual members thereof, when authorized by the Department of Human Resources, will become an obligation against funds designated for this purpose.

PART VII

Reports.—Reports and recommendations of the Council shall be furnished to the Mayor through the Director of the Department of Human Resources and may be released at such times and under such circumstances as the Mayor, his designee and/or the Director, DHR may determine.

PART VIII

Effective date.—The provisions of this Order shall become effective immediately.

ORGANIZATION ORDER NO. 212.—ADP POLICY BOARD

(Organization Order No. 212, Mayor's Order No. 77-49a, Mar. 25, 1977, as amended by M.O. No. 77-171, Oct. 20, 1977.)

By virtue of the authority vested in me by the District of Columbia Self-Government and Governmental Reorganization Act (P.L. 93-198), it is hereby ORDERED THAT:

Establishment: There is established within the Executive Office of the Mayor an ADP (Automatic Data Processing) Policy Board. The Chairman of the Board will be appointed by the Mayor.

Purpose: The purpose of this Policy Board shall be to develop District-Wide ADP policies and objectives; initiate and oversee an ADP planning process; establish procedures and standards governing the acquisition and operation of ADP equipment; and review and approve all major ADP acquisitions and contractual services.

Membership: Membership of the ADP Policy Board shall include the directors of the following departments and agencies. Any delegations by these directors shall be no lower than the deputy director level:

Metropolitan Police Department
Department of Human Resources

Office of Budget and Management Systems
Department of Finance and Revenue
District of Columbia Unemployment Compensation Board

Department of Transportation
Department of Economic Development
Department of General Services
Department of Manpower
Municipal Planning Office
D.C. Personnel Office

Special Assistant to the Mayor for Financial Systems Development

Staff Support: Staff support to the Policy Board will be provided initially by the Office of Budget and Management Systems. The Board shall identify and request other sources of staff support.

Purchase Freeze: Pending the establishment of the ADP planning process, and initial guidelines by the Policy Board governing acquisition of ADP hardware and software, the freeze on such acquisitions imposed by my Order 76-128, dated June 24, 1976, shall continue to be imposed.

Rescissions: Mayor's Orders 76-128 and 76-135, respectively, concerning the establishment of the Mayor's Task Force on Data Processing and Procedures and the ADP Work Group for the Task Force, are hereby rescinded.

Effective Date: This Order shall be effective immediately.

ORGANIZATION ORDER NO. 213.—MAYOR'S AD HOC ADVISORY COMMITTEE ON THE EDUCATION OF HANDICAPPED CHILDREN

(Organization Order No. 213, Mayor's Order No. 75-118, June 13, 1975, as amended by M.O. 77-76, Apr. 27, 1977; M.O. 77-200, Dec. 8, 1977.)

By virtue of the authority vested in me by the District of Columbia Self-Government and Governmental Reorganization Act (P.L. 93-198), it is hereby ORDERED THAT Mayor's Order 75-118 is amended to read as follows:

I. **Establishment:** There is established in the District of Columbia a Mayor's Ad Hoc Advisory Committee on the Education of Handicapped Children.

II. **Purpose:** The Committee will bring together those agencies whose objectives include the provision of special education and related services to meet the needs of handicapped children in the District of Columbia. The Committee shall advise the Mayor on District of Columbia interdepartmental participation in the implementation of the Mills Decree and Public Law 94-142, "The Education of ALL Handicapped Children Act of 1975".

III. **Delegation of authority:** The City Administrator, on behalf of the Mayor, is authorized to order all departments and offices under the direct authority of the Mayor to comply with directives relating to the implementation of the Mills Decree and P.L. 94-142.

IV. **Functions:** The Mayor's Ad Hoc Advisory Committee shall:

A. Recommend to the City Administrator actions to be taken by the District Government and its agencies to implement the Mills Decree;

B. Recommend to the City Administrator actions to be taken by the District Government and its agencies to implement P.L. 94-142;

C. Participate with the State Advisory Panel, established by the Superintendent of Schools, in the development of a State Plan to implement P.L. 94-142;

D. Coordinate interagency actions and develop interagency cooperation in the implementation of the Mills Decree and P.L. 94-142;

E. Cooperate with the appropriate public and private agencies engaged in the education and provision of other services for handicapped children; and

F. Make such other recommendations or engage in such other activities as the Committee may deem appropriate with respect to matters affecting the education of handicapped children of the District of Columbia.

V. **Composition:** The Mayor's Ad Hoc Advisory Committee will comprise the following members:

A. The City Administrator, who will serve as Chairman;

B. The Director of the Office of Budget and Management Systems;

C. The Corporation Counsel of the District of Columbia;

D. The Director of the Department of Human Resources;

E. The Director of the Department of Recreation;

F. The Director of the Department of Corrections.

The following officials will be invited to participate as members of the Committee:

A. The Superintendent of Schools;

B. The President of the District of Columbia Board of Education;

C. The Chairman of the Mayor's Committee on the Handicapped.

Members may designate an alternate representative.

VI. *Organization*: The Chairman of the Mayor's Ad Hoc Advisory Committee on the Education of Handicapped Children shall establish any subcommittees or work groups as deemed necessary for the operation of the Committee.

Staff support shall be provided, as needed, by member agencies of the Committee.

VII. *Effective Date*: The provisions of this order shall become effective immediately.

ORGANIZATION ORDER NO. 214.—HISTORICAL RECORDS ADVISORY BOARD

(Organization Order No. 214, Mayor's Order No. 77-101a, June 28, 1977.)

By virtue of the authority vested in me by the District of Columbia Self-Government and Governmental Reorganization Act (P.L. 93-198), it is hereby ORDERED THAT:

I. *Establishment*: There is established in the Government of the District of Columbia an Historical Records Advisory Board. The Board shall serve as an advisory body to the Mayor for historical records planning and for coordinating projects developed and carried out under the grant program of the National Historical Publications and Records Commission.

II. *Functions*: The Board shall:

A. Sponsor surveys of the condition and needs of historical records in the District of Columbia and publish results of the surveys.

B. Solicit or develop plans for historical records projects to be carried out in the District of Columbia with financing by the National Historical Publications and Records Commission.

C. Review historical records projects proposed by institutions in the District of Columbia and make recommendations thereon.

D. Develop, submit, and revise annually recommended plans for District of Columbia historical records projects.

E. Review the operation and progress of approved historical records projects in the District of Columbia.

III. *Composition and Membership*: The Board shall consist of eleven voting members appointed by the Mayor. The Board shall be broadly representative of the public and private archival and research organizations in the District of Columbia and a majority of the members must be persons of recognized professional qualifications and experience in the administration of historical records or in a field of research which makes extensive use of such records. Names and qualifications of the appointees are to be submitted to the National Historical Publications and Records Commission for its approval prior to appointment.

The Executive Secretary, District of Columbia and Director, D.C. Public Library, shall serve ex officio. The Mayor shall appoint the Chairperson from among the two ex officio members. The Chairperson is designated as the Historical Records Coordinator for the District of Columbia.

IV. *Term of Office*: Of the initial eleven members of the Board, the Chairperson shall serve a term of four years, three members shall be selected by lot to serve terms of three years, three members to serve terms of two years and three members to serve terms of one year. In all subsequent appointments, terms for the Chairperson shall be four years and for the other members three years. Terms of appointed members may be renewed at the discretion of the Mayor. If a vacancy occurs through death, incapacity, removal or resignation of a member, a new member will be appointed to complete the unexpired term caused by such vacancy. After expiration of a term, each member shall

continue to serve until a successor is qualified and appointed.

V. *Compensation*: All members shall serve without compensation, but appropriate expenses will be reimbursed from funds of the Office of the Executive Secretary, District of Columbia, as duly authorized by the Executive Secretary and approved by the Chairperson.

VI. *Organization*: Within the context of this Order the Board shall determine its organization and promulgate its rules of procedure. The Board shall meet not less than six times annually.

VII. *Administration*: The Executive Secretary, District of Columbia shall provide the Board with necessary staff services.

ORGANIZATION ORDER NO. 215.—BLIND VENDORS COMMITTEE

(Organization Order No. 215, Mayor's Order No. 77-131, Aug. 8, 1977, as amended by M.O. No. 78-22, Jan. 22, 1978.)

By virtue of the authority vested in me by the District of Columbia Self-Government and Governmental Reorganization Act (P.L. 93-198), it is hereby ORDERED THAT:

A. *Establishment*: There is established a Blind Vendors Committee within the Vending Facility Program of the District of Columbia in compliance with the Randolph Sheppard Vending Stand Act (P.L. 74-732), as amended by P.L. 83-565 and P.L. 93-516; and 45 CFR, Part 1369.14.

B. *Functions*: The committee shall be responsible for the following functions:

1. Actively participate with the Licensing Agency in major administrative decisions and policy and program development decisions affecting the over-all administration of the Vending Facility Program;

2. Receive and transmit to the Licensing Agency grievances at the request of blind vendors and serve as advocates for such vendors in connection with such grievances;

3. Actively participate with the Licensing Agency in the development and administration of a program system for the transfer and promotion of blind vendors;

4. Actively participate with the Licensing Agency in the development of training and retraining programs for blind vendors; and

5. Sponsor, with the assistance of the Licensing Agency, meetings and instructional conferences for blind vendors within the program.

C. *Membership*: The Committee shall be composed of seven (7) members, all of whom shall be Licensed Blind Vendors operating Vending Facilities in the District of Columbia. They shall be selected in an election provided by the Licensing Agency in which all Licensed Blind Vendors shall have opportunity to vote.

D. *Structure*: The Committee shall organize itself by selecting a chairman and assigning duties and responsibilities where necessary to other members so that it may carry out its designated functions effectively. Members of the committee will serve without remuneration.¹

E. *Tenure*: The term of Office shall be two years, unless a member fails to maintain the qualifications for membership set forth in Part C hereof.

F. *Staff assistance*: The Bureau of Rehabilitation Services shall provide technical, clerical and other staff assistance to the Committee, as needed.

G. *Effective date*: This Order is effective immediately.

ORGANIZATION ORDER NO. 216.—INVESTMENT ADVISORY COMMITTEE FOR THE DISTRICT OF COLUMBIA TEACHERS' RETIREMENT AND ANNUITY FUND

(Organization Order No. 216, Mayor's Order No. 77-142, Aug. 25, 1977.)

By virtue of the authority vested in me by Public Law 93-198, the District of Columbia Self-Government and Governmental Reorganization Act, it is hereby ORDERED THAT:

A. *Establishment and purpose*: There is established in the Government of the District of Columbia the Investment Advisory Committee for the District of Columbia Teachers' Retirement and Annuity Fund. The Committee shall make recommendations to the Mayor on investment policies for the Fund.

¹ So in original. Probably should be "remuneration".

B. Composition: The Committee shall comprise the following members:

1. The Director of the Office of Budget and Management Systems, who shall serve as Chairman.
2. The Director of the Department of Finance and Revenue.

In addition, the following organizations are invited to designate representatives to serve on the Committee, as indicated:

The Board of Education.

The Washington Teacher's Union—a teacher currently contributing to the Fund.

The D.C. Retired Teachers' Association.

The School Officers' Union—a current school officer.

The Mayor will invite a member of the financial community to serve on the Committee.

The agencies and organizations listed above may designate alternates. Alternates shall participate fully in the activities of the Committee in the absence of their principals.

Committee members shall serve without compensation.

C. Duties: The Investment Advisory Committee shall have the following duties:

1. Perform an annual review of investment transactions carried out on behalf of the Fund during the preceding year.
2. Make recommendations to the Mayor on investment policies for the Fund.

D. Organization and procedures: The Committee shall establish its own organization and adopt its own rules of procedures.

E. Administration: Administrative support for the Committee shall be provided by the Office of Budget and Management Systems.

F. Effective date: This order shall take effect immediately.

ORGANIZATION ORDER NO. 217.—INVESTMENT ADVISORY COMMITTEE

(Organization Order No. 217, Mayor's Order No. 77-151, Aug. 31, 1977.)

By virtue of the authority vested in me by the District of Columbia Self-Government and Governmental Reorganization Act of 1973 (P.L. 93-198) it is hereby ORDERED THAT:

1. **Purpose:** Order of the Commissioner No. 70-181 and Commissioner's Order No. 72-147 [Organization Order No. 31] are hereby rescinded. This Mayor's Order reconstitutes the Investment Advisory Committee for the Land Grant Endowment funds awarded to the newly formed University of the District of Columbia as follows:

The Director of the Office of Budget and Management Systems is authorized to invest any and all funds made available to the District of Columbia under the provisions of the District of Columbia Public Postsecondary Education Reorganization Act, as amended, relating to Land Grant Funds (D.C. Code, Sec. 31-1719 et seq., Supp. IV, 1977), provided that such investments shall be made in accordance with applicable law, and in the following manner:

a. An Investment Advisory Committee shall be formed to manage and invest such funds.

b. The Investment Advisory Committee shall be composed as follows:

- (1) A member of the Executive Committee of the Board of Trustees of the University of the District of Columbia, and an alternate member to serve in his absence, designated by said Board.
- (2) A member of the Finance Committee of the Board of Trustees of the University of the District of Columbia, and an alternate member to serve in his absence, designated by said Board.
- (3) The Director of the Office of Budget and Management Systems of the District of Columbia Government. The Deputy Director for Financial Operations, Office of Budget and Management Systems, shall serve as alternate member in the absence of the Director.
- (4) The Director of the Office of Budget and Management Systems shall serve as Chairman of the Committee.

c. The Committee is authorized to retain the services of a trust or investment institution to manage

the fund. The institution will serve as Trustee under a Trust Agreement with the Advisory Investment Committee and will provide:

- (1) full management services;
- (2) complete record-keeping services, with monthly chronological statements of account transactions and a current list of fund assets; and
- (3) safe-keeping services for stock certificates, and other evidence of ownership, in vaults separated from the assets of the investment institution or of any other account.

d. All account assets consisting of cash, interest, and dividends shall be deposited by the District of Columbia in the United States Treasury or in such other depository as may be designated pursuant to Section 448 of P.L. 93-198 [D.C. Code, sec. 47-226]. The investment institution shall transfer all such assets which may come into its possession to the District of Columbia Treasurer within five days of receiving such assets.

e. Investments shall be made in accordance with applicable investment procedures set forth in the Opinion of the Comptroller General (50 Comp. Gen. 712 (1971)).

f. The Committee shall review at least annually the performance of the investment institution, to determine whether the Trust Agreement shall be modified or continued.

g. The Board of Trustees of the University of the District of Columbia shall pay any and all charges connected with the management and investment of such funds.

h. Proceeds and earnings from the investment of funds shall be used for the University of the District of Columbia.

2. **Effective date:** This Order shall become effective immediately.

ORGANIZATION ORDER NO. 218.—MENTAL HEALTH ADVISORY COUNCIL

(Organization Order No. 218, Mayor's Order No. 77-222, Dec. 23, 1977.)

By virtue of the authority vested in me by Section 422 (11) of the District of Columbia Self-Government and Governmental Reorganization Act of 1973 (P.L. 93-198, 87 Stat. 774), it is hereby ORDERED THAT:

In accordance with the provisions of Section 237 of the Community Mental Health Centers Amendments of 1975 (P.L. 94-63, 89 Stat. 330, 42 U.S.C.A. § 2689t(a)(1) (A) and the proposed regulations of the Secretary, DHEW, there is established, for the District of Columbia, a Mental Health Advisory Council.

The purpose, function, composition, and operation of the District of Columbia Mental Health Advisory Council shall be defined herein:

Purpose: The District of Columbia Mental Health Advisory Council is established for the purpose of advising the Department of Human Resources on the development and administration of the Mental Health State Plan and to support the District of Columbia's Statewide Health Coordinating Council in matters relating to mental health issues.

Functions: The District of Columbia Mental Health Advisory Council shall perform the following functions:

- (1) Review the Mental Health Plan for the District of Columbia as well as any proposed amendments to that Plan.
- (2) Recommend changes and amendments which should be made to the State Plan.
- (3) Present recommendations in whatever form required to the State Health Coordinating Council (SHCC) for the District of Columbia.
- (4) Make recommendations to the Mental Health Administration and the Department of Human Resources in the areas of need and utilization of mental health resources within the District of Columbia.

Composition: The membership of the District of Columbia Mental Health Advisory Council shall meet the following requirements:

- (1) Twenty (20) members shall be appointed by the Mayor for designated terms of service.
- (2) All of the members shall be residents of the District of Columbia.

(3) This council shall observe the composition requirements which are promulgated by the Department of Health, Education, and Welfare, for State Mental Health Advisory Councils under the Community Mental Health Centers Amendments of 1975 (P. L. 94-63, 89 Stat. 330, 42 U.S.C.A. § 2689t(a) (1) (A), and the requirements outlined in the Mental Health Plan for the District of Columbia.

Operation: The District of Columbia Mental Health Advisory Council shall be organized and operated in accordance with bylaws or other similar rules or regulations which will insure that the council will meet the requirements of the Community Mental Health Centers Amendments of 1975 and the D.C. Mental Health State Plan.

Effective Date: The provisions of this Order shall become effective immediately.

ORGANIZATION ACTIONS OF THE COMMISSIONER OF THE DISTRICT OF COLUMBIA

- Comm. Ord.*
Nos.
- 70-93. Office of Youth Opportunity Services [Repealed].
 - 71-259. Office of Civil Defense [Replaced by Org. Ord. No. 51].
 - 71-307. Office of Planning and Management [Superseded].
 - 71-392. Office of Planning and Management [Superseded].
 - 71-443. D.C. Bicentennial Commission [Rescinded and replaced by Org. Ord. No. 202].
 - 72-3. Mayor's Financial Management Improvement Committee [Rescinded].
 - 72-234. D.C. Bicentennial Policy Committee [Rescinded].
 - 73-73. D.C. Environmental Health School.
 - 74-145. Designation of National Capital Housing Authority.
 - 74-146. Planning Responsibilities under P.L. 93-198.
 - 74-237. Utilities Management Function.

ORGANIZATION ACTION—ESTABLISHMENT OF OFFICE AND DEPARTMENTS

[For subsequent transfers of functions referred to in Commissioner's Order No. 69-96, as amended, see Commissioner's Orders (Organization Actions) Nos. 71-255, July 27, 1971; 71-270, July 30, 1971; and 71-307, Aug. 13, 1971; Organization Order No. 30, Apr. 5, 1972; Organization Order No. 33, July 14, 1972; Organization Order No. 40, Oct. 3, 1973; Reorg. Plan No. 3 of 1975; D.C. Law 1-97, § 3, Mar. 29, 1977 (D.C. Code, § 1-1352).]

[For rescission of functions of Department of Economic Development referred to in Commissioner's Order No. 69-96, as amended, see Mayor's Order No. 77-62, Apr. 13, 1977, set out as a note under section 1-1352.]

(Commissioner's Order No. 69-96, Mar. 7, 1969, as amended by C.O. No. 69-144, Mar. 31, 1969, C.O. No. 69-339, July 2, 1969, C.O. No. 546, Oct. 3, 1969, C.O. No. 69-614, Nov. 13, 1969, C.O. No. 69-644, Dec. 10, 1969, C.O. No. 70-6, Jan. 12, 1970, C.O. No. 70-83, Mar. 6, 1970, C.O. No. 70-301, Aug. 11, 1970, C.O. No. 70-355, Sept. 14, 1970, C.O. No. 70-369, Sept. 28, 1970, C.O. No. 70-472, Dec. 21, 1970, C.O. No. 71-16, Jan. 26, 1971, C.O. No. 71-188, June 11, 1971, C.O. No. 72-177, July 14, 1972, C.O. No. 72-243, Oct. 4, 1972, C.O. No. 73-95, Apr. 5, 1973.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, IT IS HEREBY ORDERED THAT:

- * * * *
- 4. Offices and Departments.
- * * * *

DEPARTMENT OF ECONOMIC DEVELOPMENT

The Director of the Department of Economic Development is responsible for planning, implementing and administering programs for promotion of economic activities in the District; protection of consumers; business and professional licensing and regulation, including examining boards; enforcement of the District's housing, building, mechanical and electrical codes and regulations; enforcement of zoning laws and regulations; providing technical facilities, staff, administrative, housekeeping and fiscal services for the Board for the Condemnation of Insanitary Buildings, Condemnation Review Board and the Alcoholic Beverage Control Board; providing staff support and an intermediate supervisory channel for the Commissioner's Economic Development Committee (O.O. 11, August 6, 1968); maintaining cooperative relationships

and liaison with the Public Service Commission, the Minimum Wage and Industrial Safety Board (R.O. 36, June 16, 1953), the Department of Insurance (R.O. 43, June 23, 1953), and the Armory Board. The Director of the Department of Economic Development is hereby delegated final authority to revoke existing permits for projections into public space and to order the removal of such projections.

<i>Organizational entities from which functions are transferred</i>	<i>Functions as stated in (including all amendments thereto)</i>
Department of Occupations and Professions-----	R.O. 59, Sept. 15, 1953
Department of Licenses and Inspections -----	R.O. 55, June 30, 1953
Office of Community Renewal----	O.O. 11, Part IV, 4, August 6, 1968
* * * *	

ORGANIZATION ACTION—OFFICE OF ASSISTANT TO THE COMMISSIONER FOR HOUSING PROGRAMS

(Commissioner's Order No. 69-182, Apr. 25, 1969, as amended by C.O. No. 69-546, Oct. 3, 1969, and C.O. No. 71-392, Nov. 1, 1971.)

[The position of the Assistant to the Mayor-Commissioner and the Office of Housing Programs is abolished and the functions and delegated authorities of the Assistant to the Commissioner for Housing Programs as set forth in the Commissioner's Order No. 69-182 of April 25, 1969, and as amended by Commissioner's Orders 69-546 of October 3, 1969; 71-307 of August 13, 1971; 71-357 of September 20, 1971; 71-392 of November 1, 1971; and 72-223 of August 18, 1972, were transferred to the Office of Housing and Community Development by Organization Order No. 45, dated June 29, 1974.]

ORGANIZATION ACTION—OFFICE OF YOUTH OPPORTUNITY SERVICES

Commissioner's Order No. 70-93, Mar. 17, 1970, establishing the Office of Youth Opportunity Services, was repealed and that Office was abolished by section 4(a) of act Mar. 29, 1977, D.C. Law 1-93, which is classified to section 6-2003(a). For the transfer of the functions, personnel, and funds of the Office of Youth Opportunity Services, see chapter 20 of title 6, Health and Safety.

ORGANIZATION ACTION—SERVICE AREA SYSTEM

(Commissioner's Order No. 70-142, Apr. 20, 1970, as amended by C.O. No. 72-95, Apr. 21, 1972.)

[For subsequent realignment of Service Area System and modification of Commissioner's Orders No. 70-142 and 72-95, see Mayor's Order (Organization Action) No. 76-97, Apr. 7, 1976.]

ORGANIZATION ACTION—OFFICE OF CRIMINAL JUSTICE PLANS AND ANALYSIS

[Functions of the Office of Criminal Justice Plans and Analysis as set forth in Commissioner's Order No. 70-355 were transferred to the Office of Planning and Management by Commissioner's Order (Organization Action) No. 71-307, dated Aug. 13, 1971, as amended.]

(Commissioner's Order No. 70-355, Sept. 14, 1970, as amended by Mayor's Order No. 77-52, Apr. 1, 1977.)

By virtue of the authority vested in me by provisions of Reorganization Plan 3 of 1967, it is hereby ordered that:

- * * * *
- 3. The Director of the Office of Criminal Justice Plans and Analysis, subject to the supervision and direction of the Corporation Counsel, shall assure the providing of necessary staff services to the Board, and shall serve as its Executive Director.

Expenses incurred by the Board, or by any of its members, when duly authorized in accordance with District of Columbia regulations and procedures relating to the approval of such funds shall become an obligation against funds designated for that purpose.

* * * *
ORGANIZATION ACTION—BOARD OF POLICE AND FIRE SURGEONS

(Commissioner's Order No. 70-369, Sept. 28, 1970, as amended by C.O. No. 74-259, Dec. 20, 1974.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, IT IS HEREBY ORDERED THAT:

PART I

Board of Police and Fire Surgeons.—A. The existing Board of Police and Fire Surgeons including the Office of the Chairman thereof, is hereby reconstituted, with the same name and with the same functions now performed, including the powers, duties, and authority of all members, officers, and employees assigned thereto: *Provided*, That in all cases involving retirement or involuntary separation from service pursuant to the Policemen and Firemen's Retirement and Disability Act as amended, sections 4-526 through 4-529, D.C. Code, 1973 ed., the duty of the Board of Police and Fire Surgeons shall be that of submitting in writing to the Police and Firemen's Retirement and Relief Board its reports or recommendations concerning the physical or mental condition, or both of the member for whom involuntary separation or retirement is sought. Any member of the Board of Police and Fire Surgeons, and any other person, whose report of the facts or examination of the member formed any part of the basis of such report or recommendation of the Board of Police and Fire Surgeons, shall, when so requested by any member of the Police and Firemen's Retirement and Relief Board, testify thereon before the Retirement and Relief Board with respect thereto and produce before such Board all the records and evidence before, or in the files of, the Board of Police and Fire Surgeons or any such other person concerning the member whose retirement or separation is sought, and such submission and all such records and evidence of the Board of Police and Fire Surgeons and of any such other person shall be considered by the Police and Firemen's Retirement and Relief Board; *Provided* further, that the authority lodged in the Board of Police and Fire Surgeons by subsection (1) of said Act to make the judgment as to the disability of a member from performing further duty in his department, is hereby withdrawn from said Board of Police and Fire Surgeons, and such authority is hereby delegated exclusively to the Police and Firemen's Retirement and Relief Board, established pursuant to Organization Order No. 48.

ORGANIZATION ACTION—OFFICE OF CIVIL DEFENSE

(Commissioner's Order No. 71-259, July 26, 1971, as amended by C.O. No. 73-156, July 5, 1973, establishing an Office of Civil Defense, was rescinded and replaced by Organization Order No. 51, Commissioner's Order No. 74-267, Dec. 27, 1974.)

ORGANIZATION ACTION—OFFICE OF PLANNING AND MANAGEMENT

[The Office of Planning and Management was replaced by the Municipal Planning Office, see Org. Ord. No. 50.

[Functions pertaining to the development of accounting policies and systems, as set forth in former subparagraph (o) of paragraph (3) Commissioner's Order No. 71-307, were transferred to the Director of the Office of Budget and Financial Management by Organization Order No. 30, dated Apr. 5, 1972.

[Functions and delegated authorities of the Assistant to the Commissioner for Housing Programs, as set forth in Commissioner's Order No. 71-307, as amended, were transferred to the Office of Housing and Community Development by Organization Order No. 45, dated June 29, 1974.

[Functions of the Office of Planning and Management set forth in paragraphs 3h, 3i, 3k, 3l, 3m, and 3n of Commissioner's Order No. 71-307, Aug. 13, 1971, were transferred to the Office of Budget and Management Systems by Organization Order No. 50 (Supplement No. 1), Mayor's Order No. 75-41, Feb. 26, 1975.

[Organization Order No. 50 (Supplement No. 2), Mayor's Order No. 75-42, Feb. 26, 1975, provided in part that previous orders establishing functions and duties of the Office of Planning and Management are hereby superseded.]

(Commissioner's Order No. 71-307, Aug. 13, 1971, as amended by C.O. No. 71-357, Sept. 20, 1971; C.O. No. 71-

392, Nov. 1, 1971; C.O. 72-80, Apr. 5, 1972; C.O. 73-192, Aug. 24, 1973; and C.O. 73-264, Nov. 8, 1973.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is hereby ordered that:

3. **Functions.** The Director of the Office of Planning and Management shall be responsible for the following functions: a. Assisting the Commissioner in matters relating to his responsibility for planning in the District of Columbia, analysis and coordination of governmental policies affecting the District and initiation of new programs to meet the needs of the District.

o. Providing administrative services to the Zoning Commission and the Board of Zoning Adjustment, and performing staff functions relating to zoning regulations and the zoning map of the District of Columbia.

ORGANIZATION ACTION—OFFICE OF PLANNING AND MANAGEMENT

(Commissioner's Order No. 71-392, Nov. 1, 1971.)

[Functions and delegated authorities of the Assistant to the Commissioner for Housing Programs, as set forth in Commissioner's Order No. 71-392, were transferred to the Office of Housing and Community Development by Organization Order No. 45, dated June 29, 1974.

[Organization Order No. 50 (Supplement No. 2), Mayor's Order No. 75-42, Feb. 26, 1975, provided in part that previous orders establishing functions and duties of the Office of Planning and Management are hereby superseded.]

ORGANIZATION ACTION—D.C. BICENTENNIAL COMMISSION

Commissioner's Order No. 71-443, Dec. 17, 1971, as amended by C.O. No. 73-275, Dec. 13, 1973, establishing the D.C. Bicentennial Commission, was rescinded and replaced by Org. Ord. No. 202, May 21, 1975.

ORGANIZATION ACTION—MAYOR'S FINANCIAL MANAGEMENT IMPROVEMENT COMMITTEE

Commissioner's Order No. 72-3, Jan. 2, 1972, establishing the Mayor's Financial Management Improvement Committee was rescinded by Commissioner's Order No. 73-77, Mar. 28, 1973.

ORGANIZATION ACTION—ORGANIZATION CHANGES OF THE ALCOHOLIC BEVERAGE CONTROL BOARD

(Commissioner's Order No. 72-206, Aug. 8, 1972, as amended by C.O. No. 73-146, June 15, 1973.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is hereby ordered that:

1. **Establishment.**—There is established, in the Department of Economic Development, under the direction and control of the Commissioner, an Alcoholic Beverage Control Board, consisting of three members appointed by the Commissioner, one of whom shall be appointed Chairman by the Commissioner. A quorum shall consist of any two members. Each member of the Alcoholic Beverage Control Board shall maintain residence in the District of Columbia during the term for which he was appointed. Any board member who is not a regular employee of the District of Columbia shall be an intermittent employee of the District of Columbia and shall receive compensation when actually performing service as a Board member from funds designated for that purpose, in accordance with applicable laws and regulations. Of the three persons first appointed as members of the Board, one shall be appointed for two years, one for three years, and one for four years and thereafter all appointments shall be for the term of four years, except such appointments as may be made for the remainder of unexpired terms.

ORGANIZATION ACTION—COORDINATOR FOR FORT LINCOLN NEW TOWN

(Commissioner's Order No. 72-223, Aug. 18, 1972.)

[Functions and delegated authorities of the Assistant to the Commissioner for Housing Programs, as set forth in Commissioner's Order No. 72-223, were transferred to the Office of Housing and Community Development by Organization Order No. 45, dated June 29, 1974.]

ORGANIZATION ACTION—D.C. BICENTENNIAL POLICY COMMITTEE

Commissioner's Order No. 72-234, Sept. 13, 1972, establishing the D.C. Bicentennial Policy Committee, was rescinded by Organization Order No. 36, Commissioner's Order No. 73-60, Mar. 9, 1973.

ORGANIZATION ACTION—TRANSFER OF THE LEGISLATIVE UNIT

(Commissioner's Order No. 72-243, Oct. 16, 1972, as amended by C.O. 73-44, Feb. 22, 1973.)

By virtue of the authority vested in me by Reorganization Plan 3 of 1967, it is hereby ordered that:

1. *Direction.*—The legislative unit created by Commissioner's Order 69-644 of December 10, 1969, and placed in the Office of Planning and Management by Commissioner's Order 71-307 of August 13, 1971, is continued in the Office of Planning and Management for purposes set out in Paragraph 4, below. The head of the unit shall report to and receive direction from the Office of the Mayor-Commissioner.

4. *Administrative Support.*—All administrative, fiscal, and housekeeping services for the unit shall be furnished by the Office of Planning and Management.

ORGANIZATION ACTION—D.C. ENVIRONMENTAL HEALTH SCHOOL

(Commissioner's Order No. 73-73, Mar. 28, 1973.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is hereby ordered that:

Establishment.—The Director of the Department of Environmental Services shall establish and operate an environmental health school for the purpose of remedially training persons who have violated anti-litter Regulations (Article 3, "Deposits on Streets and in Sewers," Police Regulations; Section 8-3:603, "Storage of Solid Wastes," City Council Regulation No. 71-21 (June 29, 1971), Solid Waste Regulations; Article 260, Section 2601, 2602, and 2603, Housing Regulations).

Duties and responsibilities.—The Director of the Department of Environmental Services shall coordinate the operation of the Environmental Health School with the enforcement operations of the Metropolitan Police Department, the Director, Department of Economic Development, and the Corporation Counsel.

The Corporation Counsel shall upon the recommendation of appropriate Department head or his designated agent use the Environmental Health School as an alternative to prosecution for violations of the above cited Regulations when in the Corporation Counsel's judgment that alternative would serve the interest of those Regulations.

The Chief of Police shall enforce anti-litter Regulations, inform violators of this Order, and assist the Corporation Counsel in determining candidates for the Environmental Health School.

The Director of the Department of Economic Development shall enforce the above provisions of the Housing Regulations, inform violators of this Order, and assist the Corporation Counsel in determining candidates for the Environmental Health School.

Effective date.—This Order shall go into effect immediately.

ORGANIZATION ACTION—DESIGNATION OF NATIONAL CAPITAL HOUSING AUTHORITY

Commissioner's Order No. 74-145, June 29, 1974, is set out as a note under section 5-104.

ORGANIZATION ACTION—PLANNING RESPONSIBILITIES UNDER P.L. 93-198

Commissioner's Order No. 74-146, June 29, 1974, is set out as a note under section 1-1002.

ORGANIZATION ACTION—UTILITIES MANAGEMENT FUNCTION

(Commissioner's Order No. 74-237, November 27, 1974.)

I. *Establishment and purpose.*—By virtue of the author-

ity vested in me by Reorganization Plan No. 3 of 1967, it is hereby ordered that a Utilities Management Function be established for the Government of the District of Columbia. The purpose is to provide a mechanism for improving the overall management of utility usage and assuring that utility company bills can be processed and paid in a timely and efficient manner.

II. *Designation of central billing offices.*—The following agencies are designated as central billing offices:

A. The Department of Highways and Traffic is hereby designated the central billing office for telephone charges for all District agencies and departments and for utilities charges incurred by the Street Lighting and Traffic Signal Operation Programs.

B. The Department of General Services is hereby designated the central billing office for electricity (excluding charges associated with the Street Lighting and Traffic Signal Operation Programs), gas, and miscellaneous utilities charges for all District agencies and departments.

III. *Responsibilities of the central billing offices.*—The Department of Highways and Traffic and the Department of General Services shall carry out the following responsibilities for the utilities within their respective jurisdictions, as set out in Section II of this Order:

A. Receive all bills for utility services rendered to District agencies and review them to certify that each invoice represents a valid account that has been authorized on behalf of a District agency or department or is a justifiable charge duly authorized under a District Government contract.

B. Group validated bills by user agency and forward the original and one copy to the District Accounting Office (Office of Budget and Financial Management) within five (5) working days after receipt of the bill.

C. Review and verify reports of billing discrepancies submitted by District agencies and make necessary adjustments in subsequent billings.

D. Review and validate past due charges for utility services received by District agencies and departments.

E. Review and revise as necessary utility company listings that are used for billing purposes. When appropriate, request a company to modify the listings so that the District agencies receiving service and the relevant accounting codes can be more easily identified. Necessary accounting code data shall be developed in cooperation with the District Accounting Office, OBFM.

F. Develop and issue instructions and guidelines for the heads of District agencies to use in carrying out their responsibilities in relation to the utilities management function.

IV. *Responsibilities of the district accounting office, OBFM.*—The District Accounting Office, OBFM shall carry out the following responsibilities in relation to the utility management function:

A. Audit, record, and pay validated utility bills within five (5) working days after receipt of the invoices from the central billing offices.

B. Transmit copies of the paid utility bills, including payments for long-distance telephone calls, to the user agencies.

C. Maintain records of agency certificates of payments for long-distance calls.

D. Develop and issue procedures to ensure that District agencies encumber sufficient funds to meet utility costs.

E. Develop and issue procedures to ensure that consolidated payments to utility companies are made in a timely fashion.

V. *Responsibilities of district agencies and departments.*—Each District agency or department shall carry out the following responsibilities in relation to the utilities management function:

A. Appoint a Utilities Coordinator and inform the central billing offices of the name and telephone number of the Coordinator.

B. Establish consolidated MERs for estimated utilities costs in accordance with Commissioner's Memorandum 74-88 (June 12, 1974).

C. Review copies of paid bills transmitted by the District Accounting Office, OBFM, and identify discrepancies. Notify the appropriate central billing office of any discrepancies.

D. Ensure compliance with Section 4 of Public Law 68-76 (May 10, 1939), which prohibits the use of appropriated funds to pay for long-distance telephone calls made for other than official purposes and requires certification by the agency or department head or his delegate of all authorized calls. To ensure compliance, each agency shall:

1. Review copies of paid bills for long-distance telephone calls provided by the District Accounting Office, OBFM.
2. Certify one copy of the voucher for an authorized call and return to the District Accounting Office, OBFM. The certification should be in the following form:

Pursuant to Section 4 of the act approved May 10, 1939 (53 Stat. 738), I certify that the use of the telephone for the official long-distance calls listed herein was necessary in the interest of the Government.

Signed _____
Head of Department

3. Notify the District Accounting Office, OBFM, of all unauthorized long-distance calls.

4. Ensure that reimbursement is received from District employees who placed unauthorized long-distance calls.

E. Prepare and submit to the District Accounting Office transfer vouchers (D.C. 111) to reflect the proper distribution of utilities charges and to correct any errors. Transfer vouchers should be submitted at least once every quarter.

VI. *Delegation of authority.*—The authority vested in the Mayor-Commissioner by Reorganization Plan No. 3 of 1967 to sign documents authorizing payment to the utilities companies is hereby delegated to the Accounting Officer, District Accounting Office, OBFM.

VII. *Superseding of prior orders.*—This Order supersedes Commissioner's Order 74-155 (July 17, 1974).

VII. *Effective date.*—The provisions of this Order shall go into effect immediately.

ORGANIZATION ACTIONS OF THE MAYOR OF THE DISTRICT OF COLUMBIA

Mayor's Ord.

Nos.

- 75-228. Hackers' License Appeal Board.
- 76-92. Information Office for Advisory Neighborhood Commissions.
- 76-97. Realignment of Service Area System.
- 77-62. Office of Business and Economic Development.
- 77-180. Inter-Agency Council for Minority Procurement.
- 77-181. Work Group on Procurement and Supply Management.

ORGANIZATION ACTION—HACKERS' LICENSE APPEAL BOARD

(Mayor's Order No. 75-228, Oct. 24, 1975.)

By virtue of the authority vested in me by section 422(6) of the District of Columbia Self-Government and Governmental Reorganization Act (P.L. 93-198), it is hereby ordered that:

SECTION I

The Director of the Department of Transportation is delegated the authority to appoint the Chairman of the Hackers' License Appeal Board, provided that such Chairman shall be selected from among the senior employees of the Department of Transportation. Such appointment shall be for one year unless sooner terminated by the appointing authority.

SECTION II

All duties and functions heretofore vested in the Mayor or delegated to the Executive Secretary are hereby delegated to the Director of the Department of Transportation.

SECTION III

The Department of Transportation shall provide the necessary administrative services for the Hackers' License Appeal Board.

SECTION IV

This Order shall become effective November 10, 1975.

ORGANIZATION ACTION—INFORMATION OFFICE FOR ADVISORY NEIGHBORHOOD COMMISSIONS

(Mayor's Order No. 76-92, Mar. 30, 1976.)

1. *Establishment.*—There is established in the Office

¹ So in original, probably should be "VIII".

of the Secretariat, Executive Office of the Mayor, the Information Office for Advisory Neighborhood Commissions (ANCs), charged with serving the needs of District agencies and the ANCs to exchange information and comments.

2. *Functions.*—The Office will serve the ANCs and the District Government by:

A. Assisting agency heads to comply with the requirements of Section 13(c), D.C. Law 1-58, "Duties and Responsibilities of the Advisory Neighborhood Commissions Act of 1975" [D.C. Code, § 1-1711(c)], with respect to providing notice of proposed actions in addition to the notice requirements of the D.C. Administrative Procedure Act, and shall maintain records of such notifications and assure their receipt by the appropriate ANCs;

B. Assisting ANCs to comply with section 13(d) of the D.C. Law 1-58, with respect to forwarding written recommendations to the Mayor and appropriate District agencies within the necessary time period;

C. Acting as an information and assistance office for ANCs and the District government, and

D. Preparing and submitting appropriate vouchers to obtain ANC funding and assisting the ANCs in the development of financial-accounting rules and regulation.

3. *Budget and fiscal.*—The Director of the Office of Budget and Management Systems will assure that fiscal resources for the operation of this office are provided through appropriate financial procedures as may be required.

4. *Personnel.*—Position descriptions for the positions in this Office shall be established by the Director of D.C. Personnel.

5. *Effective date.*—The Office shall become operational on April 15, 1976.

ORGANIZATION ACTION—REALIGNMENT OF SERVICE AREA SYSTEM

(Mayor's Order No. 76-97, Apr. 7, 1976.)

By virtue of Reorganization Plan No. 3 of 1967 and in accordance with the District of Columbia Self-Government and Governmental Reorganization Act of 1973 (P.L. 93-198), and 1974 (Organization Order No. 50) and Order 74-264, December 31, 1974 (Organization Order No. 50) and Order of the Mayor No. 75-42 February 26, 1975 setting forth the functional responsibilities of the Municipal Planning Office, and in furtherance of the Advisory Neighborhood Commission Act and District of Columbia Boundary Act of 1975 respectively, it is hereby ORDERED:

1. The District's nine (9) Service Area Boundary System is abolished, and is reestablished as an eight (8) Ward Boundary System as shown on the attached map of the District of Columbia. These Ward Service Areas shall be used in connection with the coordination and planning of the delivery of municipal services by District Departments, Agencies, and Offices.

2. The District's nine (9) Inter-Agency Service Area Committees established to function within the nine (9) geographical Service Areas are abolished, and eight (8) inter-governmental Ward Service Area Committees (W-SAC) are established to function within each of the eight (8) Ward Service Areas.

3. The District's technical Inter-Agency Community Services Advisory Committee (CSAC) is retained in structure and function.

4. The Community Services Division of the Municipal Planning Office shall coordinate and convene and arrange for the chairing of each of the eight (8) Ward Service Area Committees and provide Administrative and Technical staff support for the Service Area System.

Service area committee functions.—Pursuant to the Advisory Neighborhood Commission Act of 1975, District Department, Agency and Office Heads so designated (Appendix A) shall appoint a Ward Service Area Manager to oversee the day to day operations of the respective Department, Agency and Office in each of the eight (8) Ward Service Areas, and represent the respective Department, Agency, Office on each of the eight (8) Ward Service Area Committees.

The Ward Service Area Manager shall possess necessary technical knowledge of Department, Agency, Office Program Operations, planning, fiscal management and inter-

governmental coordination as related to the Ward Service Area assignment, and have expertise in community relations.

The function of each of the eight (8) Ward Service Area Committees is to assist the Mayor, Department, Agency, Offices in planning, coordinating, and improving the delivery of municipal services at the ward service area level. The Ward Service Area Committees are to coordinate, their efforts with the Advisory Neighborhood Commissions, as well as the broader community of the respective Ward Service Area.

Each Ward Service Area Committee shall review proposals as referred by the Mayor, Department, Agency and Office Heads through the Municipal Planning Office for new projects or for the renewal of existing projects.

Each Ward Service Area Committee shall prepare both quarterly and annual reports reflecting progress made in the delivery of municipal services within the respective Ward Service Area.

Each Ward Service Area Committee shall conduct annual community reviews of the City's Budget, Comprehensive Plan and Legislative program.

Each Ward Service Area Committee shall convene collectively once per month, but may meet more frequently.

Community Services Advisory Committee (CSAC) functions.—The CSAC is established as the city-wide Inter-Agency technical committee for the Service Area System et al., insuring central coordination and communications on all Ward Service Area Managers activities to the Department, Agency and Office Heads.

The CSAC shall also advise the Director of the Municipal Planning Office on matters relating to Special Project Development, planning, and the conduct of the Service Area System.

Each Department, Agency, Office shall appoint one employee representative to the CSAC who should possess expertise in the field of urban planning, policy formulation, fiscal management and program operations. The CSAC representative should have ready access to Department, Agency, Office Heads.

Municipal Planning Office/Community Services Division.—Shall coordinate and chair the Ward Service Area Committees where possible, serve as Chairman pro tem for the Director of the Municipal Planning Office of the CSAC, assist the Municipal Planning Office Planning Teams, and provide Administrative and Technical Support to the Service Area System.

On program coordination and service delivery matters, the Municipal Planning Office/Community Services Division shall maintain staff liaison with the Advisory Neighborhood Commissions and the broader community within the eight (8) Ward Service Areas.

The Municipal Planning Office/Community Services Division shall participate in the work of the city's taskforce for the conduct of Special Events, the Capital Improvement Program-Technical Advisory Committee (CIP-TAC) and upon request assist in planning citizen participation programs.

Previous orders.—Previous orders establishing the functions and duties of the Service Area System and the Community Services Division, including Commissioner's Order No. 70-142, dated April 20, 1970, and Commissioner's Order No. 72-95, dated April 21, 1972, are modified in accordance with this order.

ORGANIZATION ACTION—OFFICE OF BUSINESS AND ECONOMIC DEVELOPMENT

Mayor's Order No. 77-62, Apr. 13, 1977, which established within the Executive Office of the Mayor an Office of Business and Economic Development is set out as a note under section 1-1352.

ORGANIZATION ACTION—INTER-AGENCY COUNCIL FOR MINORITY PROCUREMENT

(Mayor's Order No. 77-180, Nov. 7, 1977.)

By virtue of the authority vested in me by Section 422(11) of the District of Columbia Self-Government

and Governmental Reorganization Act of 1973 (P.L. 93-198), it is hereby ORDERED THAT:

1. **Establishment.**—There is established within the Executive Office of the Mayor an Inter-Agency Council for Minority Procurement to be chaired by the General Assistant to the Mayor.

2. **Purpose.**—The purpose of the Inter-Agency Council for Minority Procurement is to assist the Minority Business Opportunity Commission in implementing the Minority Contracting Act of 1976. (D.C. Law 1-95) [D.C. Code, secs. 1-851 et seq.]

3. **Membership.**—Membership of the Inter-Agency Council for Minority Procurement shall include the following persons or their designates:

Director, Department of Housing and Community Development

Director, Department of Human Resources

Superintendent, D.C. Public Schools

Director, Department of Transportation

President, University of the District of Columbia

Director, Department of Manpower

Director, Department of General Services

Director, Department of Environmental Services

Director, Office of Budget and Management Systems

Executive Director, D.C. General Hospital

Executive Officer (or Administrative Assistant), D.C. Superior Court

4. **Effective date:** This order shall be effective immediately.

ORGANIZATION ACTION—WORK GROUP ON PROCUREMENT AND SUPPLY MANAGEMENT

(Mayor's Order No. 77-181, Nov. 7, 1977.)

By virtue of the authority vested in me by Section 422(11) of the District of Columbia Self-Government and Governmental Reorganization Act of 1973 (P.L. 93-198), it is hereby ORDERED THAT:

I. **Establishment:** There is established within the Executive Office of the Mayor a Work Group on Procurement and Supply Management to be chaired by the Special Assistant to the Mayor for Financial Systems Development.

II. **Purpose and scope:** The purpose of this Work Group shall be to review and identify individual agency procurement and supply activities and make recommendations for their integration, as feasible, into an improved city-wide system. Primary areas of concern will be procurement, inventory, and warehousing. The Group shall develop an Action Plan for this project.

III. **Membership:** Members of the Work Group shall include department and agency director designees with acknowledged procurement and supply expertise or technical competence to represent the following:

Department of General Services

Department of Transportation

Department of Environmental Services

Department of Economic Development

Department of Human Resources

Department of Corrections

Department of Recreation

Department of Manpower

D.C. Public Schools

Metropolitan Police Department

Fire Department

Department of Housing and Community Development

IV. **Authority:** The Chairman may establish such subgroups to the Work Group as deemed appropriate to provide technical assistance.

V. **Final report:** The Work Group, upon completion of its work, shall submit a final report with recommendations to the Mayor.

VI. **Staff support:** Principal staff support to the Group shall be the responsibility of the Office of Budget and Management Systems with the Department of General Services providing primary technical support.

VII. **Effective date:** This Order shall be effective immediately.

TITLE 2.—DISTRICT BOARDS AND COMMISSIONS

Chap. Sec.
12. Boxing and Wrestling Commission..... 2-1201

Chapter 1.—HEALING ARTS PRACTICE

SUBCHAPTER I.—LICENSURE AND OTHER REGULATORY PROVISIONS

- Sec.
2-103. Commission on Licensure—Establishment—Membership appointment—Term of office—Vacancies — Officers — Quorum — Removal—Compensation—Liability for damages—Regulations—Legal counsel—Continuation of prior Commission.
2-105. Staff director—Staff.
2-121. Issuance of license by endorsement and without examination.
2-121a. Certificate or diploma from national examining board or completion of examination by Federation of State Medical Boards—Proof required.
2-122a. Temporary licenses for residency or fellowship training programs—Proof required—Renewal—Execution of documents authorized.
2-123. Professional misconduct or incapacity—Sanctions—Procedures and standards.
2-141. Repealed.
2-142. Liability of individuals for negligence in rendering emergency medical assistance—Emergency medical technician/paramedic—Physicians.

SUBCHAPTER II.—REPORTS OF NEGLECTED CHILDREN

- 2-162. Persons required to make reports—Procedures.
2-163. Nature and contents of reports.
2-167. Penalty for failure to make report—Prosecution by Corporation Counsel.

SUBCHAPTER I.—LICENSURE AND OTHER REGULATORY PROVISIONS

§ 2-101. The healing art—Definitions—Exclusions.

CROSS REFERENCES TO BOARDS AND COMMISSIONS NOT FOUND IN THIS TITLE

- Advisory Neighborhood Commissions, see §§ 1-171 et seq.
Board of Elections and Ethics, see § 1-1103.
Commission on Aging, see § 6-1721.
Commission on Latino Community Development, see § 6-1921.
Commission on the Arts and Humanities, see § 31-1903.
Educational Institution Licensure Commission, see § 31-2003.
General Hospital Commission, see §§ 32-1301 et seq.
Law Revision Commission, see § 49-401.
Minority Business Opportunity Commission, see § 1-853.
Rental Accommodations Commission, see § 45-1631.

§ 2-103. Commission on Licensure—Establishment—Membership appointment—Term of office—Vacancies—Officers—Quorum—Removal—Compensation—Liability for damages—Regulations—Legal counsel—Continuation of prior Commission.

(a) (1) There is established a Commission on Licensure to Practice the Healing Art. The Commission shall have twelve members, ten of whom shall be appointed by the Mayor with the advice and consent of the Council as follows:

(A) Three members shall be appointed from a panel of six physicians, licensed under this subchapter and practicing in the District of Columbia, who are nominated by the Medical Society of the District of Columbia.

(B) One member shall be appointed from a panel of two physicians licensed under this subchapter, who are nominated by the Dean of the Georgetown Medical School.

(C) One member shall be appointed from a panel of two physicians licensed under this subchapter, who are nominated by the Dean of the George Washington University Medical School.

(D) One member shall be appointed from a panel of two physicians licensed under this subchapter, who are nominated by the Dean of Howard University Medical School.

(E) One member shall be appointed from a panel of two physicians licensed under this subchapter, who are nominated by the Medico-Chirurgical Society of the District of Columbia.

(F) One member shall be appointed from a panel of two osteopathic physicians licensed under this subchapter and nominated by the Association of Osteopathic Physicians of the District of Columbia, Incorporated.

(G) Two members shall be appointed from persons who are not health care providers and who represent the consumers of health care. These two members shall have all the powers which other members have.

(2) (A) The Director of Public Health or the lawful successor of that office shall be an ex officio member and may nominate another District employee licensed under this subchapter to be a temporary or permanent alternate member with all the powers of other Commission members.

(B) The Corporation Counsel shall be an ex officio member of the Commission.

(3) A vacancy in the Commission shall be filled in the same manner as the original appointment was made.

(b) (1) The members appointed under paragraph (a) (1) shall be appointed for a term of three years.

(2) Of the members first appointed under paragraph (a) (1), three shall be appointed for terms of one year, three for terms of two years, and four for terms of three years, as designated by the Mayor at the time of appointment.

(3) Any member appointed under paragraph (a) (1) to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term. For a period not exceeding 90 days, a member appointed under paragraph (a) (1) may serve after the expiration of his or her term until a successor has been appointed, qualified and taken

office. A member appointed under paragraph (a) (1) shall not be eligible for reappointment for a period of three years after the expiration of his or her term.

(c) The Commission shall elect a President and Vice President from among its members. The member selected through subparagraph (a) (2) (A) shall be the Secretary of the Commission.

(d) Seven members of the Commission shall constitute a quorum for the transaction of business at any meeting.

(e) The Mayor may remove any member of the Commission appointed under paragraph (a) (1), for neglect of duty required by this subchapter, incompetency, or unprofessional conduct.

(f) Each member of the Commission appointed under paragraph (a) (1) may be paid at the rate of fifty dollars per day devoted to Commission work, and may be reimbursed for necessary expenses not to exceed five thousand dollars in any one year.

(g) No member shall be liable in damages to any person for any action or recommendation within the scope of the member's function.

(h) The Commission may make and alter reasonable procedural and substantive rules in accordance with sections 1-1504, 1-1505 and 1-1506.

(i) The Corporation Counsel shall be the Commission's legal advisor and representative, and if the Commission requests, shall represent the complainant's case in a proceeding before the Commission under section 2-123. After such a request from the Commission, the Corporation Counsel shall take no part as a Commission member in the consideration or decision of the case.

(j) The Commission composed as required in subsection (a) is the continuation of the Commission prior to the effective date of this section. Until all members first appointed under paragraph (a) (1) take office, the members of the Commission shall continue to be appointed in the same manner as prior to the effective date of this act. (Feb. 27, 1929, 45 Stat. 1327, ch. 352, §§ 4, 5; June 25, 1948, 62 Stat. 909, ch. 646, § 1; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Apr. 6, 1977, D.C. Law 1-106, § 2(a), 23 DCR 8736.)

REFERENCES IN TEXT

The effective date of this section, referred to in subsec. (j), is probably a reference to the effective date of section 2(a) of act Apr. 6, 1977, D.C. Law 1-106, which amended this section generally. See Effective Date of 1977 Amendment note set out below.

The effective date of this act, referred to in subsec. (j), is probably a reference to the effective date of act Apr. 6, 1977, D.C. Law 1-106. See Effective Date of 1977 Amendment note set out below.

AMENDMENT

1977—Act Apr. 6, 1977, D.C. Law 1-106, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 9 of act Apr. 6, 1977, D.C. Law 1-106, provided: "This act [for classification of act see Tables] shall be effective immediately following the period provided for Congressional review in section 602(c) (1) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c) (1)]."

CROSS REFERENCE

Report of loss of privileges to practice granted to health care providers by licensed health care institutions, see § 32-305a.

§ 2-103a. Standards of education and training—Register of approved schools and hospitals—License on years of practice—Graduates of foreign medical schools.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-104. Commission on Licensure to receive and record applications for licenses—Issuance of licenses—Registration and payment of fees—Penalties.

The Commission shall receive, number consecutively, and record all applications presented in due form for licenses and for registration; but such applications may be classified according to their respective purposes, and numbered consecutively and registered according to the several classes thus established. If the Commission finds that an applicant is entitled to a license by virtue of an outstanding license to practice medicine and surgery in the District of Columbia or by virtue of years of practice, under the provisions of section 2-120, or by virtue of endorsement, under the provisions of section 2-121, or by virtue of a certificate or diploma by a national examining board as provided in section 2-121a, or by virtue of successful completion of the examination administered by the Federation of State Medical Boards of the United States as provided in such section, it shall issue to him a license accordingly. If the Commission finds that an applicant has submitted satisfactory proof of age, moral character, preprofessional education, professional education, and, if required by the Commission, of hospital training, but must be subjected to an examination to determine his professional fitness, under section 2-122, it shall certify him to the proper examining board for that purpose; and upon receipt of a report from any such board, satisfactory to the Commission, showing that the applicant has passed such an examination, the Commission, being of the opinion that the applicant is in all other respects legally qualified, shall issue to him a license to practice the healing art in the manner described in his application and as authorized by law, in whatever class the Commission shall find him qualified to so practice.

(As amended Apr. 6, 1977, D.C. Law 1-106, § 4(a), 23 DCR 8736.)

AMENDMENT

1977—Act Apr. 6, 1977, D.C. Law 1-106, amended first paragraph of section by inserting "or by virtue of successful completion of the examination administered by the Federation of State Medical Boards of the United States as provided in such section," after "section 1-121a," and by substituting "endorsement" for "reciprocity".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 9 of act Apr. 6, 1977, D.C. Law 1-106, set out as a note under § 2-103.

§ 2-105. Staff director—Staff.

On or after October 1, 1977, the President of the Commission shall appoint a full-time staff director. The staff director shall appoint, with the consent of the Commission, such counsel, secre-

taries, investigators or other persons as are necessary to carry out the functions of the Commission. Until such staff is sufficient for all the needs of the Commission, the Department of Economic Development shall continue staff and administrative assistance to the Commission. (Feb. 27, 1929, 45 Stat. 1328, ch. 352, § 7; Apr. 6, 1977, D.C. Law 1-106, § 3, 23 DCR 8736.)

AMENDMENT

1977—Act Apr. 6, 1977, D.C. Law 1-106, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 9 of act Apr. 6, 1977, D.C. Law 1-106, set out as a note under § 2-103.

§ 2-108. Reference of applicants to Board of Examiners in Basic Sciences—Examination—Subjects—Acceptance of examination before foreign board—Certification to other boards.

The Commission shall refer to the Board of Examiners in the Basic Sciences every applicant for a license to practice the healing art in the District of Columbia, except those entitled to licenses by virtue of licenses to practice medicine and surgery in the District of Columbia outstanding February 27, 1929, or by virtue of years of practice of osteopathy or some form of drugless healing in the District of Columbia at that time, for determination of the applicant's ability to understand and to apply the sciences of anatomy, physiology, chemistry, bacteriology, and pathology to the study and practice of the healing art. The Commission shall refer such applicants so that the Board of Examiners in the Basic Sciences and any member of that Board shall not know the method of practice the applicant has studied or the method of practice he intends to follow. The Board of Examiners in the Basic Sciences may examine any applicant referred to it, but it may accept in lieu of examination proof that the applicant has passed, before a Board of Examiners in the Basic Sciences, by whatsoever name it may be known, or before any examining or licensing board in the healing art as that art is hereinbefore defined, of any State, Territory, or other jurisdiction under the United States, or of any foreign country, an examination in anatomy, physiology, chemistry, bacteriology, and pathology, as comprehensive and as exhaustive as that required in the District of Columbia under authority of this subchapter. The Board of Examiners in the Basic Sciences shall report its findings to the Commission. An applicant who is reported by the Board as qualified in the sciences of anatomy physiology, chemistry, bacteriology, and pathology, but who is not entitled to a license to practice the healing art, without examination, shall be certified by the Commission to the Board of Examiners in Medicine and Osteopathy, or a board of examiners in drugless healing, as the case may be, for determination of his professional fitness. An applicant who is reported by the Board as qualified in said sciences and who is entitled to a license by endorsement, without examination, or by virtue of a certificate or diploma issued by a national examining board, or by virtue of successful completion of the examination administered

by the Federal¹ of State Medical Boards of the United States, shall thereupon be given such a license. The Commission shall issue no license to practice the healing art to any person who has not been reported by the Board of Examiners in the Basic Sciences as qualified in the sciences of anatomy, physiology, chemistry, bacteriology, and pathology, except to such persons as are entitled to licenses by virtue of licenses to practice medicine and surgery in the District of Columbia outstanding on February 27, 1929, and by virtue of years of practice of osteopathy or some form of drugless healing in said district prior to February 27, 1929, and except to applicants for licenses to practice midwifery. (Feb. 27, 1929, 45 Stat. 1329, ch. 352, § 11; Apr. 20, 1948, 62 Stat. 175, ch. 216, § 2; Apr. 6, 1977, D.C. Law 1-106, § 4(b), 23 DCR 8736.)

AMENDMENT

1977—Act Apr. 6, 1977, D.C. Law 1-106, amended sixth sentence of section by inserting "or by virtue of successful completion of the examination administered by the Federal of State Medical Boards of the United States," after "national examining board," and substituting "endorsement" for "reciprocity".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 9 of act Apr. 6, 1977, D.C. Law 1-106, set out as a note under § 2-103.

§ 2-113. Board of Examiners in Midwifery—Appointment—Reference of applicants to board.

The Commission may appoint, from time to time, as it deems expedient, a Board of Examiners in Midwifery, consisting of not less than three and not more than five persons, who have practiced the healing art in the District of Columbia for not less than three years immediately preceding their respective appointments, under authority of licenses authorizing them so to practice. Appointments to such boards shall be made for such terms as the Commission deems proper. The Commission may abolish any such board at any time. The Commission shall refer to a Board of Examiners in Midwifery every applicant for a license to practice midwifery who intends and in his or her application agrees to limit his or her practice to the care of women during normal pregnancy and parturition, in so far as the licentiate is able to determine whether pregnancy and parturition are normal in any particular case, for determination of the applicant's fitness so to practice, and who is not entitled to a license by virtue of an outstanding license to practice midwifery in the District of Columbia in force on February 27, 1929. (Feb. 27, 1929, 45 Stat. 1331, ch. 352, §§ 16, 17; Oct. 1, 1976, D.C. Law 1-87, § 3, 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended fourth sentence by substituting "his or her" for "her" wherever it appeared.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 2-114. Examinations—Time of holding—Notice—Publication.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

¹ So in original. Probably should be "Federation".

Costs of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 2-118. Commission to issue licenses based on reports of boards—Retention of examination papers—Papers open to inspection.

The Commission shall carefully consider the reports of the Board of Examiners in the Basic Sciences and of the examining board by which any applicant has been examined, purporting to show the qualifications of the applicant. If the Commission is satisfied that the applicant is qualified to practice the healing art in accordance with law and within the limits fixed by his application, the Commission shall issue to him a license attesting that fact and authorizing him so to practice in whatever class of practice the Commission has found him qualified, subject to any action taken under sections 2-123, 2-131, and 2-132. All reports of examining boards and all questions to and answers by applicants in written examinations shall be open to inspection by any person who shows to the satisfaction of the Commission that he has some proper interest in them. All examination papers shall be preserved by the Commission for a period of not less than two years. The Commission shall record all licenses in a book kept for that purpose, which shall be duly indexed. Licenses shall be consecutively numbered, except that licenses of different classes may be numbered and recorded in separate series. Licenses shall show on their faces the class of practice for which they are issued, and licentiates shall display the same prominently in their offices at all times. (Feb. 27, 1929, 45 Stat. 1333, ch. 352, § 22; Apr. 6, 1977, D.C. Law 1-106, § 6(b), 23 DCR 8736.)

AMENDMENT

1977—Act Apr. 6, 1977, D.C. Law 1-106, amended section by substituting "subject to any action taken under sections 2-123, 2-131, and 2-132" for "so long as that license is unsuspended and unrevoked".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 9 of act Apr. 6, 1977, D.C. Law 1-106, set out as a note under § 2-103.

§ 2-119. Applications for licenses to be filed with Commission—Contents of applications—Fees—Refunds.

Any person desiring to practice the healing art in the District of Columbia shall apply to the Commission, in writing, for authority so to do. The application shall be in such form and accompanied by such evidence of the qualifications of the applicant as the Commission requires. Each application shall show whether the applicant (a) seeks a license (1) on the basis of a license to practice medicine and surgery in the District of Columbia, under section 2-120; (2) on the basis of years of practice, under section 2-120; (3) on the basis of endorsement, under section 2-121; (4) by virtue of a certificate or diploma issued by a national examining board, or by virtue of successful completion of the examination administered by the Federation of State Medical Boards of the United States, as provided in section 2-121a; or (5) on the basis of examination under section 2-122; or (b) seeks registration as a person exempted from licensure, under section 2-133. Each application shall be accompanied by a

fee, as follows: For a license on the basis of a license to practice medicine and surgery in the District of Columbia, a fee of \$1; on the basis of years of practice in the District of Columbia, a fee of \$25; for a license on the basis of endorsement, a fee of \$50; for a license on the basis of a certificate or diploma from a national examining board, or on the basis of successful completion of the examination administered by the Federation of State Medical Boards of the United States¹ a fee of \$25; for certification of applications for license by endorsement in other jurisdictions, a fee of \$10; for a license on the basis of examination, a fee of \$25; for registration as a person exempted from license, a fee of \$1; but physicians and surgeons of the United States Army, Navy, Air Force, and Public Health Service, and medical officers in any other branch of the federal government whatsoever, and practitioners of the healing art residing within and licensed by states bordering on the District of Columbia, who do not maintain an office or appoint places where patients may be met within the District of Columbia, applying for registration as persons exempted from licensure in the District of Columbia, shall not be required to pay any fee in connection with any such application. The Commission may, on showing of any adequate cause, refund to an applicant for a license on the basis of examination any or all of the fee paid by him, prior to the reference of his application to an examining board for consideration, and thereafter if the applicant is by reason of sickness or other adequate cause prevented from entering the examination, the Commission may refund not more than 50 per centum of such fee. An applicant for a license by endorsement who fails to establish his right to such a license, and an applicant for registration as a person exempted from licensure who fails to establish his right to such registration, may be repaid by the Commission not to exceed 80 per centum of the amount deposited by him with his application. (Feb. 29, 1929, 45 Stat. 1333, ch. 352, § 23; Apr. 20, 1948, 62 Stat. 175, ch. 216, § 3 (a), (b); Apr. 6, 1977, D.C. Law 1-106, § 4(c), 23 DCR 8736.)

AMENDMENT

1977—Act Apr. 6, 1977, D.C. Law 1-106, amended section by inserting in the third sentence "or by virtue of successful completion of the examination administered by the Federation of State Medical Boards of the United States," after "national examining board,"; inserting in the fourth sentence "or on the basis of successful completion of the examination administered by the Federation of State Medical Boards of the United States" after "national examining board,"; and substituting "endorsement" for "reciprocity".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 9 of act Apr. 6, 1977, D.C. Law 1-106, set out as a note under § 2-103.

§ 2-120. Licensees in medicine, surgery, or midwifery under prior law to be relicensed—Osteopaths, chiropractors, and those who practice the healing arts to apply for license—License without examination.

* * * * *

Any person who was engaged in the practice of osteopathy in the District of Columbia on or before

¹ So in original. There probably should be a comma.

January 1, 1928, may deliver to the Commission, within ninety days after February 27, 1929, a written application for a license to practice osteopathy and surgery in the District of Columbia, together with satisfactory proof that the applicant is not less than eighteen years of age and of good moral character, and had previously obtained a diploma from some legally incorporated school or college of osteopathy, and had been actively engaged in the practice of osteopathy for the past ten years, or had previously obtained a diploma from some legally incorporated college of osteopathy whose requirements were equal to those recognized by the American Osteopathic Association.

* * * * *

Any person who was engaged in the practice of chiropractic in the District of Columbia on or before January 1, 1928, may deliver to the Commission, within ninety days after February 27, 1929, a written application for license to practice chiropractic in the District of Columbia, together with satisfactory proof that the applicant is not less than eighteen years of age and of good moral character, and had previously obtained a diploma from some legally chartered or incorporated and duly established school or college of chiropractic and was actually engaged in the practice of chiropractic in said District on January 1, 1928.

* * * * *

Any person who has been engaged in the practice of the healing art as defined in this subchapter in the District of Columbia on or before January 1, 1928, according to any other drugless method of healing, who was been graduated with a degree appropriate to the system of drugless healing that he has practiced by a legally chartered or incorporated and duly established school, and who desires to continue so to practice, shall within ninety days after February 27, 1929, submit proof, satisfactory to the commission, of such date of practice and of graduation, of the fact that he is not less than eighteen years of age and of good moral character, and of the name, character, and limits of the method of healing practiced by him. When the Commission is satisfied as to the qualifications of the applicant as aforesaid, it shall issue to the applicant a license to practice the healing art in accordance with the system described by the applicant, if recognized by the commission as a named system of drugless healing, which shall be clearly defined and limited in the license so as to distinguish it from all other systems of practice. A license issued in any such case shall show that it was issued on the basis of years of practice and not on the basis of examination.

* * * * *

(As amended Apr. 6, 1977, D.C. Law 1-106, § 4(f), 23 DCR 8736.)

AMENDMENT

1977—Act Apr. 6, 1977, D.C. Law 1-106, amended second, fourth, and sixth paragraphs by substituting "eighteen" for "twenty-one".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 9 of act Apr. 6, 1977, D.C. Law 1-106, set out as a note under § 2-103.

§ 2-121. Issuance of license by endorsement and without examination.

An applicant who desires to obtain a license by endorsement and without examination, by virtue of a license issued to him by a state, territory, or other jurisdiction forming a part of the United States, or by a foreign country, shall submit proof, satisfactory to the Commission, that he is not less than eighteen years of age and is of good moral character; that he was licensed to practice the healing art in the jurisdiction whence he comes under conditions that at that time would have enabled him to obtain a license to practice the healing art in the District of Columbia, or to have obtained a license under the provisions of this subchapter were it then in force; that he practiced the healing art after the issuance of said license for not less than one continuous year out of three years immediately preceding the date of his application and that he intends, if licensed by the Commission, to practice in the District of Columbia. The required one continuous year's practice may be either private, institutional or governmental, or a combination thereof. The Commission may issue a license by endorsement to an applicant under this section if it determines the applicant has met the requirements of this section: *Provided*, That an applicant who has been examined under authority of the Commission and who has failed, shall not for three years after the failure be licensed under the provisions of this section.

A license issued to an applicant under this section shall correspond in scope as nearly as practicable to the license held by the applicant which is the basis for the issuance of a license under this section. (Feb. 27, 1929, 45 Stat. 1335, ch. 352, § 25; Dec. 15, 1944, 58 Stat. 805, ch. 587; Apr. 6, 1977, D.C. Law 1-106, § 4(d), (f), 23 DCR 8736.)

AMENDMENT

1977—Section 4(d) of act Apr. 6, 1977, D.C. Law 1-106, amended section by inserting "by endorsement and" immediately before "without examination" in the first sentence of the first paragraph and by substituting the last sentence of the first paragraph and the second paragraph for the third and fourth sentences. For prior provisions, see the 1973 edition of the Code.

Section 4(f) of that act amended the first paragraph of the section by substituting "eighteen" for "twenty-one".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 9 of act Apr. 6, 1977, D.C. Law 1-106, set out as a note under § 2-103.

§ 2-121a. Certificate or diploma from national examining board or completion of examination by Federation of State Medical Boards—Proof required.

The Commission may issue a license, without examination, to anyone holding a certificate or diploma from a national examining board or to anyone who has successfully completed the examination administered by the Federation of State Medical Boards of the United States if the Commission determines that the examination given by the national examining board or by such Federation, as the case may be, was as comprehensive and as exhaustive as that required in the District of Columbia. The applicant for license on this basis shall submit with his application proof satisfactory to the Commission that he is not less than eighteen years of age; that he is of

good moral character; that he has had not less than two years of preprofessional education and training in a college or university acceptable to the Commission before entering on the study of the healing art; that he has studied the healing art through not less than four graded courses of not less than nine months each, in a professional school or schools registered under this subchapter, and has been graduated by such school with the degree of doctor of medicine, doctor of osteopathy, or some equivalent degree; and, if required by the Commission, that he has had not less than one year of training in a hospital registered by the Commission under this subchapter: *Provided further*, That the license issued on the basis of a certificate or diploma from a national examining board or on the basis of successful completion of the examination administered by the Federation of State Medical Boards of the United States shall so state on its face. (Feb. 27, 1929 ch. 352, § 25(a), as added Apr. 20, 1948, 62 Stat. 175, ch. 216, § 4; Apr. 6, 1977, D.C. Law 1-106, § 4 (e), (f), 23 DCR 8736.)

AMENDMENT

1977—Section 4(e) of act Apr. 6, 1977, D.C. Law 1-106, amended section by substituting "or to anyone who has successfully completed the examination administered by the Federation of State Medical Boards of the United States if the Commission determines that the examination given by the national examining board or by such Federation, as the case may be," for "": *Provided*, That the examination given by the national examining board" and by inserting in the final proviso "or on the basis of successful completion of the examination administered by the Federation of State Medical Boards of the United States" immediately after "national examining board".

Section 4(f) of that act amended section by substituting "eighteen" for "twenty-one".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 9 of act Apr. 6, 1977, D.C. Law 1-106, set out as a note under § 2-103.

§ 2-122. Evidence to be submitted with application— Licensing of those practicing before effective date of this chapter—Education and training.

Each applicant for a license to practice the healing art, to be issued after examination, shall submit with his application proof satisfactory to the Commission that he is not less than eighteen years of age; that he is of good moral character; that he has had not less than two years of preprofessional education and training in a college or university acceptable to the Commission before entering on the study of the healing art; that he has been graduated from a professional school registered under this subchapter; with the degree of doctor of medicine, doctor of osteopathy, or some equivalent degree; and, if required by the Commission, that he has had not less than one year of training in a hospital registered by the Commission under this subchapter; *Provided*, That the commission shall by rule provide for determining whether an applicant who has been graduated from a professional school registered under this subchapter at a time when such school was not so registered may be admitted to examination, and such commission shall, in determining whether any such applicant shall be admitted to examination under this section, take into consideration whether the curriculum and the qualifica-

tions of the faculty of such school were substantially the same during the period the school was attended by the applicant as they were at the time the school first became registered under this subchapter, and if the commission shall so find, such applicant shall be admitted to examination: *Provided further*, That an applicant who has had the education and training required above, in preprofessional and professional schools, but whose graduation has been deferred by the professional school he last attended until after he has completed his training in a registered hospital, may be admitted to examination; but no license shall be issued to any such applicant until after he has been graduated from a registered school: *Provided further*, That an applicant for a license to be issued after examination who was graduated before February 27, 1929, by a school registered under this subchapter may, if otherwise qualified, be admitted to examination upon proof by the applicant of such preprofessional and professional education and training, and of such graduation, as were required by the laws of the District of Columbia regulating the practice of medicine and surgery at the time of such graduation: *Provided further*, That an applicant for a license to practice osteopathy and surgery who has been graduated as aforesaid prior to December 31, 1930, shall be examined and licensed on showing that he was graduated by a high school acceptable to the Commission before he entered on the study of osteopathy and that he in all other respects is qualified as aforesaid for examination: *And provided further*, That an applicant for a license to practice drugless healing, who has been graduated before December 31, 1935, may be admitted to examination on proof that before entering on the study of drugless healing he was graduated by a high school acceptable to the Commission and that he in all other respects is qualified as aforesaid for examination, and was graduated by a school registered under this subchapter, teaching the method of healing that he intends to follow, with a degree appropriate to that method of healing, after not less than three graded courses of resident study and training of at least six months each. After December 31, 1935, every such applicant shall be required to submit, before he is referred to an examining board for examination, evidence of not less than two years' education in a college acceptable to the Commission and not less than four graded resident courses of professional study of not less than nine months each, in the same manner and to the same extent as are required of other applicants for licenses to practice the healing art.

An applicant for a license to practice midwifery shall submit proof, satisfactory to the Commission, that before beginning the study of midwifery she had been graduated by a high school acceptable to the Commission and thereafter studied midwifery in a school of midwifery registered under this subchapter, for at least two graded courses of six months each, including attendance of not less than twenty-five cases of labor, and was duly graduated by that school. (Feb. 27, 1929, 45 Stat.

1336, ch. 352, § 26; Sept. 14, 1961, 75 Stat. 518, Pub. L. 87-248, § 2; Apr. 6, 1977, D.C. Law 1-106, § 4(f), 23 DCR 8736.)

AMENDMENT

1977—Act Apr. 6, 1977, D.C. Law 1-106, amended first sentence of first paragraph by substituting "eighteen" for "twenty-one".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 9 of act Apr. 6, 1977, D.C. Law 1-106, set out as a note under § 2-103.

§ 2-122a. Temporary licenses for residency or fellowship training programs—Proof required—Renewal—Execution of documents authorized.

(a) The Commission may issue, without examination, temporary licenses to persons holding the Degree of Doctor of Medicine or Doctor of Osteopathy who wish to pursue or participate in residency or fellowship training programs in the District of Columbia. An applicant for a temporary license shall furnish to the Commission satisfactory proof that the applicant—

- (1) is of good character;
- (2) is a graduate of an accredited medical school or an accredited school of osteopathy or is otherwise qualified after examination by the Educational Council of Foreign Medical Graduates;
- (3) has completed a minimum of one year of postgraduate education accredited by the American Medical Association's Council on Medical Education and Training and has been accepted or appointed for residency or fellowship in a program accredited by the American Medical Association's Council on Medical Education and Training;
- (4) will limit his practice and training to the confines of the hospitals or other facilities within such accredited program; and
- (5) will practice only under supervision of the attending medical staff or such hospitals, facilities, or affiliated institutions within such accredited program.

Each applicant for a license under this section must be nominated by the institution in which he is serving as a resident or fellow. An institution which nominates an applicant for a license under this section shall notify the Commission of the beginning and ending dates of the period for which such applicant has been accepted or appointed.

(b) A license issued under this section shall be valid for a period not to exceed one year. Such a license may be renewed upon application for a period not to exceed one year. A license issued under this section may not be renewed for periods aggregating more than seven years.

(c) The holder of a license under this section may sign birth and death certificates, prescriptions for narcotics, barbiturates and other drugs, and other legal documents in compliance with existing laws, if the execution of such documents involves duties prescribed by or incident to his residency or fellowship program. (Feb. 27, 1929, ch. 352, § 26A, as added Apr. 6, 1977, D.C. Law 1-106, § 5, 23 DCR 8736.)

EFFECTIVE DATE

See section 9 of act Apr. 6, 1977, D.C. Law 1-106, set out as a note under § 2-103.

§ 2-123. Professional misconduct or incapacity—Sanctions—Procedures and standards.

(a) (1) Any person, organization or entity may make or assist in making a formal complaint in writing of professional misconduct or incapacity as defined in subsection (d) against a licensee under this subchapter. The Commission may also sua sponte institute a complaint or appropriate investigation if it deems necessary.

The Commission may receive informal reports which are not complaints from any source at any time made in any manner. A person who makes such a report, or a complaint pursuant to the preceding paragraph, without knowing and intending it to be false, shall be immune from civil or criminal liability for the making of such report or complaint.

The Commission may not act upon a formal complaint, or report or investigation, without further investigation thereof. The Commission may, for the purpose of accuracy, professional judgment, promptness, or economy, delegate such further investigation to a non-governmental organization, and may, in the Commission's discretion, specify the part or manner of such further investigation to be performed by any such delegee. The delegee, and the member or employee of the delegee who is actually carrying out the investigation, shall be immune from civil or criminal liability arising from good faith performance of the investigation. A licensee formally complained against shall be informed of the complainant's identity. The findings of the investigation shall be reported in writing to the Commission.

After review of the findings, the Commission shall determine whether a hearing is warranted. If a hearing is warranted, charges shall be prepared within fifteen days.

(2) The charges shall state the alleged professional misconduct or incapacity and shall state concisely the material facts but not the evidence by which the charges are to be proved.

(3) The Commission shall set the time and place of the hearing which shall not be later than seventy-five days after the date on which the charges are served. The notice of hearing shall state (a) the date, time and place of the hearing, (b) that the licensee shall file a written answer to the charges prior to the hearing, (c) that the licensee shall appear personally at the hearing and may be represented by counsel, (d) that the licensee shall have the right to produce witnesses and evidence in his or her behalf, to cross-examine witnesses including the complainant, to examine evidence produced and to have subpoenas issued in the complainant's behalf to require the production of witnesses and evidence, (e) that an electronic record of the hearing will be made, (f) the charges and (g) other information as may be considered appropriate by the Commission.

(4) The provisions of sections 1-1503a, 1-1509 and 1-1510 apply to proceedings under this section.

(5) The Commission may issue a subpoena requiring a person to appear and testify, or to produce books, papers, documents, or other materials, pertaining to a matter within the Commission's juris-

diction. Such subpoena shall direct such appearance, testimony, or production to be made to the Commission, or a member, agent, or delegee thereof.

In any investigation or proceeding by the Commission, a physician shall not be permitted to disclose any confidential information acquired in attending a patient professionally, unless the patient or the patient's legal representative makes a complaint or report under paragraph (1), or otherwise expressly consents to such disclosure.

Prior to complying with a subpoena issued by the Commission, a person wishing to contest the subpoena shall request and obtain a hearing and decision on the subpoena by the Commission. If the refusal to comply is validly based upon the privilege provided in the preceding paragraph, the subpoena shall be quashed.

Except for hearings by the Commission on formal complaints (not on subpoenas), all fact-finding by the Commission or its agents or delegees with respect to particular licensees under this subchapter shall proceed in confidence. Information obtained by such fact-finding shall not be disclosed except to the extent necessary for the proper functioning of the Commission. Any other or further disclosure, use or dissemination of such information by or to any individual, organization, agency, or other entity, by any means, except pursuant to a valid court order, is prohibited.

The Commission may authorize a member, delegee, or agent of the Commission to administer an oath to a witness in a matter within the Commission's jurisdiction.

(6) The Commission may order a penalty or sanction against a licensee only if five or more, but in no event less than a majority of the Commission members present and eligible to vote, vote to approve the Commission's findings of fact and law and selection of penalty or sanction.

(7) The penalties and sanctions which may be imposed by the Commission on a present or former licensee who has committed professional misconduct or incapacity are:

- (A) censure and reprimand;
- (B) a civil fine not to exceed five thousand dollars;
- (C) suspension of license:
 - (i) wholly or partially, and,
 - (ii) for a fixed period of time, or until the licensee successfully completes a course, approved by the Commission, of (a) therapy or treatment; and/or, (b) retraining in the area of medicine or osteopathy to which the suspension applies;
- (D) revocation of license;
- (E) annulment of license;
- (F) limitation on issuance of any further license; and
- (G) a course of remediation, approved by the Commission, consisting of:
 - (i) therapy or treatment and/or
 - (ii) retraining in the area of the healing art to which the finding of misconduct or incapacity applies, and

(iii) subsequent to such remediation, reexamination, at the discretion of, and in the manner prescribed by, the Commission.

(b) A licensee may request in writing to the Commission a restriction of his or her license to practice. The Commission may grant such request for restriction and shall have authority to attach conditions and limitations to the licensee's practice, and waive the commencement or continuation of any proceeding under this section.

(c) The Commission may restore partial or complete license privileges where these privileges have been previously affected in any way pursuant to subsections (a) or (b), but as a condition thereof may impose any disciplinary or corrective measure which it might originally have imposed.

(d) The Commission shall impose a penalty or sanction only upon a present or former licensee whom the Commission finds has committed professional misconduct or incapacity, which means any of the following:

(1) Use of any false, fraudulent or forged statement or document, or dishonest practice in connection with any of the licensing requirements.

(2) Conviction for a crime which has a direct bearing on whether or not the licensee should be entrusted to serve the public as a licensed health care provider, and which is a felony under:

(A) District of Columbia law, or

(B) Federal law, or

(C) The law of another jurisdiction and which, if committed within the District of Columbia, would have constituted a felony under District of Columbia law.

(3) Abandonment of a patient whose care a physician has undertaken, or discontinuation of services to such a patient without being discharged or without giving notice to the patient, or the patient's relatives or responsible friends, long enough in advance of discontinuation to allow them to secure another medical attendant.

(4) Addiction to or habitual use of narcotics, barbiturates, amphetamines, hallucinogens or other drugs having similar effect, habitual drunkenness or rendering professional services to a patient while intoxicated or under the influence of such drugs, or mental illness, senility or physical incapacity, which prevents a licensee from providing health care with reasonable skill and safety to patients.

In enforcing this paragraph, the Commission shall, upon probable cause, require a physician to submit to a mental or physical examination by physicians designated by it. Failure of a licensee to submit to such examination when directed shall constitute an admission of the allegations against the licensee under this paragraph only, unless failure is due to circumstances beyond the licensee's control. In the event of such wilful failure, a final order may be entered by the Commission without a hearing as prescribed in subsection (a). A licensee disciplined under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume a competent practice of medicine with reasonable skill and safety to patients. For the purposes of this paragraph, a per-

son, by accepting a license under this subchapter, shall be deemed to have given consent to submit to a mental or physical examination when directed to do so in writing by the Commission, and to have waived all objections to the admissibility of the testimony or examination reports of the examining physician on the ground that the testimony or reports constitute a privileged communication.

(5) Direct promotion by a licensee of the sale of drugs, devices, appliances or goods provided for a patient in such a manner as to exploit the patient for financial gain of the physician.

(6) Wilfully making and filing false reports or records, or wilfully omitting to make or file, obstructing the making or filing, or inducing another person to omit to make or file, medical reports or records required by law.

(7) Wilful failure to furnish details of a patient's medical record to succeeding physicians or hospitals upon proper request, within a reasonable period of time.

(8) Receiving compensation for referral of patients to other health care services or providers, or for medical services, appliances or medications purchased by or on behalf of a patient.

(9) Division of fees or agreeing to split or divide the fees received for professional services with any person for bringing in or referring a patient.

(10) Knowingly practicing medicine with an unlicensed physician except in an accredited preceptorship or residency training program; or aiding or abetting such unlicensed persons in the practice of medicine. This provision shall not apply to accepted use of qualified paramedical personnel.

(11) Refusing to provide service to a person because of such person's race, creed, color, sex, or national origin;

(12) Practicing the healing art in violation of an effective order of the Commission.

(13) Acts which have resulted in disciplinary action against the licensee by the proper licensing authority or court in another state, territory or country, and which, if committed in the District of Columbia, would be professional misconduct or incapacity as defined in this paragraph.

A copy of the judgment or proceeding under the seal of the clerk of the court or of the administrative agency which entered the same shall be admissible into evidence without further authentication and shall constitute prima facie evidence of the contents thereof.

(14) Demonstrating a wilful or careless disregard for the health, welfare or safety of a patient, in any of which cases, proof of actual injury may but need not be established.

(15) Failure to conform to the standards of acceptable and prevailing healing arts practice in which prior actual injury to a patient may but need not be established. (Feb. 27, 1929, 45 Stat. 1337, ch. 352, § 27; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, § 164(a)(2), title I, 84 Stat. 584; Apr. 6, 1977, D.C. Law 1-106, § 6(a), 23 DCR 8736.)

AMENDMENT

1977—Act Apr. 6, 1977, D.C. Law 1-106, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 9 of act Apr. 6, 1977, D.C. Law 1-106, set out as a note under § 2-103.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-103, 2-118, 2-129.

§ 2-130. Penalties.

* * * * *

(b) Any person violating the provisions of section 2-102 shall be punished, for the first offense by a fine of not more than \$5,000 or by imprisonment for not more than six months, or by both such fine and imprisonment; for the second and subsequent offenses by a fine of not more than \$10,000 or by imprisonment for not more than two years, or by both such fine and imprisonment.

* * * * *

(As amended Apr. 6, 1977, D.C. Law 1-106, § 7, 23 DCR 8736.)

AMENDMENT

1977—Act Apr. 6, 1977, D.C. Law 1-106, amended subsec. (b) generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 9 of act Apr. 6, 1977, D.C. Law 1-106, set out as a note under § 2-103.

§ 2-131. Suspension or revocation of license upon conviction of felony—Appeal as supersedeas.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2-118.

§ 2-132. Enjoining unlawful practice of healing art—Procedure.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2-118.

§ 2-133. Exemptions from operation of license laws—Officers of Federal Government—Consultants—Treatment of specified patients—Doctors employed by District.

The provisions of this subchapter forbidding the practice of the healing art without a license shall not apply (a) to commissioned surgeons of the United States Army, Navy, Air Force, or Public Health Service, or to medical officers in any other branch of the federal government whatsoever, in the discharge of their official duties; nor (b) to practitioners of the healing art duly licensed to practice their respective callings in states or territories, or in jurisdictions under the control of the federal government, or in foreign countries, and actually called from such states, territories, jurisdictions, or countries, in consultation, to visit specified patients in the District of Columbia or to give demonstrations or clinics under the auspices and for the members of an incorporated organization made up of licensed prac-

tioners of the healing art in the District of Columbia; nor (c) to practitioners licensed to practice their respective callings in states and territories, and in other jurisdictions forming a part of the United States, or in foreign countries, and called from such states, territories, jurisdictions, or countries to visit, on their own behalf and not in consultation, specified patients in the District of Columbia; nor (d) to any practitioner in the discharge of his official duties as an employee of the government of the District of Columbia if such practitioner—

(1) is not less than eighteen years of age and is of good moral character,

(2) has studied the healing art through not less than four graded courses and not less than nine months each in a professional school or schools approved by the Mayor of the District of Columbia,

(3) has had not less than one year of training in a hospital approved by the Mayor, and

(4) is duly licensed to practice his calling in a State or other jurisdiction forming a part of the United States.

All practitioners claiming exemption under the provisions of this section, except those called into the District of Columbia on consultations only, shall file with the Commission, in such manner as the Commission may prescribe, evidence of their right to such exemption. Upon proof of that right, to the satisfaction of the Commission, the Commission shall enter the name of the applicant in a register kept for that purpose and shall issue to the applicant a certificate in evidence of such registration. (Feb. 27, 1929, 45 Stat. 1339, ch. 352, § 42; Oct. 24, 1967, Pub. L. 90-115, § 1, 81 Stat. 336; Apr. 6, 1977, D.C. Law 1-106, § 4(f), 23 DCR 8736.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1977—Act Apr. 6, 1977, D.C. Law 1-106, amended par. (1) by substituting "eighteen" for "twenty-one".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 9 of act Apr. 6, 1977, D.C. Law 1-106, set out as note under § 2-103.

§ 2-137. Enforcement.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-139. Short title.

SHORT TITLES

The first section of act Sept. 28, 1977, D.C. Law 2-25, provided "That this act [amending §§ 1-921, 2-142, and 33-409] may be cited as the 'Advanced Life Support Act of 1977'."

The first section of act Apr. 6, 1977, D.C. Law 1-106, provided "That this act [for classification of act see Tables] may be cited as the 'Healing Arts Practice Act of 1976'."

§ 2-140. Saving clause—Prior, contrary, or inconsistent laws repealed.

SEVERABILITY PROVISIONS OF D.C. LAW 1-106

Section 10 of act Apr. 6, 1977, D.C. Law 1-106, provided: "If any provision of this act [for classification of act see Tables], or the application thereof to any person or circumstance, is held invalid, the remainder of this act, and the application of such provision to other persons not similarly situated or to other circumstances, shall not be affected."

§ 2-141. Repealed. Apr. 6, 1977, D.C. Law 1-106, § 2(b), 23 DCR 8736.

Section, Act Feb. 27, 1929, ch. 352, § 50, as added Sept. 14, 1961, 75 Stat. 519, Pub. L. 87-248, § 3, defined "commission" to mean the office or agency to which the Mayor delegated the functions required to be performed by this subchapter.

EFFECTIVE DATE OF REPEAL

See section 9 of act Apr. 6, 1977, D.C. Law 1-106, set out as a note under § 2-103.

§ 2-142. Liability of individuals for negligence in rendering emergency medical assistance—Emergency medical technician/paramedic—Physicians.

(a) Any person who in good faith renders emergency medical care or assistance to an injured person at the scene of an accident or other emergency in the District of Columbia outside of a hospital, without the expectation of receiving or intending to seek compensation from such injured person for such service, shall not be liable in civil damages for any act or omission, not constituting gross negligence, in the course of rendering such care or assistance.

(b) In the case of a person who renders emergency medical care or assistance in circumstances described in subsection (a) of this section and who is not licensed or certified by the District of Columbia or by any state to provide medical care or assistance, the limited immunity provided in subsection (a) of this section shall apply to such persons: *Provided*, That the person shall relinquish the direction of the care of the injured person when an appropriate person licensed or certified by the District of Columbia or by any state to provide medical care or assistance assumes responsibility for the care of the injured person.

(c) A certified emergency medical technician/paramedic who, in good faith and pursuant to instructions either directly or via telecommunication from a licensed physician, renders advanced emergency medical care or assistance to an injured person at the scene of an accident or other emergency or in transit from the scene of an accident or emergency to a hospital shall not be liable in civil damages for any act or omission not constituting gross negligence in the course of rendering such advanced emergency medical care or assistance.

(d) A licensed physician who in good faith gives emergency medical instructions either directly or via telecommunication to a certified emergency medical technician/paramedic for the purpose of providing advanced emergency medical care to an injured person at the scene of an accident or other emergency or in transit from the scene of an accident or emergency to a hospital shall not be liable in civil damages for any act or omission not constituting gross negligence in the course of giving such emergency medical instructions.

(e) For the purposes of this section, the term "emergency medical technician/paramedic" means a person who has been trained in advanced emergency medical care, employed in that capacity, and certified by the appropriate governmental certifying authority in the District of Columbia or in any state to:

- (1) carry out all phases of basic life support;
- (2) administer drugs under the written or oral authorization, including via telecommunication, of a licensed physician;
- (3) administer intravenous solutions under the written or oral authorization, including via telecommunication, of a licensed physician; and
- (4) carry out, either directly or via telecommunication instructions from a licensed physician, certain other phases of advanced life support as authorized by the appropriate governmental certifying authority.

(Nov. 8, 1965, 79 Stat. 1302, Pub. L. 89-341, § 1; Sept. 28, 1977, D.C. Law 2-25, § 2, 24 DCR 3718.)

AMENDMENT

1977—Act Sept. 28, 1977, D.C. Law 2-25, amended section generally. For prior provisions, see the 1973 edition of the Code.

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of section, see sec. 2 of the Emergency Advanced Life Support Act of 1977 (D.C. Act 2-55, July 8, 1977, 24 DCR 807).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 6 of act Sept. 28, 1977, D.C. Law 2-25, provided: "This act [amending §§ 1-921, 2-142, and 33-409] shall take effect as provided in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

CROSS REFERENCES

Liability of paramedics employed by District, see § 1-921.

Narcotic drugs, authority of paramedic to administer, see § 33-409.

SUBCHAPTER II.—REPORTS OF NEGLECTED CHILDREN

§ 2-161. Purpose of subchapter.

It is the purpose of this subchapter to require a report of a suspected neglected child in order to identify neglected children; to assure that protective services will be made available to a neglected child to protect the child and his or her siblings and to prevent further abuse or neglect; and to preserve the family life of the parents and children, to the maximum extent possible, by enhancing the parental capacity for adequate child care. (Nov. 6, 1966, 80 Stat. 1354, Pub. L. 89-775, § 1; Sept. 23, 1977, D.C. Law 2-22, title I, § 103(b), 24 DCR 3341.)

AMENDMENT

1977—Act Sept. 23, 1977, D.C. Law 2-22, amended section generally. For prior provisions, see the 1973 edition of the Code.

EMERGENCY ACT AMENDMENT

1975—For temporary penalty provision for violations of reporting requirements, see sec. 2(2) of the District of Columbia Emergency Act on Reporting of Child Abuse (D.C. Act 1-63, Nov. 7, 1975, 22 DCR 2564).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 411 of act Sept. 23, 1977, D.C. Law 2-22, set out as a note under § 6-2101.

DEFINITIONS

The definitions in § 6-2101 apply to terms appearing in the amendment to this section made by act Sept. 23, 1977, D.C. Law 2-22.

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 2-162. Persons required to make reports—Procedures.

¹ Notwithstanding section 14-307, any person specified in subsection (b) of this section who knows or has reasonable cause to suspect that a child known to him or her in his or her professional or official capacity has been or is in immediate danger of being a mentally or physically abused or neglected child, as defined in section 16-2301(9), shall immediately report or have a report made of such knowledge or suspicion to either the Metropolitan Police Department of the District of Columbia or the Child Protective Services Division of the Department of Human Resources.

(b) Persons required to report such abuse or neglect shall include every physician, psychologist, medical examiner, dentist, chiropractor, registered nurse, licensed practical nurse, person involved in the care and treatment of patients, law enforcement officer, school official, teacher, social service worker, day care worker, and mental health professional. Whenever a person is required to report in his or her capacity as a member of the staff of a hospital, school, social agency or similar institution, he or she shall immediately notify the person in charge of the institution or his or her designated agent who shall then be required to make the report. The fact that such a notification has been made does not relieve the person who was originally required to report from his or her duty under subsection (a) of this section of having a report made promptly to the Metropolitan Police Department of the District of Columbia or the Child Protective Services Division of the Department of Human Resources.

(c) In addition to those persons who are required to make a report, any other person may make a report to the Metropolitan Police Department of the District of Columbia or the Child Protective Services Division of the Department of Human Resources. (Nov. 6, 1966, 80 Stat. 1354, Pub. L. 89-775, § 2; Sept. 23, 1977, D.C. Law 2-22, title I, § 103(c), 24 DCR 3341.)

AMENDMENT

1977—Act Sept. 23, 1977, D.C. Law 2-22, amended section generally. For prior provisions, see the 1973 edition of the Code.

EMERGENCY ACT AMENDMENT

1975—For temporary amendment of section, see sec. 2(1) of the District of Columbia Emergency Act on Reporting of Child Abuse (D.C. Act 1-63, Nov. 7, 1975, 22 DCR 2563).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 411 of act Sept. 23, 1977, D.C. Law 2-22, set out as a note under § 6-2101.

DEFINITIONS

The definitions in § 6-2101 apply to terms appearing in the amendment to this section made by act Sept. 23, 1977, D.C. Law 2-22.

¹ So in original. Paragraph probably should be designated subsec. (a).

§ 2-163. Nature and contents of reports.

(a) Each person required to make a report of a known or suspected neglected child shall:

(1) immediately make an oral report of the case to the Child Protective Services Division of the Department of Human Resources or the Metropolitan Police Department of the District of Columbia and

(2) make a written report of the case if requested by said Division or Police.

(b) The report shall include, but need not be limited to, the following information if it is known to the person making the report:

(1) the name, age, sex, and address of the following individuals:

(A) the child who is the subject of the report;

(B) each of the child's siblings; and

(C) each of the child's parents or other persons responsible for the child's care;

(2) the nature and extent of the abuse or neglect of the child and any previous abuse or neglect, if known;

(3) all other information which the person making the report believes may be helpful in establishing the cause of the abuse or neglect and the identity of the person responsible for the abuse or neglect.

(4) If the source was required to report under this subchapter, the identity and occupation of the source, how to contact the source and a statement of the actions taken by the source concerning the child.

(Nov. 6, 1966, 80 Stat. 1354, Pub. L. 89-775, § 3; Sept. 23, 1977, D.C. Law 2-22, title I, § 103(d), 24 DCR 3341.)

AMENDMENT

1977—Act Sept. 23, 1977, D.C. Law 2-22, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 411 of act Sept. 23, 1977, D.C. Law 2-22, set out as a note under § 6-2101.

DEFINITIONS

The definitions in § 6-2101 apply to terms appearing in the amendment to this section made by act Sept. 23, 1977, D.C. Law 2-22.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-2112.

§ 2-164. Immunity from liability.

Any person, hospital, or institution participating in good faith in the making of a report pursuant to this subchapter shall have immunity from liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making of the report. Any such participation shall have the same immunity with respect to participation in any judicial proceeding involving the report. In all civil or criminal proceedings concerning the child or resulting from the report good faith shall be presumed unless rebutted. (Nov. 6, 1966, 80 Stat. 1354, Pub. L. 89-775, § 4; Sept. 23, 1977, D.C. Law 2-22, title I, § 103(e), 24 DCR 3341.)

AMENDMENT

1977—Act Sept. 23, 1977, D.C. Law 2-22, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 411 of act Sept. 23, 1977, D.C. Law 2-22, set out as a note under § 6-2101.

DEFINITIONS

The definitions in § 6-2101 apply to terms appearing in the amendment to this section made by act Sept. 23, 1977, D.C. Law 2-22.

§ 2-165. Evidence not privileged if Family Division of Superior Court so determines.

Notwithstanding the provisions of sections 14-306 and 14-307, neither the husband-wife privilege nor the physician-patient privilege shall be grounds for excluding evidence in any proceeding in the Family Division of the Superior Court of the District of Columbia concerning the welfare of a neglected child: *Provided*, That a judge of the Family Division of the Superior Court of the District of Columbia determines such privilege should be waived in the interest of justice. (Nov. 6, 1966, 80 Stat. 1355, Pub. L. 89-775, § 5; July 29, 1970, Pub. L. 91-358, title I, § 159(a), 84 Stat. 577; Sept. 23, 1977, D.C. Law 2-22, title I, § 103(f), 24 DCR 3341.)

AMENDMENT

1977—Act Sept. 23, 1977, D.C. Law 2-22, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 411 of act Sept. 23, 1977, D.C. Law 2-22, set out as a note under § 6-2101.

DEFINITIONS

The definitions in § 6-2101 apply to terms appearing in the amendment to this section made by act Sept. 23, 1977, D.C. Law 2-22.

§ 2-167. Penalty for failure to make report—Prosecution by Corporation Counsel.

Any person required to make a report under this subchapter who willfully fails to make such a report shall be fined not more than one hundred dollars (\$100) or imprisoned for not more than thirty (30) days or both. Violations of this subchapter shall be prosecuted by the Corporation Counsel of the District of Columbia or his or her agent in the name of the District of Columbia. (Nov. 6, 1966, Pub. L. 89-775, § 7, as added Sept. 23, 1977, D.C. Law 2-22, title I, § 103(g), 24 DCR 3341.)

EFFECTIVE DATE

See section 411 of act Sept. 23, 1977, D.C. Law 2-22, set out as a note under § 6-2101.

DEFINITIONS

The definitions in § 6-2101 apply to terms appearing in this section.

Chapter 2.—ANATOMICAL BOARD**CHAPTER REFERRED TO IN OTHER SECTIONS**

This chapter is referred to in sections 2-259, 3-213a, 27-131.

§ 2-201. Anatomical Board of the District of Columbia—Creation, duties, and powers.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-202. Dead bodies for burial at public expense to be reported to board—Removal—Exceptions.**CROSS REFERENCES**

Funeral and burial expenses,
Indigents and wards of District, see § 3-213a.
Public assistance recipients, see § 3-213.

§ 2-204. Bond to be furnished by school receiving bodies.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia, and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2A.—HUMAN TISSUE BANKS**§ 2-252. Definitions.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-253. Tissue bank licenses and regulations.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-258. Office of the Chief Medical Examiner.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-260. Coordination of act with reorganization plan No. 5.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-261. Blood banks—Authority to transfer blood components within District of Columbia.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 3.—DENTISTS**§ 2-301. Board of Dental Examiners—Appointment—Qualifications—Eligibility—Term of office.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-302. Officers—Bond—Rules and regulations for admission to and practice of dentistry—Dental internes for hospitals—Sessions of board.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-306. Annual report of finances and official acts.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-308. Application for license—Examination—Admission without examination—Reciprocity with States or Territories—Waiver of examination.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-309. License—Form and execution—Registration—Duplicate licenses.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-309a. Special licenses—Applicability of other sections.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-331. Rules and regulations—Promulgation—Notice.**CROSS REFERENCES**

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

Chapter 4.—NURSES, PHYSICAL THERAPISTS, AND PSYCHOLOGISTS**SUBCHAPTER I.—REGISTERED NURSES**

Sec.

2-411. Repealed.

SUBCHAPTER II.—PRACTICAL NURSES

2-429. Omitted.

SUBCHAPTER III.—PHYSICAL THERAPISTS

2-458. Omitted.

SUBCHAPTER I.—REGISTERED NURSES

§ 2-401. Registration required.

No person shall in the District of Columbia in any manner whatsoever represent himself or herself to be a registered, certified graduate, or trained nurse, or allow himself or herself to be so represented, unless he or she has been and is registered or is registered by the Nurses' Examining Board in accordance with the provisions of this subchapter. (Feb. 9, 1907, 34 Stat. 887, ch. 913, § 1, as renumbered Mar. 2, 1929, 45 Stat. 1519, ch. 540; Oct. 1, 1976, D.C. Law 1-87, § 4(a), 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting "he or she" and "himself or herself" for "she" and "herself", respectively.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 2-402. Examining board—Constitution—Qualifications—Tenure—Removal.

The Nurses' Examining Board shall be composed of five members appointed by the Mayor of the District of Columbia. Those persons who are members of the Nurses' Examining Board on June 30, 1929, shall continue to be members of the said Board for the remainder of the terms for which they were appointed. The term of each member of said board shall be five years. All appointments shall be made so that the term of one member expires on the 30th day of June of each year. Each vacancy or unexpired term shall be filled by appointment from a list of five nominees submitted to the Mayor of the District of Columbia by the Graduate Nurses' Association of the District of Columbia. Each nominee shall have had not less than five years' experience in the profession of nursing, be a registered nurse registered in the District of Columbia, and a member of the Graduate Nurses' Association of the District of Columbia. The Graduate Nurses' Association of the District of Columbia shall make such nominations to the said Mayor. No member of said Board shall enter upon the discharge of his or her duties until he or she has taken oath faithfully and impartially to perform the same; and the said Mayor may remove any member of said Board for neglect of duty or for any just cause. (Feb. 9, 1907, 34 Stat. 887, ch. 913, § 2, as renumbered Mar. 2, 1929, 45 Stat. 1519, ch. 540; Oct. 1, 1976, D.C. Law 1-87, § 4(a), 23 DCR 2544.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting "he or she" and "his or her" for "she" and "her", respectively.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 2-403. Examining board—Organization—Officers—Duties—By-laws—Registration of nurses—Examinations—Notice—Inspection of schools.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-404. Registration — Application — Requirements—Registration of training schools.

Every nurse desiring to register in the District of Columbia shall make application to the Nurses Examining Board for examination and registration, and at the time of making such application shall pay to the treasurer of said Board \$15. Said applicant must furnish satisfactory evidence that he or she is over eighteen years of age, or that he or she will attain the age of eighteen years within six months after the date fixed for the necessary examination to be held by said Board after the date of such application. Except as otherwise provided in this subchapter, an applicant shall not be registered unless he or she has passed an examination by the Nurses' Examining Board. No nurse shall be registered in the District of Columbia who has not attained the age of eighteen years. Said applicant must also furnish satisfactory evidence of good moral character, and further that he or she holds a diploma from training school for nurses which has been registered by the Nurses' Examining Board of the District of Columbia: *Provided, however,* That no training school shall be registered which does not maintain proper educational standards and give not less than two years' training in a general hospital, or in a special hospital with adequate affiliations, all of which shall be determined by the Nurses' Examining Board. (Feb. 9, 1907, 34 Stat. 888, ch. 913, § 4, as renumbered Mar. 2, 1929, 45 Stat. 1520, ch. 540, and amended Aug. 8, 1946, 60 Stat. 933, ch. 885, § 1; July 30, 1963, 77 Stat. 114, Pub. L. 88-81, § 1; July 22, 1976, D.C. Law 1-75, § 3(a), 23 DCR 1177; Oct. 1, 1976, D.C. Law 1-87, § 4(a), 23 DCR 2544.)

AMENDMENTS

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting "he or she" for "she".

Act July 22, 1976, D.C. Law 1-75, amended section by substituting "eighteen" for "nineteen".

EFFECTIVE DATES OF 1976 AMENDMENTS

For act Oct. 1, 1976, D.C. Law 1-87, see sec. 43 of such act set out as a note under § 1-511.

For act July 22, 1976, D.C. Law 1-75, see sec. 8 of such act set out as a note under § 21-101.

§ 2-406. Annual registration—Nurses Training schools—Cancellation by failure to reregister—Restoration.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-407. Suspension or revocation of certificate for filing false document or evidence—Procedure—Appeal.

No person shall file or attempt to file with the Nurses' Examining Board of the District of Columbia any statement, diploma, certificate, credential, or other evidence when he or she knows, or when he or she might by reasonable diligence ascertain, that it is false and misleading. Suspension or revocation by the Nurses' Examining Board of any license issued or registration effected under this subchapter, with respect to a person guilty of misconduct or professionally incapacitated, shall be governed by the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510). (Feb. 9, 1907, 34 Stat. 889, ch. 913, § 8, as renumbered Mar. 2, 1929, 45 Stat. 1521, ch. 540, and amended June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Nov. 8, 1965, 79 Stat. 1308, Pub. L. 89-347, § 6; July 29, 1970, Pub. L. 91-358, § 164(d), title I, 84 Stat. 585; Oct. 1, 1976, D.C. Law 1-87, § 4(a), 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting "he or she" for "she".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 2-408. Expenses to be paid from registration fees—Salaries and allowances—Audit—Annual report.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-410. Nonregistered nurses may practice as such.

Nothing in this subchapter shall be construed to prevent any person from nursing any other person in the District of Columbia, either gratuitously or for hire: *Provided*, That such person so nursing shall not represent himself or herself as being a registered, certified, graduate, or trained nurse. (Feb. 9, 1907, 34 Stat. 889, ch. 913, § 11, as renumbered Mar. 2, 1929, 45 Stat. 1522, ch. 540; Oct. 1, 1976, D.C. Law 1-87, § 4(a), 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting "himself or herself" for "herself".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 2-411. Repealed. Oct. 1, 1976, D.C. Law 1-87, § 4(c)(1), 23 DCR 2544.

Section, Act Feb. 9, 1907, ch. 913, § 12, as added Mar. 2, 1929, 45 Stat. 1522, ch. 540, provided for construing "she" to include "he".

SUBCHAPTER II.—PRACTICAL NURSES

§ 2-421. Definitions.

As used in this subchapter—

(a) The term "Mayor" means the Mayor of the District of Columbia sitting as a board or his authorized agent or agents.

(b) The word "person" includes corporations, companies, associations, firms, partnerships, societies, and schools of practical nursing, as well as natural persons.

(c) The term "school of practical nursing" means a school or institution for the training of practical nurses.

(d) The term "Washington metropolitan area" means that area comprising the District of Columbia, Montgomery and Prince Georges Counties, Maryland, the counties of Arlington and Fairfax, Virginia, and the cities of Alexandria, Falls Church, and Fairfax, Virginia, and shall include those areas adjacent to the District of Columbia within a radius of thirty miles from the United States Capitol Building. (Sept. 6, 1960, 74 Stat. 803, Pub. L. 86-708, § 2; July 25, 1966, 80 Stat. 326, Pub. L. 89-518, § 1; Oct. 1, 1976, D.C. Law 1-87, § 4(c)(2), 23 DCR 2544.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by striking par. (c) and redesignating pars. (d) and (e) as pars. (c) and (d), respectively.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 2-422. Exemption of Federal and District employees.

This subchapter shall not apply to any person employed in the District of Columbia by the Federal Government or any agency thereof, while such person is acting in the discharge of his or her official duties. (Sept. 6, 1960, 74 Stat. 803, Pub. L. 86-708, § 3; Oct. 1, 1976, D.C. Law 1-87, § 4(a), 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting "his or her" for "her".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 2-423. Restrictions on persons engaged in nursing.

Nothing in this subchapter shall be construed to prevent any person from nursing any other person in the District of Columbia, either gratuitously or for hire: *Provided*, That such person so nursing shall not represent himself or herself as being a licensed practical nurse. (Sept. 6, 1960, 74 Stat. 803, Pub. L. 86-708, § 4; Oct. 1, 1976, D.C. Law 1-87, § 4(a), 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting "himself or herself" for "herself".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 2-424. Use of title "Licensed Practical Nurse" and abbreviation "L.P.N."

(a) From and after the effective date of this subchapter, no person shall, in the District of Colum-

bla, in any manner whatsoever, represent himself or herself to be a licensed practical nurse or allow himself or herself to be so represented unless he or she is licensed in accordance with the provisions of this subchapter.

(b) Any person licensed to practice as a licensed practical nurse in the District of Columbia shall have the right to use the title "Licensed Practical Nurse" and the abbreviation "L.P.N.". No other person shall assume such title or use such abbreviation. (Sept. 6, 1960, 74 Stat. 803, Pub. L. 86-708, § 5; Oct. 1, 1976, D.C. Law 1-87, § 4(a), 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended subsec. (a) by substituting "he or she" and "himself or herself" for "she" and "herself", respectively.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 2-425. Commissioner authorized to delegate functions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-426. Establishment of Practical Nurses' Examining Board—Composition—Terms—Compensation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-427. Rules and regulations—Curricula and standards for nursing schools—Examination and licensing—Renewal of licenses—Authority to make studies and investigations, subpoena witnesses—Application to compel attendance.

* * * * *

(b) The Council may obtain or require the furnishing of such information under oath or affirmation or otherwise, as it deems necessary or proper to assist it in prescribing any regulation under this subchapter. The Mayor may make such studies and investigations, and obtain or require the furnishing of such information under oath or affirmation or otherwise, as he deems necessary or proper to assist him in prescribing any order under this subchapter, or in the administration and enforcement of this subchapter, and regulations and orders thereunder. For such purposes, the Council and the Mayor, respectively, may administer oaths and affirmations, may require by subpoena or otherwise the attendance and testimony of witnesses and the production of documents at any designated place. In the event of contumacy or refusal to obey any such subpoena or requirement under this section, the Council and the Mayor, respectively, may make application to the Superior Court of the District of Columbia for an order requiring obedience thereto. Thereupon the court, with or without notice and hearing, as it, in its discretion, may decide, shall make such order as is proper and may punish as a contempt any failure to

comply with such order. (Sept. 6, 1960, 74 Stat. 803, Pub. L. 86-708, § 8; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, §§ 155(a), 164(g) (2), 84 Stat. 570, 585.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

This section is set out in part in this supplement to correct a typographical error in the source credit.

§ 2-428. Qualification requirements—Written examination—Exception—Application fee—Closed and reopened applications.

(a) Except as provided in section 2-429, an applicant for a license to practice as a licensed practical nurse shall submit to the Mayor written evidence, verified by his or her oath, that the applicant (1) is at least 18 years of age; (2) is of good moral character; (3) is in good physical and mental health, as certified by a physician licensed to practice in the District of Columbia; (4) has completed at least two years of high school or the equivalent thereof as determined by the Mayor; and (5) has successfully completed an accredited program for the training of licensed practical nurses approved by the Mayor, or the equivalent thereof as determined by him. The applicant shall meet such other qualification requirements as the Mayor may prescribe. Except as otherwise provided in this subchapter, the applicant shall be required to pass a written examination in such subjects as the Mayor may determine. Each written examination may be supplemented by an oral or practical examination. If the applicant passes such examinations, the Mayor shall issue to the applicant a license to practice as a licensed practical nurse if he is satisfied that he or she possesses the required qualifications.

(b) The Mayor may issue a license to practice as a licensed practical nurse without examination to any applicant who has been duly licensed or registered as a licensed vocational or practical nurse or a person entitled to perform similar service under a different title, by examination, under the laws of a State, territory, or possession of the United States, the Commonwealth of Puerto Rico, or a foreign country, if he is satisfied that the applicant meets the qualifications required of licensed practical nurses in the District of Columbia.

(c) An applicant for a license to practice as a licensed practical nurse shall at the time such application is made pay the required fee for an original license. An application shall be closed and filed as closed and incomplete at the end of a year from the time that the application was received if the applicant has failed to take all steps required of him or her to obtain a license. In order to reopen an application which has been closed or withdrawn, the applicant shall pay the same fee as is required for an original license. (Sept. 6, 1960, 74 Stat. 804, Pub. L. 86-708, § 9; Oct. 1, 1976, D.C. Law 1-87, § 4(a), (b) (1), 23 DCR 2544.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended subsec. (a) by substituting "he or she" and "his or her" for "she" and "her", respectively, and subsec. (c) by substituting "him or her" for "her".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 2-429. Omitted.

Section, Acts Sept. 6, 1960, 74 Stat. 804, Pub. L. 86-708, § 10; July 25, 1966, 80 Stat. 326, Pub. L. 89-518, § 2; Oct. 1, 1976, D.C. Law 1-87, § 4(a), 23 DCR 2544, provided for the issuance of a license without written examination to persons who applied within one year after the effective date of this subchapter or 90 days after the effective date of act July 25, 1966, amending this section. Since these periods have expired, this section has been omitted as obsolete.

§ 2-430. License to be renewed annually—Processing of renewal applications—Reinstatement of lapsed licensees—Nonpracticing list of licensees.

(a) The license of every person licensed under the provisions of this subchapter shall expire on June 30 of each year and be annually renewed. On or before May 31 of each year, the Mayor shall mail an application for renewal of license to every person who at the time of such mailing holds a valid license under this subchapter. The applicant shall, before the following July 1, complete and execute such application and return the same to the Mayor with the required renewal fee. Upon receipt of such application and fee, the Mayor shall verify the accuracy of the application and issue to the applicant a certificate of renewal for the year beginning on such July 1 and expire the following June 30. Any licensee who allows his or her license to lapse by failing to renew the license as provided above, may be reinstated by the Mayor by showing cause satisfactory to the Mayor for such failure and on payment of the required fee.

(b) Any person licensed under the provisions of this subchapter but not so practicing in the District of Columbia shall give written notice of such fact to the Mayor. Upon receipt of such notice, the Mayor shall place the name of such person upon the nonpracticing list. While remaining on such list, the person shall not be subject to the payment of any renewal fee and shall not hold himself or herself out as a licensed practical nurse in the District of Columbia. Application for renewal of license and payment of renewal fee for the current year shall be made to the Mayor by any such person desiring to resume practice as a licensed practical nurse. (Sept. 6, 1960, 74 Stat. 805, Pub. L. 86-708, § 11; Oct. 1, 1976, D.C. Law 1-87, § 4(a), 23 DCR 2544.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended subsec. (a) by substituting "his or her" for "her" and subsec. (b) by substituting "himself or herself" for "herself".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 2-431. Applications to operate a school of practical nursing—Commissioner to pass on qualifications of applicants—Survey of approved schools for maintenance of standards—Removal procedure of schools from accredited list.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-432. Fixation of miscellaneous fees—Payment into the Treasury.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-433. Denial, revocation, or suspension of licenses—Procedure—Lists of persons denied licenses may be furnished upon written request to boards of examiners of States, Territories, or foreign countries.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-434. Review of orders and decisions of Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-435. Selling, aiding, or abetting in the sale of fraudulent licenses or diplomas—Practicing as a licensed practical nurse under false licenses or diplomas—Use of false designation tending to imply that a person is a licensed practical nurse—Practicing under a suspended or revoked license.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER III.—PHYSICAL THERAPISTS

§ 2-451. Definitions.

As used in this subchapter—

(a) The term "Mayor" means the Mayor of the District of Columbia sitting as a board, or his authorized agent or agents.

(b) The term "physical therapy" means the treatment of human disability, injury, or disease by supervised therapeutic procedures embracing the specific scientific application of physical measures to secure the functional rehabilitation of the human body. Nothing in this subchapter shall be construed as authorizing a physical therapist, whether registered or not, to practice medicine, osteopathy, chiropractic, naturopathy, or any other form or method of healing.

(c) The term "physical therapist" means a person who practices physical therapy under the prescription, supervision, and direction of a person licensed to practice under subchapter I of chapter 1 of this title.

(d) The word "State" or "States" shall be deemed to include any territory of the United States and the Commonwealth of Puerto Rico. (Sept. 22, 1961, 75 Stat. 578, Pub. L. 87-280, § 2; Oct. 1, 1976, D.C. Law 1-87, § 4(c) (3), 23 DCR 2544.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by striking par. (b) and redesignating pars. (c), (d), and (e) as pars. (b), (c), and (d), respectively.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 2-452. Exemption from registration.

This subchapter shall not apply to any person employed in the District of Columbia by the Federal Government or any agency thereof while such person is acting in the discharge of his or her official duties. (Sept. 22, 1961, 75 Stat. 578, Pub. L. 87-280, § 3; Oct. 1, 1976, D.C. Law 1-87, § 4(a), 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting "his or her" for "her".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 2-453. Registration.

(a) No person shall practice physical therapy in the District of Columbia unless (1) he or she is duly registered in accordance with the provisions of this subchapter, or (2) is exempted from such registration by the terms of this subchapter.

(b) No person not registered in accordance with the provisions of this subchapter, unless exempted from registration by the terms of this subchapter, shall, directly or indirectly, (1) represent himself or herself to be so registered or (2) represent himself or herself to be certified, licensed, or authorized to practice physical therapy.

(c) No person shall use in connection with his or her name the words "physical therapist", "physiotherapist", "physical therapy technician", or use the initials "P.T.", "P.T.T.", "R.P.T.", or any other let-

ters, words, abbreviations, or insignia indicating or implying that he or she is a registered physical therapist, unless such person is a holder of a valid registration under this subchapter.

(d) Nothing in this section shall prohibit any person duly licensed or registered in the District of Columbia under any other Act from engaging in the practice for which he or she is duly registered or licensed.

(e) Nothing in this subchapter shall apply to any person licensed under subchapter I of chapter 1 of this title, nor to any employee of any such person working under his immediate supervision and direction in his private office, provided no such employee shall hold himself or herself out, or otherwise represent himself or herself to be a physical therapist. (Sept. 22, 1961, 75 Stat. 578, Pub. L. 87-280, § 4; Oct. 1, 1976, D.C. Law 1-87, § 4(a), 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended subsecs. (a) and (d) by substituting "he or she" for "she", subsecs. (b) and (e) by substituting "himself or herself" for "herself", and subsec. (c) by substituting "his or her" and "he or she" for "her" and "she", respectively.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 2-454. Commissioner authorized to delegate functions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-455. Establishment of board.

The Mayor may establish a physical therapists examining board to perform any of the functions vested in the Mayor by this subchapter, and, if so established, such board shall be composed of such persons possessing such qualifications as the Council of the District of Columbia shall determine. The Council is authorized to prescribe the terms of office of members of such board and to fix the compensation of such members. The Mayor may appoint as members of such board, Federal and District government employees, and such members shall not be entitled to receive compensation as board members, and any such member shall not be debarred by such membership from employment in the Federal or District governments not inconsistent with his or her duties as a board member. Any board member may receive his or her compensation as a board member as well as any retirement pay, retirement compensation, or annuity to which he or she may be entitled on account of previous service rendered to the United States or the District of Columbia governments. (Sept. 22, 1961, 75 Stat. 579, Pub. L. 87-280, § 6; Oct. 1, 1976, D.C. Law 1-87, § 4(a), 23 DCR 2544.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting "he or she" and "his or her" for "she" and "her", respectively.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 2-456. Powers and duties—Register of physical therapists and approved schools—Studies and investigations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-457. Registration of qualified applicants—Issuance of certificates.

The Mayor shall register as physical therapists all applicants who prove to the satisfaction of the Mayor their fitness for registration under the terms of this subchapter. The Mayor shall issue to each person registered a certificate of registration, which shall be prima facie evidence of the right of the person to whom it is issued to represent himself or herself as a registered physical therapist, and authorized to practice as such under this subchapter. (Sept. 22, 1961, 75 Stat. 580, Pub. L. 87-280, § 8; Oct. 1, 1976, D.C. Law 1-87, § 4(a), 23 DCR 2544.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting "himself or herself" for "herself".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 2-458. Omitted.

Section, Acts Sept. 22, 1961, Pub. L. 87-280, § 9, 75 Stat. 580; Oct. 1, 1976, D.C. Law 1-87, § 4(a) 23 DCR 2544, authorized the registration of certain persons without examination if application for registration was made within one year after the effective date of this subchapter. Since the period for applying has expired, this section has been omitted as obsolete.

§ 2-459. Registration after examination.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 2-460. Reciprocity.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-461. Renewal of registration—Nonpracticing therapists.

(a) Every registered physical therapist engaged in or who proposes to engage in the practice of physical therapy in the District of Columbia is hereby required to register with the Mayor annually. Any registrant who allows his or her registration to lapse by failing to renew the registration annually may be reinstated by the Mayor by showing cause satisfactory to the Mayor for such failure and upon payment of all required fees. The Council of the District of Columbia is authorized, after public hearing, to change from time to time the period for which registration or renewal thereof may be issued.

(b) Any person registered under the provisions of this subchapter but not so practicing in the District of Columbia shall give written notice of such fact to the Mayor. Upon receipt of such notice, the Mayor shall place the name of such person upon the non-practicing list. While remaining on such list, such person shall not be subject to the payment of any renewal fee and shall not hold himself or herself out as a registered physical therapist nor practice as such in the District of Columbia. Application for renewal of registration and payment of renewal fee for the current year shall be made to the Mayor by any such person desiring to resume practice as a registered physical therapist. (Sept. 22, 1961, 75 Stat. 581, Pub. L. 87-280, § 12; Oct. 1, 1976, D.C. Law 1-87, § 4(a), 23 DCR 2544.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended subsec. (a) by substituting "his or her" for "her" and subsec. (b) by substituting "himself or herself" for "herself".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 2-462. Denial, revocation, and suspension of registration.

The Mayor is authorized and empowered to deny, revoke, or suspend any registration or certificate of renewal of registration issued by the Mayor or applied for in accordance with the provisions of this subchapter if the applicant or holder thereof—

* * * * *

Provided, That such denial, revocation, or suspension shall be made only upon specific charges in writing. A copy of any such charges and at least ten days' notice of the hearing of the same shall be mailed to the holder of or applicant for such registration, addressed to him or her at his or her last known address. (As amended Oct. 1, 1976, D.C. Law 1-87, § 4(b) (2), 23 DCR 2544.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended the proviso by substituting "addressed to him or her" and "his or her last known address" for "addressed to her" and "her last known address", respectively.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§2-463. Court review.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§2-464. Unauthorized practice of physical therapy.

It shall be unlawful for any person in the District of Columbia to—

* * * * *

(c) use in connection with his or her name any designation tending to imply that he or she is a registered physical therapist unless duly registered under provisions of this subchapter;

(d) practice physical therapy during the time his or her registration shall be suspended or revoked.

(As amended Oct. 1, 1976, D.C. Law 1-87, § 4(a), 23 DCR 2544.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended subsec. (c) by substituting "he or she" and "his or her" for "she" and "her", respectively, and subsec. (d) by substituting "his or her" for "her".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§2-468. Fees and charges—Public hearings to change fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§2-471. Reorganization.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER IV.—PSYCHOLOGISTS

§2-481. Congressional declaration.

SHORT TITLE

Section 201 of Act Dec. 7, 1974, Pub. L. 93-515, title II, 88 Stat. 1615, provided: "This title [amending §§ 2-487, 2-492 to 2-494, and enacting provisions set out in a note under § 2-492] may be cited as the 'Practice of Psychology Act Amendments'."

§2-482. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§2-484. Practice of psychology without license or certificate prohibited—Exemptions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§2-485. Duties of Commissioner—Board of Psychologist Examiners—Records.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§2-486. Qualification requirements—Written examination—Application fee.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Constitutionality

District of Columbia Practice of Psychology Act's [this subchapter] irrefutable presumption of professional incompetence absent a graduate degree deprived practitioner of 14 years of his constitutionally recognized interest in practice of psychology in violation of due process clause of Fifth Amendment, which guarantees practitioner some alternative means of demonstrating his professional competence, in nature of a "grandfather" concession to psychologists practicing at time the licensure requirement was enacted. *J. R. Berger v. Board of Psychologist Examiners* (1975, 521 F. 2d 1056, 172 U.S. App. D.C. 396; rem'g 313 A. 2d 602).

§2-487. License without examination.

(a) Notwithstanding any other provision of this subchapter, a license shall be issued without examination to any applicant who is of good moral character, who, at any time during the twelve-month period preceding the effective date of this subchapter, maintained a residence or office, or participated in psychological practice acceptable to the Mayor, in

the District of Columbia, and who, within one year after the effective date of this subchapter, submitted an application for license accompanied by the required fee, and who—

(1) holds a doctoral degree in psychology or forty-five credit hours taken subsequent to a bachelor's degree in courses related to psychology, from accredited colleges or universities, and has engaged in psychological practice acceptable to the Mayor for at least two years prior to the filing of such application pursuant to this subchapter;

(2) holds a master's degree in psychology or twenty-four credit hours taken subsequent to a bachelor's degree in courses related to psychology, from accredited colleges or universities, and has engaged in psychological practice acceptable to the Mayor for at least seven years prior to the filing of such application pursuant to this subchapter; or

(3) presents evidence of completion of a curriculum of study acceptable to the Mayor, taken subsequent to a bachelor's degree in psychology, in courses related to psychology from an institution outside the United States acceptable to the Mayor, and has engaged in psychological practice acceptable to the Mayor for at least seven years prior to the filing of such application pursuant to this subchapter.

(b) For purposes of subsection (a) of this section, the term—

(1) "courses related to psychology" means any combination of the following behavioral science courses not necessarily in one department of one school: human development, education, educational psychology, guidance, counseling, guidance and counseling, vocational counseling, school psychology, school guidance, family counseling, counseling and psychotherapy, special education, learning disabilities, anthropology, sociology, human ecology, social ecology, rehabilitation counseling, group counseling and psychotherapy, or any substantially similar field of study acceptable to the Mayor; and

(2) "psychological practice acceptable to the Mayor" includes any job in which the job title or description contains any term acceptable to the Mayor, or any of the following terms: psychologists, psychotherapy, group therapy, family therapy, art therapy, activity therapy, psychometry, measurement and evaluation, psychodiagnosis, pupil personnel services, counseling and guidance, special education, rehabilitation, or any job in which the person or organization was recognized or reimbursed under public or private health insurance programs by reason of being engaged in psychological practice.

(Jan. 8, 1971, Pub. L. 91-657, § 8, 84 Stat. 1958; Dec. 7, 1974, Pub. L. 93-515, title II, § 202(5), 88 Stat. 1616.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

The effective date of this subchapter, referred to in subsec. (a), is prescribed by sec. 20 of Act Jan. 8, 1971, set out as a note under § 2-481 of the main 1973 ed. of the Code. The subchapter became effective ninety days after Jan. 8, 1971.

AMENDMENT

1974—Section 202(5) of Act Dec. 7, 1974, Pub. L. 93-515, amended section generally. For provisions prior to amendment, see main 1973 ed. of the Code.

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 2-492.

NOTES TO DECISIONS

Construction

In defining what constitutes a "master's degree in psychology" within meaning of this section providing for issuance of license to applicant who holds a master's degrees in psychology, the Board of Psychologist Examiners was not required to give absolute deference to whether a particular college or university labeled the master's degree as one in "psychology"; Board could properly adopt regulation requiring degree to include at least 24 semester hours in psychology course beyond the undergraduate level. *M. E. Berl v. Board of Psychologist Examiners of the District of Columbia* (D.C. App. 1974, 322 A.2d 274).

In applying regulation defining term "master's degree in psychology" as used in this section to mean a master's degree awarded pursuant to completion of a curriculum in which at least 24 semester hours shall have been psychology courses beyond the baccalaureate level, the Board of Psychologist Examiners was required to look to the substance of the courses for which credit was sought and not the arbitrary happenstance of how the university organized its academic department; Board was required to look to the substance, not the form of the master's degree. *Id.*

§ 2-488. Reciprocity.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-489. Regulations—Fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-490. Renewal of license or certificate.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-491. Denial, revocation, and suspension of license or certificate.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-492. Procedure for suspension or revocation of license or certificate—Hearing—Review of decision.

(C) Any person aggrieved by a final decision or a final order of the Mayor under subsection (B) of this section may seek review of such decision or order in the District of Columbia Court of Appeals in accordance with the District of Columbia Administrative Procedure Act [D.C. Code, Secs. 1-1501 et seq.]

(D) In hearings conducted pursuant to subsection (B) of this section, the Mayor may administer oaths and affirmations, and may require by subpoena or otherwise the attendance and testimony of witnesses and the production of such books, records, papers, and documents as he may deem advisable in carrying out his functions under this subchapter. In the case of contumacy or refusal to obey any such subpoena or requirement of this subsection, the Mayor may make application to the Superior Court of the District of Columbia for an order requiring obedience thereto. Thereupon the court, with or without notice and hearing, as it in its discretion may decide, shall make such order as is proper and may punish as contempt of court any failure to comply with such order. (As amended Dec. 7, 1974, Pub. L. 93-515, title II, § 202(1), (2), 88 Stat. 1615.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1974—Section 202(1), (2) of Act Dec. 7, 1974, Pub. L. 93-515, amended subsecs. (C) and (D) generally. For provisions prior to amendment, see main 1973 ed. of the Code.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 203 of Act Dec. 7, 1974, Pub. L. 93-515, title II, 88 Stat. 1616, provided: "The amendments [to §§ 2-492 to 2-494] made by paragraphs (1) through (4) of section 202 of this title shall take effect with respect to petitions filed after the date of the enactment of this title for review of decisions or orders."

NOTES TO DECISIONS

Review

Practitioner of 14 years, who subsequent to passage of District of Columbia Practice of Psychology Act [this subchapter] applied for license, and whose application was denied by Board of Psychologist Examiners because of his lack of required academic degrees, can properly avail himself of statutory review procedure outlined in this section in order to prosecute constitutional challenge that the Board's refusal to test his professional competence by some standard other than his academic credentials constituted a violation of fundamental due process, and is not limited to interposing his constitutional claims as a defense to criminal proceedings for violating licensure requirement. *J. R. Berger v. Board of Psychologist Examiners* (1975, 521 F.2d 1056, 172 U.S. App. D.C. 396; rem'g 313 A.2d 602).

§ 2-493. Penalties.

Any person who shall practice psychology, as defined in this subchapter, without having a valid, unexpired, unrevoked, and unsuspended license or certificate of registration issued as provided in this subchapter, shall be deemed guilty of a misdemeanor

and, upon conviction, shall be fined not more than \$500, or confined in jail for not more than six months, or both. Prosecutions shall be conducted in the name of the District of Columbia in the Superior Court of the District of Columbia by the Corporation Counsel or any of his assistants. (Jan. 8, 1971, Pub. L. 91-657, § 14, 84 Stat. 1960; Dec. 7, 1974, Pub. L. 93-515, title II, § 202(3), 88 Stat. 1615.)

AMENDMENT

1974—Section 202(3) of Act Dec. 7, 1974, Pub. L. 93-515, amended the second sentence generally. Prior to amendment, the sentence read: "Prosecutions shall be in the name of the District of Columbia by the Corporation Counsel or one of his assistants."

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 2-492.

§ 2-494. Enjoining unauthorized practice of psychology.

The unlawful practice of psychology, as defined in this subchapter, may be enjoined by the Superior Court of the District of Columbia on petition by the Corporation Counsel for the District of Columbia, upon a finding that the person sought to be enjoined has committed a violation of the provisions of this subchapter. In any such proceeding it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found guilty of the unlawful practice of psychology, the court shall enjoin him from so practicing unless and until he has been duly licensed. The remedy by injunction herein given may be imposed in addition to, or in lieu of, criminal prosecution and punishment as provided in section 2-493. (Jan. 8, 1971, Pub. L. 91-657, § 15, 84 Stat. 1960; Dec. 7, 1974, Pub. L. 93-515, title II, § 202(4), 88 Stat. 1616.)

AMENDMENT

1974—Section 202(4) of Act Dec. 7, 1974, Pub. L. 93-515, amended the first sentence by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 2-492.

§ 2-495. Commissioner to enforce subchapter.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 5.—OPTOMETRISTS

§ 2-503. Board of Optometry—Qualifications—Tenure—Oath—Removal.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-505. By-laws and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-506. Secretary-treasurer to give bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-507. Secretary-treasurer to receive compensation and pay expenses out of funds in custody of board.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-508. Official seal—Records—Reports.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-511. Standard examination—Qualifications of applicants.

Any person over the age of eighteen years, of good moral character, who has had a preliminary education equivalent to a two years' course in a first-grade high-school (which shall be determined either by examination or by certificate acceptable to the Board as to work done in such approved institution), and who is a graduate of a school of optometry in good standing (as determined by the Board and which maintains a course in optometry of not less than one thousand hours), shall be entitled to take the standard examination. Such standard examination shall consist of tests in—

- (a) Practical optics.
- (b) Theoretic optometry.
- (c) Anatomy and physiology and such pathology as may be applied to optometry.
- (d) Practical optometry.
- (e) Theoretic and physiologic optics. (May 28, 1924, 43 Stat. 180, ch. 202, § 11; July 22, 1976, D.C. Law 1-75, § 3(b), 23 DCR 1177.)

AMENDMENT

1976—Act July 22, 1976, D.C. Law 1-75, amended section by substituting "eighteen" for "twenty-one".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 8 of act July 22, 1976, D.C. Law 1-75, set out as a note under § 21-101.

§ 2-512. Changes in educational standards authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 6.—PHARMACY

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2-101, 33-701, 33-708, 33-801.

§ 2-601. Pharmacy regulations—Sale of drugs restricted—Licensed pharmacists in drug stores—Physicians, dentists, and veterinarians exempt—Sale of poisons—Permits to sell—Sales by minors—Sale of household drugs—Patent medicine.

It shall be unlawful for any person not licensed as a pharmacist within the meaning of this chapter to conduct or manage any pharmacy, drug or chemical store, apothecary shop, or other place of business for the retailing, compounding, or dispensing of any drugs, chemicals, or poisons, or for the compounding of physicians' prescriptions, or to keep exposed for sale, at retail, any drugs, chemicals, or poisons, except as hereinafter provided; or, except as hereinafter provided, for any person not licensed as a pharmacist within the meaning of this chapter to compound, dispense, or sell, at retail, any drug, chemical, poison, or pharmaceutical preparation upon the prescription of a physician, or otherwise, or to compound physicians' prescriptions, except as an aid to and under the proper supervision of a pharmacist licensed under this chapter. And it shall be unlawful for any owner or manager of a pharmacy, drug store, or other place of business to cause or permit any person other than a licensed pharmacist to compound, dispense, or sell, at retail, any drug, medicine, or poison, except as an aid to and under the proper supervision of a licensed pharmacist: *Provided*, That nothing in this section shall be construed to interfere with any legally registered practitioner of medicine, dentistry, or veterinary surgery in the compounding of his own prescriptions, or to prevent him from supplying to his patients such medicines as he may deem proper; nor with the exclusively wholesale business of any dealer who shall be licensed as a pharmacist, or who shall keep in his employ at least one person who is so licensed, except as hereinafter provided; nor with the sale by others than pharmacists of poisonous substances sold exclusively for use in the arts, or as insecticides, when such substances are sold in unbroken packages bearing labels having plainly printed upon them the name of the contents, the word "poison," when practicable the name of at least one suitable antidote, and the name and address of the vendor: *Provided further*, That such person, firm, or corporation has obtained a permit from the Board of Pharmacy, which grants the right and privilege to make such sales, such permit to be issued for a period of three years, and that each sale of such substance be registered as required of a licensed pharmacist, and it shall be unlawful for any person under the age of eighteen years to sell such substances, and in no case shall the sale be made to a person under eighteen years of age except upon the written order of a person known or believed to be an adult: *And provided further*, That persons other than registered pharmacists may sell household ammonia and concentrated lye, in sealed containers plainly labeled, so as to indicate the nature of the contents with the word "poison," and with a statement of two or more antidotes to be

used in case of poisoning, and may sell bicarbonate of soda, borax, cream of tartar, olive oil, sal ammoniac, and sal soda; and persons other than registered pharmacists may, furthermore sell in original sealed containers, properly labeled, such compounds as are commonly known as "patent" or "proprietary" medicines, except those the sale of which is regulated by the provisions of sections 2-610 and 2-612. (May 7, 1906, 34 Stat. 175, ch. 2084, § 1; July 22, 1976, D.C. Law 1-75, § 3(r), 23 DCR 1180.)

AMENDMENT

1976—Act July 22, 1976, D.C. Law 1-75, amended section by substituting "eighteen" for "twenty-one", immediately following "under the age of".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 8 of act July 22, 1976, D.C. Law 1-75, set out as a note under § 21-101.

CROSS REFERENCE

Prescription drug price information and substitution requirements, see §§ 33-801 et seq.

§ 2-602. Application for licenses—Sworn statement of qualifications—Examination—Minimum age and experience—College graduation—Recognition of any school of pharmacy.

Every person not registered under an act to regulate the practice of pharmacy in the District of Columbia, approved June 15, 1878 (20 Stat. 137), who shall desire to be licensed as a pharmacist shall file with the Board of Pharmacy an application, duly verified under oath, setting forth the name and age of the applicant, the experience which the applicant has had in compounding physicians' prescriptions under the direction of a licensed pharmacist, and the name and location of the school or college of pharmacy of which he is a graduate and shall submit evidence sufficient to show to the satisfaction of said board that he is of good moral character and not addicted to the use of alcoholic liquors or narcotic drugs so as to render him unfit to practice pharmacy; and said applicant shall appear at a time and place designated by the Board of Pharmacy aforesaid and submit to an examination as to his qualifications for license as a pharmacist: *Provided*, That applicants shall be not less than eighteen years of age, and in order to be entitled to an examination for the determination of his fitness to be licensed as a pharmacist in the District of Columbia, must have had not less than three years' experience in the practice of pharmacy under the instruction of a regular licensed pharmacist; and must be a graduate of an accredited school or college of pharmacy: *Provided, however*, That the Council of the District of Columbia in its discretion, may establish, by general rules, conditions upon compliance with which by any school or college of pharmacy, and under the submission by said school or college of evidence sufficient to prove such compliance to the satisfaction of said Board, applicants who have been graduated by such school or college during any specified year or years may be allowed credit for experience in the practice of pharmacy by reason of attendance at and graduation by said school or college. (May 7, 1906, 34 Stat. 176, ch. 2084, § 3;

Feb. 27, 1907, 34 Stat. 1006, ch. 2085, § 3; Mar 4, 1927, 44 Stat. 1413, ch. 497, § 2; July 22, 1976, D.C. Law 1-75, § 3(c), 23 DCR 1178.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act July 22, 1976, D.C. Law 1-75, amended section by substituting "eighteen" for "twenty-one".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 8 of act July 22, 1976, D.C. Law 1-75, set out as a note under § 21-101.

§ 2-606. Renewal of licenses or permits to sell poisons—Renewal obtained by fraud—Failure of board to renew—Hearings—Attendance of witnesses—Report of findings—Revocation of license—Review in District of Columbia Court of Appeals—Public display of license.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-607. Board of Pharmacy—Creation—Appointment—Tenure—Removal—Oath—Meetings—Seal—Bond of treasurer—Duty to examine applicants.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-608. Board of Pharmacy to have same powers as Commission on Licensure to Practice the Healing Art—Accounting—Records—Reports.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-609. Fees—Expenses—Compensation of Board.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-614. Preservation of prescriptions—Copies—Inspection—Directions for use on label.

CROSS REFERENCES

Records and labeling required for substitution of equivalent drugs, see § 33-834.

Inspection of pricing records and practices by Office of Consumer Protection, see § 33-843.

§ 2-617. Penalties—Enforcement.**CROSS REFERENCES**

Enforcement of prescription drug price information and substitution requirements by Office of Consumer Protection, see § 33-843.

Penalties for violation of prescription drug price information and substitution requirements, see §§ 33-841, 33-842.

Chapter 7.—PODIATRY**§ 2-701. Board of Podiatry Examiners—Appointment—Term of office—Eligibility—Qualifications.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-702. Officers—Bond—Rules and regulations for admission to practice—Seal—Record of proceedings—Register of credentials and of licenses issued or revoked—Certified copy as evidence—Quorum—Annual report of finances and official acts.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-705. Application for license—Form and requirements—Citizenship—Verification—Fees—Scope of examination—Application for license without examination—Reciprocity with States or Territories.

Any person who desires to begin the practice of podiatry within the District of Columbia shall file with the secretary-treasurer of the Board a written application for a license, and furnish satisfactory proof that he is a citizen of the United States or has duly declared his intention to become a citizen of the United States, not less than eighteen years of age, of good moral character, and is a graduate of a podiatry college recognized by the National Association of Chiropodists and approved by the Board. Any license issued to a person who is a citizen of a foreign country and who has duly declared his intention to become a citizen of the United States shall automatically terminate and the registration of the candidate be annulled in the event such candidate shall fail to submit to the Board satisfactory evidence within six years from the date of such license that he has become a citizen of the United States. Such application must be upon the form prescribed by the Board, verified by oath, and accompanied by the required fee and a recent unmounted autographed photograph of the applicant. The Board shall hold in January and July of each year, in such place as it may designate, examinations to determine the fitness of applicants for licenses under this chapter.

(As amended July 22, 1976, D.C. Law 1-75, § 3(d), 23 DCR 1178.)

AMENDMENT

1976—Act July 22, 1976, D.C. Law 1-75, amended provisions preceding subsec. (a) by substituting "eighteen" for "twenty-one".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 8 of act July 22, 1976, D.C. Law 1-75, set out as a note under § 21-101.

§ 2-711. "Practice of podiatry" defined.**NOTES TO DECISIONS****Medicaid coverage**

Limiting podiatric services that podiatrists may provide under District of Columbia medicaid plan while permitting physicians to furnish a full range of podiatric care does not violate medicaid provisions of the Social Security Act or implementing regulations. *District of Columbia Podiatry Society et al. v. District of Columbia et al.* (1975, 407 F.Supp. 1259).

§ 2-719. Rules and regulations—Promulgation—Notice.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

Chapter 8.—VETERINARIANS**§ 2-801. Board of Examiners in Veterinary Medicine—Creation—Appointment, tenure, and removal.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-802. Election of officers—Rules and regulations—Register of applicants—Bond—Reports.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-803. Applications for license—Qualifications—Fees—Expenses—Examinations—Applications preserved.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-804. Reciprocal relations with similar boards.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-806. Appeal from board—Board of review—Fees and compensation.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-810. Revocation of licenses—Causes—Procedure—Appeals—Costs.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 9.—ACCOUNTANTS**§ 2-911. Definitions.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-913. Board of Accounting—Corporation, qualifications, tenure, compensation, and removal.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-914. Rules and regulations.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-915. Certified public accountants—Issuance of certificate—Qualifications—Prior applications and certificates.

(a) The Mayor is authorized to issue a certificate of certified public accountant of the District of Columbia to any applicant furnishing to the Mayor satisfactory proof that he has the following qualifications:

- (1) Is at least eighteen years of age;

* * * * *

(As amended July 22, 1976, D.C. Law 1-75, § 3(e), 23 DCR 1178.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act July 22, 1976, D.C. Law 1-75, amended subsec. (a) (1) by substituting "eighteen" for "twenty-one".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 8 of act July 22, 1976, D.C. Law 1-75, set out as a note under § 21-101.

§ 2-916. Education and experience required.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-917. Waiver of examination and endorsement of C.P.A. certificate—Rights of holder of endorsed certificate.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-918. Registration of certified public accountants—Failure to register.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-919. Registration of partnerships practicing public accountancy—Requirements—Use of titles.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-920. Hearings, and revocation, suspension, or denial of certificate, etc.—Censure—Procedure.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-921. Witnesses and records at hearings—Nature of hearings.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-922. Revocation or suspension of partnership registrations—Censure.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the

District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-923. Administrative procedure for public hearings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-924. Issuance of new certificate, etc. after revocation—Permitting registration after registration revoked.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-925. Noncertified public accountants as employees or assistants—Temporary practice in District by nonresident certified public accountants.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-926. Penalty for violations—Prosecutions by Corporation Counsel—Jurisdiction.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-930. Fees for costs of administration—Disposition of funds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 10.—ARCHITECTS

§ 2-1001. Board of Examiners—Creation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1003. Tenure—Filling vacancies.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1004. Oath of office.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1010. Roster of architects—Report.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1020. Qualifications of applicants.

Any citizen of the United States or any person who has declared his (or her) intention of becoming a citizen, being at least eighteen years of age, of good moral character, and who has had at least three years of practical architectural experience in offices engaged in the practice of architecture as defined by this chapter, may apply for registration or for such examination as shall be requisite for registration under this chapter. (Dec. 13, 1924, 43 Stat. 715, ch. 9, § 20; Sept. 7, 1950, 64 Stat. 782, ch. 908, § 3; July 22, 1976, D.C. Law 1-75, § 3(f), 23 DCR 1178.)

AMENDMENT

1976—Act July 22, 1976, D.C. Law 1-75, amended section by substituting "eighteen" for "twenty-one".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 8 of act July 22, 1976, D.C. Law 1-75, set out as a note under § 21-101.

§ 2-1023. Fees.

The fees to be paid by an applicant to the District of Columbia Treasurer for the application for, issuance of, and renewal of a license are established as follows:

- (a) (1) Application fee for examination for license as an architect_____ \$10;
- (2) Examination fee_____ \$80;
- (b) Original license fee for an architect_____ \$10;
- (c) Annual renewal fee for license for an architect _____ \$20;
- if the request for renewal is late, an additional fee of _____ \$5;
- (d) Fee for the restoration of an expired license _____ \$25;
- (e) Fee for certifying records_____ \$10; and
- (f) Fee for an application for license by reciprocity _____ \$90.

(Dec. 13, 1924, 43 Stat. 716, ch. 9, § 23; Sept. 7, 1950, 64 Stat. 782, ch. 908, § 3; Sept. 14, 1976, D.C. Law 1-82, title V, § 502, 23 DCR 2461.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section generally. For prior provisions, see the 1973 edition of the Code.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 502 of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 89) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1851).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 2-1028. Procedure for revocation—Appeal.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1029. Attendance of witnesses and production of documents.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 11.—BARBERS

§ 2-1102. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1103. Board of Barber Examiners—Qualifications—Tenure—Removal—Register—Power to make rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1112. Conduct of examinations—Expenses and compensation—Appointment of clerk and inspectors—Qualifications.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1114a. Authority to prescribe regulations for posting prices of services—Authority to impose fine—Limitation of fine.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 12.—BOXING AND WRESTLING COMMISSION

SUBCHAPTER I.—BOXING COMMISSION ACT OF 1934

Sec.

2-1201 to 2-1209. Repealed.

SUBCHAPTER II.—BOXING COMMISSION ACT OF 1944

Sec.

2-1210 to 2-1226. Omitted.

SUBCHAPTER III.—BOXING AND WRESTLING COMMISSION ACT OF 1975

2-1231. Purpose.

2-1232. Definitions.

2-1233. Statement of authority.

2-1234. Establishment of Commission.

2-1235. Jurisdiction.

2-1236. Powers.

2-1237. Administration.

2-1238. Violations of Commission rules—Penalties.

2-1239. Liability of Commission members.

SUBCHAPTER I.—BOXING COMMISSION ACT OF 1934

§§ 2-1201 to 2-1209. Repealed. Dec. 20, 1944, 58 Stat. 826, ch. 612, § 7.

SUBCHAPTER II.—BOXING COMMISSION ACT OF 1944

§§ 2-1210 to 2-1226. Omitted.

Sections 2-1210 to 2-1226, Act Dec. 20, 1944, ch. 612, 58 Stat. 823, as amended Aug. 19, 1950, ch. 762, 64 Stat. 466; July 5, 1952, ch. 577, 66 Stat. 392; Aug. 19, 1964, Pub. L. 88-448, § 401(a), 78 Stat. 489.

§ 2-1210 abolished the former Boxing Commission, created a new Boxing Commission, and contained provisions relating to its composition and requiring an annual report.

§ 2-1211 related to the appointment and compensation of personnel.

§ 2-1212 related to powers and duties.

§ 2-1213 related to permits, and examination of accounts and records.

§ 2-1214 related to licenses.

§ 2-1215 required conformity to rules governing contests.

§ 2-1216 related to fees for licenses and permits.

§ 2-1217 related to application for license, and posting of bond.

§ 2-1218 related to payment to Commission of percentage of gross receipts from admissions etc., reports, and contents of admission tickets.

§ 2-1219 provided for covering receipts into trust fund, payment of salaries and expenses, and sale and redemption of bonds.

§ 2-1220 related to quarterly audit of accounts.

§ 2-1221 related to oaths, witnesses, and subpoenas.

§ 2-1222 related to personal liability of Boxing Commissioners.

§ 2-1223 related to penalties for violations.

§ 2-1224 related to prosecution for violations.

§ 2-1225 defined "person".

§ 2-1226 related to compensation of Boxing Commissioners.

SUBCHAPTER III.—BOXING AND WRESTLING COMMISSION ACT OF 1975

§ 2-1231. Purpose.

It is the purpose of this subchapter to create a Boxing and Wrestling Commission for the District of Columbia with the authority to promulgate rules and regulations and to regulate boxing and wrestling within its jurisdiction. (Oct. 8, 1975, D.C. Law 1-20, § 2, 23 DCR 1806; Feb. 26, 1976, D.C. Law 1-50, § 3, 22 DCR 5127.)

AMENDMENT

1976—Act Feb. 26, 1976, D.C. Law 1-50, amended section by substituting "and wrestling" for "wrestling, and martial arts events".

EMERGENCY ACT AMENDMENT

1975—For temporary amendment of section relating to striking "martial arts", see sec. 3 of the Emergency District of Columbia Boxing and Wrestling Commission act Amendment act (D.C. Act 1-66, Nov. 10, 1975, 22 DCR 2607).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 4 of act Feb. 26, 1976, D.C. Law 1-50, provided: "This act [amending §§ 2-1231, 2-1232, 2-1235 to 2-1238, and 47-2344a] shall take effect as provided for acts of the Council of the District of Columbia in Section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

EFFECTIVE DATE

Section 11 of act Oct. 8, 1975, D.C. Law 1-20, provided that "This act [enacting this subchapter and amending § 47-2344a(d)(3)] shall become effective by operation of Section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. 93-198, 87 Stat. 814 [§ 1-147(c)(1)]."

SHORT TITLES

The first section of act June 9, 1976, D.C. Law 1-66, provided "That this act [amending § 2-1234] may be cited as the 'District of Columbia Boxing and Wrestling Commission Nominee Confirmation Procedure act.'"

The first section of act Feb. 26, 1976, D.C. Law 1-50, provided "That this act [amending §§ 2-1231, 2-1232, 2-1235 to 2-1238, and 47-2344a] may be cited as the 'District of Columbia Boxing and Wrestling Commission act Amendment act.'"

The first section of act Oct. 8, 1975, D.C. Law 1-20, provided "That this act [enacting this subchapter and amending § 47-2344a(d)(3)] may be cited as the 'District of Columbia Boxing and Wrestling Commission Act.'"

§ 2-1232. Definitions.

For purposes of this subchapter, the term or terms—

(a) "person" means an individual, partnership, corporation, association, or club.

(b) "Mayor" and "Council" have the meanings given in section 1-122.

(c) "Commission" means the District of Columbia Boxing and Wrestling Commission.

(d) "School, college, or university" means every school, college, or university supported in whole or in part from public funds and every other school, college or university supported in whole or in part by a religious, charitable, scientific, literary, educational or fraternal organization which is not operated for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(e) "Participants" means all boxers, wrestlers, performers of martial arts, seconds, managers, matchmakers, promoters, referees, judges, timekeepers, announcers, ushers, ticket sellers, advertising and public relations personnel, and other persons that the Commission may designate who are involved or connected with, other than as a spectator, boxing, wrestling or martial arts contests, matches, exhibitions, or showings, professional as well as amateur, to be held, given, or shown within the District of Columbia.

(f) "Contestants" means boxers or wrestlers or practitioners of the martial arts.

(g) Repealed. Feb. 26, 1976, D.C. Law 1-50, § 3, 22 DCR 5127.

(Oct. 8, 1975, D.C. Law 1-20, § 3, 23 DCR 1806; Feb. 26, 1976, D.C. Law 1-50, § 3, 22 DCR 5127.)

AMENDMENT

1976—Act Feb. 26, 1976, D.C. Law 1-50, amended section by striking out subsec. (g) which read as follows: "'Martial Arts' means Karate, Judo, Kung Fu, Jujitsu, Tae Kwon Do, Aikido, and other such forms of self-defense, sport, or weaponry."

EMERGENCY ACT AMENDMENT

1975—For temporary amendment of section relating to striking "martial arts", see sec. 3 of the Emergency District of Columbia Boxing and Wrestling Commission act Amendment act (D.C. Act 1-66, Nov. 10, 1975, 22 DCR 2607).

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 4 of act Feb. 26, 1976, D.C. Law 1-50, set out as a note under § 2-1231.

§ 2-1233. Statement of authority.

The authority of the Council to establish a Boxing and Wrestling Commission is granted in sections 1-144 (a) and (b). (Oct. 8, 1975, D.C. Law 1-20, § 4, 23 DCR 1807.)

§ 2-1234. Establishment of Commission.

(a) There is hereby created a District of Columbia Boxing and Wrestling Commission to consist of three members nominated by the Mayor and approved by the Council.

(b) Other than as provided in subsection (g) of this section, the term of office of a member of the Commission shall be three years.

(c) Whenever a vacancy on the Commission occurs before the end of a term, the Mayor, with the consent of the Council, may appoint a person to complete the remaining period of that term.

(d) A Commission member may be removed by resolution of the Council—

(i) for good cause shown, or

(ii) upon the written recommendation of the Mayor.

(e) The members of the Commission shall be residents of the District of Columbia for the duration of their term.

(f) The members of the Commission shall receive remuneration for their services in an amount to be determined by the Mayor at such time as the Commission is deemed established in accordance with subsection (g) of this section, provided that no such member shall receive remuneration in excess of \$75 per diem.

(g) The Mayor shall, within 30 days of October 8, 1975, nominate an individual to serve as Chairperson of the Commission for three years, and two more individuals to serve as members for two years, and one year respectively. The Council shall confirm or reject these nominees within 90 days of their nomination, or, in the absence of such action within 90 days, such nominees shall be deemed confirmed. When at least two members have been confirmed, the Commission shall be deemed established. (Oct. 8, 1975, D.C. Law 1-20, § 5, 23 DCR 1808; June 9, 1976, D.C. Law 1-66, § 2, 23 DCR 498.)

CODIFICATION

In subsec. (g), "October 8, 1975" has been substituted for "the effective date of this act".

AMENDMENT

1976—Act June 9, 1976, D.C. Law 1-66, amended second sentence of subsec. (g) by substituting "90" for "30".

EMERGENCY ACT AMENDMENT

1976—For temporary amendment of subsec. (g) relating to time for confirmation of nominees, see sec. 2 of the District of Columbia Boxing and Wrestling Commission Nominees Review Emergency Act (D.C. Act 1-86, Jan. 19, 1976, 22 DCR 3895).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 3 of act June 9, 1976, D.C. Law 1-66, provided: "This act [amending this section] shall take effect at the end of the thirty day period provided for Congressional review of acts of the Council in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 1-147(c))."

§ 2-1235. Jurisdiction.

(a) The Commission shall have and hereby is vested with the sole direction, management, control and jurisdiction over all boxing and wrestling contests, matches, exhibitions, and showings, professional as well as amateur, to be conducted, held, given, or shown, within the District of Columbia. The Commission is hereby given control, authority and jurisdiction over all licenses and permits to hold boxing and wrestling contests, matches, and exhibitions for prizes or purses or in which a fee or price in money or value is charged or for which revenue of any type is received, and over all licenses or permits to participants in boxing or wrestling contests, matches or exhibitions; this section shall not be construed, however, to preclude the Commission from differentiating between professional and amateur contests, matches, and exhibitions and charitable and profit-seeking ventures on a reasonable basis. The Commission shall establish the criteria and procedures for the granting of licenses and permits under its jurisdiction and shall promulgate such criteria in accordance with the District of Columbia Administrative Procedure Act (D.C. Code sec. 1-1501 et seq.).

(b) The Commission may exempt schools, colleges, or universities and similar amateur events from any and all of its rules upon proper application by such school, college, or university or by the manager or promoter of such amateur event. (Oct. 8, 1975, D.C. Law 1-20, § 6, 23 DCR 1809; Feb. 26, 1976, § 3, 22 DCR 5127.)

AMENDMENT

1976—Act Feb. 26, 1976, D.C. Law 1-50, amended subsec. (a) by eliminating reference to the martial arts.

EMERGENCY ACT AMENDMENT

1975—For temporary amendment of section relating to striking "martial arts", see sec. 3 of the Emergency District of Columbia Boxing and Wrestling Commission act Amendment act (D.C. Act 1-66, Nov. 10, 1975, 22 DCR 2607).

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 4 of act Feb. 26, 1976, D.C. Law 1-50, set out as a note under § 2-1231.

§ 2-1236. Powers.

(a) The Commission shall have the power to make, amend, carry out, and enforce such rules as it deems necessary for and likely to be effective in governing the events and procedures within its jurisdiction as well as all participants in such events and procedures. The Commission shall conduct its rulemaking and enforcement and other functions under the provisions of the District of Columbia Administrative Procedures Act (D.C. Code, sec. 1-1501, et seq.)

where appropriate, and shall promulgate rules within 60 days of its establishment.

(b) (1) The Commission shall have the power to issue permits and licenses to all participants, and for all events covered by this subchapter. If the Commission, by rule, regulation, or order requires a license for a person or event covered by this subchapter, no person shall hold, conduct, or be a participant in any such boxing or wrestling contest, match, or exhibition without a permit or license from the Commission. The Commission is authorized, in its sole judgment and discretion to assign to those with proper permits, dates on which boxing and wrestling contests, matches, and exhibitions may be held, and no person shall hold any boxing or wrestling contest, match or exhibition on any dates unless specifically authorized to do so by the Commission. No permit as described in this section shall be issued to any person unless such person agrees to accord to the Commission the right to examine the books of account and other records of such person relative to the boxing or wrestling contest, match or exhibition for which such permit is issued, and such permit shall so state on its face. Licenses and permits may be revoked or suspended by the Commission for violation of any rule, regulation, or order of the Commission or for violation of any rule, regulation, or order of the District of Columbia or for other cause. The contested case provisions of the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1509, 1-1510) shall be followed in revocation and suspension proceedings.

(2) [This paragraph contained an amendment of section 47-2344a(d) (3), and is reflected therein.]

(c) The Commission shall have the power to collect fees for permits and licensure in an amount and in a manner that is reasonable in light of costs of administration and like charges imposed by other jurisdictions for similar licenses and that it shall determine with the approval of the Mayor.

(d) The Commission shall have the power to require all licensees and permittees to execute and file with the Commission a bond in an amount to be determined by the Commission before such license or permit may be granted. Said bond shall be approved as to form and sufficiency of sureties by the Mayor, or by such official as he may designate. In case of default in such performance, recovery may be had on such bond in the same manner as other penalties are recovered by law.

(e) The Commission shall have the power to establish standards for, and the permitted circumstances of, rental or ownership of the premises where events within the jurisdiction of the Commission will or may occur. The Commission may also establish standards for all equipment of the Commission. The Commission may also provide for the inspection of such premises and equipment.

(f) The Commission shall have the power to assess nonlicense fees and fines payable to the Commission under this subchapter or the Commission rules, and to require reports and manifests to be furnished the Commission relating to nonlicense fees.

(g) The Commission shall have the power to employ clerical and administrative personnel as it deems necessary and at rates of compensation that

this Commission shall fix provided that such rate shall not exceed \$20,000 per person per annum. The Commission may also employ inspectors, examining physicians, and other personnel, whose compensation shall be fixed by the Commission as may be necessary to administer the subchapter, *Provided That* part-time professional personnel shall not receive more than \$150 for one day or evening of work.

(h) Each member of the Commission shall have the power to administer oaths and affirmations and examine witnesses concerning any matters within the jurisdiction of the Commission. The Commission shall be vested with the same powers to issue subpoenas as to matters within its jurisdiction as are vested in trial boards of the Metropolitan Police and Fire Departments. False swearing on the part of any witness before the Commission shall be punishable in the same manner as false swearing before said trial boards, and obedience to any subpoena issued by the Commission may be compelled in the same manner as obedience is compelled to subpoenas issued by said trial boards set forth in chapter 6 of title 4.

(i) The Commission shall have the power to investigate all operations, occurrences, events and persons within its jurisdiction, and any suspected violation of its orders or rules, or of this subchapter.

(j) The Commission shall have the power to issue such orders (including suspensions of licenses and permits), to persons within its jurisdiction, which reasonably will (i) assure compliance with this subchapter, or the Commission's rules or orders, (ii) prevent influence of organized crime in boxing and wrestling in the District of Columbia, or (iii) encourage boxing and wrestling in the District.

(k) The Commission shall have the power subject to the approval of the Mayor, to make or engage in contracts, agreements, or cooperative work, with other District of Columbia agencies, or commissions or agencies of other states or cities governing boxing or wrestling, or private persons, when such contracts, agreements, or cooperative work will reasonably and lawfully carry out the purposes of this subchapter.

(l) The Commission shall have the power to establish other rules and regulations concerning events and persons within its jurisdiction as it deems appropriate to encourage boxing and wrestling in the District of Columbia and for other purposes consistent with this subchapter. (Oct. 8, 1975, D.C. Law 1-20, § 7, 23 DCR 1810; Feb. 26, 1976, D.C. Law 1-50, § 3, 22 DCR 5127.)

AMENDMENT

1976—Act Feb. 26, 1976, D.C. Law 1-50, amended subsecs. (b) (1), (j), (k), and (l) by eliminating references to the martial arts.

EMERGENCY ACT AMENDMENT

1975—For temporary amendment of section relating to striking "martial arts", see sec. 3 of the Emergency District of Columbia Boxing and Wrestling Commission act Amendment act (D.C. Act 1-66, Nov. 10, 1975, 22 DCR 2607).

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 4 of act Feb. 26, 1976, D.C. Law 1-50, set out as a note under § 2-1231.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2-1238.

§ 2-1237. Administration.

(a) All receipts and disbursements of the Commission shall be made to and from a separate trust fund maintained for the Commission.

(b) Every person holding or conducting an event within the jurisdiction of the Commission shall file with the Commission within 24 hours after the event is over, a report concerning fees, prices, revenues, and gross receipts from the event at the time and in the form prescribed by the Commission; however, this shall not preclude the Commission from demanding manifests or reports at an earlier time. Such person shall pay to the Commission at the time of the filing of the report, a fee of 5 per centum of the gross receipts realized by such person as a result of holding or conducting the event except that the Commission may require the amount so collected be not less than that necessary for the payment of compensation to the personnel necessary to conduct such contest, match or exhibition. Each ticket of admission to any covered event shall bear clearly upon its face its price.

(c) Every person presenting or showing any boxing or wrestling match, contest, or exhibition on closed circuit telecast or subscription television viewed within the District, whether or not originating in the District, shall file with the Commission within 24 hours after such telecast or showing is over, a report stating the exact number of tickets sold for such showing and the gross receipts therefrom, or if no tickets are sold, stating the price in money or value paid or owed for such telecast or subscription, and further stating any other information the Commission may require. Such person or club shall within twenty-four hours after such showing pay to the Commission a fee of 10% of the gross receipts realized from, or price paid or owed for, the showing; however, this provision shall not preclude the Commission from seeking an advance payment for such presentation or showing where it deems such payment to be appropriate.

(d) The Commission may also charge such other nonlicense fees as are reasonable in amount for services it renders in carrying out its lawful functions.

(e) The Commission shall report annually to the Mayor and to the Council its official acts during the preceding year and the financial condition of the trust fund. It shall also make such recommendations as it deems appropriate.

(f) The District of Columbia Auditor shall conduct an annual audit of the Commission.

(g) The Mayor shall conduct quarterly audits of the Commission and furnish the Commission with such office space as it needs and with administrative aid as the Commission may request.

(h) All amounts in the trust fund established in subsection (a) above at the end of each fiscal year in excess of \$50,000, shall be paid to the General Fund of the District of Columbia. (Oct. 8, 1975, D.C. Law 1-20, § 8, 23 DCR 1815; Feb. 26, 1976, D.C. Law 1-50, § 3, 22 DCR 5127.)

AMENDMENT

1976—Act Feb. 26, 1976, D.C. Law 1-50, amended subsec. (c) by eliminating the reference to the martial arts.

EMERGENCY ACT AMENDMENT

1975—For temporary amendment of section relating to striking "martial arts", see sec. 3 of the Emergency District of Columbia Boxing and Wrestling Commission act Amendment act (D.C. Act 1-66, Nov. 10, 1975, 22 DCR 2607).

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 4 of act Feb. 26, 1976, D.C. Law 1-50, set out as a note under § 2-1231.

CROSS REFERENCES

District of Columbia Auditor, generally, see § 47-120.
General fund of District, see § 47-130b.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2-1238.

§ 2-1238. Violations of Commission rules—Penalties.

(a) Any person who holds any boxing or wrestling contest, match or exhibition in the District of Columbia, or engages or participates in a boxing or wrestling contest, match, or exhibition without a valid license or permit effective at the time as provided in section 2-1236(b), shall, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than one year, or both. Such cases shall be prosecuted by the Corporation Counsel of the District of Columbia in the Superior Court of the District of Columbia.

(b) In the case of a person who is found by a preponderance of the evidence, under the contested case procedure in the District of Columbia Administrative Procedures¹ Act [D.C. Code, sec. 1-1501 et seq.], in a hearing before the Commission, to have violated lawful orders or rules of the Commission other than those penalized by subsection (a) of this section, the Commission may, upon findings explaining its actions—

- (1) Revoke the licenses previously obtained by such person under the Commission Rules;
- (2) Consider the violation as grounds for future license denials against such person;
- (3) Levy a fine in the amount of \$1,000 or less;
- (4) Refer the case to Corporation Counsel for further prosecution; or
- (5) Make such other orders as are reasonable and just, restricting or directing the violator's actions in regard to boxing, wrestling or the martial arts in the District of Columbia.

(c) For failure to file the reports or pay the fees required in sections 2-1237 (b) and (c), a fine amounting to 10% of the fees due under those sections, up to a maximum of 30% thereof, shall be assessed for each month or part thereof in which such required reports are not filed, or fees paid. (Oct. 8, 1975, D.C. Law 1-20, § 9, 23 DCR 1817; Feb. 26, 1976, D.C. Law 1-50, § 3, 22 DCR 5127.)

AMENDMENT

1976—Act Feb. 26, 1976, D.C. Law 1-50, amended subsec. (a) by eliminating references to the martial arts.

EMERGENCY ACT AMENDMENT

1975—For temporary amendment of section relating to striking "martial arts", see sec. 3 of the Emergency District of Columbia Boxing and Wrestling Commission act Amendment act (D.C. Act 1-66, Nov. 10, 1975, 22 DCR 2607).

¹ So in original.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 4 of act Feb. 26, 1976, D.C. Law 1-50, set out as a note under § 2-1231.

CROSS REFERENCE

Power of Commission to assess nonlicense fees and fines, see § 2-1236.

§ 2-1239. Liability of Commission members.

(a) A member of the Commission shall not knowingly participate in any action of the Commission if such member, or the member's spouse, parent, grandparent, child, grandchild, brother, sister, uncle, aunt, cousin, nephew or niece, has a financial or business interest in the action.

(b) A member shall not be liable in damages or court costs for any action of the Commission performed in good faith. (Oct. 8, 1975, D.C. Law 1-20, § 10, 23 DCR 1818.)

CODIFICATION

The text of subsec. (b) was omitted in the corrected publication of act Oct. 8, 1975, D.C. Law 1-20, at 23 DCR 1818, accordingly, the text is based on the original publication of the act at 22 DCR 2012.

Chapter 13.—COSMETOLOGISTS

§ 2-1302. Board of Cosmetology—Qualifications—Tenure—Removal—Officers—Compensation—Bond—Meetings—Quorum—Records.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan. No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1303. Regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan. No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1304. Powers and duties of the board—Suspension, revocation of license—Procedure.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1305. Appeal from action of the board.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1318. Examinations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1321. Sanitary rules.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 14.—PLUMBERS

Sec.

2-1405. Licenses—Renewal—Fees—Revocation.

§ 2-1401. Plumbing board—Appointment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1402. Licenses—Examination of applicants—Issuance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1403. Applicants—Qualifications.

Applicants for licenses as master plumbers and gas fitters or master gas fitters, who are citizens of the United States, must be eighteen years of age, must make application in their own handwriting, and must accompany such application with a certificate as to good character signed by at least three reputable residents of the District of Columbia, two of whom shall certify that the applicants have had at least four years' experience in the plumbing and gas-fitting business. (June 18, 1898, 30 Stat. 477, ch. 467, § 3; July 14, 1932, 47 Stat. 659, ch. 476, § 3; July 22, 1976, D.C. Law 1-75, § 3(g), 23 DCR 1178.)

AMENDMENT

1976—Act July 22, 1976, D.C. Law 1-75, amended section by substituting "eighteen" for "twenty-one".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 8 of act July 22, 1976, D.C. Law 1-75, set out as a note under § 21-101.

§ 2-1404. Bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1405. Licenses—Renewal—Fees—Revocation.

All renewals of existing licenses and all new licenses as a master plumber and gas fitter or master gas fitter shall be for a period of not more than one year, and the fee for the issuance of such license shall be \$5.00 per annum, and for the renewal of such license, the fee shall be \$30.00 per annum for a

license year beginning January 1 and ending December 31. Such special license fee shall be separate from, or in addition to, any contractors' or business license tax, hereafter fixed for this and similar occupations by the Mayor of the District of Columbia according to law. Licenses issued at any time after the beginning of the year shall date from the first day of the month in which the license is issued and end on the last day of the license year, and payment shall be made of a proportional amount of the annual license fee. Any licensee may apply for and receive a license for or on behalf of any firm, copartnership, or corporation that he is a bona fide member of or a substantial stockholder in; but all plumbing or gas fitting done pursuant to such license shall be done under the immediate personal supervision of the licensed man. In addition to the fees listed above, there is also established the following fees:

- (a) (1) Application fee for examination for license as a master plumber, gas fitter or master gas fitter ----- \$ 5;
- (2) Examination fee----- \$20;
- (b) Fee for certifying records----- \$10;
- if the request for annual renewal is late, an additional fee of----- \$ 5.

The Mayor of the District of Columbia or his duly authorized agent shall have the power to suspend or revoke any plumber's or gas fitter's license for a violation of the plumbing or gas fitting regulations after a public hearing granted the licensee, or after conviction in court for such violation or for conduct involving moral turpitude. (June 18, 1898, 30 Stat. 477, ch. 467, § 4; July 14, 1932, 47 Stat. 659, ch. 476, § 4; Sept. 14, 1976, D.C. Law 1-82, title V, § 503, 23 DCR 2461.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section generally. For prior provisions, see the 1973 edition of the Code.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 503 of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 90) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1852).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

Chapter 15.—STEAM AND OTHER OPERATING ENGINEERS

§ 2-1501. Steam and other operating engineers—License required.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1502. Board of examiners—Constitution—Examination of applicants—Compensation of Board members—Inspection of engines and boilers.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1503. Qualification of applicants.

Applicants for license as steam or other operating engineers must be eighteen years of age and of temperate habits; must make application in writing, to which application must be attached a certificate as to character and moral habits signed by at least three citizens of the District of Columbia, themselves of moral standing. (Feb. 28, 1887, 24 Stat. 427, ch. 272, § 3; Mar. 4, 1925, 43 Stat. 1284, ch. 545; July 22, 1976, D.C. Law 1-75, § 3(h), 23 DCR 1178.)

AMENDMENT

1976—Act July 22, 1976, D.C. Law 1-75, amended section by substituting "eighteen" for "twenty-one".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 8 of act July 22, 1976, D.C. Law 1-75, set out as a note under § 21-101.

Chapter 17.—ARMORY BOARD

SUBCHAPTER III.—PUBLIC SAFETY AT STADIUM AND ARMORY

Sec.

- 2-1741. Possession of disposable containers prohibited—Exceptions.
- 2-1742. Unauthorized entry onto stadium playing field prohibited.
- 2-1743. Establishment of barriers or restricted zones by Chief of Police.
- 2-1744. Penalty for violation of subchapter.

SUBCHAPTER I.—GENERAL PROVISIONS

§ 2-1701. Declaration of policy.

SHORT TITLE

The first section of act Apr. 7, 1977, D.C. Law 1-113, provided "That this act [amending §§ 2-1706, 2-1708, and 2-1724 and enacting material set out as a note under § 2-1701] may be cited as may be cited as¹ 'The 1976 District¹ of Columbia Armory Board Amendment Act'."

SEVERABILITY PROVISIONS OF D.C. LAW 1-113

Section 4 of act Apr. 7, 1977, D.C. Law 1-113, provided: "If any section or provision of this act is held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the remaining sections or provisions of this act."

§ 2-1702. Membership of board—Term—Appointment of alternates—Delegation of authority—Compensation—Election of chairman.

There is established an Armory Board, to be composed of the commanding general of the District of Columbia Militia, and two other members appointed by the Mayor of the District of Columbia by and with the advice and consent of the Council of the District of Columbia. The members appointed by the Mayor shall each serve for a term of four years beginning on the date such member qualifies. Each member of the Armory Board is authorized to appoint, and in his discretion to withdraw the appointment of, an alternate and to delegate to such alternate authority to act in his place and stead in respect of the powers granted by this subchapter. The members of said Board and the alternates shall serve without additional compensation. Said Armory Board shall elect a chairman from among its members. (June 4, 1948, 62 Stat. 339, ch. 418,

¹ So in original.

§ 2; Dec. 24, 1973, Pub. L. 93-198, title IV, § 494, 87 Stat. 811.)

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended the section by striking out the first sentence and inserting in lieu two new sentences to read as above set out. Prior to amendment, the first sentence read: "There is hereby established an Armory Board, to be composed of the Commissioner of the District of Columbia, the Commanding General of the District of Columbia Militia, and a third person not employed by the Federal or District Governments who shall be appointed by the Chairmen of the District of Columbia Committees of the United States Senate and the United States House of Representatives for a term of three years."

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this amendment is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in the amendment to this section made by Act Dec. 24, 1973, Pub. L. 93-198.

TRANSFER OF FUNCTIONS

Section 712 of Act Dec. 24, 1973, Pub. L. 93-198 [set out as § 1-132], provided in part that "[no] function now vested pursuant to section 501 of Reorganization Plan Numbered 3 of 1967 in the . . . Armory Board, or in any officer, employee, or body of or under such agency, shall be considered as a function transferred to the Council pursuant to section 404(a) of this Act [§ 1-144(a)]. Each such function is hereby transferred to the officer, employee, or agency (including any body of or under such agency), to whom or to which it was delegated, or in whom or in which it has remained vested, until the Mayor or Council established under this Act, or both, pursuant to the powers herein granted, shall revoke, modify, or transfer such delegation or vesting."

SECTION REFERRED TO IN U.S. CODE

This section is referred to in section 607 of title 40, U.S. Code.

§ 2-1703. Control and jurisdiction over District of Columbia National Guard Armory—Maintenance and repair.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1705. Use of armory by the militia of the District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-1706, 2-1741.

§ 2-1706. Secondary purposes—Authorization.

* * * * *

(j) to incur obligations not in excess of \$200,000 at any one time in furtherance of the secondary purposes of this subchapter, and not in excess of

\$50,000 above the unobligated excess in the Armory Board Working Capital Fund; and

* * * * *

(As amended Apr. 7, 1977, D.C. Law 1-113, § 2(1), 23 DCR 8742.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-113, amended subsec. (j) by substituting “\$200,000” for “\$50,000” and “\$50,000” for “\$10,000”.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 5 of act Apr. 7, 1977, D.C. Law 1-113, provided: “This act [amending §§ 2-1706, 2-1708, and 2-1724 and enacting material set out as a note under § 2-1701] shall take effect at the end of the period provided for Congressional review of acts of the Council of the District of Columbia in Subsection (c) of Section 602 of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)].”

§ 2-1707. Canteen—Authorization for—Proceeds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2-1741.

§ 2-1708. Provision for working capital as revolving fund—Transfer of rental revenues to revolving fund — Expenditures — Revenues — Deficiency appropriations.

There is hereby created an Armory Board working capital fund in the amount of \$400,000, and there shall be deposited in the Treasury of the United States to the credit of the said Armory Board working capital fund all receipts derived from the exercise by the Armory Board of the powers granted by this subchapter. Said Armory Board working capital fund, including all receipts credited thereto, shall be used as a permanent revolving fund for all expenses incurred by the Armory Board in the exercise of the powers granted by this subchapter, including personal services. There shall also be transferred to said Armory Board working capital fund all revenues derived from rentals of the District of Columbia National Guard Armory under contracts made between July 1, 1947, and June 4, 1948, except revenues resulting from the operation of concessions, and the Secretary of the Treasury is authorized to transfer to the credit of the Armory Board working capital fund authorized by this subchapter funds resulting from rental of the District of Columbia National Guard Armory received by him and held in escrow pending enactment of legislation. As soon as practicable after the close of each fiscal year, after provision has been made for payment of all lawful obligations then incurred, all sums in excess of \$400,000 in said Armory Board working capital fund shall be transferred to the general revenues of the District of Columbia. Expenditures from such fund may be made only upon vouchers which have been certified by said Armory Board and which have been approved before payment by the Auditor of the District of Columbia, and shall be disbursed in the same manner as other District of Columbia funds are disbursed: *Provided*, That

the Disbursing Officer of the District of Columbia is authorized to advance to the Armory Board, upon requisitions previously approved by the Accounting Officer of the District of Columbia, sums of money not to exceed \$15,000 at any one time to be used by the Armory Board for its office and sundry expenses and for change-making purposes in connection with the secondary purposes of this subchapter, and in connection with the operation of the stadium and related motor-vehicle parking areas pursuant to sections 2-1720 to 2-1729: *Provided further*, That an amount not to exceed \$20,000 in any fiscal year shall be available for promotional expenses in the furtherance of the secondary purposes of this subchapter, and of the purposes of sections 2-1720 to 2-1729, and the certificate of the Armory Board shall be sufficient voucher for such expenditure. There is hereby authorized to be appropriated annually such sum as may be required to supply any deficiency in the Armory Board working capital fund. Revenues resulting from the operation of concessions within the District of Columbia National Guard Armory under contracts made between July 1, 1947, and June 4, 1948, which have been held by the District of Columbia National Guard pending enactment of legislation are hereby transferred to the canteen fund of the District of Columbia National Guard. (June 4, 1948, 62 Stat. 341, ch. 418, § 8; Aug. 4, 1955, 69 Stat. 498, ch. 562, § 1; July 28, 1958, 72 Stat. 423, Pub. L. 85-561, § 2(a); Sept. 23, 1959, 73 Stat. 702, Pub. L. 86-378, § 2; Apr. 7, 1977, D.C. Law 1-113, § 2(2), 23 DCR 8742.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-113, amended section by substituting “\$400,000” for “\$100,000” and “\$20,000” for “\$10,000”.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 5 of act Apr. 7, 1977, D.C. Law 1-113, set out as a note under § 2-1706.

§ 2-1710. Yearly financial statement and report of activities—Recommendations.

The Armory Board shall file with the Congress in July of each year a financial statement certified as to accuracy by the Auditor of the District of Columbia, a report of the activities and business at the armory during the preceding fiscal year, and recommendations to the Congress as to the future control and use of the armory. (June 4, 1948, 62 Stat. 342, ch. 418, § 10; Nov. 15, 1977, Pub. L. 95-185, § 2, 91 Stat. 1383.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1977—Act Nov. 15, 1977, Pub. L. 95-185, amended section by substituting “July” for “January”.

SUBCHAPTER II.—DISTRICT OF COLUMBIA STADIUM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 47-228.

SUBCHAPTER REFERRED TO IN U.S. CODE

This subchapter is referred to in section 607 of title 40, U.S. Code.

§ 2-1720. Purpose—Authorization of Armory Board to construct Stadium—Plans.

CROSS REFERENCE

Seating capacity authorized to be increased by not to exceed 8,000, see 40 U.S.C. 607.

NOTES TO DECISIONS

Jurisdiction of contractor claims

Contractor's claim based on its construction of District of Columbia's stadium is not vindicable in Court of Claims where not only is the United States not directly a party to underlying contract but, more importantly, appropriated public funds are not involved since stadium was financed by issuance of bonds, notwithstanding that the bonds were guaranteed by the United States or that the issuer, i.e., District of Columbia Armory Board, was created by Congress or that all right, title and interest in the stadium will ultimately rest in the United States; furthermore, Board employees are not covered by the Classification Act. *McCloskey & Company v. United States* (1976, 530 F. 2d 374, 208 Ct. Cl. 374).

§ 2-1723. Authority of Board outlined.

CROSS REFERENCE

Authority of Board respecting additional seating capacity of stadium, see 40 U.S.C. 607.

§ 2-1724. Deposit of receipts into operating fund—Use of funds—Record of cost and maintenance to be kept—Board may advance moneys for operation and maintenance—Reimbursement—Surplus moneys to be placed in sinking fund—Statement to be filed with Congress.

(a) The Board shall place into an operating fund all receipts derived from the exercise by the Board of the powers granted by this subchapter. All records and accounts relating to the operations, revenues, expenses, and costs of the stadium and the lighting, operation, and maintenance of motor-vehicle parking areas in connection with such stadium shall be kept separate and distinct from the records and accounts relating to the operations, revenues, expenses, and costs of the District of Columbia National Guard Armory. The Board is authorized, from time to time, to make advances for the operation and maintenance of the stadium and the lighting, operation, and maintenance of motor-vehicle parking areas in connection with such stadium from the armory board working capital fund established in section 2-1708, but not to exceed a total of \$25,000 at any one time. The Board is further authorized to make advances, not to exceed \$15,000 at any one time, from such working capital fund to be used in connection with the expenses of operating concessions at the stadium, including use for change-making purposes. Such advances shall be reimbursed from the operating fund created by this subsection. The operating fund shall be used for constructing, operating, maintaining, and repairing the stadium and the lighting, operation, and maintenance of motor-vehicle parking areas in connection with such stadium. After payment or provision for payment from the operating fund of all costs for construction, maintenance,

repair, and operation of the stadium and the lighting, operation, and maintenance, of motor-vehicle parking areas in connection with such stadium and the reservation of an amount of money estimated to be sufficient for the maintenance, repair, and operation during the ensuing period of not more than twelve months, the remainder of the receipts derived from the exercise by the Board of the powers granted by this subchapter shall be placed in a sinking fund. Such sinking fund shall be used for the following purposes and in the following order of priority: (1) to pay the interest on and principal of bonds and other securities issued under authority of section 2-1722; (2) to reimburse the District of Columbia for any moneys advanced from its revenues and any amounts borrowed by the Commissioners of the District of Columbia from the Secretary of the Treasury, including interest on such borrowed amounts, to pay interest on or principal of bonds issued by the Board; and (3) to redeem bonds before maturity as provided in section 2-1722, or to repurchase bonds before maturity. All revenues from the operation of the stadium and the lighting, operation, and maintenance of motor-vehicle parking areas in connection with such stadium are hereby pledged to the uses and to the application thereof as heretofore in this section required. An accurate record of the cost of the stadium and the lighting, operation, and maintenance of motor-vehicle parking areas in connection with such stadium, the expenditures for maintenance and operation, and of rentals and lease receipts shall be kept and shall be available for the information of all interested persons.

* * * * *

(As amended Apr. 7, 1977, D.C. Law 1-113, § 3, 23 DCR 8742.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-113, amended subsec. (a) by inserting the fourth sentence.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 5 of act Apr. 7, 1977, D.C. Law 1-113, set out as a note under § 2-1706.

CROSS REFERENCE

Disposition of revenue derived from additional seating capacity of stadium, see 40 U.S.C. 607.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in section 607 of title 40, U.S. Code.

§ 2-1727. Limitation on indebtedness—Limitation on liability of Board members—Deficits to be included in budget estimates—Authority to borrow from Secretary of Treasury—Repayment—Bonds guaranteed by the United States.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1728. Filing of annual reports with Congress.

The Board shall file with the Congress in July of each year a financial statement certified as to accuracy by the Commissioners of the District of Columbia, or their designated agent, a report of the activities and business at the stadium, and of the operation and maintenance of the motor-vehicle parking areas in connection therewith, during the preceding fiscal year and recommendations to Congress as to future control and use of the stadium. (Sept. 7, 1957, 71 Stat. 622, Pub. L. 85-300, § 10; July 28, 1958, 72 Stat. 423, Pub. L. 85-561, § 1(15); Sept. 23, 1959, 73 Stat. 702, Pub. L. 86-378, § 1(8); Nov. 15, 1977, Pub. L. 95-185, § 3, 91 Stat. 1383.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1977—Act Nov. 15, 1977, Pub. L. 95-185, amended section by substituting "July" for "January".

SUBCHAPTER III.—PUBLIC SAFETY AT STADIUM AND ARMORY

§ 2-1741. Possession of disposable containers prohibited—Exceptions.

(a) Except as provided in subsection (b), no person shall bring into or have in his or her possession within the Robert F. Kennedy Memorial Stadium any conveniently disposable container made of glass or metal designed primarily to hold or store beverages or liquids of any kind, including but not limited to bottles or cans.

(b) Subsection (a) shall not apply to:

(1) any person duly authorized or licensed by the District of Columbia Armory Board to possess, sell, give away, transport, or store alcoholic beverages or containers within any portion of the Robert F. Kennedy Memorial Stadium or the District of Columbia National Guard Armory or to any employee or agent acting for any such duly authorized or licensed person; or

(2) activities of the militia of the District of Columbia as provided in sections 2-1705 and 2-1707.

(c) For the purposes of this section, the term "person" includes any duly authorized or licensed individual, partnership, association, or corporation. (Nov. 3, 1977, D.C. Law 2-37, § 2, 24 DCR 4058.)

EFFECTIVE DATE

Section 6 of act Nov. 3, 1977, D.C. Law 2-37, provided: "This act [enacting this subchapter] shall take effect as provided in section 602(c) (1) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c) (1)]."

SHORT TITLE

The first section of act Nov. 3, 1977, D.C. Law 2-37, provided "That this act [enacting this subchapter] may be cited as the 'Robert F. Kennedy Memorial Stadium and District of Columbia National Guard Armory Public Safety Act'."

§ 2-1742. Unauthorized entry onto stadium playing field prohibited.

Unless expressly authorized by the District of Columbia Armory Board or its duly authorized agent, no person shall at any time enter onto any portion of the playing field within the Robert F. Kennedy Memorial Stadium. For the purposes of this section, the "playing field" is that area encompassed by the seating facilities within that Stadium as such seating facilities may be arranged from time to time. (Nov. 3, 1977, D.C. Law 2-37, § 3, 24 DCR 4058.)

§ 2-1743. Establishment of barriers or restricted zones by Chief of Police.

Whenever the Chief of Police of the Metropolitan Police Department or his or her duly authorized agent determines that there is or may be a need for controlling the movement of persons attending events being held at the Robert F. Kennedy Memorial Stadium or the District of Columbia National Guard Armory, he or she may establish barriers or restricted zones, as he or she considers necessary, for the purpose of affording a clearing for:

- (1) the operation of firemen or policemen;
- (2) the movement of traffic;
- (3) the exclusion of the public from the vicinity of a riot, disorderly gathering, accident, wreck, explosion, or other emergency; or
- (4) the safety and protection of persons and property. (Nov. 3, 1977, D.C. Law 2-37, § 4, 24 DCR 4058.)

§ 2-1744. Penalty for violation of subchapter.

Any person who violates any provision of this subchapter shall upon conviction be fined not more than three hundred dollars (\$300.00). (Nov. 3, 1977, D.C. Law 2-37, § 5, 24 DCR 4058.)

Chapter 18.—PROFESSIONAL ENGINEERS

§ 2-1802. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1805. Board of registration—Appointment of members — Qualifications — Terms — Removal of members.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1806. Compensation of members of Board.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1808. General powers of Board.

* * * *

(b) *Registration of professional engineers.*—To register as a professional engineer any person of good character and repute who is a citizen of the United States, at least eighteen years of age, and who speaks and writes the English language, if such person—

* * * *

(c) *Certification of engineers-in-training.*—To provide for and to regulate the certification and to certify as an engineer-in-training any person of good character and repute who is a citizen of the United States, at least eighteen years of age or has graduated from an institution, and who speaks and writes the English language, if such person—

* * * *

(As amended July 22, 1976, D.C. Law 1-75, § 3(i), 23 DCR 1178.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act July 22, 1976, D.C. Law 1-75, amended subsecs. (b) and (c) by substituting "eighteen" for "twenty-five" and "twenty-one" respectively.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 8 of act July 22, 1976, D.C. Law 1-75, set out as a note under § 21-101.

§ 2-1813. Fees—Payment of expenses—Audit.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1816. Annual report.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 19.—COUNCIL ON LAW ENFORCEMENT**§ 2-1901. Council on Law Enforcement in the District of Columbia.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 20.—PAWNBROKERS**§ 2-2001. Definitions.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2002. Licenses required of pawnbrokers.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2003. Appointment of attorney and application for licenses.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2004. Bond provisions—Annual renewal.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2005. Issuance of license.

(a) If the Mayor approves the bond filed by the applicant and the form of the application, and find after investigation (1) that the financial responsibility, experience, character, and general fitness of such applicant, and of the members thereof if the applicant is a firm or voluntary association, and of the officers and directors thereof if the applicant is a joint-stock company, incorporated society, or corporation are such as to command the confidence of the community and to warrant the belief that the business of the applicant will be operated honestly, fairly, and efficiently in accordance with the purposes of this chapter; (2) that permitting such applicant to engage in such business will promote the convenience and advantage of the community; and (3) that the applicant has available for use in such business at the location specified in the application cash capital of at least \$20,000, the Mayor shall upon payment by the applicant of a license fee of \$800, issue to the applicant a license to make such loans in accordance with the provisions of this chapter at the location specified in such application; except that if any such license is issued after the thirtieth day of April of any year the fee for such license shall be \$250. If the Mayor does not so find after investigation he shall notify the applicant thereof and return the bond filed with the application. Within sixty days from the date of filing the application for license, accompanied by the investigation fee and bond required by this chapter the Mayor shall either issue or refuse to issue such license, but no applicant shall be denied a license until after a due hearing by the Mayor, at which the applicant shall have a reasonable opportunity to be heard and to produce evidence

in support of his application. If the application be denied the Mayor shall within twenty days thereafter prepare a written decision and findings with respect thereto containing a summary of the evidence and the reasons supporting the denial and forthwith serve upon the applicant a copy thereof.

* * * *

(As amended Sept. 14, 1976, D.C. Law 1-82, title I, § 101(a), 23 DCR 2461.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended subsec. (a) by substituting "\$800" for "\$500".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 101(a) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 61) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1823).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 2-2006. Revocation, suspension, and renewal of licenses.

(a) Each license shall remain in full force and effect until the first day of November following the date of issuance unless sooner surrendered by the licensee or suspended or revoked as hereinafter provided. Application for license for the following year may be made by any licensee within twenty days prior to the first day of November. If the Mayor is satisfied that no fact or condition then exists which clearly would warrant the Mayor in refusing to issue a license on an original application the Mayor is authorized to issue license for the year commencing on the first day of November following the date of such application, upon payment of license fee of \$550.

* * * *

(As amended Sept. 14, 1976, D.C. Law 1-82, title I, § 101(b), 23 DCR 2461.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended subsec. (a) by substituting "\$550" for "\$250".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 101(b) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 61) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1823).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 2-2007. Enforcement provisions—Commissioner to investigate licensees—Production of records—Contempt proceedings—Filing of reports—Preservation of records—Review of Commissioner's decisions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2008. Advertising—Statement of rates.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2009. Investigations of economic conditions relating to pawnbrokerage business—Fixing of interest rates—Payment of loan.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2011. Pawnbroker to keep accurate records of loan transactions—Books open to inspection by Commissioner—Police to be admitted by pawnbroker during business hours—Divulging contents of records—Daily transcripts of loan transactions to be filed with Chief of Police.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2017. Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 21.—CHARITABLE SOLICITATIONS

§ 2-2101. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2102. Powers of Commissioner and Council.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2103. Certificate of registration—Nonapplicability to educational or religious groups—Other exemptions by regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2104. Application for and issuance of certificate.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2106. Registrant required to make report of contributions—Time.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2107. Representations as to truth or finding by Commissioner in regard to registration certificate or solicitor card prohibited.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2109. Commissioner may appoint advisory committee—Composition of committee—Secretary.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2110. Promulgation of regulations—Hearing.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 22.—PUBLIC DEFENDER SERVICE

§ 2-2222. Functions and authority of Service—Persons who may be represented—Use of private attorneys—Determination of financial capability of applicant—False information—Penalty.

CROSS REFERENCES

Representation of indigents, generally, see § 11-2601 et seq.

Right to counsel of child alleged to be delinquent or in need of supervision, see § 16-2304.

NOTES TO DECISIONS

Change of venue

With respect to motion for change of venue which was first granted and was then withdrawn by defendant, no error was shown by contention that transfer was made contingent on relinquishment of right to effective counsel, where counsel who was preparing insanity defense was from the legal aid agency and by statute could not follow the case outside the district, and where issue of replacement counsel in transferee district was never raised since defendant insisted on retaining original counsel and accordingly chose to have case remain in District of Columbia, where his chief counsel assured trial court that defendant could get a fair trial. *United States v. B. A. Bryant* (1972, 471 F. 2d 1040, 153 U.S. App. D.C. 72; cert. denied 93 S. Ct. 923, 409 U.S. 1112).

Effective assistance of counsel

If in a collateral attack based on allegations of ineffectiveness of appointed counsel the trial court concludes that a hearing should be held a non-Public Defender Service attorney should be appointed if the original trial was with that agency. *W. J. Angarano v. United States* (D.C. App. 1974, 329 A. 2d 453).

Withdrawal of counsel

If a real conflict of interest exists as to whether alleged ineffectiveness of a Public Defender Service trial attorney may have reached constitutional proportions the PDS may be permitted to withdraw as appellate counsel; however, the PDS is not entitled to carte blanche authority to withdraw from the appellate handling of a case which was tried by another of its attorneys simply by stating that "ethical considerations" are present; a prima facie case of constitutional ineffectiveness must exist before leave to withdraw is granted. *W. J. Angarano v. United States* (D.C. App. 1974, 329 A. 2d 453).

An adequate specific showing that prima facie ineffectiveness exists is required before the District of Columbia Court of Appeals will grant the Public Defender Service leave to withdraw and appoint new counsel to determine whether to assert such an issue in the reviewing court or to seek collateral relief in the trial court. *Id.*

§ 2-2223. Board of Trustees—Appointment—Members—Powers—Term of office—Vacancies—Legal Aid Society Trustees to continue in office—Trustees deemed employees of District for purpose of suit.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2226. Reports by Board of Trustees—Annual audits by certified public accountants.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2227. Appropriations—Grants and contributions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the

District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 23.—BONDING OF HOME IMPROVEMENT BUSINESS

§ 2-2301. Bonding of persons engaged in home improvement business—Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2302. Council may establish classes and subclasses of persons licensed in the home improvement business—Bonds for the protection of the public—Licensees may be required to carry public liability and property damage insurance—Designation of Commissioner by licensees as their attorney for service of process—Terms and conditions of bonds—Aggrieved person may sue on the bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Construction

This chapter is remedial legislation designed for protection of homeowner, and should be broadly construed to effectuate its purpose but cannot be construed to impose liability beyond proofs made at trial. *Bathroom Design Institute et al. v. E. Parker et ano.* (D.C. App. 1974, 317 A.2d 526).

Contracts

Contract between homeowners and contractor which was unlicensed in District of Columbia, for waterproofing basement in the District, was void and unenforceable. *Bathroom Design Institute et al. v. E. Parker et ano.* (D.C. App. 1974, 317 A.2d 526).

Liability of surety

Where contractor unlicensed in District of Columbia received money from homeowners to waterproof basement and failed to perform, contractor was liable for amount received, and surety on performance bond was likewise liable for same amount. *Bathroom Design Institute et al. v. E. Parker et ano.* (D.C. App. 1974, 317 A.2d 526).

Under this section limiting amount of damages recoverable, under this chapter, to damage sustained by reason of an act, transaction or conduct of home improvement contractor in violation of law or regulation in force in the District relating to licensed activity, surety upon performance bond of defendant contractor was not liable for interest paid by householders as result of loan which they themselves obtained from lender. *Id.*

Measure of damages

Work performed by contractor in District of Columbia though contractor was unlicensed in the District was performed in contravention of regulations designed for regulatory purposes in exercise of police power, and there was no equitable basis upon which quasi-contractual recovery could be predicated. *Bathroom Design Institute et al. v. E. Parker et ano.* (D.C. App. 1974, 317 A.2d 526).

§ 2-2304. Penalty for violation of chapter.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2305. Prosecutions to be conducted by Corporation Counsel.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2306. Supplemental authority of Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 24.—SECURITY AGENTS AND BROKERS

§ 2-2413. Civil liabilities.

NOTES TO DECISIONS

Evidence—Sufficiency

Evidence in investor's action under this chapter for securities fraud is insufficient to show that investor, in delivering check payable to foreign corporation, did so in reliance on allegedly false representations by individual defendant. *D. Price et al. v. B. H. Griffin* (D.C. App. 1976, 359 A.2d 582).

Jurisdiction

District Court would decline to exercise pendent jurisdiction over local law claims charging accountants with violation of state securities statutes and reckless or negligent misrepresentation where federal claim against accountants had been dismissed at early stage, before extended discovery and resultant framing of issues. *D. P. Houlihan et al. v. Anderson-Stokes, Inc., et al.* (1977, 434 F. Supp. 1324).

Misrepresentation

Where individual soliciting purchase of stock in foreign corporation agreed with potential investor that any money invested in corporation would be held in escrow pending approval of public offering of stock issue abroad, and that such money would be returned to investor if stock was not issued, investor was entitled to compensatory damages in amount of his investment, plus cost and attorney's fees, when such representations were not honored. *D. Price et al. v. B. H. Griffin* (D.C. App. 1976, 359 A.2d 582).

—Reliance on

Recovery under this chapter should not be allowed on mere showing that representation made by seller of securities was inaccurate if sale was made under circumstances showing that such misrepresentation was not one which caused investor to enter into transaction; accordingly, where complaint under this chapter alleges certain misstatements, in contradistinction to failure to disclose material facts, some element of reliance must be shown to demonstrate that such statements caused injury complained of. *D. Price et al. v. B. H. Griffin* (D.C. App. 1976, 359 A.2d 582).

Punitive damages

Evidence in investor's action in common-law fraud and under this chapter for alleged misrepresentations which led him to invest in corporation does not show special aggravating circumstances of kind necessary to justify verdict for punitive damages. *D. Price et al. v. B. H. Griffin* (D.C. App. 1976, 359 A.2d 582).

Scope of liability

Even though they were not "agents" or "broker-dealers" within meaning of this chapter, individuals are subject to suit under chapter's provisions concerning liability of persons who offer or sell security by means of untrue

statement of material fact. *D. Price et al v. B. H. Griffin* (D.C. App. 1976, 359 A.2d 582).

Statute of limitations

Two-year statute of limitations contained in this section which creates civil cause of action in favor of buyer of securities sold by means of materially false or misleading statement or by means of statements containing material omissions, not the three-year statute of limitations of section 12-301 governing common-law fraud actions, applied to action charging violation of federal statute prohibiting fraudulent interstate transactions in securities and statute prohibiting manipulative and deceptive devices in connection with purchase or sale of registered securities. *Forrestal Village, Inc. v. K. Graham et al.* (1977, 551 F. 2d 411, 179 U.S. App. D.C. 225).

—Tolling

Federal tolling doctrine governing fraudulently concealed causes of action is inapplicable in suit under fed-

eral securities laws against accountants for their alleged misrepresentations and omissions in projections prepared for investment transaction where plaintiffs failed to allege in their complaint that accountants' misrepresentations and omissions were fraudulent or that accountants engaged in intentional effort to conceal cause of action which arose from such misrepresentations and omissions. *D. P. Houlihan et al. v. Anderson-Stokes, Inc., et al.* (1977, 434 F. Supp. 1324).

§ 2-2416. Advisory committee.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 3.—BOARD OF PUBLIC WELFARE

Chap.	Sec.
3. Day Care.....	3-301

Chapter 1.—BOARD OF PUBLIC WELFARE

Sec.

- 3-114. Powers of Mayor over dependent children.
- 3-115. Contracts for care of dependent children—Adoption subsidy payments.
- 3-117. Mayor to care for dependent and neglected children—Children to be placed in private families—Adoption.
- 3-119. Repealed.

§ 3-102. Board of Public Welfare—Creation—Successor to boards abolished—Employees transferred.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3-126.

§ 3-103. Composition of board—Term of office—Eligibility of members—Removal—Service without compensation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-105. Director of Public Welfare—Appointment and duties—Qualifications—Other employees—Compensation.

The Mayor of the District of Columbia, upon the nomination of the Board, is hereby authorized to appoint a Director of Public Welfare, which position is hereby authorized and created, who shall be the chief executive officer of the Board and shall be charged, subject to its general supervision, with the executive and administrative duties provided for in this Act. The Director shall be a person of such training, experience, and capacity as will especially qualify him or her to discharge the duties of the office. The Director of Public Welfare may be discharged by the Mayor of the District of Columbia upon recommendation of the Board. The Mayor of the District of Columbia is authorized, upon the nomination of the Board, to appoint such personnel as may be necessary for the efficient performance of the duties of the Board: *Provided, however*, That all employees of the Board, except the Director, shall be appointed in accordance with and be subject to the provisions of sections 1101-1103, 1105, 1301-1303, 1307, 1308, 2102, 2951, 3302-3306, 3318, 3319, 3321, 3361, 7152, 7321, 7322, and 7352 of title 5, U.S. Code [relating to the classified civil service], and the rules and regulations made in pursuance thereof in the

same manner as members in the classified civil service of the United States, the Mayor of the District of Columbia, however, being authorized in his discretion to give preference to residents of the District of Columbia. The Civil Service Commission is hereby authorized and directed to confer a competitive civil-service status upon those employees performing services for the Board on the effective date of this section who are citizens of the United States and who, within six months after the effective date of this section, are certified by the Mayor, upon recommendation of the Board, (a) as having been appointed from among the highest available eligibles from an appropriate register of the Civil Service Commission or (b) as having rendered active service for the Board prior to the effective date of this section, and who qualify in such appropriate noncompetitive examinations as the Civil Service Commission may prescribe, except that as to employees engaged in work in which the Federal Government shares the expense, the Board of Public Welfare shall prescribe such conditions for eligibility to enter appropriate noncompetitive examinations prescribed by the Civil Service Commission as shall conform to the Federal Acts providing for Federal financial participation and to rules and regulations of the Federal agencies administering such Acts. Any employee of the Board who fails to meet these requirements or who fails to take or pass the noncompetitive examination prescribed by the Commission, or who is not certified by the Mayor, may continue to serve for a period of not more than thirty days after the establishment of appropriate registers. (Mar. 16, 1926, 44 Stat. 209, ch. 58, § 5; Dec. 20, 1941, 55 Stat. 849, ch. 605, § 1.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section is set out in this supplement to correct an error in the translation of the Act of Jan. 16, 1883, appearing in this section in the main edition.

The reference in this section to "sections 1101-1103, 1105, 1301-1303, 1307, 1308, 2102, 2951, 3302-3306, 3318, 3319, 3321, 3361, 7152, 7321, 7322, and 7352 of title 5, U.S. Code [relating to the classified civil service]" was substituted for "an Act entitled 'An Act to regulate and improve the civil service of the United States', approved January 16, 1883, as amended (5 U.S.C. 638 et seq.)" for the same reason stated in the codification note under § 4-103 in the main edition.

§ 3-107. Supervision of personnel of institutions—Appointment and discharge of personnel.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-108. Regulation of admissions to, and administration of institutions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-110. Powers of Board of Charities transferred.

The following powers and duties prior to March 16, 1926, imposed by law upon the Board of Charities shall be vested in the board, and the unexpended balance of all appropriations made for the purpose of discharging such powers and duties shall become available to the board: (a) To provide for the transportation to their respective places of residence of nonresident indigent persons, and to provide for indigent persons, who are legal residents of the District of Columbia, medical care and treatment when necessary, under contracts with such hospitals as are or may be designated by law; (b) to provide for the transportation to their respective places of residence, of nonresident insane persons and to afford hospital care for indigent insane persons who are legal residents of the District of Columbia in such hospital or hospitals as are or may be designated by law; (c) to provide for all other aged, infirm, or needy persons, in the manner authorized by law or by appropriations enacted by the Congress. (Mar. 16, 1926, 44 Stat. 210, ch. 58, § 10; Oct. 1, 1976, D.C. Law 1-87, § 5, 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by striking clause (c); redesignating clause (d) as clause (c); and striking out in clause (d), as redesignated, "including women and children."

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

NOTES TO DECISIONS

Public medical assistance—Adequacy of facilities

Before trial court exercises any authority it may have to order 14-year-old involuntarily committed orphan treated at public expense outside the District of Columbia, on ground that no suitable facilities are available within the District, the District is entitled to reasonable time to attempt to design a program for alternate local care and court is also to consider the public's as well as the patient's interest; public interest requires that a request for commitment of an extraordinary amount of public funds for treatment of a single patient be given closest administrative and judicial scrutiny. *District of Columbia v. In the Matter of H. J. B.* (D.C. App. 1976, 359 A.2d 285).

— Residence

Section 21-551 providing that a person committed to a public hospital but found not to be a resident of the District of Columbia is to be transferred to his state of residence if an appropriate institution in that state is willing to accept him may not be used to bar claim of a newly-arrived resident for medical public assistance since to do so would be unjustifiably discriminatory in violation of Fifth Amendment right to due process; also, resort to section 32-405 providing that all indigent insane per-

sons residing in the District at the time they become insane are entitled to benefits of St. Elizabeths Hospital would also be invalid for such reason. *District of Columbia v. In the Matter of H. J. B.* (D.C. App. 1976, 359 A.2d 285).

In view of fact that custodian of mentally retarded orphan, who has brought to the United States for purpose of adoption, was a District of Columbia corporation, the orphan acquired a colorable claim to District of Columbia "residence" for purpose of medical treatment at public expense once she was placed directly in custody of officials operating from corporation's District of Columbia office absent evidence that transfer from New York office was intended as anything less than an indefinite arrangement for her care or some residue of permanent attachment to another jurisdiction, the District is liable for her care. *Id.*

§ 3-112. Plans for new institutions to be submitted to board—Investigation of institutions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-114. Powers of Mayor over dependent children.

The Mayor of the District of Columbia (hereinafter referred to as the "Mayor") may—

(1) make temporary provision for the care of children pending investigation of their status;

(2) have the care and legal guardianship, including the power to consent to or arrange for adoption in appropriate cases, of—

(A) children who may be committed to the Mayor as wards of the District of Columbia by courts of competent jurisdiction; and

(B) children who are relinquished by their parents to the Mayor or whose relinquishment is transferred to the Mayor by a licensed child-placing agency under section 32-786; and

(3) make such provisions for the care and maintenance of such children in private homes, under contract, including adoption subsidy pursuant to section 3-115, or in public or private institutions, as the welfare of such children may require; and

(4) provide care and maintenance for substantially retarded children who may be received upon application or upon court commitment, in institutions or homes or other facilities equipped to receive them, within or without the District of Columbia.

The Mayor shall cause the wards of the District of Columbia placed out under temporary care to be visited as often as may be required to safeguard their welfare. (Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11; Jan. 2, 1974, Pub. L. 93-241, § 1(a)(1), 87 Stat. 1057.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1973—Act Jan. 2, 1974, Pub. L. 93-241, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 3 of Act Jan. 2, 1974, Pub. L. 93-241, 87 Stat. 1061, provided: "The amendments made by this Act [amending §§ 3-114, 3-115, 3-117, 16-307, 16-309] shall take effect at the end of the ninety-day period beginning on the date of enactment of this Act."

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 3-115. Contracts for care of dependent children—Adoption—Subsidy payments.

(a) Except as provided in subsection (f), the Mayor may conclude arrangements with persons or institutions at such rates as may be agreed upon.

(b) (1) The Mayor may make adoption subsidy payments to an adoptive family (irrespective of the State of residence of the family), as needed, on behalf of a child with special needs, where such child would in all likelihood go without adoption except for the acceptance of the child as a member of the adoptive family, and where the adoptive family has the capability of providing the permanent family relationships needed by such child in all areas except financial, as determined by the Mayor. Subsidy payments may be made under this section only pursuant to a subsidy payment agreement entered into by the Mayor and the adoptive parents concerned prior to completion of the adoptive process, but subsidy payments may be made before such adoption becomes final.

(2) For the purposes of this subsection—

(A) The term "child with special needs" includes any child who is difficult to place in adoption because of age, race, or ethnic background, physical or mental condition, or membership in a sibling group which should be placed together. A child for whom an adoptive placement has not been made within six months after he is legally available for adoptive placement shall be considered a child with special needs within the meaning of this section.

(B) The term "adoptive family" includes single persons.

(c) Any public agency or licensed child-placing agency, having a child with special needs in foster care or institutional care, or any foster parent having such a child in his home may recommend to the Mayor a subsidy for the adoption of such child, and may include in the recommendation advice as to the appropriate level of payments and any other information likely to assist the Mayor in carrying out the provisions of this section. The Mayor shall make the determination as to whether or not an appropriate adoptive home exists for the child, but in so doing the Mayor shall refer to the recommendations of the referring agency. If the Mayor concludes that the child referred is a child with special needs within the meaning of this section, and that an appropriate adoptive home exists for the child, the Mayor is authorized to enter into a tentative adoption subsidy agreement with the prospective adoptive family, and upon entering into such an agreement, the Mayor may accept a transfer of relinquishment of parental rights from the referring agency pursuant to section 32-786.

(d) If a child in the custody of the Mayor or a licensed child-placing agency has been in foster

care or institutional care for at least six months after the child is considered legally available for adoptive placement, the Mayor or agency shall inform the family or institution providing care of the possibility of financial aid for adoption under this section. If the family caring for the prospective adoptee applies to the Mayor for adoption of the child, and if it appears to the Mayor after study that the family would be an appropriate adoptive family for the child but for the family's economic inability to meet the child's needs, the Mayor shall enter into a tentative agreement with the family concerning the amount and duration of a proposed subsidy in the event the child is placed for adoption with that family. Thereafter the Mayor may accept a transfer of relinquishment of parental rights from the referring agency in appropriate cases. The Mayor shall in all cases take all steps necessary to assist the family in completing the legal and procedural requirements necessary to effectuate the adoption, including payment for legal fees and court costs.

(e) The amount and duration of adoption subsidy payments may vary according to the special needs of the child, and may include maintenance costs, medical, dental, and surgical expenses, psychiatric and psychological expenses, and other costs necessary for his care and well-being. A subsidy may be paid on a long-term basis to help a family whose income is limited and is likely to remain so; on a time-limited basis to help a family meet the cost of integrating a child into the family over a specified period of time; or on a special services basis to help a family meet a specific anticipated expense or expenses when no other resource appears to be available. Eligibility for payments shall continue until the child reaches eighteen years of age.

(f) The Mayor is authorized to make payments under this section from appropriations for the care of children in foster homes and institutions, and to seek and accept funds from other sources including Federal, private, and other public funding sources, to carry out the purposes of this section. The amount expended by the Mayor for any subsidy may not exceed the highest amount the Mayor would be authorized to spend in providing or securing support and special services for the child if the child were in the legal custody of the Mayor. There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

(g) No adoption subsidy payment shall be made on behalf of any child with respect to whom an adoption decree has been entered by the Superior Court of the District of Columbia, pursuant to chapter 3 of title 16, prior to April 2, 1974.

(h) Once during each calendar year the Mayor shall review the need for continuing each family's subsidy. At the time of such review and at other times during the year when changed conditions, including variations in medical opinions, prognosis, and costs are deemed by the Mayor to warrant such action, appropriate adjustments in payments shall be made based upon changes in the needs of the child. Any parent who is a party to a subsidy agreement may at any time in writing request, for reasons set forth in the request, a review of the amount of any payment or the level of continuing payments.

Such review shall be begun not later than thirty days from the receipt of the request. Any adjustment may be made retroactive to the date the request was received by the Mayor. If the request is not acted on within thirty days after it has been received by the Mayor, or if the Mayor modifies or terminates an agreement without the concurrence of all parties, any party to the agreement shall be entitled to a hearing under the applicable provisions of the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501—1-1510).

(i) The Mayor shall keep such records as are necessary to evaluate the effectiveness of adoption subsidy as a means of encouraging and promoting the adoption of children with special needs. The Mayor shall make an annual progress report which shall be open to public inspection. The report shall include, but not be limited to—

(1) the number of children placed in adoptive homes under subsidy agreements during the year preceding the annual report and the major characteristics of the children placed; and

(2) the number of children currently in foster care with the Mayor for six months or more, and the legal status of those children.

The Mayor shall disseminate information to prospective adoptive families as to the availability of adoptable children and of the existence of aid to families who qualify for a subsidy under this section.

(j) All rules and regulations adopted by the Mayor pursuant to sections 3-115 to 3-118 shall be published in the District of Columbia Register as required by section 6 of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1505). (July 26, 1892, 27 Stat. 269, ch. 250, § 3; Jan. 2, 1974, Pub. L. 93-241, § 1(a) (2), 87 Stat. 1058.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

In subsec. (g), "April 2, 1974" was substituted for "the effective date of this section" on authority of sec. 3 of Act Jan. 2, 1974, which provided the section take effect at the end of the ninety-day period beginning on the date of enactment of the Act.

AMENDMENT

1974—Act Jan. 2, 1974, Pub. L. 93-241, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 3-114.

CROSS REFERENCE

Age of majority, see § 21-101 note.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3-114, 3-117, 16-307, 16-309.

§ 3-116. Children over whom Board shall have supervision.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon, Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 3-117. Mayor to care for dependent and neglected children—Children to be placed in private families—Adoption.

The Mayor may—

(1) accept for care, custody, and guardianship dependent or neglected children whose custody or parental control has been transferred to the Mayor, and to provide for the care and support of such children during their minority or during the term of their commitment, including the initiation of adoption proceedings and the provision of subsidy in appropriate cases under section 3-115;

(2) with respect to all children accepted by him for care, place them in private families either without expense or with reimbursement for the cost of care, or in appropriate cases to place them in private families under an adoption subsidy agreement concluded under section 3-115 or to place them in institutions willing to receive them either without expense or with reimbursement for the cost of care; and

(3) consent to, arrange for or initiate court proceedings for the adoption of all children committed to the care of the Mayor whose parents have been permanently deprived of custody by court order, or whose parents have relinquished a child to the Mayor or to a licensed child-placing agency which has transferred the relinquishment to the Mayor under section 32-786.

(July 26, 1892, 27 Stat. 269, ch. 250, § 5; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11; Jan. 12, 1942, 55 Stat. 883, ch. 649, § 3; Jan. 2, 1974, Pub. L. 93-241, § 1(b), 87 Stat. 1060.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1974—Act Jan. 2, 1974, Pub. L. 93-241, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 3-114.

CROSS REFERENCE

Age of majority, see § 21-101 note.

NOTES TO DECISIONS

Parental rights—Termination

The Superior Court exceeded its statutory grant of rule-making power by enacting procedural rule which abridged substantive right of a parent, i.e., rule permitting permanent severance of parent-child relationship in a nonadoption proceeding. *In the Matter of C. A. P.* (D.C. App. 1976, 356 A.2d 335).

Superior Court's *parens patriae* power is insufficient authority for its enactment of rule permitting termination of parental rights in nonadoption proceedings. *Id.*

Court of Appeals' holding that Superior Court's adoption of rule permitting termination of parental rights based on neglect was in excess of its statutory authority

would be given prospective application only. *In the Matter of C. A. P.* (D.C. App. 1976, 359 A. 2d 11).

§ 3-118. Antecedents of children to be investigated—Records confidential—Physical and mental care.

CROSS REFERENCE

Age of majority, see § 21-101 note.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3-115.

§ 3-119. Repealed. June 28, 1977, D.C. Law 2-12, § 6(b), 24 DCR 1442.

Section, Acts May 18, 1910, 36 Stat. 409, ch. 248; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11, authorized the Board of Public Welfare to accept voluntary aid. For general authority to accept volunteer services, see §§ 1-215a et seq.

EFFECTIVE DATE OF REPEAL

See section 9 of act June 28, 1977, D.C. Law 2-12, set out as a note under § 1-215a.

§ 3-123. Annual budgets—Report of activities—Studies of social conditions—Children to be placed with regard to religious faith of parents—Record if placed elsewhere—Religious freedom.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 3-126. Additional duties of Board.

The Board of Public Welfare of the District of Columbia established by section 3-102, shall, in addition to the other duties and responsibilities imposed upon it by law, have the following duties and responsibilities:

* * * * *

(2) To safeguard the welfare of children born out of wedlock, by providing services for their mothers and fathers and in caring for and in obtaining support for such children;

* * * * *

(As amended Oct. 1, 1976, D.C. Law 1-87, § 6, 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended clause (2) by inserting "fathers and" after "mothers and".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 3-127. Assisting child to leave institution without authority—Penalty.

CROSS REFERENCE

Age of majority, see § 21-101 note.

Chapter 2.—PUBLIC ASSISTANCE

Sec.

3-210. Redetermination of grants—Limitation of benefits under General Public Assistance program for unemployables—Application for extension of benefits.

3-213a. Same; Indigents and wards of the District.

3-215. Public assistance not assignable.

3-221. Repealed.

§ 3-201. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SHORT TITLE

The first section of act June 15, 1977, D.C. Law 2-10, provided "That this act [amending § 3-210] may be cited as the 'General Public Assistance for Unemployables (G-U) Benefits Limitation Act of 1977'."

DEFINITION OF CERTAIN TERMS RELATING TO INCAPACITY AND DISABILITY

Act Apr. 7, 1977, D.C. Law 1-108, 23 DCR 8738, provided: "That this act may be cited as the 'District of Columbia Public Assistance Regulation Revising the Definition of Certain Terms of the Financial and Medical Assistance Programs'."

"SEC. 2. For the purpose of determining coverage and conditions of eligibility of applicants and recipients in financial and medical assistance programs of the District of Columbia, the Mayor shall apply the following definitions relating to incapacity and disability with respect to parents and other adults who are otherwise eligible for assistance under such programs:

"(a) Physical or mental incapacity.

"(1) For the Aid to Families with Dependent Children program, physical or mental incapacity shall be deemed to exist when one parent has a physical or mental defect, illness, or impairment. The incapacity shall be supported by competent medical testimony and must be of such a debilitating nature as to reduce substantially or eliminate the parent's ability to support or care for an otherwise eligible child and be expected to last for a period of at least thirty days.

"(2) For the General Public Assistance program, physical or mental incapacity shall be deemed to exist when the applicant or recipient has a physical or mental defect, illness, or impairment. The incapacity shall be supported by competent medical testimony and must be of such a debilitating nature as to reduce substantially or eliminate the ability of the applicant or recipient to care for or support himself and be expected to last for a period of at least thirty days.

"(3) In making the determination of ability to support, the Mayor shall take into account the limited employment opportunities of handicapped individuals.

"(4) A finding of eligibility for Old Age, Survivors, and Disability Insurance or Supplemental Security Income benefits, based on disability or blindness, shall be deemed acceptable proof of incapacity for purposes of the Aid to Families with Dependent Children or General Public Assistance Programs.

"(b) Disability. An individual shall be deemed to be disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.

"SEC. 2. Regulation No. 72-4, approved February 26, 1972, is hereby repealed.

"SEC. 3. This act shall become effective as provided by section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147 (c)]."

For temporary provisions relating to the definition of certain terms for the purposes of financial and medical assistance programs prior to the enactment of act Apr. 7, 1977, D.C. Law 1-108, see sec. 2 of the Second Emergency District of Columbia Public Assistance Regulation Revising the Definition of Certain Terms of the Financial and Medical Assistance Programs (D.C. Act 2-2, Jan. 31, 1977, 23 DCR 6868), sec. 2 of the District of Columbia Public Assistance Regulation Revising the Definition of Certain

Terms of the Financial and Medical Assistance Programs (D.C. Act 1-190, Jan. 3, 1977, 23 DCR 4945), and sec. 2 of the Emergency District of Columbia Public Assistance Regulation Revising the Definition of Certain Terms of the Financial and Medical Assistance Programs (D.C. Act 1-168, Nov. 2, 1976, 23 DCR 3210).

NOTES TO DECISIONS

Needy persons

Directive in statute that public assistance "shall be awarded to or on behalf of any needy individual" simply means that assistance is to be given any needy individual eligible under one of the five categories established by the statute, not that any and every needy individual is entitled to public assistance. *H. E. Staley v. District of Columbia Department of Human Resources* (D.C. App. 1973, 310 A. 2d 842).

§ 3-202. Categories and administration of public assistance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Aid to families with dependent children

District of Columbia Department of Human Resources regulation concerning determination of income for purpose of computing aid to families with dependent children and stating that all income must be actually available to the applicant or recipient for his current use cannot be interpreted as covering only income available for current use, particularly in view of other regulations stating that voluntary deductions for future benefits are not to be excluded from gross income. *T. Harris et ano. v. District of Columbia Department of Human Resources* (D.C. App. 1973, 304 A. 2d 868).

Reductions in income of AFDC recipients, which in one case was caused by garnishment of wages because of a default judgment against recipient who signed note as an accommodation maker and which in the other case resulted from recipient's voluntary assignment of wages to repay debt owed to credit union, were the result of recipients' voluntary acts of incurring the debts and were not mandatory deductions for purpose of determining the entitlement of recipients of AFDC benefits. *Id.*

Windfall regulations concerning computation of AFDC benefits involved extraordinary happening such as overpayments, legacies, settlement of lawsuits, etc., and not earned income, and such regulations are not applicable where applicants' voluntary actions result in reduction of regular income. *Id.*

General public assistance

District of Columbia, charged with the difficult responsibility of allocating limited welfare funds among the myriad of potential recipients, was authorized, if not compelled, to limit eligibility under public assistance statute's "General Public Assistance" category to a particular class of needy persons, namely, those unable to work because of a physical or mental disability expected to be of short duration. *H. E. Staley v. District of Columbia Department of Human Resources* (D.C. App. 1973, 310 A. 2d 842).

Judicial review—Court costs

Length of delay in implementing retroactive payment order of Commissioner of Department of Human Resources justifies an assessment of costs in form of a \$25 filing fee against administrative officers in their official capacity once petition in nature of mandamus to compel agency action was dismissed as moot after officers tardily performed requested action. *B. Dillard et ano. v. J. P. Yeldell et al.* (D.C. App. 1975, 334 A. 2d 578).

Needy persons

Directive in statute that public assistance "shall be awarded to or on behalf of any needy individual" simply means that assistance is to be given any needy individual eligible under one of the five categories established by the statute, not that any and every needy individual is en-

titled to public assistance. *H. E. Staley v. District of Columbia Department of Human Resources* (D.C. App. 1973, 310 A. 2d 842).

§ 3-203. Eligibility for public assistance.

CONDITIONS OF ELIGIBILITY FOR APPLICANTS AND RECIPIENTS OF AID; REPEAL OF REGULATIONS

Act Mar. 29, 1977, D.C. Law 1-92, 23 DCR 9532b, provided: "That this act may be cited as the 'District of Columbia Paternity and Child Support Amendments Act'.

"Sec. 2. As a condition of eligibility, each applicant for or recipient of aid, including each child under the Aid to Families with Dependent Children, Emergency Assistance, or AFDC Foster Assistance programs operated pursuant to Title IV-A of the Social Security Act [42 U.S.C. 601 et seq.] shall be required to:

"(a) Furnish to the Director of the Department of Human Resources a social security account number, or to apply for a social security number if such a number has not been issued or is not known, and

"(b) Assign to the District of Columbia any support rights, including accrued support rights from any other person that such applicant or recipient may have in his own behalf, or in behalf of any other family member from whom the applicant or recipient is applying for or receiving aid.

"Sec. 3. As a condition of eligibility for assistance under the programs specified in section 2 of this act, each applicant for, or recipient of assistance shall be required to cooperate with the District of Columbia in—

"(a) identifying and locating the parent of a child with respect to whom aid is claimed;

"(b) establishing the paternity of a child born out of wedlock with respect to whom aid is claimed;

"(c) obtaining support payments for such applicant, recipient, or child with respect to whom aid is claimed; and

"(d) obtaining any other payment or property due such applicant, recipient, or such child.

"Sec. 4. An applicant for or recipient of aid shall be required to comply with the requirements of section 3 of this act, unless such applicant or recipient is found to have good cause for refusing to so cooperate as determined by the Director of the Department of Human Resources, in accordance with standards prescribed by the Secretary of Health, Education and Welfare, and which standards shall take into consideration the best interests of the child on whose behalf aid is claimed.

"Sec. 5. If any relative with whom a child is living fails to comply with the conditions of eligibility set out in sections 2 and 3 of this act, such relative will be denied eligibility without regard to other eligibility factors.

"Sec. 6. If the relative with whom a child is living is found to be ineligible for assistance because of failure to comply with the conditions of sections 2 and 3 of this act, any aid for which such child is eligible (determined without regard to the needs of the ineligible relative) will be provided in the form of protective or vendor payments.

"Sec. 7. Section 4 of Regulation No. 70-29, approved July 9, 1970, and Section 2 of Regulation 71-2, approved January 14, 1971, are hereby repealed.

"Sec. 8. This act shall take effect in accordance with the provisions of Section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act. [§ 1-147(c)]."

For prior temporary provisions, similar to those of act Mar. 29, 1977, D.C. Law 1-92, see the Emergency District of Columbia Paternity and Child Support Amendments Act (D.C. Act 1-136, January 25, 1976, 23 DCR 149); the Second Emergency District of Columbia Paternity and Child Support Amendments Act (D.C. Act 1-155, Oct. 5, 1976, 23 DCR 2572); and the Third Emergency District of Columbia Paternity and Child Support Amendments Act (D.C. Act 1-191, Jan. 4, 1977, 23 DCR 4948).

§ 3-204. Amount of public assistance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AVAILABILITY OF APPROPRIATIONS

Section 109 of title I of the District of Columbia Appropriation Act, 1977 (Oct. 1, 1976, Pub. L. 94-446, 90 Stat. 1494) provided:

"Appropriations in this title shall be available for the payment of public assistance without reference to the requirement of subsection (b) of section 5 of the District of Columbia Public Assistance Act of 1962 [§ 3-204(b)] and for the non-Federal share of funds necessary to qualify for Federal assistance under the Act of July 31, 1968 (Public Law 90-445)."

Similar provisions were contained in the following prior appropriation acts:

1976—June 30, 1976, Pub. L. 94-333, § 8, 90 Stat. 791.
 1975—Aug. 31, 1974, Pub. L. 93-405, § 8, 88 Stat. 827.
 1974—Aug. 14, 1973, Pub. L. 93-91, § 11, 87 Stat. 310.
 1973—July 10, 1972, Pub. L. 92-344, § 12, 86 Stat. 455.
 1972—Dec. 18, 1971, Pub. L. 92-202, § 14, 85 Stat. 687.
 1971—July 19, 1970, Pub. L. 91-339, § 15, 84 Stat. 437.
 1970—Dec. 24, 1969, Pub. L. 91-155, § 17, 83 Stat. 433.

NOTES TO DECISIONS

Administrative procedure

Petitioner had a "fair hearing" on its petition challenging validity of Council regulation reducing and, in some cases, terminating payments in form of aid to families with dependent children to those recipients without outside income and resources to extent that Department of Human Resources ruled that it lacked authority to invalidate regulation. *L. Archer et al. v. District of Columbia Dept. of Human Resources* (D.C. App. 1977, 375 A.2d 523).

Regulations—Validity

Department of Human Resources has no power to invalidate a regulation which had been enacted by the Council and which operated to reduce and, in some cases, to terminate payments in form of aid to families with dependent children to those recipients with outside income and resources. *L. Archer et al. v. District of Columbia Dept. of Human Resources* (D.C. App. 1977, 375 A.2d 523).

Though regulation of the Council reducing and, in some cases, terminating payments in form of general public assistance and aid to families with dependent children to those recipients with outside income and resources was invalid for failure of Council to meet notice requirements, upon enactment of remedial legislation, petitioners, who accepted remedial legislation and made no further claims stemming from new law even though reduced payments were same as under invalidated regulation, are not entitled to retroactive, supplemental payments encompassing period between effective date of invalidated regulation and effective date of remedial law. *Id.*

§ 3-205. Application for public assistance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-206. Investigation of applicant—Public assistance identification card—Check distribution—Penalty.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-207. Award and payment of public assistance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-208. Recipient incapacitated.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-209. Emergency public assistance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Moot claim

Claim of petitioner, who filed application for emergency assistance to cover her past-due rent the day after she received eviction notice but who was evicted some four days later before any definitive action could be taken on her application by Department of Human Resources, for past-due rent is moot. *M. Barber v. District of Columbia Department of Human Resources* (D.C. App. 1976, 361 A.2d 194).

Moving expenses

Where practical considerations justified Department of Human Resources limiting payment for moving expenses to only "the contract mover" and warranted restriction for storage fees to instances where family entered family emergency shelter, Department's interpretation of regulation authorizing Department to administer program of emergency assistance is entitled to due deference and thus petitioner, who did not utilize contract mover nor enter family emergency shelter and whose claim for emergency assistance in any event covered period in excess of 30-day statutory limitation, is not entitled to emergency assistance. *M. Barber v. District of Columbia Department of Human Resources* (D.C. App. 1976, 361 A.2d 194).

§ 3-210. Redetermination of grants—Limitation of benefits under General Public Assistance program for unemployables—Application for extension of benefits.

(a) All public assistance grants made under this chapter shall be reconsidered by the Mayor as frequently as he may deem necessary, but in every case the Mayor shall make such reconsiderations at least once in each year. After such further investigation as the Mayor may deem necessary, the amount of public assistance may be changed, or may be entirely withdrawn, if the Mayor finds that any such grant has been made erroneously, or if he finds that the recipient's circumstances have altered sufficiently to warrant such action. If at any time during the continuance of public assistance the recipient thereof becomes possessed of income or resources in excess of the amount previously reported by him, or if other changes should occur in the circumstances previously reported by him which would alter either his need or his eligibility, it shall

be his duty to notify the Mayor of such fact immediately on the receipt or possession of such additional income or resources, or on the change of circumstances.

(b) The period of payment of public assistance grants under the General Public Assistance program for unemployables (G-U) shall be limited to such period of incapacity as may be determined by the Mayor. Within any twelve month period, no such payment shall be made to any applicant or recipient of general public assistance for a period in excess of six months for the same incapacity unless the grant is reviewed as the result of a reapplication by the applicant or recipient as provided in subsection (c) of this section.

(c) Any person whose public assistance payment has been terminated because of the provisions of subsection (b) and who, because of a continuing inability to work due to a physical or mental incapacity, continues to require such assistance may reapply for an extension of the period of the payment of such general public assistance. Sixty days prior to termination of the period of eligibility the Mayor shall notify the client in writing advising him to submit a new medical report and to request continuation of assistance within 30 days of the date that the notice is mailed (postmarked), if he believes he is still eligible for assistance. No client who submits to the Mayor the request for continuation of assistance within the 30 days of the date his notice is mailed (postmarked) shall have his assistance terminated unless his case has been reviewed by the Mayor and he has been found ineligible.

(d) For the purposes of this section, General Public Assistance for Unemployables covers adult individuals and adult couples without children who are not eligible for the Federal Supplemental Security Income program but whose earning power is temporarily diminished because of a physical or mental incapacity. (Oct. 15, 1962, 76 Stat. 916, Pub. L. 87-807, § 11; June 15, 1977, D.C. Law 2-10, § 2(a), 24 DCR 1216.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1977—Act June 15, 1977, D.C. Law 2-10, amended section by designating prior provisions as subsec. (a) and adding subsecs. (b) to (d).

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of section, see sec. 2(a) of the Third Emergency General Public Assistance for Unemployables (G-U) Benefits Limitation Act (D.C. Act 2-14, Mar. 28, 1977, 23 DCR 8175).

1976—For temporary amendment of section, see sec. 2 of the General Public Assistance Benefits Limitation Emergency Act (D.C. Act 1-153, Sept. 30, 1976, 23 DCR 2568) and the Second Emergency General Public Assistance for Unemployables (G-U) Benefits Limitation Act (D.C. Act 1-188, Dec. 29, 1976, 23 DCR 4939).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 3 of act June 15, 1977, D.C. Law 2-10, provided: "This act [amending § 3-210] shall be effective at the end of the period provided in section 602(c) of the District of Columbia Self-Government and Governmen-

tal Reorganization Act for Congressional review of acts of the Council of the District of Columbia [§ 1-147(c)]."

§ 3-211. Records.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-213. Funeral expenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-213a. Same; Indigents and wards of the District.

(a) The Mayor of the District of Columbia is hereby authorized, pursuant to regulations prescribed by the Council of the District of Columbia, to provide for the payment of reasonable funeral and burial expenses of indigent residents of the District of Columbia and of persons under the care and custody of the District of Columbia government institutions.

(b) Nothing in this section shall be construed as repealing or in any way modifying any provision of chapter 2 of title 2, sections 27-129 through 27-131, or this chapter. (Oct. 26, 1973, Pub. L. 93-140, § 3, 87 Stat. 504.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was not enacted as a part of the District of Columbia Public Assistance Act of 1962 (Oct. 15, 1962, Pub. L. 87-807) which comprises this chapter.

APPROPRIATIONS

See note under § 1-226a.

CROSS REFERENCE

Dead bodies for burial at public expense, notice, removal, see § 2-202.

§ 3-214. Hearings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Fair hearing

Petitioner had a "fair hearing" on its petition challenging validity of Council regulation reducing and, in some cases, terminating payments in form of aid to families with dependent children to those recipients without outside income and resources to extent that Department of Human Resources ruled that it lacked authority to invalidate regulation. *L. Archer et al. v. District of Columbia Dept. of Human Resources* (D.C. App. 1977, 375 A.2d 523).

§ 3-215. Public assistance not assignable.

Public assistance awarded under this chapter shall not be transferable or assignable at law or in equity, and none of the money paid or payable to any recipient under this chapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. (Oct. 15, 1962, 76 Stat. 917, Pub. L. 87-807, § 16; Dec. 15, 1971, Pub. L. 92-196, title VII, § 704, 85 Stat. 656; May 22, 1975, D.C. Law 1-5, § 1, 21 DCR 3949.)

AMENDMENT

1975—Act May 22, 1975, D.C. Law 1-5, struck out "(a)" at the beginning of the first paragraph, and repealed subsecs. (b)-(g) relating to rent allotment to lessors.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 2 of Act May 22, 1975, D.C. Law 1-5, provided: "The amendments [to § 3-215] made by this act shall be effective with respect to monthly public assistance grants for and after the month following the month in which this act is enacted."

§ 3-216. Fraud in obtaining public assistance—Repayment.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-217. Property—District's claim against estate of recipient.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

Section 1353 of title 42, U.S. Code, referred to in subsec. (c), was repealed effective Jan. 1, 1974 (except with respect to Puerto Rico, Guam, and the Virgin Islands) by Act Oct. 30, 1972, Pub. L. 92-603, title III, § 303 (a), (b), 86 Stat. 1484.

§ 3-218. Responsible relatives.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS**Burden of proof**

Where wife had deserted the marital abode burden is on District, in action by District of Columbia to recover from husband public assistance payments made by District for support of wife, to rebut presumption of wrongful desertion by establishing either that separation was by mutual consent, that separation was the fault of husband, or that wife was insane at time of separation. *G. D. Randolph, Jr. v. District of Columbia* (D.C. App. 1975, 333 A. 2d 380).

Construction

Congress intended that common-law equitable defenses to liability for support of one's spouse be incorporated into this section imposing obligation to pay for public assistance received by spouse. *G. D. Randolph, Jr. v. District of Columbia* (D.C. App. 1975, 333 A. 2d 380).

Evidence

In action by District of Columbia against husband seeking reimbursement of public assistance payments made by District for support of wife, evidence that husband's duty to support his wife had been eradicated by wife's adultery and unjustifiable desertion from husband prior to her commitment in mental hospital is admissible. *G. D. Randolph, Jr. v. District of Columbia* (D.C. App. 1975, 333 A. 2d 380).

Jurisdiction

Where District Court ordered wife committed to mental hospital, jurisdiction over any claim for contribution to her support remained in District Court while she was confined in hospital, but after she was released and placed in foster home, claim for contribution to her support is to be brought in Superior Court. *G. D. Randolph, Jr. v. District of Columbia* (D.C. App. 1975, 333 A. 2d 380).

§ 3-220. Delegation of authority.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-221. Repealed. June 28, 1977, D.C. Law 2-12, § 6(h), 24 DCR 1442.

Section, Act Oct. 15, 1962, 76 Stat. 919, Pub. L. 87-807, § 22, authorized the Mayor to accept voluntary services in administering this chapter. For general authority to accept volunteer services, see §§ 1-215a et seq.

EFFECTIVE DATE OF REPEAL

See section 9 of act June 28, 1977, D.C. Law 2-12, set out as a note under § 1-215a.

§ 3-222. Appropriations.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 3.—DAY CARE**Sec.**

- 3-301. Definitions.
- 3-302. Day care program authorized.
- 3-303. Payment of full cost by Department.
- 3-304. Supplemental payments by Department.
- 3-305. Schedule of payments by parents.
- 3-306. Liability of Department for payments by parents.
- 3-307. Payments by Department to child development center or home during child's absence.
- 3-308. Payments by Department for in-home day care limited to days services are rendered.
- 3-309. Recovery of overpayments.
- 3-310. Waiver of overpayments.
- 3-311. Payments by parents for child development center programs funded by Department—Use—Amount.
- 3-312. Schedule of payments by Department on per child basis.
- 3-313. Licensed child development facilities to be used.
- 3-314. Standards for in-home care.
- 3-315. Compliance with Federal and District regulations.
- 3-316. Monitoring day care services.

§ 3-301. Definitions.

As used in this chapter the term—

(a) "Child" means an individual between the ages of birth and fifteen years.

(b) "Child Development Home" means a child development facility as defined in section 103(5) of Regulation No. 74-34 (Child Development Facilities

Regulation), except that for purposes of this chapter, a child development home shall also include care given to a child by a caregiver related to that child pursuant to section 201(a) of Regulation No. 74-34.

(c) "Department" means the District of Columbia Department of Human Resources. (Apr. 26, 1977, D.C. Law 1-131, § 2, 23 DCR 9925.)

EMERGENCY ACT AMENDMENTS

1977—For temporary provisions relating to day care services prior to the enactment of this chapter, see the Emergency Day Care Policy Act (D.C. Act 1-192, Jan. 4, 1977, 23 DCR 4970) and the Second Emergency Day Care Policy Act (D.C. Act 2-26, Apr. 4, 1977, 23 DCR 8210).

EFFECTIVE DATE

Section 19 of act Apr. 26, 1977, D.C. Law 1-131, provided: "This act [enacting this chapter] shall be effective at the end of the period provided for Congressional review of acts of the Council of the District of Columbia in subsection (c) of section 602 of the District of Columbia Self-Government and Governmental Reorganization Act. [§ 1-147(c)]."

SHORT TITLE

The first section of act Apr. 26, 1977, D.C. Law 1-131, provided "That this act [enacting this chapter] may be cited as the 'Day Care Policy Act'."

REPEAL OF REGULATIONS BY D.C. LAW 1-131

Section 18 of act Apr. 26, 1977, D.C. Law 1-131, provided: "Regulations No. 69-9, No. 71-1, and No. 74-23, approved February 7, 1969, January 5, 1971, and August 29, 1974, respectively, are hereby repealed."

§ 3-302. Day care program authorized.

The Department is hereby authorized to provide a broad program of day care services for children of parents referred or approved by the Department for various training and work incentive programs, for children of other parents known to the Department where day care appears to be in the child's best interest, and for children of low-income families, otherwise unknown to the Department, where the parents are employed outside the home. (Apr. 26, 1977, D.C. Law 1-131, § 3, 23 DCR 9925.)

§ 3-303. Payment of full cost by Department.

The Department is hereby authorized to pay the full cost of day care for children identified through the following circumstances:

(a) Children of AFDC mothers referred to, enrolled in, and participating in the Work Incentive Program (WIN).

(b) Children of AFDC mothers in other goal oriented training programs; such programs being identified as those which include services of a job placement officer, social worker, counselor, or other special staff member who offers support and help in job finding and employment adjustment.

(c) Children of AFDC mothers who have completed training—for the first three months following placement in full time employment.

(d) Children of AFDC fathers or AFDC children who are living with caretaker relatives whose requirements are included in the public assistance grant and who are in training for employment.

(e) Children of AFDC mothers who are mentally retarded or who have a history of mental illness when day care is deemed to be in the child's best interest.

(f) Children of AFDC parents who are receiving extended treatment because of physical or mental problems, and day care is recommended by the treating facility.

(g) Children of AFDC mothers who are attending high school, until the mother receives a high school diploma or drops out of school. In the case of high school graduates, day care shall be continued for three months after graduation occurs.

(h) Children of unwed mothers who live with one or both parents or another caretaker relative, if the parent or parents or other caretaker relative either refuses to give care to the child or is unable to do so—until the mother receives a high school diploma, or reaches the age of 18, or drops out of school.

(i) Children who are approved for AFDC and live with caretaker relatives (not parents), and children approved for General Public Assistance and live with unrelated caretakers, when day care is required due to employment of the caretaker.

(j) Children of unemployed parents who are receiving vocational rehabilitation services, when day care is needed to allow them to engage in an established vocational rehabilitation program. (Apr. 26, 1977, D.C. Law 1-131, § 4, 23 DCR 9925.)

§ 3-304. Supplemental payments by Department.

The Department is hereby authorized to supplement the payment for day care services by parents (paid directly to a child development center, child development home, or to an in-home caregiver according to a daily fee scale), whose gross annual income does not exceed the limits specified in the fee scale for the designated family size in section 3-305, under the following circumstances:

(a) Children of AFDC parents placed in employment through the Work Incentive Program (WIN) or other goal oriented training programs—after completion of three months of such employment.

(b) Children of other single parents (in single parent households) when day care is needed due to the parent's employment.

(c) Children of working parents whose income is limited and the provision of day care services will enable the family to remain together.

(d) Children receiving child social services, if the children are not in foster care placement and day care seems to be in the child's best interest.

(e) Children of parents who are receiving extended treatment due to physical or mental problems and day care is recommended by the treating facility.

(f) Children of employed parents who are receiving vocational rehabilitation services, when day care is needed to allow them to engage in an established vocational rehabilitation program. (Apr. 26, 1977, D.C. Law 1-131, § 5, 23 DCR 9925.)

§ 3-305. Schedule of payments by parents.

The scale for day care fees to be paid by parents shall be based on the following criteria:

(a) The daily rate of pay by parents, for children in day care, shall be based on family size, the

family's gross income as compared to median income specified by federal determination for services under Title XX of the Social Security Act [42 U.S.C. 1397 et seq.], and a graduated percentage of costs of care as specified through payment rates shown in section 3-312.

(b) Day care shall be provided free for otherwise eligible children whose family's gross income is less than 50 percent of the median income, adjusted to family size, for the District of Columbia.

(c) Eligibility for subsidized care through the Department shall cease when the family's gross income, adjusted to family size, is greater than 85 percent of the specified median income.

(d) Parents shall pay a percentage of costs for each child in day care, on a graduated scale, as their gross income increases from 50 to 85 percent of the specified median income. The percentages for the five graduated increments shall be 4, 8, 12, 16 and 20 percent of the appropriate payment rates specified in section 3-312, as shown in chart below.

Parent payment:	When family income is:
Free -----	50% of median income
4% of cost-----	57% of median income
8% of cost-----	64% of median income
12% of cost-----	71% of median income
16% of cost-----	78% of median income
20% of cost-----	85% of median income

Parent payment:	When family income is:
Free -----	50% of median income
4% of cost-----	57% of median income
8% of cost-----	64% of median income
12% of cost-----	71% of median income
16% of cost-----	78% of median income
20% of cost-----	85% of median income

(Apr. 26, 1977, D.C. Law 1-131, § 6, 23 DCR 9925.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3-304, 3-311.

§ 3-306. Liability of Department for payments by parents.

The Department shall not be liable for payment of that part of the day care fee which the parent agrees to pay the child development center, child development home, or in-home caregiver, even though the parent fails to pay the facility or in-home caregiver according to agreement. (Apr. 26, 1977, D.C. Law 1-131, § 7, 23 DCR 9925.)

§ 3-307. Payments by Department to child development center or home during child's absence.

The Department shall be responsible for its part of the payment of day care fees to a child development center or a child development home, after admission of a particular child, for up to 15 consecutive days for that child when absence is caused by illness of the child or a change in the parent's training status, provided the child is in regular attendance and the parent remains eligible or a space is being reserved. (Apr. 26, 1977, D.C. Law 1-131, § 8, 23 DCR 9925.)

§ 3-308. Payments by Department for in-home day care limited to days services are rendered.

The Department shall be responsible for its part of the payment of day care fees to an in-home caregiver only for those days when the in-home caregiver is present in the mother's home and rendering services as agreed. (Apr. 26, 1977, D.C. Law 1-131, § 9, 23 DCR 9925.)

§ 3-309. Recovery of overpayments.

An overpayment by the Department to a child development center, child development home, or to an in-home caregiver who is continuing to provide day care services shall be collectible in any amount. (Apr. 26, 1977, D.C. Law 1-131, § 10, 23 DCR 9925.)

§ 3-310. Waiver of overpayments.

The collection of an overpayment of not more than \$25.00 may be waived for child development centers, child development homes, or in-home caregivers who are no longer providing day care services for the Department. (Apr. 26, 1977, D.C. Law 1-131, § 11, 23 DCR 9925.)

§ 3-311. Payments by parents for child development center programs funded by Department—Use—Amount.

For those child development centers where special programs are developed to meet the community needs and with which contracts are negotiated to cover full funding or seventy-five (75) percent of funding, the Department's contribution shall not be reduced by the amount of planned payments by parents. These payments shall be used to enhance center programs. Such payment by parents shall be based on the daily rates for slot-funded programs and the day care fee scale set forth in section 3-305.

In the event the total of the planned parental payments which are actually received in any fiscal year by any center plus the Department's reimbursement to that center for costs for that fiscal year exceed the total budget of that center as negotiated with and approved by the Department for that fiscal year, that center shall pay the amount of the excess to the Department and, should it fail to do so, the Department is expressly authorized, in addition to any other remedies it may have, to hold back the amount of that excess from any reimbursement to be made to that center in the next fiscal year. (Apr. 26, 1977, D.C. Law 1-131, § 12, 23 DCR 9925.)

§ 3-312. Schedule of payments by Department on per child basis.

Payments to child development centers (slot-funded), where contracts call for payment per child placed, to child development homes, or to in-home caregivers shall be made according to the following rates, effective October 1, 1976:

(a) Full Day Care

(1) Child Development Homes—\$4.50 per day per child.

(2) Child Development Centers—\$8.00 per day per child, with \$1.00 added when transportation is provided.

(3) In-Home Care—

(A) For care during the day, \$2.75 per child per day.

(B) For care during night hours, \$3.50 per child per night.

(b) Part-time Care

(1) Child Development Homes—\$3.00 per day per child for before and after school care.

(2) Child Development Centers—\$4.00 per day per child for before and after school care.

(3) In-Home Care—

(A) Before and after school care, \$1.75 per child per day.

(B) For night care of less than six hours, \$2.00 per child per night.

(Apr. 26, 1977, D.C. Law 1-131, § 13, 23 DCR 9925.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3-305.

§ 3-313. Licensed child development facilities to be used.

Only licensed child development facilities shall be used by the Department when day care is arranged in other than the child's own home or in homes of relatives within the degree specified by licensing requirements. (Apr. 26, 1977, D.C. Law 1-131, § 14, 23 DCR 9925.)

§ 3-314. Standards for in-home care.

Guidelines and standards for in-home care are set forth as follows:

(a) In-home care within the child's own home, by an in-home caregiver, shall be used only when other day care plans are not feasible and in-home care offers greater benefits to the mother or other responsible relative and the child.

(b) In-home care may be provided, as appropriate and available, for children of eligible persons in training and during their subsequent employment, and for AFDC children living with caretaker relatives (not parents) when day or night care is required due to employment of the caretaker relative.

(c) In-home care shall be arranged by mutual agreement between the child's own mother or caretaker relative, the in-home caregiver, and the Department.

(d) Selection of the in-home caregiver shall be made by the parent, subject to final approval by the Department.

(e) The Department shall make direct payments to the in-home caregiver for services rendered.

(f) The in-home caregiver shall be of an age between 21 and 70 years.

(g) The in-home caregiver shall furnish the Department with the same medical certification of good health as that required for licensed caregivers pur-

suant to section 403(h) of Regulation No. 74-34 (Child Development Facilities Regulation). Further, the in-home caregiver shall furnish the Department with medical certification of good health for any child of her own whom she brings to the home of the mother or caretaker relative.

(h) Duties of the in-home caregiver shall be limited to supervision of the child or children in her care, preparation and serving of appropriate meals or snacks, and washing of dishes and utensils used in the preparation of food.

(i) The in-home caregiver shall have no more than two preschool children of her own.

(j) The in-home caregiver shall not care for children other than her own and the child or children of the AFDC mother or caretaker relative.

(k) If the in-home caregiver brings her own children to the home of the AFDC mother or caretaker relative, an agreement shall be reached between them as to the amount of food she brings for their needs.

(l) The in-home caregiver shall have prior experience in child care, either with her own children or siblings. (Apr. 26, 1977, D.C. Law 1-131, § 15, 23 DCR 9925.)

§ 3-315. Compliance with Federal and District regulations.

(a) Any child development center or child development home that contracts or agrees with the Department to provide day care shall comply with all applicable provisions of Regulation No. 74-34 (Child Development Facilities Regulation).

(b) Child development facilities contracting or agreeing with the Department to provide day care, which are included in the programs for Federal reimbursement, shall comply with all applicable Federal regulations and requirements. (Apr. 26, 1977, D.C. Law 1-131, § 16, 23 DCR 9925.)

§ 3-316. Monitoring day care services.

The Department shall be responsible for monitoring the provision of day care services to assure that adequate services are provided to the children and that contractual and other agreements are met. (Apr. 26, 1977, D.C. Law 1-131, § 17, 23 DCR 9925.)

TITLE 4.—POLICE AND FIRE DEPARTMENTS

Chap.	Sec.
5. Police and Firefighters Retirement and Disability	4-501

Chapter 1.—METROPOLITAN POLICE

Sec.	
4-101a. Federal control of Metropolitan Police in emergencies.	
4-116 to 4-118. Repealed.	
4-188. Funds for the prevention and detection of crime.	
4-189. Attendance at pistol matches.	

§ 4-101. Metropolitan Police district created.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Demonstrations, assemblages, and marches relating to Federal Government, reimbursement of costs incurred by District, see § 1-827.

Metropolitan police assistance to U.S. Secret Service and Executive Protective Service, see § 1-826.

NOTES TO DECISIONS

Capitol grounds

Evidence that metropolitan police department is under general duty to enforce laws of the United States within the District, that there is a Capitol police force with special obligation to patrol Capitol grounds, that the Capitol police force is staffed by members of the metropolitan police department, that Chief of the metropolitan police had furnished members of the metropolitan police force for purpose of keeping order during demonstrations, and that the Capitol police force was under the direction of United States officials demonstrates that District of Columbia could be held liable for unlawful arrests of demonstrators despite contention that the Chief had become, at the time of the arrests, a borrowed servant of the United States. *R. V. Dellums et al. v. J. M. Powell, Chief etc.* (1977, 566 F. 2d 216, 184 U.S. App. D.C. —).

Discrimination in services provided

In claim that District of Columbia had discriminated in provision of municipal services, since any prior inequality in police services had been remedied by political and administrative machinery in the District of Columbia, it was presently neither desirable nor proper for District Court to act in regard to police services. *M. Burner et al. v. W. E. Washington et al.* (1975, 399 F. Supp. 44).

Injunctions

Where evidence showed no clear pattern of police harassment likely to be continued and where in light of administrative directive concerning vendors' licensing statute it did not appear likely that police would continue to attempt to prevent underground newspaper vendors from selling newspapers from stacks upon sidewalk, injunctive relief was properly refused. *Washington Free Community, Inc., et al. v. J. V. Wilson, Chief of Police, et al.* (1973, 484 F. 2d 1078, 157 U.S. App. D.C. 360; aff'g 334 F. Supp. 77).

Police line

Since District of Columbia police line regulation deals only with extraordinary or emergency occasions in which substantial factors of unpredictability exist, the regulation's definition of the scope of police discretion in functional terms is reasonable and meticulous specificity is not

required; regulation is not unconstitutionally vague for failure to set out the "mechanics" of the police line, such as geographic area, number of officers deployed, means of maintaining a line against assault, how long the line is to be maintained and how to announce to the public initiation of a line. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1977, 566 F. 2d 107, 184 U.S. App. D.C. —)

Although one who has violated no law is not to be arrested for the offenses of those who have been violent or obstructive, the police may validly order violent or obstructive demonstrators to disperse or clear the streets and if any demonstrator or bystander refuses to obey such an order after fair notice and opportunity to comply, his arrest does not violate the Constitution even though he has not previously been violent or obstructive; nonviolent demonstrators may be properly arrested for failure to obey a valid dispersal order. *Id.*

Even assuming that religious group had agreed to limit peaceful prayer vigil near White House to 100 persons with full cognizance of import of such agreement, breach of such agreement was not sufficient cause for the establishment of a police line for alleged purpose of protecting persons or property from dangerous propensities of "outsiders" who had joined the vigil. *L. Tatum et al. v. R. C. B. Morton et al.* (1974, 402 F. Supp. 719; rem'd 562 F. 2d 1279, 183 U.S. App. D.C. 331).

—Damages

District Court, in awarding damages to persons unlawfully arrested while participating in peaceful Quaker vigil of prayer on White House sidewalk in 1971, erred in limiting recoverable damages on grounds that plaintiffs had sought notoriety by participating in demonstration and that some plaintiffs had chosen not to post \$10 collateral when they were given opportunity to do so in order to procure their release. *L. Tatum et al. v. R. C. B. Morton et al.* (1977, 562 F. 2d 1279, 183 U.S. App. D.C. 331; rem'g 402 F. Supp. 719).

District Court acted properly in denying punitive damages to persons who were unlawfully arrested while participating in peaceful Quaker vigil of prayer on White House sidewalk in 1971 as part of protest against government's war policies in Vietnam. *Id.*

§ 4-101a. Federal control of Metropolitan Police in emergencies.

(a) Notwithstanding any other provision of law, whenever the President of the United States determines that special conditions of an emergency nature exist which require the use of the Metropolitan Police force for Federal purposes, he may direct the Mayor to provide him, and the Mayor shall provide, such services of the Metropolitan Police force as the President may deem necessary and appropriate. In no case, however, shall such services made available pursuant to any such direction under this subsection extend for a period in excess of forty-eight hours unless the President has, prior to the expiration of such period, notified the Chairman and ranking minority Members of the Committees on the District of Columbia of the Senate and the House of Representatives, in writing, as to the reason for such direction and the period of time during which the need for such services is likely to continue.

(b) Subject to the provisions of subsection (c) of this section, such services made available in accord-

ance with subsection (a) of this section shall terminate upon the end of such emergency, the expiration of a period of thirty days following the date on which such services are first made available, or the adoption of a resolution by either the Senate or the House of Representatives providing for such termination, whichever first occurs.

(c) Notwithstanding the foregoing provisions of this section, in any case in which such services are made available in accordance with the provisions of subsection (a) of this section during any period of an adjournment of the Congress sine die, such services shall terminate upon the end of the emergency, the expiration of the thirty-day period following the date on which Congress first convenes following such adjournment, or the adoption of a resolution by either the Senate or the House of Representatives providing for such termination, whichever first occurs.

(d) Except to the extent provided for in subsection (c) of this section, no such services made available pursuant to the direction of the President pursuant to subsection (a) of this section shall extend for any period in excess of thirty days, unless the Senate and the House of Representatives approve a concurrent resolution authorizing such an extension. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 740, 87 Stat. 830.)

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

CROSS REFERENCES

Demonstrations, assemblages, and marches relating to Federal Government, reimbursement of costs incurred by District, see § 1-827.

Metropolitan police assistance to U.S. Secret Service and Executive Protective Service, see § 1-826.

§ 4-102. Police districts and precincts to be established by Council.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-103. Appointments—Civil service rules made applicable—Classification.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Discrimination

Positive relationship between test of verbal skill administered applicants for employment as police officers to training course performance is sufficient to validate the test, wholly aside from its possible relationship to actual

performance as a police officer. *W. E. Washington, etc., et al. v. A. E. Davis et al.* (1976, 96 S. Ct. 2040, 426 U.S. 229; rev'g 512 F.2d 956, 168. US. App. D.C. 42).

The disproportionate impact on Negroes of written test of verbal skill administered to applicants for employment as police officers does not warrant the conclusion that the test, which is neutral on its face, is a purposely discriminatory device. *Id.*

The affirmative efforts of Police Department to recruit black officers, the changing racial composition of the recruit classes and of the force in general, and the relationship of written test of verbal skill to the training program negates any inference that the Department discriminated on the basis of race notwithstanding the disproportionate impact of the test on Negro applicants. *Id.*

While claim raised against Police Department, namely, that test given in connection with promotion from patrolman to sergeant operated to discriminate against blacks, was not governed by equal employment provision of Civil Rights Act until Act was amended, Court would look to Act and decisions construing it for guidance as to constitutional constraints on a public employer. *A. E. Davis et al. v. W. E. Washington et al.* (1972, 352 F. Supp. 187).

Where there was a poorer statistical showing of blacks than whites who passed multiple-choice critical-incident test of judgment and supervisory competence used in connection with promotion from patrolman to sergeant in police department, prima facie case of discrimination was established, and burden then shifted to government employer to justify test by establishing that it was job related. *Id.*

Where, within multiple-choice critical-incident test of judgment and supervisory competence given in connection with promotion from patrolman to sergeant, judgmental questions portrayed by critical incidents chosen by most informed and expert members of police department and reviewed by another panel of police and testing experts without a doubt comprised a suitable sample of behaviors and skills extremely relevant to job of police sergeant, test was job related and constitutionally acceptable by current professional standards consistent with guidelines of Equal Employment Opportunity Commission. *Id.*

§ 4-104. Oath of office.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-105. Service during probationary period—Discharge for unsatisfactory service—Retention equivalent to permanent appointment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Burden of proof

Officials bear burden of a factual demonstration that discharged District of Columbia probationary police officer's statements detrimentally affected his efficiency as a police officer or the police department's efficiency as a police force. *J. R. Tygrett v. W. E. Washington, Commissioner, etc.* (1974, 543 F. 2d 840, 177 U.S. App. D.C. 355; rev'g 346 F. Supp. 1247).

First Amendment rights

First Amendment free speech clause cannot be laid aside simply on basis that speaker is penalized not for his speech but for a state of mind manifested thereby. *J. R. Tygrett v. W. E. Washington, Commissioner, etc.* (1974, 543 F. 2d 840, 177 U.S. App. D.C. 355; rev'g 346 F. Supp. 1247).

District of Columbia probationary policeman is bound to a high standard of accountability for comments made to fellow officers or to public, but he cannot be banished from the force on a basis that infringes his constitutionally protected interests, especially his interest in freedom of speech. *Id.*

Review

Premises upon which the validity of an administrative order is to be decided are only those upon which the agency predicated its action, and court is not at liberty to furnish an alternative, unstated ground to support an agency's decision if that ground is one that the agency alone is authorized to make. *J. R. Tygrett v. W. E. Washington, Commissioner, etc.* (1974, 543 F. 2d 840, 177 U.S. App. D.C. 355; rev'g 346 F. Supp. 1247).

Unsatisfactory conduct

Discharge of District of Columbia probationary policeman can be justified only by a specific finding that officer's statements in question adversely affected his efficiency as a police officer or the efficiency of the police department as a police force. *J. R. Tygrett v. W. E. Washington, Commissioner, etc.* (1974, 543 F. 2d 840, 177 U.S. App. D.C. 355; rev'g 346 F. Supp. 1247).

§ 4-106. Classification of officers and privates of police department—Duties of each.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Administration of firearms control provisions by Chief of Police, see §§ 6-1801 et seq.

§ 4-106a. Assistant to inspector commanding detective bureau—Rank and pay—Chief of detectives—Rank and pay.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-107. Age limits on original appointments.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-108a. Allowance for use of private motor vehicles by inspectors.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-110. Detail of privates for detective work.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-112. Crossing policemen—Detail—Penalty for failure to stop cars.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-115. Special policemen—Appointment and compensation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Arrest powers of special officer

Evidence in false imprisonment action by former store employee against his former employer shows, as matter of law, that employer had probable cause to detain employee for investigation as to possible discrepancies in employee's department. *Lansburgh's, Inc. v. S. Ruffin* (D.C. App. 1977, 372 A.2d 561).

Special policeman's power of arrest is sole factor which distinguishes holder of special police commission from private citizen. *United States v. R. N. McDougald* (D.C. App. 1976, 350 A.2d 375).

Nongovernmental action

Mere regulatory licensing of security guards by District of Columbia for private employment does not implicate District in actions of such security guards so as to make all their actions governmental actions for purposes of determining whether civil rights have been violated. *United States v. R. N. McDougald* (D.C. App. 1976, 350 A.2d 375).

It is not violation of due process rights of defendant charged with shoplifting and receiving stolen goods for officer of complaining supermarket to order subordinate security police not to discuss case with defendant's counsel unless United States attorney was present. *Id.*

§§ 4-116 to 4-118. Repealed. Oct. 1, 1976, D.C. Law 1-87, § 7, 23 DCR 2544.

Sections 4-116 to 4-118, Act July 23, 1888, 25 Stat. 340, ch. 694.

Section 4-116 authorized the appointment of three police matrons.

Section 4-117 provided for duties of police matrons.

Section 4-118 required a woman to have 10 recommendations for appointment as police matron.

§ 4-119. Duties of Commissioner as head of police department.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Federal control of Metropolitan Police in emergencies, see § 4-101a.

NOTES TO DECISIONS

Constitutionality of police regulations

Police regulation requiring a permit from chief of police in order to deliver any speech in a public space in the District is unconstitutional, as violative of First Amendment rights, since it fails to provide objective and definite standards to guide the licensing authority. *A. Shifrin et al. v. J. Wilson et al.* (1976, 412 F. Supp. 1282).

Immunity—Public officials

An arresting officer can be held liable when acting under a statute which has not been declared unconstitutional if it is found that he or she should have anticipated that statute could not pass constitutional muster. *A. Shifrin et al. v. J. Wilson et al.* (1976, 412 F. Supp. 1282).

Although under District of Columbia common-law principles a distinction is made between discretionary and ministerial acts of public officials and immunity is provided in cases involving the former, the common-law immunity is not available in cases arising under the Civil Rights Act or cases arising under the Constitution itself. *Id.*

Although police chief, who allegedly was aware of dubious constitutionality of police regulation requiring a permit to give a speech in a public place and who was sought to be held liable for violations of plaintiff's constitutional rights in connection with his arrest for speaking without a permit, is not entitled to invoke a common-law immunity, he is entitled to a "good faith-reasonableness" qualified immunity. *Id.*

Injunction

Request for declaratory and injunctive relief as regards police regulation requiring a permit to deliver a speech in a public place is not rendered moot following police chief's distribution of circular instructing police officers not to enforce the regulation since the regulation remained available to several other law enforcement agencies authorized to enforce local police regulations; furthermore, one plaintiff's damage claim was contingent on a finding that the regulation is unconstitutional. *A. Shifrin et al. v. J. Wilson et al.* (1976, 412 F. Supp. 1282).

§ 4-120. Police jurisdiction to extend to public buildings and grounds.**NOTES TO DECISIONS****Capitol grounds**

Evidence that metropolitan police department is under general duty to enforce laws of the United States within the District, that there is a Capitol police force with special obligation to patrol Capitol grounds, that the Capitol police force is staffed by members of the metropolitan police department, that Chief of the metropolitan police had furnished members of the metropolitan police force for purpose of keeping order during demonstrations, and that the Capitol police force was under the direction of United States officials demonstrates that District of Columbia could be held liable for unlawful arrests of demonstrators despite contention that the Chief had become, at the time of the arrests, a borrowed servant of the United States. *R. V. Dellums et al. v. J. M. Powell, Chief etc.* (1977, 566 F. 2d 216, 184 U.S. App. D.C. —).

§ 4-121. Rules and regulations—Fine, suspension, or dismissal of police—Charges to be heard by trial board.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS**Grooming standards**

Standards of appearance for uniformed police officers set forth in challenged departmental order prescribing standards of hair lengths were amply supported not only because "uniformly applied to a class of employees for a reasonable business purpose" but also because a policy which would permit patrolmen to let their hair and whiskers grow wild would present a danger to the public and, thus, order is excluded from Human Rights Law prohibiting discrimination on basis of personal appearance. *M. A. Marshall v. District Unemployment Compensation Board* (D.C. App. 1977, 377 A. 2d 429).

Police department grooming regulations promoted a substantial governmental interest (projection of an image facilitating effective functioning of the police department necessary to insure the safety and security of

citizens) which outweighed plaintiff officer's interest in maintaining his hair and beard as his religious beliefs dictated, and said regulations did not unconstitutionally infringe on plaintiff's free exercise rights under the First Amendment. *M. A. Marshall v. District of Columbia et al.* (1975, 392 F. Supp. 1012; aff'd 559 F. 2d 726, 182 U.S. App. D.C. 105).

Judicial review

Compelling police department to hire and assign plaintiff as an undercover agent, so that he would not have to comply with department grooming regulations, would constitute an undue interference by the court in the internal administration of the department. *M. A. Marshall v. District of Columbia et al.* (1975, 392 F. Supp. 1012; aff'd 559 F. 2d 726, — U.S. App. D.C. —).

§ 4-122. Trial board—Appointment—Hearings—Findings—Appeals—Existing rules and regulations ratified.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-123. Commissioner and major and superintendent of police may administer oaths.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-124. Police surgeons—Qualifications—Duties.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-125. Affiliation with organizations advocating strikes, prohibited—Penalties—Conspiracy to interfere with operation of police force—Right of resignation restricted.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS**Constitutionality**

This section which prohibits District of Columbia police officers from engaging in fundamentally protected activity, that is from advocating, asserting or simply entertaining thoughts of achieving the right to strike against the District of Columbia, significantly infringed upon rights guaranteed a public employee by the First Amendment which were not counterbalanced by a compelling state interest. *Police Officers' Guild, National Union of Police Officers, AFL-CIO, et al. v. W. E. Washington, Mayor Commissioner etc., et al.* (1973, 369 F. Supp. 543).

Courts

Claim of plaintiff union and others that this section preventing policemen of the District of Columbia from affiliating with organizations which advocate strikes violated rights of free speech and association clearly "arises under the Constitution" within meaning of jurisdictional statute. *Police Officers' Guild, National Union of Police*

Officers, AFL-CIO, et al. v. W. E. Washington, Mayor Commissioner etc., et al. (1973, 369 F. Supp. 543).

Three-judge court statute was properly invoked where complaints of plaintiffs formally alleged the basis for and specifically requested preliminary and permanent injunctive relief against enforcement of this section prohibiting members of police department of the District of Columbia from affiliating with organizations which advocate strikes, where a substantial constitutional question was raised, and where this section was an "Act of Congress" within meaning of three-judge court statute. *Id.*

First Amendment rights

First Amendment free speech clause cannot be laid aside simply on basis that speaker is penalized not for his speech but for a state of mind manifested thereby. *J. R. Tygrett v. W. E. Washington, Commissioner, etc.* (1974, 543 F. 2d 840, 177 U.S. App. D.C. 355; rev'g 346 F. Supp. 1247).

District of Columbia probationary policeman is bound to a high standard of accountability for comments made to fellow officers or to public, but he cannot be banished from the force on a basis that infringes his constitutionally protected interests, especially his interest in freedom of speech. *Id.*

Injunctions

District of Columbia would not be enjoined from enforcing unconstitutional statute prohibiting District of Columbia police officers from associating with groups which advocate strikes, where there was no indication that decision of three-judge district court would be ignored by the District of Columbia or by any other of the defendants, so that entry of a declaratory judgment would be a fully sufficient remedy. *Police Officers' Guild, National Union of Police Officers, AFL-CIO, et al. v. W. E. Washington, Mayor Commissioner etc., et al.* (1973, 369 F. Supp. 543).

§ 4-126. Police to respect and obey major and superintendent.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-127. Major and superintendent to make quarterly reports.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-129. Rewards, presents, fee, or emoluments to police officers—Notice to Commissioner—Penalty for failure to give notice.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Apprehension of prison fugitives and of conditional release and parole violators, payment of rewards prohibited, see § 24-426.

§ 4-130. Clothing to be uniform.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Grooming standards

Standards of appearance for uniformed police officers set forth in challenged departmental order prescribing standards of hair lengths were amply supported not only because "uniformly applied to a class of employees for a reasonable business purpose" but also because a policy which would permit patrolmen to let their hair and whiskers grow wild would present a danger to the public and, thus, order is excluded from Human Rights Law prohibiting discrimination on basis of personal appearance. *M. A. Marshall v. District Unemployment Compensation Board* (D.C. App. 1977, 377 A. 2d 429).

Police department grooming regulations promoted a substantial governmental interest (projection of an image facilitating effective functioning of the police department necessary to insure the safety and security of citizens) which outweighed plaintiff officer's interest in maintaining his hair and beard as his religious beliefs dictated, and said regulations did not unconstitutionally infringe on plaintiff's free exercise rights under the First Amendment. *M. A. Marshall v. District of Columbia et al.* (1975, 392 F.Supp. 1012; aff'd 559 F.2d 726, 182 U.S. App. D.C. 105).

Judicial review

Compelling police department to hire and assign plaintiff as an undercover agent, so that he would not have to comply with department grooming regulations, would constitute an undue interference by the court in the internal administration of the department. *M. A. Marshall v. District of Columbia et al.* (1975, 392 F.Supp. 1012; aff'd 559 F. 2d 726, 182 U.S. App. D.C. 105).

§ 4-131. Appropriations for clothing.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-132a. Residence requirements of members of Police Force and Fire Department.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-133. Appointment of special police without pay.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-134. Records—General complaint files—Lost, missing, or stolen property—Personnel records of police.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Arrest records—Amplification

In cases where an arrest is mistaken and lack of culpability has affirmatively been shown, appropriate remedy is not to destroy or seal record, but to clarify such record by a notation reflecting fact that no grounds of culpability existed, and in respect to records already disseminated, such records need not be returned, provided that suitable exculpatory explanations are sent to all persons or agencies in possession of them. *District of Columbia v. J. Sophia* (D.C. App. 1973, 306 A.2d 652).

— Expungement

Persons who were unlawfully arrested while participating in peaceful Quaker vigil of prayer on White House sidewalk in 1971 are entitled to full expungement of their arrest records, including entry of court order declaring that the seizures should be deemed not to have been "arrests." *L. Tatum et al. v. R. C. B. Morton et al.* (1977, 562 F.2d 1279, 183 U.S. App. D.C. 331; rem'g 402 F. Supp. 719).

On failure of showing of probable cause for arrests, in action to declare certain acts with respect to arrests and prosecutions unconstitutional and to enjoin further prosecutions in connection with disorderly conduct type offenses related to antiwar demonstrations in District of Columbia during week of May 3, 1971, defendant officials were ordered to convey to counsel for plaintiffs for destruction all specified records that would in any way relate, inform or reflect that any member of class had been arrested or charged with an offense from and including May 3 through May 6, 1971, and it was ordered that seizures of members of class from and including May 3, 1971, through May 6, 1971, would be deemed to have been "detention" rather than "arrests." *N. Sullivan et al. v. C. F. Murphy et al.* (1974, 380 F. Supp. 867).

Arrestees' action against District of Columbia police officials to compel expungement of records of arrest during civil disorders was ripe for determination where all prosecutions arising from the disorders had terminated, any danger of embarrassment or interference from judgments possibly inconsistent with those of the District of Columbia courts was obviated and a clear-cut federal controversy existed. *N. Sullivan et al. v. C. F. Murphy, Corporation Counsel, et al.* (1973, 478 F.2d 938, 156 U.S. App. D.C. 28; cert. denied 94 S. Ct. 162, 414 U.S. 880).

Where arrests made during May, 1971, civil disorders were presumptively invalid because usual arrest procedures were not followed, arrest records, consisting in part of photographs and fingerprints taken of arrestees while they were being held in detention, would be ordered expunged. *Id.*

Police personnel files

In proceeding in which accused were charged with assault on three police officers, granting of accused's discovery requests, under rule providing for disclosure of documents material to preparation of the defense, for disclosure of certain documents, within officers' personnel records, on theory that accused, who did not assert that reputation of any officer for violence was known to accused at time of alleged assault, would be permitted at trial to introduce the documents as evidence of violence by officers to prove that they were of violent character and likely to have been the first aggressors was error. *United States v. W. Akers, Sr. et ano.* (D.C. App. 1977, 374 A.2d 874).

Trial court properly sustained motion to quash defendant's subpoena of police personnel files of two officers involved in incident which gave rise to prosecution for carrying pistol without license, assault with dangerous weapon, and negligent homicide, where defense counsel was unable to proffer any reason to believe that material indicating prior violent acts on the part of the officers or tending to show that one officer had motive for perjury would be found in the personnel files. *N. L. Cooper v. United States* (D.C. App. 1975, 353 A.2d 696).

In view of fact that "general complaint file" required to be open to public inspection does not contain citizen complaints of police misconduct, but rather reports reflecting complaints of criminal offenses, provision of section 4-135 pertaining to general complaint files did not entitle defendant to inspect any "general complaints" against police officers, in prosecution arising from exchange of gunfire between officer and defendant, though

such material might be susceptible to production by traditional subpoena. *Id.*

Police records

Where evidence in action for injunction prohibiting arbitrary use by police of computer system containing records of outstanding warrants and traffic tickets, for declaratory judgment that police regulations permitting use of system were unconstitutional and for compensatory and punitive damages arising out of alleged misuse of computer system revealed that check through computer revealed that plaintiffs had outstanding warrants against them, that plaintiffs without protest paid amounts assessed for outstanding warrants and that plaintiffs who were arrested because of warrants did not suffer any physical injury or lengthy deprivation, allegations of misconduct on part of police were not so serious as to warrant claim for more than \$10,000; thus, federal court did not have jurisdiction. *R. A. Boraks et ano. v. J. V. Wilson et al.* (1974, 383 F. Supp. 195).

Preservation of records

Metropolitan police department and not Superior Court must be charged with safekeeping of records with respect to which a clarification has been made by a notation reflecting fact that arrest was mistaken and that no grounds of culpability existed. *District of Columbia v. J. Sophia* (D.C. App. 1973, 306 A.2d 652).

§ 4-134a. Central criminal records.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Arrest records—Amplification

In cases where an arrest is mistaken and lack of culpability has affirmatively been shown, appropriate remedy is not to destroy or seal record, but to clarify such record by a notation reflecting fact that no grounds of culpability existed, and in respect to records already disseminated, such records need not be returned, provided that suitable exculpatory explanations are sent to all persons or agencies in possession of them. *District of Columbia v. J. Sophia* (D.C. App. 1973, 306 A.2d 652).

— Distribution

Substantial bundle of constitutional rights, including those of due process, privacy and presumption of innocence, may be unnecessarily infringed by police authorities' practice of routinely distributing preconviction or postexoneration arrest records, including not only fingerprints but also data identifying person arrested and information concerning details and surrounding circumstances of arrest, to Federal Bureau of Investigation for nationwide redistribution for both law enforcement and employment and licensing purposes. *J. E. Utz et al. v. M. Cullinane* (1975, 520 F.2d 467, 172 U.S. App. D.C. 67).

"Duncan Ordinance" prohibited practice of metropolitan police department of routinely disseminating to Federal Bureau of Investigation, whether before conviction or after exoneration or both, arrest records which included not only arrestees' fingerprints but also data identifying persons arrested and information concerning details and surrounding circumstances of arrests, at least as long as FBI continued to redisseminate that data for other than law enforcement purposes and particularly for purposes of employment and licensing. *Id.*

Police report as notice

Police report, which set forth the circumstances surrounding plaintiff's arrest for unlawful entry and carrying a dangerous weapon, was not notice of an injury to person or damage to property for purposes of Code provision [§ 12-309] prohibiting maintenance of an action against the District of Columbia for unliquidated damages to person or property unless, within six months after the injury or damage, claimant has given written notice to the District of Columbia Commissioner of the approxi-

mate time, place, cause, and circumstances of the injury or damage. *H. E. Brown v. District of Columbia* (D.C. App. 1973, 304 A. 2d 292).

Preservation of records

Metropolitan police department and not Superior Court must be charged with safekeeping of records with respect to which a clarification has been made by a notation reflecting fact that arrest was mistaken and that no ground of culpability existed. *District of Columbia v. J. Sophia* (D.C. App. 1973, 306 A. 2d 652).

§ 4-134b. Reports by independent police.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-135. Records open to public inspection.

NOTES TO DECISIONS

Police personnel files

Trial court properly sustained motion to quash defendant's subpoena of police personnel files of two officers involved in incident which gave rise to prosecution for carrying pistol without license, assault with dangerous weapon, and negligent homicide, where defense counsel was unable to proffer any reason to believe that material indicating prior violent acts on the part of the officers or tending to show that one officer had motive for perjury would be found in the personnel files. *N. L. Cooper v. United States* (D.C. App. 1975, 353 A.2d 696).

In view of fact that "general complaint file" required to be open to public inspection does not contain citizen complaints of police misconduct, but rather reports reflecting complaints of criminal offenses, provision of this section pertaining to general complaint files did not entitle defendant to inspect any "general complaints" against police officers, in prosecution arising from exchange of gunfire between officer and defendant, though such material might be susceptible to production by traditional subpoena. *Id.*

§ 4-136. Police to have power of constables.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-137. Preservation and destruction of records.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Arrest records—Expungement

On failure of showing of probable cause for arrests, in action to declare certain acts with respect to arrests and prosecutions unconstitutional and to enjoin further prosecutions in connection with disorderly conduct type offenses related to antiwar demonstrations in District of Columbia during week of May 3, 1971, defendant officials were ordered to convey to counsel for plaintiffs for destruction all specified records that would in any way relate, inform or reflect that any member of class had been arrested or charged with an offense from and including May 3 through May 6, 1971, and it was ordered that seizures of members of class from and including May 3, 1971, through May 6, 1971, would be deemed to have been

"detentions" rather than "arrests." *N. Sullivan et al. v. C. F. Murphy et al.* (1974, 380 F. Supp. 867).

Arrestees' action against District of Columbia police officials to compel expungement of records of arrest during civil disorders was ripe for determination where all prosecutions arising from the disorders had terminated, any danger of embarrassment or interference from judgments possibly inconsistent with those of the District of Columbia courts was obviated and a clear-cut federal controversy existed. *N. Sullivan et al. v. C. F. Murphy, Corporation Counsel, et al.* (1973, 478 F. 2d 938, 156 U.S. App. D.C. 28; cert. denied 94 S. Ct. 162, 414 U.S. 880).

Decision of the District of Columbia Court of Appeals that in view of statute which requires Washington police records to be preserved, courts sitting in the District of Columbia lack jurisdiction to order the expungement of police records was not binding upon the United States Court of Appeals for the District of Columbia circuit in action to redress violation of constitutional rights. *Id.*

Statute which provides that Washington police records must be preserved did not preclude the federal courts from giving relief, to persons in the District of Columbia deprived of constitutional rights, that would be available to persons in the various states from the appropriate federal courts of those districts and did not preclude expungement of arrest records. *Id.*

Where arrests made during May, 1971, civil disorders were presumptively invalid because usual arrest procedures were not followed, arrest records, consisting in part of photographs and fingerprints taken of arrestees while they were being held in detention, would be ordered expunged. *Id.*

Construction

Fact that statute which requires Washington police records to be preserved was enacted by Congress rather than by state legislature was not controlling on issue of applicability of the "Erie" doctrine with respect to District of Columbia Court of Appeals decision interpreting the statute. *N. Sullivan et al. v. C. F. Murphy, Corporation Counsel, et al.* (1973, 478 F. 2d 938, 156 U.S. App. D.C. 28; cert. denied 94 S. Ct. 162, 414 U.S. 880).

Preservation of records

Metropolitan police department and not Superior Court must be charged with safekeeping of records with respect to which a clarification has been made by a notation reflecting fact that arrest was mistaken and that no grounds of culpability existed. *District of Columbia v. J. Sophia* (D.C. App. 1973, 306 A. 2d 652).

§ 4-139. Discriminating laws not to be enforced.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-140a. Investigative arrests—Maximum period for questioning—Admissibility of confessions.

NOTES TO DECISIONS

Class actions

Person cannot represent class of which he is not a member; accordingly, plaintiff who was not subjected to police procedures under this section relating to interrogation of arrested persons or under statute relating to admissibility of prearrest statements could not assert class action on behalf of class that had been subject of police action based upon such statutes. *C. D. Long v. District of Columbia et al.* (1972, 469 F. 2d 927, 152 U.S. App. D.C. 187).

Stop and frisk

"Stop and frisk" which did not result in arrest or prosecution had no connection with this section relating to interrogation of arrested persons nor with statute relating to admissibility of prearrest confessions sufficient to raise issue of constitutionality of such statute so as to require convention of three-judge district court. *C. D. Long v. District of Columbia et al.* (1972, 469 F. 2d 927, 152 U.S. App. D.C. 187).

§ 4-142. Information and return after arrest.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-143a. Legal assistance for police in wrongful arrest cases.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS**Malicious prosecution**

Since involvement of Chief of Metropolitan Police in arrest of demonstrators at the United States Capitol was limited to participation in the arrest decision and did not include meeting with United States attorneys at time that decision was made to file informations against the arrestees, Chief could not be held liable for malicious prosecution. *R. V. Dellums et al. v. J. M. Powell, Chief etc.* (1977, 566 F. 2d 216, 184 U.S. App. D.C. —).

Wrongful arrest

Evidence that Chief of Metropolitan Police retained operational control over his police at scene of demonstrations on steps of United States Capitol and could have withdrawn them if he thought that arrest of demonstrators was unjustified was sufficient to impose liability on the Chief of Police for false arrest and violation of First Amendment rights of the demonstrators even though the order to make arrest was given by chief of the Capitol Police. *R. V. Dellums et al. v. J. M. Powell, Chief etc.* (1977, 566 F. 2d 216, 184 U.S. App. D.C. —).

District of Columbia police inspector is individually liable for unlawful and unreasonable arrests of members of religious group, who were conducting peaceful prayer vigil near White House, where inspector had established police lines due to claimed danger of property damage and personal injury created by influx of "outsiders" into the vigil lines, but there was no evidence to suggest possibility of violence or property damage at scene of the vigil other than simple fact that "outsiders" who joined vigil had same appearance as persons who were present at monument grounds when "unknown" persons destroyed property. *L. Tatum et al. v. R. C. B. Morton et al.* (1974, 402 F.Supp 719; rem'd 562 F.2d 1279, 183 U.S. App. D.C. 331).

—Damages

District Court, in awarding damages to persons unlawfully arrested while participating in peaceful Quaker vigil of prayer on White House sidewalk in 1971, erred in limiting recoverable damages on grounds that plaintiffs had sought notoriety by participating in demonstration and that some plaintiffs had chosen not to post \$10 collateral when they were given opportunity to do so in order to procure their release. *L. Tatum et al. v. R. C. B. Morton et al.* (1977, 562 F. 2d 1279, 183 U.S. App. D.C. 331; rem'g 402 F. Supp. 719).

District Court acted properly in denying punitive damages to persons who were unlawfully arrested while participating in peaceful Quaker vigil of prayer on White House sidewalk in 1971 as part of protest against government's war policies in Vietnam. *Id.*

§ 4-144. Detention of witnesses.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-145. Authority for search and arrest in cases of gaming-houses, bawdy-houses, and deposit or sale of lottery tickets.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-147. Supervisory power over certain classes of business.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-148. Examination of books and premises of certain establishments.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-155. Property clerk may administer oaths.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-156. Return of property by property clerk—Two or more claimants—Liability of property clerk—Property needed as evidence—Storage fees—Disposal after thirty days notice to owner.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-159. Property coming into possession of police to be transmitted to property clerk—Disposition of property of deceased and incompetent persons—Storage of property—Fees for storage and custody of property—Sale of stored property—Deposit of collected fees.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-160. Sales at public auction—Procedure—Sales of motor vehicles with liens of record—Notice to lienors and lienees—Abandonment of liens—Notice to Recorder of Deeds—Application of proceeds of sale—Deposit of moneys in Treasury—Moneys and other property of insane persons excepted.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 4-161. Sale of unclaimed animals.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 4-163. Delivery of property to owner pending trial.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-171a. Private detectives required to give bond—Conditions of bond—Suits on bond by injured persons.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-174. Police laws and regulations applicable to private detectives.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-175. Compromise of felony—Withholding information—Receiving compensation from person arrested or liable to arrest—Permitting escape—Penalty.

CROSS REFERENCE

Policemen prohibited from receiving rewards for apprehension of prison fugitives and of conditional release and parole violators, see § 24-426.

§ 4-177. Police code—Publication authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-178. Legal effect of police code.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the

District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-182. Police Department band—Director.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-186. Bonding of Metropolitan Police.

The Mayor of the District of Columbia shall obtain a bond to secure the District against loss resulting from any act of dishonesty by any officer or member of the Metropolitan Police force. Bonds obtained under this section shall be in such amounts, and may secure the District against loss resulting from such other acts by officers and members of the Metropolitan Police force, as the Council of the District of Columbia shall consider appropriate. The Mayor may obtain such bonds by negotiation, without regard to section 1-808, and shall pay the cost of such bonds out of funds appropriated for the expenses of the Metropolitan Police Department for fiscal years beginning after June 30, 1953. The premium on any such bond may cover periods not exceeding three years and may be paid in advance. (June 29, 1953, 67 Stat. 101, ch. 159, § 305(a); July 7, 1955, 69 Stat. 281, ch. 280, § 4.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-188. Funds for the prevention and detection of crime.

The Chief of Police of the Metropolitan Police Department is authorized, with the approval of the Mayor of the District of Columbia and within the limits of appropriations therefor, to make expenditures for the prevention and detection of crime under his certificate. The certificate of the Chief of Police for such expenditures shall be deemed a sufficient voucher for the sum therein expressed to have been expended. (Oct. 26, 1973, Pub. L. 93-140, § 9, 87 Stat. 505.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

APPROPRIATIONS

See note under § 1-226a.

§ 4-189. Attendance at pistol matches.

The Mayor of the District of Columbia is authorized to pay the expenses of officers and members of the Metropolitan Police Department and the Department of Corrections for attending pistol matches, including entrance fees, and is further authorized to permit officers and members to attend

such matches without loss of pay or time. (Oct. 26, 1973, Pub. L. 93-140, § 10, 87 Stat. 506.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

APPROPRIATIONS

See note under § 1-226a.

Chapter 2.—UNITED STATES PARK POLICE

Sec.

4-209. Arrests on or within roads, parks, parkways, and other Federal reservations in the environs of the District of Columbia.

4-210. Rules and regulations—Penalties.

4-211. Environs of District of Columbia defined.

§ 4-201. United States watchmen to be known as United States park police—Powers and duties.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 69.

§ 4-206. Medical attendance.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 70.

§ 4-208. Special police—Appointment—Powers.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 77.

§ 4-209. Arrests on or within roads, parks, parkways, and other Federal reservations in the environs of the District of Columbia.

On and within roads, parks, parkways, and other Federal reservations in the environs of the District of Columbia the several members of the United States Park Police force shall have the power and authority to make arrests without warrant for any felony or misdemeanor committed in the presence or view of such members in violation of any Federal law or regulation issued pursuant to law, or for any felony that in fact has been or is being committed in violation of any such law or regulation where they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony, and shall have power to take any person arrested by them, without unnecessary delay, before the Federal court having jurisdiction over the offense or before a United States commissioner specifically designated to try and sentence persons charged with petty offenses as provided in the Act of October 9, 1940 (54 Stat. 1058), or before any other officer having authority to hold or commit for the offense. Such police officers shall also have power upon such roads and within such parks, parkways, and other reservations to execute any warrant or other process issued by a court or officer of competent jurisdiction for the enforcement of the provisions of any Federal law or regulation issued pursuant to law: *Provided*, That the power and authority herein granted shall not extend to military personnel for offenses committed on military reservations: *Provided further*, That the power and authority herein granted shall not limit or restrict the investigative jurisdiction of the Federal Bureau of Investigation. (Mar. 17, 1948, ch. 136, § 1, 62 Stat. 81; Aug. 18, 1970, Pub. L. 91-383, § 4, 84 Stat. 826.)

REFERENCES IN TEXT

The Act of Oct. 17, 1968, Pub. L. 90-578, terminated the office of United States commissioner and established in place thereof the office of United States magistrate. The Act became operative in the District of Columbia on June 27, 1969, when two United States magistrates assumed the office pursuant to appointment by order of the District Court dated June 20, 1969. See §§ 401(a) and 402(a)(b) of said Act (28 U.S.C. 631 note).

The Act of Oct. 9, 1940 (54 Stat. 1058), referred to in text, was repealed by Act June 25, 1948, ch. 645, 62 Stat. 868, and is now covered by 18 U.S.C. 3401.

AMENDMENT

1970—Act Aug. 18, 1970, Pub. L. 91-383, deleted the words "over which the United States has, or hereafter acquires, exclusive or concurrent criminal jurisdiction," immediately following "District of Columbia".

CROSS REFERENCES

Arrest without warrant, generally, see § 23-581.

Park Police authority to arrest at Dulles International Airport and Washington National Airport, see §§ 7-1304, 7-1408.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4-211.

§ 4-210. Rules and regulations—Penalties.

The Secretary of the Interior, with the approval or concurrence of the head of the agency having jurisdiction or control of any road, park, parkway, or other Federal reservation, or his duly authorized representative, is hereby authorized to make all needful rules and regulations for the regulation of traffic, for the protection of persons, property, health, and morals, to prevent breaches of the peace, to suppress affrays and unlawful assemblies and to aid in the enforcement of any of the rules and regulations so promulgated. To any rule or regulation there may be attached a reasonable penalty for the violation thereof not exceeding, however, a fine of not more than \$500, imprisonment for not exceeding six months, or both. (Mar. 17, 1948, ch. 136, § 2, 62 Stat. 81.)

NOTES TO DECISIONS

Court costs, recovery of

Plaintiffs who were predominantly the prevailing party, even though there were some respects in which the government prevailed, are entitled to recover 75% of costs incurred on appeal. *A Quaker Action Group et al. v. C. D. Andrus, Secretary of Interior, et al.* (1977, 559 F.2d 716, 182 U.S. App. D.C. 95).

White House area demonstrations

The establishment of a waiver procedure for numerical limitation for gatherings at Lafayette Park, and its effectiveness for a reasonable period of time, is sufficient reason for Secretary of Interior to give consideration to a like waiver for White House sidewalk, even assuming that no waivers for use of the Park have been granted. *A Quaker Action Group et al. v. C. D. Andrus, Secretary of Interior, et al.* (1977, 559 F.2d 716, — U.S. App. D.C. —).

The security of the President and the White House and the allocation of the scarce time and space resources in the White House area among competing applicants constitute a legitimate governmental interest which would justify some prior restraint on First Amendment activity in the White House area. However, this area is a unique site for exercise of First Amendment rights and deference cannot be accorded by the courts to an executive approach to use of the White House sidewalk that is rooted in a bias against expressive conduct. *A Quaker Action Group et al. v. R. C. B. Morton, Secretary of the Interior, et al.* (1975, 516 F.2d 717, 170 U.S. App. D.C. 124).

Provisions of the permit system adopted by the National Park Service for demonstrations in the White

House area must be enforced uniformly and without discrimination; should require a permit for every public gathering in areas for which a permit is required; should define "public gathering" in terms that do not impermissibly discriminate against First Amendment activity; and may avoid unwieldy administrative burdens by exemptions from the permit requirement of groups of less than a specified size. *Id.*

§ 4-211. Environs of the District of Columbia defined.

For the purposes of sections 4-209 to 4-211, the environs of the District of Columbia are hereby defined as embracing Arlington, Fairfax, Loudoun, Prince William, and Stafford Counties and the city of Alexandria in Virginia, and Prince Georges, Charles, Anne Arundel, and Montgomery Counties in Maryland. (Mar. 17, 1948, ch. 136, § 3, 62 Stat. 81; Aug. 18, 1970, Pub. L. 91-383, § 4, 84 Stat. 826.)

AMENDMENT

1970—Act Aug. 18, 1970, Pub. L. 91-383, amended section by substituting "Arlington, Fairfax, Loudoun, Prince William, and Stafford Counties and the city of Alexandria in Virginia, and Prince Georges, Charles, Anne Arundel, and Montgomery Counties in Maryland" for "Arlington and Fairfax Counties and the city of Alexandria in Virginia, and Prince Georges, Anne Arundel, and Montgomery Counties in Maryland".

Chapter 4.—FIRE DEPARTMENT

Sec.

4-401. Fire Department boundaries—Division of District into fire companies—Council approval of major changes in manner of fire protection.

4-415. Fire prevention services for government institutions located outside the District.

4-416. Emergency ambulance service fees.

§ 4-401. Fire Department boundaries—Division of District into fire companies—Council approval of major changes in manner of fire protection.

The Fire Department of the District of Columbia shall provide fire prevention and fire protection within the geographical boundaries of the District of Columbia. The District shall be divided into such fire companies, and other units as the Council of the District of Columbia may from time to time direct. Major changes in the manner the Department provides fire protection and fire prevention shall be approved by resolution of the Council. (June 20, 1906, 34 Stat. 314, ch. 3443, § 1; Apr. 7, 1977, D.C. Law 1-111, § 2, 23 DCR 9384.)

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-111, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 3 of act Apr. 7, 1977, D.C. Law 1-111, provided: "This act [amending § 4-401] shall become effective according to the provisions of Section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act Apr. 7, 1977, D.C. Law 1-111, provided "That this act [amending § 4-401] may be cited as 'The District of Columbia Fire Department Operations Act of 1976'."

NOTES TO DECISIONS

Discrimination in services provided

In claim that District of Columbia had discriminated in provision of municipal services, evidence failed to show substantial differences in fire services provided to section of District of Columbia which was 90% black as compared to area which was 98% white. *M. Burner et al. v. W. E. Washington et al.* (1975, 399 F.Supp. 44).

§ 4-402. Rules and regulations—Appointments to be under civil service—Selection of chief engineer and deputy chief engineers—Original appointment and promotion of privates—Vacancies.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Minimum height requirement

Employment practice requiring District of Columbia firemen to be at least five feet seven inches, a requirement not based on any scientific, analytic or statistical study, not related to job performance and not required by state interest, violated Civil Service Commission employment regulation which was applicable to District of Columbia fire department and which required that there be rational relationship between job performance and employment practice and that demonstration of rational relationship includes showing that practice was professionally developed; thus, District of Columbia should be enjoined from excluding applicants for firemen positions solely on basis of height. *T. L. Fox, Jr. v. W. E. Washington et al.* (1975, 396 F. Supp. 504).

Public statements

Although subsequent to filing of action challenging constitutionality of District of Columbia regulation prohibiting employees from making public any disagreement or criticism of District operating policies and practices the regulation was expunged and disciplinary action taken against plaintiffs thereunder was rescinded, declaratory and injunctive relief would be issued in view of nature and character of the impermissive action and to avoid its repetition and to ensure that knowledge of the government's corrective action is widespread and generally known. *P. M. A. Matthews et al. v. W. E. Washington et al.* (1976, 424 F. Supp. 97).

§ 4-403. Age limits on original appointments.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-404. Two-platoon system—Classification of officers—Police surgeons to attend members of fire department—May call veterinary surgeon—Transfer to new grades.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-404a. Workweek established—Hours—Days off—Holidays—Exceptions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-406. Appropriations for clothing.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-407. Resignation from service—Membership in organization using strike methods prohibited—Conspiracy to obstruct operations of department—Penalty.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-411. Use of equipment for volunteer fire organizations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-413. Apparatus—Construction.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-414. Reciprocal agreements for mutual aid.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-415. Fire prevention services for government institutions located outside the District.

The Mayor of the District of Columbia is authorized to make provisions and payment for the furnishing of fire prevention and fire protection services to District of Columbia government institutions located outside the District of Columbia. (Oct. 26, 1973, Pub. L. 93-140, § 8, 87 Stat. 505.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

APPROPRIATIONS

See note under § 1-226a.

§ 4-416. Emergency ambulance service fees.

The Mayor of the District of Columbia is authorized, after a public hearing, to establish from time to time a fee to be charged for transportation services provided by the Emergency Ambulance Service of the Fire Department in such amount as may be reasonable in consideration of the interests of the

public and the persons required to pay the fee, and in consideration of the approximate cost of furnishing such services; *Provided* That no one shall be denied the services because of his or her inability to pay and *Further provided* That no one shall be questioned about his or her ability to pay at the time the services are requested. (Apr. 19, 1977, D.C. Law 1-124, title V, § 502, 23 DCR 8749.)

EFFECTIVE DATE

See section 1101 of act Apr. 19, 1977, D.C. Law 1-124, set out as a note under § 47-1557a.

**Chapter 5.—POLICE AND FIREFIGHTERS
RETIREMENT AND DISABILITY**

Sec.

4-533a. Police and Firemen's Retirement and Relief Board.

CHANGE OF NAME

Section 8(b) of act Oct. 1, 1976, D.C. Law 1-87, provided: "All references in Chapter 5 of Title 4 of the District of Columbia Code to 'policemen' and 'firemen' are amended to refer to 'police' and 'firefighters'."

§ 4-505. Commissioner to determine amount of pension relief.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-521. Definitions.

Wherever used in sections 4-521 to 4-535—

* * * * *

(3) The term "widow" means the surviving wife of a member or former member if—

(A) she was married to such member or former member (i) while he was a member, or (ii) for at least one year immediately preceding his death, or

(B) she is the mother of issue by such marriage.

(4) The term "widower" means the surviving husband of a member or former member if—

(A) he was married to such member or former member (i) while she was a member, or (ii) for at least one year immediately preceding her death, or

(B) he is the father of issue by such marriage.

* * * * *

(17) The term "average pay" means the highest annual rate resulting from averaging the member's rates of basic salary in effect over any twelve consecutive months of police or fire service, with each rate weighted by the time it was in effect, except that if the member retires under section 4-527 and if on the date of his retirement under the subsection he has not completed twelve consecutive months of police or fire service, such term means his basic salary at the time of his retirement.

(As amended Sept. 3, 1974, Pub. L. 93-407, title I, § 121 (a), (d) (1), 88 Stat. 1040, 1041; Oct. 1, 1976, D.C. Law 1-87, § 8(a), 23 DCR 2544.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended par. (4) generally. For prior provisions, see the 1973 edition of the Code.

1974—Section 121(a) of Act Sept. 3, 1974, Pub. L. 93-407, added par. (17), relating to average pay.

Section 121(d) (1) of such Act amended par. (3) (A) by substituting "one year" for "two years".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

EFFECTIVE DATE OF 1974 AMENDMENTS

Section 124 of Act Sept. 3, 1974, Pub. L. 93-407, title I, as amended Jan. 3, 1975, Pub. L. 93-635, § 3(b) (c), 88 Stat. 2175, provided:

"(a) The amendments [to §§ 4-521(17), 4-526, 4-527 (1) (2), 4-528(1) (3), 4-531(2) (3)] made by subsections (a) and (b) of section 121 shall apply with respect to any annuity which begins on or after July 1, 1975.

"(b) The amendment [enacting par. (3) of § 4-527] made by subsection (c) of section 121 shall take effect on the first day of the first pay period beginning more than thirty days after the date of enactment of this title.

"(c) Sections 122, 123, and 124 [enacting this section and § 4-533a, and amending § 4-533(2)] shall take effect on the date of enactment of this title."

Section 121(d) (2) of such Act provided: "The amendment [to § 4-521(3)] made by paragraph (1) shall apply with respect to any surviving wife of a member (as that term is defined in subsection (a) (1) of the Policemen and Firemen's Retirement and Disability Act) or former member irrespective of whether such wife became a widow (as that term is defined in such amendment) prior to, on, or after the date of the enactment of this Act, except that no annuity shall be paid by reason of the amendment made by paragraph (1) for any period prior to the first day of the first pay period beginning on or after July 1, 1974."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4-414, 4-505, 4-518, 4-522, 4-523, 4-524, 4-525a, 4-526, 4-528, 4-533, 4-533a, 4-534, 4-535, 4-536, 4-537, 4-538, 4-832, 4-904, 6-1202a.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 3 section 207, title 5 sections 6308, 8101 of the U.S. Code.

NOTES TO DECISIONS

Construction

Under sections 4-521 et seq. relating to disability retirement benefits for members of police department injured while off duty and defining term "disabled" as disabled for useful and efficient service in the "grade" or "class of position" last occupied by member by reason of disease or injury, the term "class of position" is obviously narrower than term "grade" which embraces wide variety of jobs in classified civil service. *B. A. Jones v. Police and Firemen's Retirement and Relief Board etc.* (D.C. App. 1977, 375 A.2d 1).

Disability

Under provision of this section defining "disabled" as meaning disabled for useful and efficient service in the grade or class of position last occupied, construction by the Police and Firemen's Retirement and Relief Board and the Board of Appeals and Review that fireman is not disabled where he can perform nonfire-fighting duties at the same or a higher class of position and with no reduction in pay, though he cannot perform the same duties and responsibilities as previously by reason of respiratory ailment, is reasonable and would be upheld, particularly since public policy considerations provide

a rational basis for such construction, which is not inconsistent with requirement that retirement laws be liberally construed in light of the humane purposes for which they were conceived. *D. J. Coakley v. Police and Firemen's Retirement and Relief Board et al.* (D.C. App. 1977, 370 A.2d 1345).

Findings by Board required

Fact that Police and Firemen's Retirement and Relief Board failed to make findings of fact with respect to claim of member of police department that she was disabled due to regulations requiring her to be available to do all forms of police work, was not fatal to board's decision denying disability retirement benefits, in view of fact that evidentiary showing concerning such police regulations is irrelevant in that police department is bound to follow congressional scheme set forth in Police and Firemen's Retirement and Disability Act which prevents department from assigning injured member of police department to positions more physically vigorous than her last class of position entailed. *B. A. Jones v. Police and Firemen's Retirement and Relief Board etc.* (D.C. App. 1977, 375 A.2d 1).

§ 4-523. Creditable service—Military and other government service.

* * * * *

(7) Notwithstanding any other provision of this section, any military service (other than military service covered by military leave with pay from a civilian position) performed by an individual after December 1956 shall be excluded in determining the aggregate period of service upon which an annuity payable under this Act to such individual or to the surviving spouse or child is to be based, if such individual or the surviving spouse or child is entitled (or would upon proper application be entitled), at the time of such determination, to monthly old-age or survivors benefits under section 202 of the Social Security Act [42 U.S.C. § 402] based on such individual's wages and self-employment income. If in the case of the individual or the surviving spouse such military service is not excluded under the preceding sentence, but upon attaining retirement age (as defined in section 216(a) of the Social Security Act [42 U.S.C. § 416(a)]) he or she becomes entitled (or would upon proper application be entitled) to such benefits, the Mayor shall redetermine the aggregate period of service upon which such annuity is based, effective as of the first day of the month in which he or she attains such age, so as to exclude such service. The Secretary of Health, Education, and Welfare shall, upon the request of the Mayor, inform the Mayor whether or not any such individual or the surviving spouse or child is entitled at any specified time to such benefits. (As amended Oct. 1, 1976, D.C. Law 1-87, § 9, 23 DCR 2544.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended par. (7) by substituting "the surviving spouse" for "his widow" or "widow".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 4-524. Deductions, deposits and refunds—Order of persons entitled to refunds for deductions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-525. Medical and hospital service—Payment of by District on certificate of Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-525a. Payment of medical expenses of total disability retirees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-526. Retirement for disability not incurred in performance of duty.

Whenever any member coming under sections 4-521 to 4-535 completes five years of police or fire service and is found by the Mayor to have become disabled due to injury received or disease contracted other than in the performance of duty, which disability precludes further service with his department, such member shall be retired on an annuity computed at the rate of 2 per centum of his average pay for each year or portion thereof of his service: *Provided*, That such annuity shall not exceed 70 per centum of his average pay: *Provided further*, That the annuity of a member retiring under this section shall be at least 40 per centum of his average pay. (Sept. 1, 1916, ch. 433, § 12(f), as added Aug. 21, 1957, 71 Stat. 394, Pub. L. 85-157, § 3, and amended Sept. 3, 1974, Pub. L. 93-407, title I, § 121(b)(1), 88 Stat. 1040; Jan. 3, 1975, Pub. L. 93-635, § 10(a), 88 Stat. 2177.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1975—Section 10(a) of Act Jan. 3, 1975, Pub. L. 93-635, struck out "basic salary at time of retirement" and inserted in lieu thereof "average pay".

1974—Section 121(b)(1) of Act Sept. 3, 1974, Pub. L. 93-407, struck out "his basic salary at the time of retirement" each place it occurred and inserted in lieu thereof "his average pay".

EFFECTIVE DATE OF 1975 AMENDMENT

Section 10(b) of Act Jan. 3, 1975, Pub. L. 93-635, provided that the amendment shall apply with respect to any annuity which begins on or after July 1, 1975.

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 4-521.

NOTES TO DECISIONS

Construction

Under sections 4-521 et seq. relating to disability retirement benefits for members of police department injured while off duty, Police and Firemen's Retirement and Relief Board is not required to determine whether member is physically fit to perform every conceivable kind of police assignment but merely whether member is still capable of handling duties required by kind of position to which member was regularly assigned prior to injury; member must establish that such physical impairment prevents performance of efficient service in the grade or class of position last occupied by him for entitlement to whatever annuity code prescribes. *B. A. Jones v. Police and Firemen's Retirement and Relief Board etc.* (D.C. App. 1977, 375 A.2d 1).

Any personnel regulations adopted by police department must accommodate themselves to congressional scheme set forth in Police and Firemen's Retirement and Disability Act, so that police department regulations requiring all police department members to be able to perform various police duties could not block police department member's right and expectation, under decision of Police and Firemen's Retirement and Relief Board, which denied her application for disability retirement benefits on ground that she was capable of performing duties of her previous position as community relations officer, to be free from assignments more physically vigorous than her last class of position entailed. *Id.*

Evidence

At disability hearing before Police and Firemen's Retirement and Relief Board at which Board needed to determine not only whether police officer was permanently disabled but also whether the disability was caused or aggravated in the line of duty, testimony bearing on relationship between officer's depressive mental state and his service-related injuries was essential to proper assessment of question of causation and, therefore, it was error for Retirement Board hearing officer to refuse to allow either testimony about the police officer's physical ailments or cross-examination of witnesses as to the officer's claimed physical injuries. *A. G. Kirven, Jr. v. Police and Firemen's Retirement and Relief Board et al.* (D.C. App. 1977, 379 A.2d 1186).

Evidence supports findings by the Police and Firemen's Retirement and Relief Board that fireman was capable of performing nonfire-fighting duties within fire department despite his chronic asthmatic and bronchial conditions and hypersensitivity to smoke. *D. J. Coakley v. Police and Firemen's Retirement and Relief Board et al.* (D.C. App. 1977, 370 A.2d 1345).

Substantial evidence supports decision of the Police and Firemen's Retirement and Relief Board to retire fireman on basis of a nonduty-related disability on ground that psychological problems predate his entry into the department and were aggravated by factors other than the performance of his occupational duties. *Id.*

Evidence that, inter alia, fireman's job frustration stemmed from his belief that job was beneath his dignity and education was sufficient to sustain finding that fireman, who was suffering from emotional difficulties and functional back and chest pains, be retired by reason of disability not incurred in nor aggravated by performance of duty as fireman. *A. R. Lewis v. District of Columbia Board of Appeals and Review* (D.C. App. 1974, 330 A.2d 253).

Board of Appeals and Review with regard to order of Police and Firemen's Retirement and Relief Board involuntarily separating member of police department from the department for disability not contracted in or aggravated by performance of duty had to make basic findings which were supported by substantial evidence in record before stating ultimate facts and conclusions and there had to be a demonstration in the findings of a rational connection between the facts found and the choice made. *M. E. Brewington v. District of Columbia Board of Appeals and Review* (D.C. App. 1973, 299 A.2d 145).

Not service connected

Where fireman was unable to get along with his colleagues over the years and his job frustration stemmed from his belief that job was beneath his dignity and educational abilities, such factors, relating to his basic personality and making him unfit for duty as a fireman, could not be considered to have been aggravating factors incurred in the "performance of duty," and thus he was retired for non-service-connected disabilities. *A. R. Lewis v. District of Columbia Board of Appeals and Review* (D.C. App. 1974, 330 A.2d 253).

District of Columbia Board of Appeals and Review properly found that police officer suffered from a mental disorder caused or aggravated by pressures of life stemming from his background and childhood, rather than from police duty. *M. E. Brewington v. District of Columbia Board of Appeals and Review* (D.C. App. 1973, 309 A.2d 112).

§ 4-527. Retirement for disability while performing or not performing duty.

(1) Whenever any member is injured or contracts a disease in the performance of duty or such injury or disease is aggravated by such duty at any time after appointment and such injury or disease or aggravation permanently disables him for the performance of duty, he shall upon retirement for such disability, receive an annuity computed at the rate of 2½ per centum of his average pay for each year or portion thereof of his service: *Provided*, That such annuity shall not exceed 70 per centum of his average pay, nor shall it be less than 66⅔ per centum of his average pay.

(2) In any case in which the proximate cause of an injury incurred or disease contracted by a member is doubtful, or is shown to be other than the performance of duty, and such injury or disease is shown to have been aggravated by the performance of duty to such an extent that the member is permanently disabled for the performance of duty, such disability shall be construed to have been incurred in the performance of duty. The member shall, upon retirement for such disability, receive an annuity computed at the rate of 2½ per centum of his average pay for each year or portion thereof of his service: *Provided*, That such annuity shall not exceed 70 per centum of his average pay, nor shall it be less than 66⅔ per centum of his average pay.

(3) A member shall be retired under this section only upon the recommendation of the Board of Police and Fire Surgeons and the concurrence therein by the Mayor, except that in any case in which a member seeks his own retirement under this section, he shall, in the absence of such recommendation, provide the necessary evidence to form the basis for the approval of such retirement by the Mayor. (Sept. 1, 1916, ch. 433, § 12(g), as added Aug. 21, 1957, 71 Stat. 394, Pub. L. 85-157, § 3, and amended Oct. 23, 1962, 76 Stat. 1133, Pub. L. 87-857, § 1; Oct. 26, 1970, Pub. L. 91-509, § 1(4), 84 Stat. 1137; Sept. 3, 1974, Pub. L. 93-407, title I, § 121(b) (1) (2), (c), 88 Stat. 1040.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1974—Section 121(b) (1) (2) of Act Sept. 3, 1974, Pub. L. 93-407, struck out "his basic salary at the time of retirement" and "his basic salary at the time of his retirement", each place it occurred in pars. (1) and (2), and inserted in lieu thereof "his average pay".

Section 121(c) of such Act added par. (3).

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 4-521.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4-183a, 4-521, 4-530, 4-531, 4-533.

NOTES TO DECISIONS

Construction

A sharp distinction must be drawn by Police and Firemen's Retirement and Relief Board between those disabilities caused or aggravated by service activities and those resulting from extrinsic circumstances, but since nonorganic impairments such as neuroses frequently are the nonaggregate products of a broad range of causative factors, both subtle and obvious, some of which are related to the officer's service and some of which are not, if there is credible expert evidence establishing that both internal and external circumstances medically contributed to the ultimately disabling condition, Board is obligated to consider all the relevant factors, determine their relationship to each other and, if possible, evaluate their relative causative significance. *E. F. Morgan v. District of Columbia Police and Firemen's Retirement and Relief Board* (D.C. App. 1977, 370 A.2d 1322).

This section providing for payment of annuity to police officer for injuries or diseases contracted during performance of his duties requires only that disabling condition be caused or aggravated by performance of duty, and makes no distinction as to individual officer's particular characteristics or vulnerabilities; mere fact that one officer may be more susceptible to disabling injury than another cannot be treated as dispositive without careful analysis of circumstances or events which caused asserted propensity to manifest itself in disabling condition. *L. M. Stoner v. District of Columbia Police and Firemen's Retirement and Relief Board* (D.C. App. 1977, 368 A.2d 524).

Evidence

At disability hearing before Police and Firemen's Retirement and Relief Board at which Board needed to determine not only whether police officer was permanently disabled but also whether the disability was caused or aggravated in the line of duty, testimony bearing on relationship between officer's depressive mental state and his service-related injuries was essential to proper assessment of question of causation and, therefore, it was error for Retirement Board hearing officer to refuse to allow either testimony about the police officer's physical ailments or cross-examination of witnesses as to the officer's claimed physical injuries. *A. G. Kirven, Jr. v. Police and Firemen's Retirement and Relief Board et al.* (D.C. App. 1977, 379 A.2d 1186).

Where record reflects a claimant who, as result of significant emotional difficulties predating and unrelated to his employment as a police officer, perhaps never should have been appointed to force, and further reflects a claimant who, after brief service, suffered relatively minor physical injuries which left no organic residual, but who, for reasons directly related to his unusual emotional vulnerability, apparently developed a disproportionately severe psychological reaction, whatever causative significance can be attached to catalytic effect of on-duty accidents is greatly outweighed by significance of claimant's preexisting psychological deficiencies, and conclusion of Police and Firemen's Retirement Relief Board that disability is a direct manifestation of personality characteristics that predate and are unrelated to claimant's employment is supported by substantial evidence. *E. F. Morgan v. District of Columbia Police and Firemen's Retirement and Relief Board* (D.C. App. 1977, 370 A.2d 1322).

Where medical witnesses unanimously pointed to on-duty traffic accident as precipitating police officer's disabling condition diagnosed as "post-traumatic neurosis"

and "hysterical conversion reaction," evidence that officer was particularly vulnerable to such psychological disability because of his personality does not support Police and Firemen's Retirement and Relief Board's conclusion that policeman's disability is unrelated to his police service and, thus, record establishes policeman's entitlement to annuities for his permanent disability. *L. M. Stoner v. District of Columbia Police and Firemen's Retirement and Relief Board* (D.C. App. 1977, 368 A.2d 524).

Evidence is sufficient to support Police and Firemen's Retirement and Relief Board's finding that former policeman who suffered head injury in motor vehicle accident while on duty was disabled, but that subsequent disablement was neither caused nor aggravated by accident sustained during performance of his duties as police officer. *G. L. Fisher v. Police & Firemen's Retirement & Relief Board* (D.C. App. 1976, 351 A.2d 502).

Unanimous medical opinion, as reflected in medical reports of eight physicians who had been involved in medical history of policeman seeking determination that he was disabled for performance of duty, that policeman was not disabled supported Board of Appeals and Review determination that policeman was not disabled. *H. M. Brooks, Jr. v. District of Columbia Board of Appeals and Review* (D.C. App. 1974, 317 A.2d 864).

Substantial evidence, including medical testimony, supported Board of Appeals and Review finding that policeman who sustained back injuries on separate occasions was not disabled for duty and therefore not entitled to disability retirement from police department. *E. F. Morgan v. District of Columbia Board of Appeals and Review* (D.C. App. 1973, 305 A. 2d 243).

Where there was evidence pointing to original causation of policeman's disabling personality disorder being due to series of injuries incurred in the performance of official duties and where there was a paucity of countervailing evidence disproving such inference, finding of Board of Appeals and Review adverse to policeman, rendered by Board on reconsideration of its original decision holding that disability was caused by injuries incurred in line of duty, was erroneous. *R. A. Crider v. District of Columbia Board of Appeals and Review* (D.C. App. 1973, 299 A. 2d 134).

Injury defined

Under this section, providing for annuities for members injured or contracting a disease in performance of duty, qualifying disabilities include psychological impairments. *L. M. Stoner v. District of Columbia Police and Firemen's Retirement and Relief Board* (D.C. App. 1977, 368 A.2d 524).

Service connected disability

Factors contributing to worsening of fireman's mental health, specifically, stress caused by mother's illness, romantic setbacks, and nonpromotion within the fire department, do not constitute aggravations incurred in the performance of duty within the meaning of this section, nor is Retirement Board obliged to rule in favor of the fireman on issue of whether disability is duty related on ground that such favorable ruling is required when there is doubt as to whether an existing disease is duty aggravated. *D. J. Coakley v. Police and Firemen's Retirement and Relief Board et al.* (D.C. App. 1977, 370 A.2d 1345).

Where no event precipitating police officer's "post-traumatic neurosis" and "hysterical conversion reaction" is shown other than a serious on-duty traffic accident where there is no previous manifestation of disability, and where, it is not shown that but for the trauma the officer would be able to fulfill his duties, officer is entitled to annuities, for his permanent disability. *L. M. Stoner v. District of Columbia Police and Firemen's Retirement and Relief Board* (D.C. App. 1977, 368 A.2d 524).

Where cause of fireman's disability is obscured or conceded due to factors predating his employment, in order to be retired for service-connected disability, fireman must prove that his disease or injury was subsequently aggravated by events occurring in the line of duty. *A. R. Lewis v. District of Columbia Board of Appeals and Review* (D.C. App. 1974, 330 A. 2d 253).

§ 4-528. Optional retirement—Conditions—Suspension of retirement provisions during emergency—Credit for unused sick leave.

(1) Any member who completes twenty years of police or fire service may, after giving at least sixty days' written advance notice to his department head stating his intention to retire and stating the date on which he will retire, voluntarily retire from the service and shall be entitled to an annuity computed at the rate of 2½ per centum of his average pay for each year of service; except that the rate of 3 per centum of his average pay shall be used to compute each year's police or fire service in excess of twenty years: *Provided*, That such notice requirement may be waived by the department head when, in his opinion, circumstances justify such waiver: *Provided further*, That whenever the Mayor or the Chief of the Executive Protective Service, or the Chief of the United States Park Police force, or the Chief of the United States Secret Service division shall determine that there exists an emergency which is likely to endanger the safety of the public and that the public safety cannot be adequately protected except by suspending the retirement provisions of this paragraph, then the Mayor or any of said Chiefs shall be authorized to suspend the retirement provisions of this paragraph in any one or more of the departments under their respective jurisdictions until such time as, in the opinion of the Mayor or any of said Chiefs, respectively, public safety can be adequately protected without such suspension.

(3) No annuity granted under paragraph (1) or (2) of this section shall exceed 80 per centum of the average pay of such member.

(As amended Sept. 3, 1974, Pub. L. 93-407, title I, § 121(b) (1)-(3), 88 Stat. 1040.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1974—Section 121(b) (1), (2) of Act Sept. 3, 1974, Pub. L. 93-407, struck out "his basic salary at the time of retirement" and "his basic salary at the time of his retirement", in par. (1), and inserted in lieu thereof "his average pay".

Section 121(b) (3) of such Act struck out "the basic salary of such member at the time of retirement", in par. (3), and inserted in lieu thereof "his average pay".

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 4-521.

§ 4-531. Survivor benefits and annuities—Amount—To whom payable—Election of type of annuity.

(2) In case of the death of any member before retirement, or of any former member after retirement, leaving a widow or widower, such widow or widower shall be entitled to receive an annuity in

the greater amount of (1) 40 per centum of such member's average pay at the time of death, or 40 per centum of the basis upon which the annuity, relief, or retirement compensation being received by such former member at the time of death was computed, or (2) 40 per centum of the corresponding salary for step 6 of salary class 1 of the District of Columbia Police and Firemen's Salary Act salary schedule currently in effect at the time of such member or former member's death: *Provided*, That such annuity shall not exceed the current rate of compensation of the position occupied by such member at the time of death, or by such former member immediately prior to retirement.

(3) Each surviving child or student-child of any member who dies before retirement, or of any former member who dies after retirement, shall be entitled to receive an annuity equal to the smallest of (1) 60 per centum of the member's average pay at the time of his death or of the basis upon which the former member's annuity at the time of his death was computed, divided by the number of eligible children; (2) \$996; or (3) \$2,988 divided by the number of eligible children: *Provided*, That such member or former member is survived by a wife or husband. If such member or former member is not survived by a wife or husband, each surviving child or student-child shall be paid an annuity equal to the smallest of (1) 75 per centum of the member's average pay at the time of his death or of the basis upon which the former member's annuity at the time of his death was computed, divided by the number of eligible children; (2) \$1,200; or (3) \$3,600 divided by the number of eligible children.

(As amended Sept. 3, 1974, Pub. L. 93-407, title I, § 121(b) (4), (5), 88 Stat. 1040.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1974—Section 121(b) (4) of Act Sept. 3, 1974, Pub. L. 93-407, struck out of par. (2) the words "basic salary" and "subclass (a)," and inserted in lieu thereof "average pay" and "of salary", respectively.

Section 121(b) (5) of such Act struck out of par. (3) the words "basic salary" each place it occurred and inserted in lieu thereof "average pay".

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 4-521.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in sections 6308, 8101 of title 5 and section 3796 of title 42, U.S. Code.

§ 4-532. Funeral expenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-533. Duties of Mayor in retirement and annuity matters—Certification of physical condition of member—Written notice of hearing—Procedure at hearings—Subpena—Contempt proceedings—Disability retiree to report employment and undergo medical examination.

(2) If a member is retired under section 4-526 or 4-527 and is employed on or after the effective date of the District of Columbia Police and Firemen's Salary Act amendments of 1972, such member shall, in accordance with such regulations as the Mayor shall prescribe, notify the Mayor of the employment; and the Mayor shall, as soon as practicable after the receipt of such notice, require each such member to undergo a medical examination (satisfactory to the Mayor) of the disability upon which the member's retirement under such section is based. The Mayor shall not require employment questionnaires or the medical examination of such member after he reaches the age of 50. (As amended Sept. 3, 1974, Pub. L. 93-407, title I, § 123, 88 Stat. 1041.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1974—Section 123 of Act Sept. 3, 1974, Pub. L. 93-407, amended par. (2) by inserting at the end thereof a new sentence, prohibiting the Commissioner from requiring employment questionnaires or the medical examination for certain members after reaching age 50.

ORDER ESTABLISHING POLICIES AND PROCEDURES FOR ADMINISTERING § 4-533(2)

Commissioner's Order No. 74-31, Feb. 12, 1974, as amended by M.O. No. 76-213, Oct. 20, 1976, provided:

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967 and pursuant to the provisions of Public Law 92-410, approved August 29, 1972, it is hereby Ordered That:

I. Purpose:

The policies and procedures established herein shall govern the administration of paragraph (2) of subsection (m) of the Policemen and Firemen's Retirement and Disability Act (as amended by P.L. 92-410; 86 Stat. 642) [D.C. Code, sec. 4-533(2)], which requires that any officer or member of the Metropolitan Police force or Fire Department of the District of Columbia, the United States Park Police force, the Executive Protective Service or the United States Secret Service who is retired under subsection (f) or (g) of the Policemen and Firemen's Retirement and Disability Act (D.C. Code, sec. 4-526 or sec. 4-527) and who is employed on or after May 14, 1972, shall notify the Commissioner of such employment and shall undergo a medical examination (satisfactory to the Commissioner) of the disability upon which the officer or member's retirement under such subsection is based.

II. Delegation of Functions:

A. *Director of Personnel.* In his capacity as Chairman, Police and Firemen's Retirement and Relief Board (hereinafter referred to as the "Retirement Board"), the Director of Personnel shall be responsible for coordinating the administration of the aforementioned paragraph (2) in accordance with these policies and procedures.

B. *Police and Firemen's Retirement and Relief Board.*
1. The Retirement Board shall be responsible for giving timely written notice to each officer or member who is

retired under subsection (f) or (g) of the Policemen and Firemen's Retirement and Disability Act of the promulgation of these policies and procedures and, if he is employed on or after May 14, 1972, of the requirement to notify the Retirement Board, in writing within 30 days of the date of its notice, of the type, location and specific duties of such employment.

2. After notification from each employed disabled retiree who resides within the Washington Metropolitan Area (the District of Columbia, the cities of Alexandria and Falls Church in Virginia, Montgomery and Prince George's Counties in Maryland, and Arlington and Fairfax Counties in Virginia), the Retirement Board shall direct the retiree to report to the Board of Police and Fire Surgeons (hereinafter referred to as the "Board of Surgeons") for a medical examination of the disability for which he was retired to determine his current physical and/or mental condition.

3. (a) After notification from each employed disabled retiree who resides outside the Washington Metropolitan Area, the Retirement Board shall direct the retiree to submit, in lieu of appearing before the Board of Surgeons, a statement of medical examination from a medical officer of any Federal, State or local government agency or any other licensed physician of the State in which he resides. To the extent possible, such medical officer or physician shall be certified in the field most nearly related to the retiree's disability. Such statement shall be submitted to the Board of Surgeons and must certify as to the retiree's current physical and/or mental condition, with specific reference to the disability for which he was retired. The statement must also certify that the examining physician is not related by blood or marriage to the retiree. Any expenses incurred in obtaining such statement will be borne by the retiree.

(b) Prior to such examination, the retiree shall submit to the Board of Surgeons the name, address and specialty field of the physician who is to perform the examination. A copy of the medical report upon which the officer or member's retirement was based shall be furnished to the examining physician for use in connection with the examination.

(c) The Retirement Board may, in its discretion, require the retired officer or member who resides outside the Washington Metropolitan Area to report to the Board of Surgeons for the medical examination. Any expenses incurred by the retiree who is required to do so will be borne by the retiree.

4. The Retirement Board shall review the written report of medical examination submitted to it by the Board of Surgeons in the case of each employed disabled retiree to determine the current status of the retiree's disability. Where it finds that an employed disabled retiree has recovered from his disability, the Retirement Board shall apply the recovery from disability provision of subsection (j) of the Policemen and Firemen's Retirement and Disability Act (D.C. Code, sec. 4-530) (see item III below).

5. The Retirement Board may, in its discretion, require any employed disabled retiree to personally appear before it to give testimony under oath regarding his present physical and/or mental condition. Any expenses incurred by the retiree who is required to do so will be borne by the retiree.

C. Board of Police and Fire Surgeons. 1. (a) The Board of Surgeons shall schedule and conduct a thorough medical examination to determine the present physical and/or mental condition of each employed disabled retiree who resides within the Washington Metropolitan Area. A specialist in the field most nearly related to the retiree's disability (e.g., orthopedics, neurology) shall be consulted, as deemed necessary, in determining the retiree's present physical and/or mental condition.

(b) The Board of Surgeons shall thoroughly evaluate all pertinent medical records and employment information in determining the retiree's present physical and/or mental condition.

(c) In the case of each employed disabled retiree it examines, the Board of Surgeons shall submit to the Retirement Board a written report of such examination, with specific reference to the disability for which the individual was retired. Such report shall include a state-

ment as to whether or not, in the Board of Surgeons' opinion, the retiree has recovered from his disability.

2. With respect to each employed disabled retiree examined by a physician outside the Washington Metropolitan Area, the Board of Surgeons shall submit to the Retirement Board a written report of its evaluation of such physician's statement of medical examination, together with such statement and related employment information, with specific reference to the disability for which the individual was retired. Such report shall include a statement as to whether or not, in the Board of Surgeons' opinion, the retiree has recovered from his disability.

D. Metropolitan Police Department and Fire Department. 1. The Chief of Police shall be responsible for establishing and maintaining an individual file on each disabled retiree, or applicant therefor, which shall contain the documents required by the Retirement Board.

2. (a) The Chief of Police shall collect, evaluate and prepare the employment data required by D.C. Code § 4-533(2) (1973 ed.) for the Retirement Board.

(b) The Chief of Police shall compile such statistical data on the police and firemen's retirement system as he deems appropriate to assist the Retirement Board in fulfilling its mission.

3. (a) The Chief of Police shall examine and investigate matters concerning disabled retirees, or applicants therefor, referred to him by the Chairman of the Retirement Board.

(b) In the case of each disabled retiree, or applicant therefor, referred by the Chairman, the Chief of Police shall submit to the Retirement Board a written report with specific reference to the scope of the investigation conducted.

4. The Fire Chief shall detail one member of his command to the Metropolitan Police Department to assist in discharging the responsibilities delegated to the Chief of Police.

III. Recovery From Disability:

1. In the case of any officer or member retired under subsection (f) or (g) of the Policemen and Firemen's Retirement and Disability Act, who is found to have recovered from his disability, before reaching the age of fifty, payment of his annuity shall cease upon reemployment in the department from which he was retired or one year from the date of the medical examination showing such recovery whichever is earlier.

2. A retiree who is found to have recovered from his disability and who applies for reinstatement in the department from which he was retired shall be reinstated in the same or nearest equivalent grade and salary available as that received at the time of his retirement provided that he meets the current entrance requirement of such department as to character.

IV. Effective Date:

The policies and procedures established herein shall take effect this date [Feb. 12, 1974].

§ 4-533a. Police and Firemen's Retirement and Relief Board.

(a) In order to carry out his responsibilities under sections 4-521 to 4-535 with respect to retirement and disability determinations, and related functions, the Mayor of the District of Columbia shall establish a Police and Firemen's Retirement and Relief Board (hereinafter in this section referred to as the "Board"). The Board shall be composed of—

(1) members and alternates appointed from among persons who are employees of the District of Columbia, one member and alternate each from the District of Columbia Personnel Office, Corporation Counsel, Department of Human Resources, Metropolitan Police Force, and the Fire Department of the District of Columbia; and

(2) two members, one of whom shall be a physician, appointed from among persons who are not officers or employees of the District of Columbia.

The member, and alternate, appointed to the Board from among employees of the Department of Human Resources shall both be medical officers. All appointments shall be made by the Mayor.

(b) The members appointed under subsection (a) (2) shall be appointed for two years, and shall be entitled to receive compensation for each day they are actually engaged in carrying out duties vested in the Board in the same manner as persons employed intermittently under section 3109 of title 5 of the United States Code. Such members shall be appointed within ninety days after September 3, 1974.

(c) The Mayor shall establish rules for the Board to assure that the Board functions fairly and equitably. The Mayor shall provide the staff necessary for the Board.

(d) In addition to the members and alternates of the Board designated by subsection (a) of this section, in all cases of retirement, disability, or other relief involving a member of the Executive Protective Service or a member of the United States Secret Service, who contribute to the Policemen and Firemen's Relief Fund of the District of Columbia, a member and alternate of the Executive Protective Service or a member and alternate of the United States Secret Service, as designated by the Director, United States Secret Service, as appropriate shall sit as a member of the Police and Firemen's Retirement and Relief Board. (Sept. 3, 1974, Pub. L. 93-407, title I, § 122, 88 Stat. 1041; Jan. 3, 1975, Pub. L. 93-635, § 19, 88 Stat. 2179.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was not enacted as part of the Policemen and Firemen's Retirement and Disability Act, which comprises sections 4-521 to 4-535.

In subsec. (b), "September 3, 1974" was substituted for "the date of enactment of this title".

AMENDMENT

1975—Act Jan. 3, 1975, Pub. L. 93-635, added subsec. (d).

EFFECTIVE DATE

Section effective Sept. 3, 1974, see sec. 124(c) of Act Sept. 3, 1974, Pub. L. 93-407, set out as a note under § 4-521.

ORDER ESTABLISHING POLICE AND FIREMEN'S RETIREMENT AND RELIEF BOARD

Organization Order No. 48, Commissioner's Order No. 74-199, September 25, 1974, which established the Police and Firemen's Retirement and Relief Board, is set out in the appendix to title 1, Administration.

CROSS REFERENCE

Rules to carry out purposes of sections 4-521 to 4-535, see § 4-535.

§ 4-534. Payment of annuities—Order of payment on death of annuitant—Waiver.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-535. Delegation of functions by Commissioner—Regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Rules to assure that Police and Firemen's Retirement and Relief Board functions fairly and equitably, see § 4-533a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4-414, 4-505, 4-518, 4-521, 4-522, 4-523, 4-524, 4-525a, 4-526, 4-528, 4-533, 4-533a, 4-534, 4-537, 4-538, 4-832, 4-904, 6-1202a.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 3 section 207, title 5 sections 6308, 8101 of the U.S. Code.

Chapter 6.—TRIAL BOARDS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2-1236.

§ 4-601. Trial boards may compel attendance of witnesses—Fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 7.—AWARDS FOR MERITORIOUS SERVICE

§ 4-702. Committee to make awards.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-704. Appropriation authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 8.—SALARIES

Sec.

4-827. Minimum rate for original appointments—Higher rates for reappointments.

4-838. Annual comparability study of police and firemen's salaries and benefits.

4-839. Recommendations for salary adjustments—Mediation of labor-management disputes.

§ 4-802. Salary increase denied if service unsatisfactory—Removal for inefficiency—Additional compensation for efficiency.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-807. Additional compensation for working on holidays.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-808. Holiday defined.

As used in section 4-807 the word "holiday" means the following: The 1st day of January, the third Monday in February, the 4th day of July, the last Monday in May, the first Monday in September, the second Monday in October, the fourth Monday in October, Thanksgiving Day, the 25th day of December, and, with respect to officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia, such other holidays as may be designated by the Council of the District of Columbia, and with respect to officers and members of the Executive Protective Service and the United States Park Police force, such other holidays as may

be designated by Executive order. (Oct. 24, 1951, 65 Stat. 607, ch. 544, § 2; July 18, 1958, 72 Stat. 378, Pub. L. 85-533, § 4(b); Sept. 3, 1974, Pub. L. 93-407, title I, § 102, 88 Stat. 1038.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1974—Section 102 of Act Sept. 3, 1974, Pub. L. 93-407, amended section by striking out "the 22d day of February", "the 30th day of May", and "the 11th day of November", and inserting in lieu thereof "the third Monday in February", "the last Monday in May", "the second Monday in October", and "the fourth Monday in October".

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 4-823.

§ 4-823. Salary Schedules—Rates of basic compensation of officers and members of Metropolitan Police force and Fire Department.

(a) Except as provided in subsection (b), the annual rates of basic compensation of the officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia shall be fixed in accordance with the following schedule of rates:

SALARY SCHEDULE

Salary class and title	Service step								
	1	2	3	4	5	6	7	8	9
Class 1: Fire private, police private.....	\$12,296	\$12,667	\$13,282	\$13,897	\$14,877	\$15,863	\$16,478	\$17,093	\$17,707
Class 2: Fire inspector.....	14,019	14,877	15,741	16,600	17,458	18,322	19,181		
Class 3: Detective, assistant pilot, assistant marine engineer.....	15,370	16,139	16,907	17,676	18,444	19,213	19,981		
Class 4: Fire sergeant, police sergeant, detective sergeant.....	16,700	17,532	18,370	19,207	20,045	20,877			
Class 5: Fire lieutenant, police lieutenant.....	19,303	20,273	21,237	22,202	23,166				
Class 6: Marine engineer, pilot.....	21,089	22,138	23,193	24,242					
Class 7: Fire captain, police captain.....	22,870	24,014	25,159	26,299					
Class 8: Battalion fire chief, police inspector.....	26,511	27,836	29,166	30,496					
Class 9: Deputy fire chief, deputy chief of police.....	31,111	33,215	35,325	37,434					
Class 10: Assistant chief of police, assistant fire chief.....	36,888	39,347	41,806						
Class 11: Fire chief, chief of police.....	42,665	45,251							

(As amended Sept. 3, 1974, Pub. L. 93-407, title I, § 101(a) (1), 88 Stat. 1036; Jan. 3, 1975, Pub. L. 93-635, § 1, 88 Stat. 2173; June 19, 1976, D.C. Law 1-73, § 2(1), 23 DCR 2807.)

AMENDMENTS

1976—Act June 19, 1976, D.C. Law 1-73, amended the salary schedule set out in subsec. (a) generally.

1975—Section 1 of Act Jan. 3, 1975, Pub. L. 93-635, substituted "16,540" for "16,510" in service step 2 of class 4 of the salary schedule.

1974—Section 101(a) (1) of Act Sept. 3, 1974, Pub. L. 93-407, amended the salary schedule set out in subsec. (a) generally.

EMERGENCY ACT AMENDMENTS

1977—For temporary adjustment of the rates of pay in the salary schedule, see secs. 101 and 301-303 of the District of Columbia Police, Firemen and Teachers' Salary Act Amendments Emergency Act of 1977 (D.C. Act 2-90, Oct. 13, 1977, 24 DCR 3196) and the District of Columbia Police, Firefighters and Teachers' Salary Act Amendments Second Emergency Act of 1977 (D.C. Act 2-119, Dec. 15, 1977, 24 DCR 5415).

1976—For temporary amendment of section, see secs. 2(1) and 3 of the Emergency District of Columbia Police

and Firemen's Salary Act Amendments of 1976 (D.C. Act 1-111, Apr. 27, 1976, 22 DCR 6183, 6186).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2(1) of act June 19, 1976, D.C. Law 1-73, provided in part that the amendment of the salary schedule is effective on the first day of the first pay period beginning on or after October 1, 1975.

Section 6 of such act provided: "This act [amending this section and § 4-828 and enacting provisions set out as notes under this section] shall take effect at the end of the period provided for Congressional review of acts of the Council of the District of Columbia in subsection (c) of section 602 of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

EFFECTIVE DATE OF 1975 AMENDMENT

Section 1 of Act Jan. 3, 1975, Pub. L. 93-635, provided in part that the amendment of the salary schedule is effective on the first day of the first pay period beginning on or after July 1, 1974.

EFFECTIVE DATE OF 1974 AMENDMENTS

Section 103 of Act Sept. 3, 1974, Pub. L. 93-407, 88 Stat. 1038, as amended Jan. 3, 1975, Pub. L. 93-635, §§ 3(a), 18, 88 Stat. 2175, 2179, provided:

"(a) Except as provided in subsections (b), (c), and (d), the amendments made by this part and subsection (b) of the first section [amendment of §§ 4-808, 4-823, 4-825,

4-828, and enactment of provisions set out as notes under § 4-823] shall take effect on and after the first day of the first pay period beginning on or after July 1, 1974.

"(b) The amendment made by paragraph (6) of section 101 [amendment of § 4-828] shall take effect on and after the first day of the first pay period beginning on or after January 1, 1974.

"(c) The amendments made by paragraphs (8) and (9) of section 101 [amendments of § 4-832] shall take effect on and after the first day of the first pay period beginning on or after May 1, 1972.

"(d) The amendment made by paragraph (4) of section 101 [amendment of § 4-827] shall take effect on and after the first day of the first pay period beginning on or after June 1, 1974."

SHORT TITLE

The first section of act June 19, 1976, D.C. Law 1-73, provided "That this act [amending this section and § 4-828 and enacting provisions set out as notes under this section] may be cited as the 'District of Columbia Police and Fireman's Salary Act Amendments of 1975'."

GROUP INSURANCE

Section 3(c) of act June 19, 1976, D.C. Law 1-73, provided:

"(c) For the purpose of determining the amount of insurance for which an officer or member is eligible under the provisions of chapter 87 of title 5, United States Code (relating to government employees group life insurance), all changes in rates of compensation or salary which result from the enactment of this act shall be held and considered to be effective as of the date of enactment of this act."

Section 104(c) of Act Sept. 3, 1974, Pub. L. 93-407, title I, provided:

"(c) For the purpose of determining the amount of insurance for which an officer or member is eligible under the provisions of chapter 87 of title 5, United States Code (relating to government employees group life insurance), all changes in rates of compensation or salary which result from the enactment of this title shall be held and considered to be effective as of July 1, 1974."

RETROACTIVE COMPENSATION UNDER D.C. LAW 1-73

Section 3 (a), (b) of act June 19, 1976, D.C. Law 1-73, provided:

"(a) Retroactive compensation or salary shall be paid by reason of the amendments made by this act only in the case of an individual in the service of the District of Columbia government or of the United States (including service in the Armed Forces of the United States) on the date of enactment of this act, except that such retroactive compensation or salary shall be paid (1) to an officer or member of the Metropolitan Police force, or the Fire Department of the District of Columbia, who retired during the period beginning on the first day of the first pay period which begins on or after October 1, 1975, and ending on the date of enactment of this act for services rendered during such periods, and (2) in accordance with the provisions of subchapter 8 of chapter 55 of title 5, United States Code (relating to settlement of accounts of deceased employees), for services rendered during the period beginning on the first day of the first pay period which begins on or after October 1, 1975, and ending on the date of enactment of this act, by an officer or member who dies during such period.

"(b) For the purposes of this section, service in the Armed Forces of the United States, in the case of an individual relieved from training and service in the Armed Forces of the United States, or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual, to a position in or under the Federal Government or the municipal government of the District of Columbia."

RETROACTIVE COMPENSATION UNDER ACT SEPT. 3, 1974, PUBLIC LAW 93-407

Section 104 (a), (b) of title I of the above described Act provided:

"(a) Retroactive compensation or salary shall be paid by reason of the amendments made by this title only in

the case of an individual in the service of the District of Columbia government or of the United States (including service in the Armed Forces of the United States) on the date of enactment of this Act, except that such retroactive compensation or salary shall be paid (1) to an officer or member of the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Park Police force, or the Executive Protective Service who retired during the period beginning on the first day of the first pay period which begins on or after July 1, 1974, and ending on the date of enactment of this Act for services rendered during such period, and (2) in accordance with the provisions of subchapter 8 of chapter 55 of title 5, United States Code (relating to settlement of accounts of deceased employees), for services rendered during the period beginning on the first day of the first pay period which begins on or after July 1, 1974, and ending on the date of enactment of this Act, by an officer or member who dies during such period.

"(b) For the purposes of this section, service in the Armed Forces of the United States, in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the Federal Government or the municipal government of the District of Columbia."

ADJUSTMENT OF SALARY SCHEDULE BY MAYOR ON OCTOBER 1, 1976, IN ACCORDANCE WITH FEDERAL COMPARABILITY INCREASES

Section 4 of act June 19, 1976, D.C. Law 1-73, provided:

"(a) The Mayor shall ascertain the percentage to be used by the President in adjusting rates of pay (to be effective October 1, 1976) under section 5305(a)(2) of title 5, United States Code, or whether the President intends to submit to the Congress an alternative plan with respect to pay adjustments under section 5305(c) of such title 5, and the contents of such alternative plan. The Mayor shall then, by applying such percentage determined by the President under such section 5305(a)(2), adjust the rates of pay in each class and service step on the salary schedule in section 101(a) of the District of Columbia Police and Firemen's Salary Act of 1958 (D.C. Code, sec. 4-823(a)); or he shall adjust such rates of pay according to such alternative plan if it becomes effective as provided in such section 5305. If such alternative plan is disapproved by the Congress, the Mayor shall adjust such rates of pay in the same manner (using the same percentage) as the President adjusts rates of pay under section 5305(m) of such title 5. Such adjustments in rates of pay made by the Mayor under this subsection shall be effective on the first day of the first pay period beginning on or after October 1, 1976.

"(b) The rates of pay which become effective under this section shall be the rates of pay for each position and class concerned as if those rates had been set by statute, and such rates of pay shall supersede and render inapplicable those corresponding rates of pay set prior to the effective date of the rates of pay set under this section.

"(c) The rates of pay that take effect under this section shall be published in the District of Columbia Register."

PLACEMENT IN SERVICE STEP 4 OF SALARY CLASS 2 OF THOSE IN SERVICE STEPS 1, 2, OR 3 IMMEDIATELY PRIOR TO THE 1974 AMENDMENT

Section 101(b) of Act Sept. 4, 1974, Pub. L. 93-407, provided: "Each officer or member who immediately prior to the effective date of the amendment [to the salary schedule in § 4-823] made by paragraph (1) of subsection (a) was assigned to service step 1, service step 2, or service step 3 of salary class 2 shall be placed in and receive basic compensation in service step 4 of salary class 2."

SEVERABILITY PROVISIONS OF D.C. LAW 1-73

Section 5 of act June 19, 1976, D.C. Law 1-73, provided: "If any section or provision of this act is held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the remaining sections or provisions of this act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4-827, 4-828, 4-832, 4-833, 4-834, 4-835, 4-836, 4-837, 4-904.

§ 4-825. Additional compensation—Helicopter pilots and bomb disposal duty.

Each officer or member of the Metropolitan Police force, Executive Protective Service, and United States Park Police force assigned on or after the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972—

(1) to perform the duty of a helicopter pilot, or

(2) to render explosive devices ineffective or to otherwise dispose of such devices.¹

shall receive, in addition to his scheduled rate of basic compensation, \$2,270 per annum so long as he remains in such assignment. The additional compensation authorized by this section shall be paid to an officer or member in the same manner as he is paid basic compensation to which he is entitled, except that when such an officer or member ceases to be in such an assignment, the loss of such additional compensation shall not constitute an adverse action for the purposes of section 7511 of title 5 of the United States Code. No officer or member who receives the additional compensation authorized by this section may receive additional compensation under section 4-828. (Aug. 1, 1958, 72 Stat. 483, Pub. L. 85-584, title II, § 202; Sept. 2, 1964, 78 Stat. 881, Pub. L. 88-575, title I, § 103; Aug. 29, 1972, Pub. L. 92-410, title I, § 104, 86 Stat. 636; Sept. 3, 1974, Pub. L. 93-407, title I, § 101(a)(2), (3), 88 Stat. 1036.)

AMENDMENT

1974—Section 101(a)(2) of Act Sept. 3, 1974, Pub. L. 93-407, amended the second sentence to provide that the loss of such additional compensation when such assignment ceases shall not constitute an adverse action.

Section 101(a)(3) of such Act amended the first sentence by substituting "\$2270" for "\$2100".

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 4-823.

§ 4-827. Minimum rate for original appointments—Higher rates for reappointments.

(a) Except as provided in subsection (b), all original appointments of Police and Fire Privates shall be made at the minimum rate set forth in the schedule in section 4-823, and the first year of service shall be probationary.

(b) Any officer or member of the Metropolitan Police force, the Fire Department of the District of Columbia, the Executive Protective Service, or the United States Park Police force who separates from that force, department, or service, and who is subsequently reappointed to such force, department, or service within three years after the date of such separation shall receive any scheduled rate of basic compensation provided in salary class 1 of the salary schedule in section 4-823(a) which does not exceed the scheduled rate of basic compensation being paid at the time of such reappointment for the class and service step he had attained at the time of his separation. For purposes of this subsection, no additional compensation authorized by sections 4-823 to 4-837 shall be used in determining service step placement. (Aug. 1, 1958, 72 Stat. 483, Pub. L. 85-584, title III,

§ 301; Sept. 3, 1974, Pub. L. 93-407, title I, § 101(a)(4), 88 Stat. 1036.)

AMENDMENT

1974—Section 101(a)(4) of Act Sept. 3, 1974, Pub. L. 93-407, amended section by (A) striking out "All" and inserting in lieu thereof "(a) Except as provided in subsection (b), all", and (B) by adding at the end thereof subsection (b).

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 4-823.

§ 4-828. Authority to establish and determine positions to be included as Technicians in Classes 1, 2, and 4.

(a) The Mayor of the District of Columbia, in the case of the Metropolitan Police force and the Fire Department of the District of Columbia, the Secretary of the Treasury, in the case of the Executive Protective Service, and the Secretary of the Interior, in the case of the United States Park Police force, are authorized to establish and determine, from time to time, the positions in salary classes 1, 2, and 4 to be included as technicians' positions.

(b) Each officer or member—

(1) who immediately prior to the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972—

(A) was in a position assigned to subclass (b) of salary class 1 or 2 or subclass (c) of salary class 4, or

(B) was in salary class 4 and was performing the duty of a dog handler, or

(2) whose position is determined under subsection (a) to be included in salary class 1, 2, or 4 on or after such date as a technician's position, shall on or after such date receive, in addition to his scheduled rate of basic compensation, \$810 per annum. An officer or member described in paragraph (1) (A) or (2) shall receive the additional compensation authorized by this subsection until his position is determined under subsection (a) not to be included in salary class 1, 2, or 4, as a technician's position or until he no longer occupies such position, whichever occurs first. An officer or member described in paragraph (1) (B) shall receive such compensation until the position of dog handler is determined under subsection (a) not to be included in salary class 4 as a technician's position or until he no longer performs the duty of dog handler, whichever first occurs. If the position of dog handler is included under subsection (a) as a technician's position, an officer or member performing the duty of a dog handler may not receive both the additional compensation authorized for an officer or member occupying a technician's position and the additional compensation authorized for officers and members performing the duty of a dog handler.

(c) Each officer or member who immediately prior to the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972 was assigned as a detective sergeant in subclass (b) of salary class 4 shall on or after such date, receive, in addition to his scheduled rate of basic compensation, \$595 per annum so long as he remains in such assignment. Each officer or member who is promoted after such date to the rank of detective sergeant shall receive, in addition to his scheduled

¹ So in original, should be a comma.

rate of basic compensation, \$595 per annum so long as he remains in such assignment.

(d) The additional compensation authorized by subsections (b) and (c) shall be paid to an officer or member in the same manner as he is paid the basic compensation to which he is entitled.

(e) Whenever any officer or member receiving additional compensation authorized by subsection (b) or (c) is no longer entitled to receive such additional compensation, without a change in salary class, he shall receive, irrespective of any subsequent salary schedule or service step adjustment authorized by sections 4-823 to 4-837, basic compensation equal to the sum of his existing scheduled rate of basic compensation and the amount of such additional compensation until his scheduled rate of basic compensation equals or exceeds such sum.

(f) The loss of the additional compensation authorized by subsection (b) or (c) shall not constitute an adverse action for the purposes of section 7511 of title 5 of the United States Code. (As amended Sept. 3, 1974, Pub. L. 93-407, title I, § 101(a) (5)-(7), 88 Stat. 1037; Jan. 3, 1975, Pub. L. 93-635, § 2, 88 Stat. 2174; June 19, 1976, D.C. Law 1-73, § 2(3), 23 DCR 2807.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1976—Act June 19, 1976, D.C. Law 1-73, amended subsec. (b) by substituting "\$810" for "\$735" and subsec. (c) by substituting "\$595" for "\$540".

1975—Section 2(a) of Act Jan. 3, 1975, Pub. L. 93-635, amended subsections. (a), (b), (c), and (d), generally.

Section 2(b) of the Act added subsections. (e) and (f).

Section 2(c) of the Act repealed pars. (5), (6), and (7) of section 101(a) of Act Sept. 3, 1974, Pub. L. 93-407, effective as of Jan. 5, 1975. Such paragraphs had amended this section, as specified in the 1974 amendment notes contained below.

1974—Section 101(a) (5) of Act Sept. 3, 1974, Pub. L. 93-407, purported to amend the entire section. It appears that amendment of the third sentence of subsec. (b) was intended, so as to substitute "until the position of dog handler . . . whichever first occurs" for "so long as he performs the duty of a dog handler". The amendment was repealed by sec. 2(c) of Act Jan. 3, 1975, Pub. L. 93-635.

Section 101(a) (6) of such Act amended the section by adding subsections. (e) and (f). The amendment was repealed by sec. 2(c) of Act Jan. 3, 1975, Pub. L. 93-635.

Section 101(a) (7) of such Act purported to amend subsec. (a) by substituting "\$735" for "\$680" [the figure "\$680" actually appeared in subsec. (b)]; and amended subsec. (c) by substituting "\$540" for "\$500". The amendment was repealed by sec. 2(c) of Act Jan. 3, 1975, Pub. L. 93-635.

EMERGENCY ACT AMENDMENT

1976—For temporary amendment of section, see secs. 2(2) and 3 of the Emergency District of Columbia Police and Firemen's Salary Act Amendments of 1976 (D.C. Act 1-111, Apr. 27, 1976, 22 DCR 6186).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2(3) of act June 19, 1976, D.C. Law 1-73, provided in part that the amendment of subsections. (b) and (c) is effective on the first day of the first pay period beginning on or after Oct. 1, 1975.

Section 6 of such act provided: "This act [amending this section and § 4-823 and enacting provisions set out as notes under § 4-823] shall take effect at the end of the period provided for Congressional review of acts of the

Council of the District of Columbia in subsection (c) of section 602 of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147 (c)]."

EFFECTIVE DATE OF 1975 AMENDMENTS

Section 2(a) of Act Jan. 3, 1975, Pub. L. 93-635, provided in part that the amendment of subsections. (a), (b), (c), and (d) is effective on and after the first day of the first pay period beginning on or after July 1, 1974.

Section 2(b) of the Act provided in part that the amendment adding subsections. (e) and (f) is effective on and after the first day of the first pay period beginning on or after January 1, 1974.

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 4-823.

§ 4-831. Demotion—Rate of compensation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-832. Additional compensation for service longevity.

(a) (1) * * *

(2) For purpose of paragraph (1), continuous service as an officer or member includes only those periods of his service determined to have been satisfactory service and any period of his service in the Armed Forces of the United States other than any period of such service (A) determined not to have been satisfactory service, (B) rendered before appointment as an officer or member, or (C) rendered after resignation as an officer or member.

* * * * *

(c) Notwithstanding any other provision of this or any other law, each deputy chief of the Metropolitan Police force and of the Fire Department of the District of Columbia shall, upon completion of thirty years of continuous service on the police force or fire department, as the case may be, be placed in, and receive basic compensation at, the highest service step in the salary class to which his position is assigned in the salary schedule contained in section 4-823. For purposes of this subsection, in computing a deputy chief's continuous service on the police force or fire department, there shall be included only those periods of his service determined to have been satisfactory service and any period of his service in the Armed Forces of the United States other than any period of such service—

(1) determined not to have been satisfactory service,

(2) rendered before appointment as an officer or member, or

(3) rendered after resignation as an officer or member.

(As amended Sept. 3, 1974, Pub. L. 93-407, title I, § 101(a) (8), (9), 88 Stat. 1037.)

AMENDMENT

1974—Section 101(a) (8) of Act Sept. 3, 1974, Pub. L. 93-407, amended subsection (a) (2) by inserting "only those periods of his service determined to have been satisfactory service and" immediately preceding "any period of his service in the Armed Forces".

Section 101(a) (9) of such Act amended the second sentence of subsec. (c) by inserting "only those periods of his

service determined to have been satisfactory service and" immediately preceding "any period of his service in the Armed Forces".

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 4-823.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in section 204 of title 3, U.S. Code.

§ 4-833. Basic compensation of United States Park Police and Executive Protective Service.

(a) Except as provided in subsections (b) and (c), the rates of basic compensation of officers and members of the United States Park Police and the Executive Protective Service shall be the same as the rates of compensation, including longevity increases, provided in sections 4-823 to 4-837, for officers and members of the Metropolitan Police force in corresponding or similar Classes.

(b) (1) Effective at the beginning at the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of title 5, United States Code, in the rates of pay under General Schedule, the annual rate of basic compensation of officers and members of the United States Park Police force shall be adjusted by the Secretary of the Interior by an amount (rounded to the next highest multiple of \$5) equal to the percentage of such annual rate of pay which corresponds to the overall percentage (as set forth in the applicable report transmitted to the Congress under such section 5305) of the adjustment made in the rates of pay under the General Schedule.

(2) No adjustment in the annual rate of basic compensation of such officers and members may be made except in accordance with paragraph (1).

(c) Any reference in any law to the salary schedule in section 4-823 with respect to officers and members of the United States Park Police force shall be considered to be a reference to such schedule as adjusted in accordance with subsection (b). (Aug. 1, 1958, 72 Stat. 485, Pub. L. 85-584, title V, § 501; Aug. 29, 1972, Pub. L. 92-410, title I, § 111, 86 Stat. 639; Oct. 17, 1976, Pub. L. 94-533, § 2, 90 Stat. 2493.)

AMENDMENT

1976—Act Oct. 17, 1976, Pub. L. 94-533, amended section by striking out "The rates" and inserting in lieu thereof "(a) Except as provided in subsections (b) and (c), the rates"; and by adding subssecs. (b) and (c).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 4 of Pub. L. 94-533, Oct. 17, 1976, provided: "The amendments [to § 4-833] made by this Act shall take effect on October 1, 1976."

PURPOSE

Section 1 of Pub. L. 94-533, Oct. 17, 1976, provided: "The purpose of this Act [amending § 4-833 and enacting this and other provisions set out in notes under § 4-833] is to insure that officers and members of the United States Park Police force are entitled to adjustments in basic compensation in the same overall percentage as are other Federal employees within the General Schedule under the Federal pay comparability system.

REPORT ON FEASIBILITY OF CODIFYING LAWS RELATING TO PARK POLICE

Section 3 of Pub. L. 94-533, Oct. 17, 1976, provided: "The Secretary of the Interior shall submit to Congress not later than one year after the date of enactment of this Act a report on the feasibility and desirability of en-

acting as a part of the United States Code those provisions concerning the powers, duties, functions, salaries, and benefits of officers and members of the United States Park Police force which presently are contained in several statutes and are compiled in the District of Columbia Code."

§ 4-835. Council authorized to promulgate regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-837. Delegation of authority by Commissioner, Secretary of Treasury and Secretary of Interior—Exception.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4-827, 4-828, 4-832, 4-833, 4-834, 4-904.

§ 4-838. Annual comparability study of police and firemen's salaries and benefits.

(a) The Commissioner of the District of Columbia, and after January 2, 1975, the Mayor of the District of Columbia, shall annually conduct a thorough study of the compensation being paid officers and members of the police and fire departments of other jurisdictions in the Washington metropolitan area and other cities of comparable size. The annual study may include other conditions of employment of police and firemen, such as hours of work, health benefits, retirement benefits, sick pay, and vacation time. The annual study shall also include the current percentage change in the Consumer Price Index for the Washington metropolitan area published by the Bureau of Labor Statistics, Department of Labor, and rates of compensation for Federal and District of Columbia employees having comparable duties and responsibilities.

(b) (1) In order to conduct the annual study specified in subsection (a), the Commissioner, or the Mayor, as the case may be, shall establish a city personnel salary and benefits study committee whose sole function shall be to conduct such annual study. The size of the committee shall be determined by the Commissioner, or the Mayor, as the case may be, who shall appoint the management members of the committee. Each labor organization or other association or group which has been selected to represent the officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia shall select representatives of their respective labor organizations or other association or group to be members of the labor-management committee.

(2) The number of management members and the number of members representing the labor organizations or other associations or groups on the labor-management committee shall be equal. The chair-

man of the labor management committee shall be chosen by members of the committee, and shall not be an officer or employee of the District of Columbia government or a member or employee of a labor organization or other association or group represented on the committee. If the committee has not chosen a chairman within 10 days after the date of the first meeting of the committee, then the chairman shall be chosen by the Director of the Federal Mediation and Conciliation Service.

(c) On or before June 30 of each year, the results of the annual study shall be made public and shall be available to the parties involved in negotiations between the District of Columbia and representatives of the officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia under the District of Columbia labor relations program. The results of such annual study shall also form the basis for consideration of adjustments in pay levels for officers of the Metropolitan Police force and the Fire Department of the District of Columbia whose compensation is adjusted in a manner which is outside the scope of the negotiations referred to in the first sentence of this subsection. (Sept. 3, 1974, Pub. L. 93-407, title I, § 111, 88 Stat. 1038.)

§ 4-339. Recommendations for salary adjustments—Mediation of labor-management disputes.

(a) If after January 2, 1975, as a result of collective bargaining the parties have reached a negotiated solution with respect to changes in compensation for officers and members of the Police and Fire Departments, the Mayor shall recommend to the Council of the District of Columbia that said changes should be authorized and that the Congress shall be requested to appropriate sufficient funds for that purpose. The first recommendation made by the Mayor under this subsection shall be made by no later than October 1, 1975.

(b) The recommendations submitted by the Mayor under subsection (a) shall be considered a labor-management issue for the purposes of subsection (c).

(c) If the parties have reached an impasse in negotiations on or before the expiration date of their existing collective bargaining agreements, either party shall promptly notify the Director of the Federal Mediation and Conciliation Service in writing. He shall assist in the resolution of that impasse by selecting an impartial person experienced in public sector disputes to serve as a mediator. If mediation does not resolve the impasse within thirty days, or any shorter period designated by the mediator, the Director shall, only upon the request of either party, then appoint an impartial Board of Arbitration to investigate the labor-management issues involved in the dispute, conduct whatever hear-

ing it deems necessary, and to issue a written award to the parties with the object of achieving a prompt, peaceful, and fair settlement of the dispute. The award shall be issued within twenty days after the Board has been established. The award shall contain findings of fact and a statement of reasons. The award shall be final and binding upon the parties to the dispute.

(d) If the procedures set forth in subsection (c) are implemented, no change in the status quo in effect prior to contract expiration date in the case of negotiations for a contract renewal, or in effect prior to the time of impasse in the case of an initial bargaining negotiation, shall be made pending the completion of mediation and/or arbitration.

(e) The factfinder, mediator, and any members of the Board of Arbitration appointed by the Director of the Federal Mediation and Conciliation Service shall be entitled to compensation at the maximum daily rate allowable by law for each day they are actually engaged in performing services under this section. (Sept. 3, 1974, Pub. L. 93-407, title I, § 112, 88 Stat. 1039.)

Chapter 9.—MISCELLANEOUS PROVISIONS

§ 4-901. Memorial fountain to members of Metropolitan Police Department.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-904. Establishment of workweek for officers and members of Metropolitan Police, United States Park Police and Executive Protective Service—Definitions—Compensatory time—Overtime pay.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-910. Reimbursement of certain tuition expenses of officers and members of the Metropolitan Police Force, Fire Department, Executive Protective Service, and United States Park Police.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 5.—BUILDING RESTRICTIONS AND REGULATIONS

Chap.	Sec.
10. Community Development.....	5-1001
11. Flood Hazards.....	5-1101
12. Condominiums.....	5-1201

Chapter 1.—ALLEY DWELLINGS

Sec.
5-103a. National Capital Housing Authority—Functions and powers of President transferred to Mayor.

§ 5-103. Alley Dwelling Law—Declaration of legislative intent and public policy—Power of President to purchase, condemn, and acquire by gift, land and buildings to prevent alley dwellings, to replat and improve such property, and to make loans for improvements.

TRANSFER OF FUNCTIONS

Functions of the President under this section were transferred to the Commissioner of the District of Columbia by § 5-103a.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in section 1428 of title 42, U.S. Code.

NOTES TO DECISIONS

Housing regulations

In view of fact that, although trial court held that District of Columbia housing regulation did not apply to public housing accommodations in which tenants lived, it afforded tenants full benefit of principles which were based upon application of housing regulation, the District of Columbia Court of Appeals would not decide whether trial court's ruling was correct because result would be same in either event. *R. L. Coleman et al. v. United States* (D.C. App. 1973, 311 A. 2d 496).

§ 5-103a. National Capital Housing Authority—Functions and powers of President transferred to Mayor.

(a) The National Capital Housing Authority (hereinafter referred to as the "Authority") established under sections 5-103 to 5-116 shall be an agency of the District of Columbia government subject to the organizational and reorganizational powers specified in sections 1-144(b) and 1-162(12).

(b) All functions, powers, and duties of the President under sections 5-103 to 5-116 shall be vested in and exercised by the Mayor. All employees, property (real and personal), and unexpended balances (available or to be made available) of appropriations, allocations, and all other funds, and assets and liabilities of the Authority are authorized to be transferred to the District of Columbia government. (Dec. 24, 1973, Pub. L. 93-198, title II, § 202, 87 Stat. 779.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was enacted as part of the District of Columbia Self-Government and Governmental Reorganization Act,

and not as part of the District of Columbia Alley Dwelling Act which comprises §§ 5-103 to 5-116.

EFFECTIVE DATE

See sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

CROSS REFERENCE

Transfer of personnel, property, and funds, generally, see § 1-131 note.

§ 5-104. Designation of the Authority—Powers—Approval of plans—Condemnation proceedings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TRANSFER OF FUNCTIONS

Part 5 of Reorganization Plan No. 3 of 1975, effective July 3, 1975, provided:

"5. *Transfer of functions and delegated authorities respecting the National Capital Housing Authority.* The powers, duties and functions of the National Capital Housing Authority, as set forth in the District of Columbia Alley Dwelling Act, as amended (D.C. Code 5-103 through 5-117), are transferred to the Director of the Department of Housing and Community Development, who shall serve as the Authority. In carrying out his functions as such Authority, the Director shall be known as the 'National Capital Housing Authority.' Such Authority shall be deemed a continuation of the Authority designated under Presidential Executive Order 6868 of October 9, 1934, as amended. During the absence or disability of the Director, or in the event of a vacancy in the Office of the Director, such Acting Director as may be designated by the Mayor or such subordinate officer of the Department as may be designated by the Director, shall act as the Authority."

Functions of the President under this section were transferred to the Commissioner of the District of Columbia by § 5-103a.

ORDER DESIGNATING THE AUTHORITY TO CARRY OUT THE PROVISIONS OF THE DISTRICT OF COLUMBIA ALLEY DWELLING ACT

(Commissioner's Order No. 74-145, June 29, 1974.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967 and Section 202 of the District of Columbia Self-Government and Governmental Reorganization Act (Public Law 93-198; 87 Stat. 774), IT IS HEREBY ORDERED that:

1. The Director of the Office of Housing and Community Development is hereby designated as the Authority to carry out the provisions of the District of Columbia Alley Dwelling Act, as amended (D.C. Code, §§ 5-103 through 5-116). Such Authority shall be deemed a continuation of the Authority designated under Presidential Executive Order No. 6868 of October 9, 1934, as amended.

2. In carrying out his functions as such Authority, the Director of the Office of Housing and Community Development shall be known as the "National Capital Housing Authority."

3. All employees, property, unexpended balances of appropriations, allocations, and all other funds, assets and liabilities of the National Capital Housing Authority, are hereby transferred to the Authority named herein.

4. This Order shall be effective on and after July 1, 1974.

§ 5-105. Appropriation of funds—"Conversion of inhabited alley fund"—Power of the Authority to borrow money—Incidental powers.

(a) The President is hereby authorized, in his discretion, to make immediately available to the Authority for its lawful uses and as needed, from the allocation made from the appropriation to carry out the purposes of the National Industrial Recovery Act, contained in the Fourth Deficiency Act, fiscal year 1933, now carried under the title, "National Industrial Recovery, Federal Emergency Administration of Public Works, Housing, 1933-1935," symbol 03/5666, not to exceed \$500,000 of any amount thereof dedicated for low-cost housing and slum-clearance projects in the District of Columbia, to be set aside in the treasury and be known as "Conversion of inhabited alleys fund" (hereinafter referred to as the "fund").

(b) The Authority is hereby authorized and empowered to borrow such moneys from individuals or private corporations as may be secured by the property and assets acquired under the provisions of sections 5-103 to 5-116, and such moneys, together with all receipts from sales, leases, or other sources, shall be deposited in the fund and shall be available for the purposes of sections 5-103 to 5-116. The Authority is hereby authorized and empowered to accept gifts of money from private sources; to borrow from the treasury of the United States not to exceed \$1,000,000 in the fiscal year ending June 30, 1939, and a like sum in each of the four succeeding fiscal years, upon such terms and conditions as the President may deem advisable, and appropriations for such purpose are hereby authorized out of the general fund of the treasury: *Provided*, That the Authority shall be obligated for the payment of interest at the going federal rate as defined in the United States Housing Act of 1937.

(c) The fund shall be available annually in such amount as may be specified in the annual appropriation acts.

(d) Repealed. Apr. 4, 1960, 74 Stat. 12, Pub. L. 86-400, § 1.

(e) In carrying out the provisions of sections 5-103 to 5-116, the Authority is hereby authorized and empowered (1) [Repealed. Aug. 2, 1946, 60 Stat. 809, ch. 744, § 9(b)], (2) to purchase books of reference, directories, and periodicals that are necessary in connection with its work, and (3) to secure architectural and engineering services on specific projects, without regard to the civil service laws: *Provided*, That this authorization shall not apply to the employment of architects and engineers by the Authority on a permanent basis. (June 12, 1934, 48 Stat. 931, ch. 465, § 3; June 25, 1938, 52 Stat. 1187, 1188, ch. 691, §§ 2-4; Aug. 2, 1946, 60 Stat. 809, ch. 744, § 9(b); Apr. 4, 1960, 74 Stat. 12, Pub. L. 86-400, § 1.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (b), is classified to 42 U.S.C. ch. 8.

The "civil service laws", referred to in subsec. (e), are set forth in title 5, U.S.C. See, particularly, § 3301 et seq. of that title.

CODIFICATION

In subsec. (e) (3), the exception from "the Classification Act of 1923, as amended" has been omitted as obsolete. Sections 1202 and 1204 of the Classification Act of 1949 (63 Stat. 972, 973) repealed the 1923 Act and all laws or parts of laws inconsistent with the 1949 Act. While § 1106(a) of the 1949 Act provided that references in other laws to the 1923 Act should be held and considered to mean the 1949 Act, it did not have the effect of continuing the exception contained in this section because of § 1106(b) that provided that the application of the 1949 Act to any position, officer, or employee shall not be affected by § 1106(a). The Classification Act of 1949 was repealed by Act Sept. 6, 1966, Pub. L. 89-554, § 8(a), 80 Stat. 632 (of which § 1 revised and enacted title 5 U.S.C., into law). Section 5102 of title 5, U.S.C., now contains the applicability provisions of the 1949 Act.

AMENDMENTS

1960—Act Apr. 4, 1960, repealed subsec. (d), which prescribed the maximum cost for property in any square.

1946—Act Aug. 2, 1946, repealed provisions in subsec. (e) (1) which read: "to procure services or make any purchase without regard to the provisions of section 3709 of the Revised Statutes, provided the aggregate amount involved is not more than \$100".

1938—Act June 25, 1938, added the last sentence of subsection (b), inserted the phrases "except by condemnation" and changed "present" to "current" in subsection (d) and added subsection (e).

CHANGE OF NAME

For redesignation of Authority, see note under § 5-104.

TRANSFER OF FUNCTIONS

Functions of the President under this section were transferred to the Commissioner of the District of Columbia by § 5-103a.

§ 5-107. The Authority to report to President—Further legislation after July 1, 1944.

TRANSFER OF FUNCTIONS

Functions of the President under this section were transferred to the Commissioner of the District of Columbia by § 5-103a.

§ 5-108. Publication of notice to owners of alley dwellings.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 5-111. Short title.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in section 1428 of title 42, U.S. Code.

§ 5-113. Additional powers of Authority.

NOTES TO DECISIONS

Income requirements

Where there is no statutory or constitutional right to homeownership through public housing program, National Capital Housing Authority can use 22.5% minimum income requirement as line-drawing procedure and is not required to consider each case on individual basis; such policy is not application of an unconstitutional conclusive presumption. *D. McQueen v. National Capital Housing Authority* (D.C. App. 1976, 366 A.2d 786).

§ 5-114. Authority considered a public housing agency—Federal financial assistance.

NOTES TO DECISIONS

Eviction—Estoppel

In light of public interest in providing low cost housing to most needy families, even assuming National Capital Housing Authority had authority to create tenancy absent written lease agreement, where occupant, son and brother of named lessees, did not allege he acted in reliance on agency's action in failing to immediately evict

him subsequent to named lessees' deaths or that he was prejudiced in any way by implied approval of his continued occupancy, estoppel would not be applied to prevent housing authority, which accepted rental payments from occupant for six months after receiving notification of lessees' deaths from denying that occupant is a tenant. *R. E. Nash v. W. E. Washington et al.* (D.C. App. 1976, 360 A.2d 510).

—Grievance procedures

Where HUD regulation requiring public housing authority to grant "any lessee or the remaining head of the household of any tenant family" an opportunity for a preeviction hearing were promulgated during pendency of appeal from trial court order holding housing authority was not required to give occupant of public housing authority an administrative hearing prior to his eviction from public housing apartment initially leased to his subsequently deceased mother and brother, occupant, under said current regulation, as remaining head of tenant household, would be entitled to invoke housing authority grievance procedure, including provisions for preeviction hearing. *R. E. Nash v. W. E. Washington et al.* (D.C. App. 1976, 360 A.2d 510).

Regulations

Although public housing authority neglected to revise its definition of "tenant" to include the "remaining head of the household of any tenant family" as required by section of current HUD requirements, where corporation counsel conceded that federal standards prescribing procedural rights of public housing residents are mandatory, occupant of apartment formerly leased to his subsequently deceased mother and brother would be considered a tenant within meaning of public housing authority's amended regulations, and as such, would be entitled to invoke current housing authority tenant grievance procedures. *R. E. Nash v. W. E. Washington et al.* (D.C. App. 1976, 360 A.2d 510).

Rent increases

On remand from decisions of Court of Appeals holding that tenants of low-rent public housing are entitled to receive notice and opportunity to make written presentations prior to official approval of any rent increase, trial court acted properly in refusing to order reprocessing of past rents for purpose of awarding restitution to tenants found to have been overcharged; record did not however, justify court's decision to leave invalidly derived rent schedule in effect for indefinite future. *C. C. Thompson et al. v. W. E. Washington, Commissioner etc.* (1977, 551 F.2d 1316, 179 U.S. App. D.C. 357).

While the National Capital Housing Authority and Department of Housing and Urban Development have discretion to determine the levels and structure of rents and public housing, the agencies must be guided by the general directive that the rents be within the financial reach of families of low income. *C. O. Thompson et al. v. W. Washington, Commissioner etc.* (1973, 497 F. 2d 626, 162 U.S. App. D.C. 39).

Tenants of National Capital Housing Authority low rent public housing were entitled by the National Housing Act to notice of proposed rent increases and to an opportunity to respond in writing before rent increase proposals were forwarded to Department of Housing and Urban Development for approval. *Id.*

Sovereign immunity

The doctrine of sovereign immunity did not bar class action on behalf of tenants of rental units of the National Capital Housing Authority against the Commissioner of District of Columbia and the National Capital Housing Authority for injunctive and declaratory relief with respect to rental increases scheduled by the Authority. *C. O. Thompson et al. v. W. Washington, Commissioner etc.* (1973, 497 F. 2d 626, 162 U.S. App. D.C. 39).

§ 5-116. Loans authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in section 1428 of title 42, U.S. Code.

Chapter 2.—BUILDING LINES

§ 5-201. Building lines established on streets less than 90 feet wide.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-202. Condemnation proceedings to be instituted.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-204. Permits for extensions of buildings beyond building line.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 67.

§ 5-205. Existing buildings may project beyond established building line—Commissioner to have control of parkings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 3.—FIRE ESCAPES AND SAFETY PROVISIONS

Sec.

- 5-324. Alterations to rental units which cause violations of housing regulations after notice to vacate—Prohibition.
- 5-325. Same—Exemption by consent of tenants.
- 5-326. Same—Exemption by Mayor.
- 5-327. Same—Penalty.

§ 5-301. Fire escapes required on certain structures—Exceptions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-302. Fire escapes—Stairways—Hall and stair lights required on certain structures.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-303. When ten or more persons employed, fire escapes and other safety measures required.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-304. Alterations may be required to locate fire escapes or add additional ones.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-308. Penalty for violations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-309. Notice, what to contain.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-310. Notice, when deemed served—Fire escapes and other safety appliances may be provided by Commissioner, when owner neglects—Costs to be lien on property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 5-311. Use of premises may be enjoined if not properly equipped with safety devices.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-313. Upon failure of owner to correct condition violative of law, Commissioner may do so—Cost of correction, lien on property—Owner not relieved from criminal responsibility.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Utilities

Rules and regulations regarding the repair of water pipes by residents of District do not violate equal protection and due process clauses of Constitution, in absence of showing of invidious discrimination by District in favor of some citizens at the expense of others; action taken by District in repairing pipes of certain property owners who were either unable or unwilling to do so was within proper scope of its police power. *District of Columbia, etc. v. North Washington Neighbors, Inc., et al.* (D.C. App. 1976, 367 A. 2d 143; cert. denied 98 S. Ct. 68, — U.S. —).

Provision of this section governing property owner's failure to correct conditions violative of law, read in conjunction with regulation governing repair of water pipes and provisions of plumbing code, confers on District authority to order property owners to repair leaking water pipes and enforce such authority by fine or by termination of property owner's water service, or in the discretion of the Mayor and his representatives, to repair pipes and assess costs of such repair against property served; requiring property owner to bear costs of excavation, refilling of excavation, and resurfacing of streets is reasonable because such costs are incidental to cost of repairing pipes. *Id.*

Where, in her original and supplemental complaints and motion for preliminary injunction, tenant sought an injunction which would require Commissioner of District of Columbia to provide utilities on a permanent, continuing basis and to make whatever repairs might be necessary to bring three buildings of apartment complex into compliance with housing regulations, but all units in apartment complex were vacated prior to order enjoining Commissioner from taking any action in respect to buildings, and, subsequent thereto, one building was demolished, appeal from denial of motion for preliminary injunction was moot and would be dismissed, and if district court on remand found that remaining two buildings were uninhabitable, barricaded, and scheduled for demolition, it would appear that it should revoke its injunctive order and dismiss action at moot. *A. Masszonio et al. v. W. E. Washington et al.* (1973, 476 F. 2d 915, 155 U.S. App. D.C. 159).

§ 5-314. Authorities permitted to enter property to inspect and correct wrongful conditions—Unlawful to interfere with inspection or correction—Penalty.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-315. Notice to correct wrongful conditions—How given—Methods of service—Required contents.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 5-316. Commissioner of the District of Columbia may prescribe fees for inspection of certain buildings—Schedule of fees to be displayed—Fees deposited in treasury—Hauling permit fees for certain multi-axle motor vehicles.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-317. Means of egress and fire safety appliances required in certain public buildings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-318. Same—Occupancy prohibited after notice of noncompliance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-319. Same—Notice to owner requiring installation—Time for compliance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-320. Same—Penalty for noncompliance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-321. Service of notice.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 5-322. Same—Construction and installation by Commissioner on owner's noncompliance—Assessment of costs against buildings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-323. Same—Injunction against unlawful use or occupation of building.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-324. Alterations to rental units which cause violations of housing regulations after notice to vacate—Prohibition.

Notwithstanding any other provision of law except sections 5-325 and 5-326, no person shall, during the period of time after the giving of a notice to vacate any rental unit (as defined by subchapter III of chapter 16 of title 45) and before the actual vacation of such unit, cause any alteration to the structure, plumbing apparatus, or electrical apparatus of the housing accommodation (as defined by subchapter III of chapter 16 of title 45) in which such unit is located, the result of which alteration is to cause such rental unit to come to be in substantial violation (or, if already in substantial violation, to be in greater violation) of the Housing Regulations of the District of Columbia for a period of time in excess of twenty-four (24) hours; *Provided* That, it shall not be a defense to an allegation of a violation of this section that the notice to vacate was invalid. (Apr. 23, 1977, D.C. Law 1-129, § 2, 23 DCR 9693.)

EMERGENCY ACT AMENDMENTS

1977—For temporary provisions relating to the habitability of rental units subject to notices to vacate prior to the enactment of sections 5-324 to 5-327, see the 1977 Emergency Act to Preserve the Habitability of Rental Units Subject to Notices to Vacate (D.C. Act 2-11, Mar. 16, 1977, 23 DCR 7673).

1976—For temporary provisions relating to the habitability of rental units subject to notices to vacate prior to the enactment of sections 5-324 to 5-327, see the Emergency Act to Preserve the Habitability of Rental Units Subject to Notices to Vacate (D.C. Act 1-126, May 26, 1976, 22 DCR 6685), the Second Emergency Act to Preserve the Habitability of Rental Units Subject to Notices to Vacate (D.C. Act 1-149, Aug. 24, 1976, 23 DCR 1820), and the Third Emergency Act to Preserve the Habitability of Rental Units Subject to Notices to Vacate (D.C. Act 1-181, Dec. 3, 1976, 23 DCR 4206).

EFFECTIVE DATE

Section 6 of act Apr. 23, 1977, D.C. Law 1-129, provided: "This act [enacting §§ 5-324 to 5-327] shall take effect pursuant to section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act Apr. 23, 1977, D.C. Law 1-129, provided "That this act [enacting §§ 5-324 to 5-327] may be cited as the "Act to Preserve the Habitability of Rental Units Subject to Notices to Vacant."¹

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-325, 5-326, 5-327.

§ 5-325. Same—Exemption by consent of tenants.

Section 5-324 shall not apply to any person performing any alteration upon any housing accommodation if the tenants of unvacated rental units,

¹ So in original. Probably should be "Vacate".

which are the subject of notices to vacate and which can reasonably be expected to be caused by the alteration to come to be in substantial violation (or, if already in substantial violation, to be in greater violation) of the Housing Regulations of the District of Columbia for a period of time in excess of twenty-four (24) hours, agree in writing to the alteration after receiving written notice of the alteration and its effect upon the habitability of the affected units. (Apr. 23, 1977, D.C. Law 1-129, § 3, 23 DCR 9693.)

EFFECTIVE DATE

See section 6 of act Apr. 23, 1977, D.C. Law 1-129, set out as a note under § 5-324.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-324

§ 5-326. Same—Exemption by Mayor.

The Mayor of the District of Columbia, or his designee, may grant an exemption from the provisions of section 5-324 in the event he, or his designee, inspects a housing accommodation wherein there are unvacated units subject to a notice to vacate and finds that a proposed alteration, while it may cause such a rental unit to come to be in substantial violation (or, if already in substantial violation, to be in greater violation) of the Housing Regulations of the District of Columbia for a period of time in excess of twenty-four (24) hours, is nevertheless, necessary for the immediate safety of the habitants of the accommodation. (Apr. 23, 1977, D.C. Law 1-129, § 4, 23 DCR 9693.)

EFFECTIVE DATE

See section 6 of act Apr. 23, 1977, D.C. Law 1-129, set out as a note under § 5-324.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-324.

§ 5-327. Same—Penalty.

Any person violating section 5-324 shall be imprisoned for not more than 10 days, fined not more than \$300, or both. (Apr. 23, 1977, D.C. Law 1-129, § 5, 23 DCR 9693.)

EFFECTIVE DATE

See section 6 of act Apr. 23, 1977, D.C. Law 1-129, set out as a note under § 5-324.

Chapter 4.—ZONING AND HEIGHT OF BUILDINGS

Sec.

5-412. Zoning Commission created—Membership—Functions.

5-417. Public hearings on proposed zoning regulations, maps, and amendments—Notice—Submission to National Capital Planning Commission.

5-426. Appropriations authorized for Zoning Commission—Compensation of members of Zoning Commission and Board of Zoning Adjustment.

§ 5-404. Additions—Towers, spires, and domes—Theaters.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-405. Width of street to govern height—Business streets—Residence streets—Corner lots—Fire-proof requirements—Dean Tract—Restrictions and limitations applicable to specific property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-147.

§ 5-410. Applications for erection or alteration of buildings fronting on certain government property to be submitted to Commission of Fine Arts.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Alteration

Demolition of all but the girders and joists of the hotel structure did not constitute an "alteration" within the meaning of statute requiring property owners in certain section of nation's capital to obtain approval of Fine Arts Commission for the "alteration" of the "height and appearance, color and texture of the materials of exterior construction" of buildings within the protected area. *Commissioner of the District of Columbia et al. v. C. B. Benenson et al.* (D.C. App. 1974, 329 A.2d 437).

The term "alteration" as used in statute requiring approval of Fine Arts Commission for the "erection or alteration" of any building within the regulated area of the nation's capital means change in the sense of adding to, remodeling or reconstruction. *Id.*

Function of Fine Arts Commission

The function of the Fine Arts Commission under statute requiring its approval for modification of buildings within certain areas of nation's capital is confined essentially to recommendations concerning applications for permits for the "erection or alteration of any building" within the prescribed area so far as the plans therefor relate to "height and appearance, color, and texture of the materials of external construction * * *." *Commissioner of the District of Columbia et al. v. C. B. Benenson et al.* (D.C. App. 1974, 329 A.2d 437).

§ 5-411. Plats of restricted area to be prepared.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-412. Zoning Commission created—Membership—Functions.

(a) To protect the public health, secure the public safety, and to protect property in the District of Columbia there is created a Zoning Commission for the District of Columbia, which shall consist of the Architect of the Capitol, the Director of the National Park Service, and three members appointed by the Mayor, by and with the advice and consent of the Council. Each member appointed by the Mayor shall serve for a term of four years, except of the members first appointed under this section—

(1) one member shall serve for a term of two years, as determined by the Mayor;

(2) one member shall serve for a term of three years, as determined by the Mayor; and

(3) one member shall serve for a term of four years, as determined by the Mayor.

(b) Members of the Zoning Commission appointed by the Mayor shall be entitled to receive compensation as determined by the Mayor, with the approval of a majority of the Council. The remaining members shall serve without additional compensation.

(c) Members of the Zoning Commission appointed by the Mayor may be reappointed. Each member shall serve until his successor has been appointed and qualifies.

(d) The Chairman of the Zoning Commission shall be selected by the members.

(e) The Zoning Commission shall exercise all the powers and perform all the duties with respect to zoning in the District as provided by law. (Mar. 1, 1920, 41 Stat. 500, ch. 92, § 1; Mar. 3, 1921, 41 Stat. 1291, ch. 124; Feb. 26, 1925, 43 Stat. 983, ch. 339; Ex. Ord. No. 6166, June 10, 1933; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1; Dec. 24, 1973, Pub. L. 93-198, title IV, § 492(a), 87 Stat. 810.)

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this amendment is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

CROSS REFERENCE

Compensation of members of Zoning Commission, see § 5-426.

§ 5-413. Zoning regulations to be made by Zoning Commission—Uniformity.

CROSS REFERENCE

Recommendations of National Capital Planning Commission, see § 1-1008.

NOTES TO DECISIONS

Advisory opinions

Absence of pending application for redevelopment of apartment complex did not render request for determination of whether requirement of an environmental impact statement would be triggered by redevelopment under either District of Columbia zoning regulations for planned unit developments or provisions for amendment of zoning maps a request for advisory opinion since issues were legal ones involving construction of statutes and regulations and were basically independent of facts surrounding a specific redevelopment proposal, redevelopment would have to occur under one of the two provisions and disposing of matter would avoid subsequent prolonged interference with the administrative process. *McLean Gardens Residents Association, Inc., et al. v. National Capital Planning Commission et al.* (1974, 390 F.Supp. 165).

Board of Zoning Adjustment—Relationship to

Person designated by Zoning Commission to represent Commission on Board of Zoning Adjustment is authorized to express Zoning Commission's concerns and to cast his

vote with full knowledge of attitudes and policy positions of Commission's members, but he is bound to cast his vote with the Board based exclusively upon the record of proceedings before the Board. *Sheridan-Kalorama Neighborhood Council et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 341 A.2d 312).

While channel for communication between Zoning Commission and Board of Zoning Adjustment may become a conduit for pressures external to the Zoning Commission, which abuse might invalidate a Board decision, such communications, if they occur should be made a part of the public record so that interested parties may comment. *Id.*

—Review of decisions

Statutory scheme for processing zoning exceptions was adhered to, and petitioners who sought judicial review of Board of Zoning Adjustment action which granted a special exception were afforded a fair and impartial hearing which satisfied requirements of procedural due process where, inter alia, following indication by Board member who was also a member of Zoning Commission, that Commission would review denial of application, one Board member dissented and expressed apprehension that improper pressure had been brought to bear from "upstairs," Commission's order of remand disavowed any intention on Commission's part to influence independent decision-making process of Board, and Board's final order was based upon criteria made applicable by zoning regulations. *Sheridan-Kalorama Neighborhood Council et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 341 A.2d 312).

Contract zoning

Refusal of Zoning Commission to consider covenant whereby developer limited maximum height of any building to 65 feet, rather than the 90 feet allowed by zoning code, was error; Commission would not have been engaged in so-called contract zoning by considering such a covenant in its rezoning decision; however, error did not require reversal since the same result would have been reached had the Commission properly interpreted the law. *Capital Hill Restoration Society et al. v. The Zoning Commission of the District of Columbia* (D.C. App. 1977, 380 A.2d 174).

Construction

This section requires only that zoning regulations be applied uniformly to all property throughout district, with all owners of same class being treated alike, and uniformity provision does not prohibit classification which is reasonable. *Dupont Circle Citizens Association v. District of Columbia Zoning Commission* (D.C. App. 1976, 355 A.2d 550; cert. denied 97 S.Ct. 396, 429 U.S. 966).

Development rights—Transfer

Where total floor area ratio for planned unit development is determinative figure, rather than floor area ratio for each building, there is no impediment to permitting payment for transfer of development rights from one building owner to another within same project when agreed to by the parties. *Dupont Circle Citizens Association v. District of Columbia Zoning Commission* (D.C. App. 1976, 355 A.2d 550; cert. denied 97 S.Ct. 396, 429 U.S. 966).

Environmental impact

Although the District of Columbia Zoning Commission and National Capital Planning Commission are not required to prepare an environmental impact statement in connection with applications under the District's zoning regulations for planned unit development or for amendment of zoning maps and zoning regulations, the environmental policies delineated in the National Environmental Policy Act should find expression in the planning and zoning process in the District; proper avenue for implementation of the purposes of the NEPA is in the planning operations of the National Capital Planning Commission, particularly in formulation of the Comprehensive Plan. *McLean Gardens Residents Association, Inc., et al. v. National Capital Planning Commission et al.* (1974, 390 F.Supp. 165).

Where potential environmental effects of decision of Zoning Commission are substantial, it must at least consider the environmental issue to fulfill its public interest

mandate. *Citizens Association of Georgetown, Inc. v. Zoning Commission of the District of Columbia* (1973, 477 F. 2d 402, 155 U.S. App. D.C. 233).

Inasmuch as District of Columbia Zoning Commission which down-zoned substantial portion of downtown area was not a federal agency, no environmental impact statement was required. *R. Ruppert et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 686; aff'd 543 F. 2d 416, 417, 177 U.S. App. D.C. 269, 270).

Ex parte contacts

Permitting assistant director of District of Columbia's Office of Planning and Management to present, at executive session of Zoning Commission, a written summary and abstract of evidence presented at public hearing in connection with rezoning application did not violate opponent's right to hearing, etc., notwithstanding that the assistant director testified in favor of application at the public hearing, since he was merely acting in accordance with his position as a staff member of the Commission; however, appearance of propriety would have been enhanced had another staff member appeared at the executive session. *Capitol Hill Restoration Society et al. v. The Zoning Commission of the District of Columbia* (D.C. App. 1977, 380 A.2d 174).

Contacts of District of Columbia Zoning Commission with federal agencies did not defeat validity of down-zoning order of the Commission on theory that the Commission considered information ex parte. *R. Ruppert et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 686; aff'd 543 F. 2d 416, 417, 177 U.S. App. D.C. 269, 270).

Hearings

While property rights may not be taken without due process of law, a property owner has no right to a particular zoning classification of his property and thus a hearing upon property owner's proposed zoning map amendment before its denial is not constitutionally required. *W. C. & A. N. Miller Development Company v. District of Columbia Zoning Commission* (D.C. App. 1975, 340 A.2d 420).

Injunctions

Preliminary injunction against enforcement of down-zoning order of District of Columbia Zoning Commission would be denied where issues were novel, likelihood of success on merits appeared slight and there was no affirmative showing of urgent necessity for interference with major city planning efforts. *R. Ruppert et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 683).

Judicial review

Controversy which arose out of Zoning Commission's actions in granting change in zoning so as to permit town-house development, which action followed an adjudicatory hearing is a "contested case" so that Court of Appeals has jurisdiction to review the action. *Palisades Citizens Assoc., et al. v. District of Columbia Zoning Commission* (D.C. App. 1977, 368 A.2d 1143).

Absent "contested case" status under Administrative Procedure Act (§§ 1-1501 et seq.), Court of Appeals does not have jurisdiction to directly review Zoning Commission's order amending zoning regulations under section 1-1510 relating to review by Court of administrative orders including power to hold unlawful and set aside findings and conclusions in enumerated instances, as that section does not denote a grant of jurisdiction but is a plain statement of scope of judicial review applicable only to contested cases. *Dupont Circle Citizen's Association et al. v. District of Columbia Zoning Commission* (D.C. App. 1975, 343 A.2d 296).

When Zoning Commission exercised its authority to determine needs of area by denying without public hearing a proposed amendment to zoning maps to change zoning classification of property, the Commission was acting legislatively and was not subject to the "contested case" provisions of Administrative Procedure Act (§§ 1-1501 et seq.), with the result that such decision is not subject to direct review by the Court of Appeals, despite contention of property owner that mere submission of proposed amendment, and the subsequent rejection of same, constituted a "hearing" required by law, and thus is subject to review. *W. C. & A. N. Miller Development Company v.*

District of Columbia Zoning Commission (D.C. App. 1975, 340 A.2d 420).

In reviewing refusal by Zoning Commission to enact interim amendment to zoning ordinance preventing major construction not in conformance with National Capital Planning Commission's comprehensive recommendations as to development of waterfront area until completion of pending area study, Court of Appeals would consider only whether Commission acted arbitrarily and capriciously, i.e., whether its decision had no substantial relationship to the general welfare. *Citizens Association of Georgetown, Inc. v. Zoning Commission of the District of Columbia* (1973, 477 F. 2d 402, 155 U.S. App. D.C. 233).

Actions of Zoning Commission are entitled to presumption of validity; however, the Commission must put forward or the court must be otherwise able to discern some basis in fact and law to justify Commission's action as consistent with reasonableness. *Id.*

Nature of proceedings

For purpose of judicial review, proceeding resulting in rezoning of 2.2-acre tract of land is a "contested case" where not only did the Zoning Commission treat the proceeding as such under its own rules but in an earlier case involving precisely the same applicant and the same parcel the court specifically held that proceeding before the Commission constituted a contested case and matter involved specific evidence concerning a single parcel of property and resolution did not depend on broad legislative policy judgments. *Capitol Hill Restoration Society et al. v. The Zoning Commission of the District of Columbia* (D.C. App. 1977, 380 A.2d 174).

Proceedings before District of Columbia Zoning Commission are quasi-legislative in character, not adjudicative in nature, and strictures of the District of Columbia Administrative Procedure Act and full range of due process protections necessary to an adversary adjudication are not applicable. *R. Ruppert et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 686; aff'd 543 F. 2d 416, 417, 177 U.S. App. D.C. 269, 270).

Proceedings held under the District of Columbia Zoning Commission's rules of practice, resulting in down-zoning of area, were not a "contested case" within meaning of Administrative Procedure Act, but were adversary in nature and equity could be invoked. *R. Ruppert et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 683).

Procedural requirements

Where there was a quorum of the Zoning Commission at the public hearings, where decision to grant application for change in zoning was made unanimously by the entire five member Commission, where the order itself, containing the finding of fact and conclusions of law, was later signed by three members, two of whom had been present at the hearings, and where opportunity was granted to objectors to file exceptions and present argument to majority of those who rendered the order, the provisions of the Administrative Procedure Act were sufficiently complied with. *Palisades Citizens Assoc., Inc., et al. v. District of Columbia Zoning Commission* (D.C. App. 1977, 368 A.2d 1143).

Evidence

Where counsel for citizens association urging rejection of application for planned unit development withdrew from participation in Zoning Commission hearing which resulted in final approval of PUD, citizens association could not complain on appeal that it was denied right to present evidence, cross-examine witnesses, and to make argument. *Dupont Circle Citizens Association v. District of Columbia Zoning Commission* (D.C. App. 1976, 355 A.2d 550; cert. denied 97 S.Ct. 396, 429 U.S. 966).

Issuance of decision

Although formally issued findings of fact and conclusions of law of Zoning Commission were not made available to the parties until date, i. e., January 2, after which two of the three Commissioners who approved rezoning order ceased being members by operation of law, the order is not invalid for want of proper issuance where decision and related order were previously signed and order was previously published in two newspapers, notwithstanding that publications did not include findings of facts and conclusions of law; even if order did not become "final"

before January 2, it took effect and was "issued" when it was published on December 28. *Capitol Hill Restoration Society et al. v. The Zoning Commission of the District of Columbia* (D.C. App. 1977, 380 A.2d 174).

—Notice

Notice of nature and extent of hearing on final application for approval of planned unit development did not deprive party of due process of law in not specifying that final hearing would include presentation of additional evidence relating to issues that had already been aired at preliminary stage, and Zoning Commission was not precluded from reexamining at final hearing matters that had been dealt with at preliminary application. *Dupont Circle Citizens Association v. District of Columbia Zoning Commission* (D.C. App. 1976, 355 A.2d 550; cert. denied 97 S.Ct. 396, 429 U.S. 966).

—Proposed decision

Absence of one member of Zoning Commission from session at which rezoning order was signed did not trigger application of section 1-1509(d) requiring that a majority of those who are to render the final order personally hear the evidence where no evidence was introduced at such meeting and purpose thereof was merely to review the findings of fact and conclusions of law and sign order which had previously been approved by voice vote. *Capitol Hill Restoration Society et al. v. The Zoning Commission of the District of Columbia* (D.C. App. 1977, 380 A.2d 174).

Where only designated representative for citizens association objecting to application for planned unit development withdrew from hearing before Zoning Commission on application, Commission is not required to serve proposed findings on citizens association. *Dupont Circle Citizens Association v. District of Columbia Zoning Commission* (D.C. App. 1976, 355 A.2d 550; cert. denied 97 S.Ct. 396, 429 U.S. 966).

Where majority of three Zoning Commissioners heard all evidence at hearing on final application for approval of planned unit development, rule regarding service of proposed findings and conclusions on each party is inapposite and fact that only two of three Commissioners present at hearing and one of the other commissioners signed the findings of fact and conclusions is irrelevant. *Id.*

Reasons for decision

Findings that, since adoption of comprehensive zoning plan, there had been substantial changes along a major arterial highway which made rezoning of site for townhouse development appropriate, that the change would promote the early and orderly development of the property, that the rezoning would not produce dangerous or objectionable traffic conditions, that the amendment was in harmony with the comprehensive zoning plan, that the amendment would not adversely affect the character or uses of adjacent districts, and that the townhouse development would require site plan review are sufficient to support rezoning of the property. *Palisades Citizens Assoc., Inc., et al. v. District of Columbia Zoning Commission* (D.C. App. 1977, 368 A.2d 1143).

Where Zoning Commission's findings of fact and conclusions of law in final decision approving planned unit development are legally adequate and sufficient to support order approving application, any deficiencies in preliminary decision rendered by Commission are remedied by final order. *Dupont Circle Citizens Association v. District of Columbia Zoning Commission* (D.C. App. 1976, 355 A.2d 550; cert. denied 97 S.Ct. 396, 429 U.S. 966).

Although the Zoning Commission is a quasi-legislative body and is not required to support its legislative type judgments with findings of fact, there are important elements of a nonlegislative nature to the Commission's decisions; while the legislative character of the Commission's decision may take it outside the strict application of requirement of fact finding, the Commission may still be required to state reasons for its decisions. *Citizens Association of Georgetown, Inc. v. Zoning Commission of the District of Columbia* (1973, 477 F.2d 402, 155 U.S. App. D.C. 233).

Reasons differ from findings in that reasons relate to law, policy, and discretion rather than to facts; thus, even where findings are not required, a disclosure of an

agency's reasons is often desirable; requirements of reasons should not be limited to formal proceedings but should extend to all determinations, unless the inconvenience is likely to outweigh the probable benefits. *Id.*

Fact that D.C. Administrative Procedure Act expressly imposes a statement of reasons requirement only in contested cases does not bar imposing a requirement of stated reasons in other contexts; the Act was meant only to prescribe minimum procedures. *Id.*

Decision of District of Columbia Zoning Commission down-zoning a substantial portion of downtown area had a substantial relationship to the general welfare and was supported by adequate reasons. *R. Ruppert et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 686; aff'd 543 F.2d 416, 417, 177 U.S. App. D.C. 269, 270).

If District of Columbia Zoning Commission in down-zoning downtown area acted for reasons not a matter of record, court would be required to find its actions arbitrary. *Id.*

Inasmuch as judicial review of action of District of Columbia zoning commission in down-zoning area of city would be facilitated by a statement of the commission's reasons, court would direct commission to state its reasons for the down-zoning order, and to provide statement of the environmental factors considered persuasive of the action taken. *R. Ruppert et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 683).

Recommendation of Planning Commission

Zoning Commission must accord substantial weight and respect to the National Planning Commission's statutorily authorized commentary on proposed maps, regulations and amendments to the comprehensive plan; the record must contain a strong basis for resort to a different interpretation. *Capitol Hill Restoration Society et al. v. The Zoning Commission of the District of Columbia* (D.C. App. 1977, 380 A.2d 174).

Rezoning of 2.2-acre vacant parcel to permit more intensive development would not be overturned where in the area involved the comprehensive plan calls for predominantly residential development density of 60 to 120 dwelling units per acre, area residences are largely single-family dwellings, subway terminal has considerable surplus capacity and applicant imposed on tract a covenant limiting maximum height of any building to 65 feet to protect surrounding historic landmarks. *Id.*

The Zoning Commission, in determining whether to adopt interim amendment to zoning ordinance preventing major construction in waterfront area until completion of study looking toward implementation of National Capital Planning Commission's comprehensive land use plan, was not bound to follow NCP's recommendation to adopt interim amendment; Zoning Commission was not required to show a compelling public interest before it could override recommendation. *Citizens Association of Georgetown, Inc. v. Zoning Commission of the District of Columbia* (1973, 477 F.2d 402, 155 U.S. App. D.C. 233).

Review by court

In reviewing action of District of Columbia Zoning Commission, district court is not required to hold a trial de novo nor may it substitute its view of the evidence before the Commission for that of the Commission. *R. Ruppert et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 686; aff'd 543 F.2d 416, 417, 177 U.S. App. D.C. 269, 270).

Court reviewing decision of Zoning Commission has duty to assure that proceedings before the Commission were essentially fair. *Id.*

Fact that plaintiffs claiming that District of Columbia zoning commission acted arbitrarily and illegally in down-zoning area had requested, after suit was filed, that commission state its reasons in form of motion for reconsideration did not defeat jurisdiction to review commission's action where there was no likelihood of favorable action by the commission. *R. Ruppert et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 683).

Spot zoning

Rezoning of 2.2-acre vacant parcel to permit more intensive development than limited residential use does not constitute unlawful "spot zoning" since the amendment does not violate the comprehensive plan. *Capitol*

Hill Restoration Society et al. v. The Zoning Commission of the District of Columbia (D.C. App. 1977, 380 A. 2d 174).

Zoning amendment

Evidence that there had been substantial changes in the neighborhood since adoption of comprehensive zoning plan and that zoning change to permit townhouse development would promote orderly development of the property and would be in harmony with the comprehensive plan is sufficient showing of substantial change to sustain rezoning. *Palisades Citizens Assoc., Inc., et al. v. District of Columbia Zoning Commission* (D.C. App. 1977, 368 A.2d 1143).

It is not necessary to show mistake in previous zoning in order to permit change in zoning, on the grounds of substantial change, so as to permit townhouse development. *Id.*

Action of Zoning Commission in approving zoning change on property to permit townhouse development did not constitute spot zoning. *Id.*

§ 5-414. Purposes of zoning regulations.

Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the National Capital, and zoning regulations shall be designed to lessen congestion in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein. (June 20, 1938, 52 Stat. 797, ch. 534, § 2; Dec. 24, 1973, Pub. L. 93-198, title IV, § 492 (b) (1), 87 Stat. 810.)

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended the first sentence by striking out "Such regulations shall be made in accordance with a comprehensive plan and" and inserting in lieu thereof "Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the National Capital, and zoning regulations shall be".

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this amendment is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

CROSS REFERENCE

Comprehensive plan for National Capital, see § 1-1004.

NOTES TO DECISIONS

Comprehensive plan

Zoning Commission must accord substantial weight and respect to the National Planning Commission's statutorily authorized commentary on proposed maps, regulations and amendments to the comprehensive plan; the record must contain a strong basis for resort to a different interpretation. *Capitol Hill Restoration Society et al. v. The*

Zoning Commission of the District of Columbia (D.C. App. 1977, 380 A. 2d 174).

Rezoning of 2.2-acre vacant parcel to permit more intensive development would not be overturned where in the area involved the comprehensive plan calls for predominantly residential development density of 60 to 120 dwelling units per acre, area residences are largely single-family dwellings, subway terminal has considerable surplus capacity and applicant imposed on tract a covenant limiting maximum height of any building to 65 feet to protect surrounding historic landmarks. *Id.*

Words "comprehensive plan," as used in statutory requirement that zoning regulations adopted by District of Columbia Zoning Commission be in accordance with comprehensive plan does not refer to comprehensive land use plan which the National Capital Planning Commission is charged with preparing by § 1-1004; rather, such requirement refers to the Commission's obligation to zone on a uniform and comprehensive basis. *Citizens Association of Georgetown, Inc. v. Zoning Commission of the District of Columbia* (1973, 477 F. 2d 402, 155 U.S. App. D.C. 233).

Construction

Interpretation of relevant statutes and zoning regulations by the Board of Zoning Adjustment, which, in respect to application for "special exception" to allow the construction of a private school in single-family residential area, refused to consider the purposes set forth in this section as adjudicatory standards in making the "special exception" determination, and which refused to allow the introduction of factual evidence regarding the impact upon public schools in the area, is not plainly erroneous or inconsistent with the statutes or regulations. *Rose Lees Hardy Home and School Association et al. v. District of Columbia Board of Zoning Adjustment et al.* (D.C. App. 1975, 343 A. 2d 564).

Law, applicability of amendment

Where following amendment of zoning map but prior to appellate review, zoning laws were amended to require that maps and amendments not be inconsistent with comprehensive plan for the National Capital, the amended law is to be applied and the amendment examined for conformity to the comprehensive plan. *Capitol Hill Restoration Society et al. v. The Zoning Commission of the District of Columbia* (D.C. App. 1977, 380 A. 2d 174).

§ 5-415. Existing zoning regulations continued until amended—Public hearing on amendments—Notice—Contents.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

NOTES TO DECISIONS

Hearings

While property rights may not be taken without due process of law, a property owner has no right to a particular zoning classification of his property and thus a hearing upon property owner's proposed zoning map amendment before its denial is not constitutionally required. *W. C. & A. N. Miller Development Company v. District of Columbia Zoning Commission* (D.C. App. 1975, 340 A.2d 420).

Judicial review

When Zoning Commission exercised its authority to determine needs of area by denying without public hearing a proposed amendment to zoning maps to change zoning classification of property, the Commission was acting legislatively and was not subject to the "contested case" provisions of Administrative Procedure Act (§§ 1-1501 et seq.), with the result that such decision is not subject to direct review by the Court of Appeals, despite contention of property owner that mere submission of proposed amendment, and the subsequent rejection of same, constituted a "hearing" required by law, and thus is subject to review. *W. C. & A. N. Miller Development Company v. District of Columbia Zoning Commission* (D.C. App. 1975, 340 A.2d 420).

§ 5-417. Public hearings on proposed zoning regulations, maps, and amendments—Notice—Submission to National Capital Planning Commission.

(a) No zoning regulation or map, or any amendment thereto, may be adopted by the Zoning Commission until the Zoning Commission—

(1) has held a public hearing, after notice, on such proposed regulation, map, or amendment; and

(2) after such public hearing, submitted such proposed regulation, map, or amendment to the National Capital Planning Commission for comment and review.

If the National Capital Planning Commission fails to submit its comments regarding any such regulation, map, or amendment within thirty days after submission of such regulation, map, or amendment to it, then the Zoning Commission may proceed to act upon the proposed regulation, map, or amendment without further comment from the National Capital Planning Commission.

(b) The notice required by clause (1) of subsection (a) shall be published at least thirty days prior to such public hearing and shall include a statement as to the time and place of the hearing and a summary of all changes in existing zoning regulations which would be made by adoption of the proposed regulation, map, or amendment. The Zoning Commission shall give such additional notice as it deems expedient and practicable. All interested persons shall be given a reasonable opportunity to be heard at such public hearing. If the hearing is adjourned from time to time, the time and place of reconvening shall be publicly announced prior to adjournment.

(c) The Zoning Commission shall deposit with the National Capital Planning Commission all zoning regulations, maps, or amendments thereto, adopted by it. (June 20, 1938, 52 Stat. 798, ch. 534, § 5; Dec. 24, 1973, Pub. L. 93-198, title IV, § 492(b) (2), 87 Stat. 810.)

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended section generally. For prior provisions, see the 1973 ed. of the Code.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this amendment is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

TRANSFER OF FUNCTIONS

Section 712 of Act Dec. 24, 1973, Pub. L. 93-198 [set out as § 1-132], provided in part that "[no] function now vested pursuant to section 501 of Reorganization Plan Numbered 3 of 1967 in the . . . Zoning Advisory Council, or in any officer, employee, or body of or under such agency, shall be considered as a function transferred to the Council pursuant to section 404(a) of this Act [§ 1-144(a)]. Each such function is hereby transferred to the officer, employee, or agency (including any body of or under such agency), to whom or to which it was delegated, or in whom or in which it has remained vested, until the Mayor or Council established under this Act, or both, pursuant to the powers herein granted, shall revoke, modify, or transfer such delegation or vesting."

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1008.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in section 71g of title 40, United States Code.

NOTES TO DECISIONS

Environmental impact

Although the District of Columbia Zoning Commission and National Capital Planning Commission are not required to prepare an environmental impact statement in connection with applications under the District's zoning regulations for planned unit development or for amendment of zoning maps and zoning regulations, the environmental policies delineated in the National Environmental Policy Act should find expression in the planning and zoning process in the District; proper avenue for implementation of the purposes of the NEPA is in the planning operations of the National Capital Planning Commission, particularly in formulation of the Comprehensive Plan. *McLean Gardens Residents Association, Inc., et al. v. National Capital Planning Commission et al.* (1974, 390 F. Supp. 165).

Planning Commission comments

Zoning Commission must accord substantial weight and respect to the National Planning Commission's statutorily authorized commentary on proposed maps, regulations and amendments to the comprehensive plan; the record must contain a strong basis for resort to a different interpretation. *Capitol Hill Restoration Society et al. v. The Zoning Commission of the District of Columbia* (D.C. App. 1977, 380 A.2d 174).

§ 5-418a. Continued use and maintenance of existing chanceries—Construction, reconstruction, expansion or alterations in accordance with permits issued on or before February 18, 1964.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-420. Board of Zoning Adjustment—Creation, membership—Tenure—Regulations to govern organization and procedure—Appeal—Procedure, powers—Majority vote necessary.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TRANSFER OF FUNCTIONS

Section 712 of Act Dec. 24, 1973, Pub. L. 93-198 [set out as § 1-132], provided in part that "[no] function now vested pursuant to section 501 of Reorganization Plan Numbered 3 of 1967 in the . . . Board of Zoning Adjustment, or in any officer, employee, or body of or under such agency, shall be considered as a function transferred to the Council pursuant to section 404(a) of this Act [§ 1-144(a)]. Each such function is hereby transferred to the officer, employee, or agency (including any body of or under such agency), to whom or to which it was delegated, or in whom or in which it has remained vested, until the Mayor or Council established under this Act, or both, pursuant to the powers herein granted,

shall revoke, modify, or transfer such delegation or vesting."

NOTES TO DECISIONS

Administrative procedure

Where Board of Zoning Adjustment granted university's application for exception to permit university uses in residential district, contingent upon university's fulfillment of certain conditions, including requirement that university construct three lane at-grade intersection at specified location, memorandum subsequently issued by Board interpreting such condition as contingent upon widening of street by Department of Highways and Traffic was contrary to plain meaning of original order and resulted in material revision of terms under which exception was granted, and, in absence of proper notice and opportunity to be heard, such action is invalid. *Citizens Association of Georgetown et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 365 A.2d 372).

Board of Zoning Adjustment properly observed procedural requirements where, promptly after it was informed that it had erred in dismissing appeal from ruling of Zoning Administrator on mistaken finding that owners of nearby cooperative apartment had not been appellant in such proceeding, it scheduled de novo hearing on appeal, thus affording all interested parties full opportunity to marshal evidence and present argument based on issue of accessory use and standing of party to proceed through de novo proceeding; that one party chose not to participate in such de novo proceeding is not reason for Court of Appeals to declare that hearing is nullity and that order entered therein is invalid. *Hilton Hotels Corporation v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 363 A. 2d 670).

Although Board of Zoning Adjustment may not have been required to consider impact on existing public and private schools in passing on request by religious organization for special exception to allow construction of private school for kindergarten and elementary school age children in residential area the Board committed procedural error, requiring remand, in not implementing its preliminary decision to seek "comments" from Board of Education respecting possible adverse impact on existing schools and in relying on information contained in letter from Superintendent of Schools as to such impact without serving such letter on the parties. *Rose Lees Hardy Home and School Association et ano. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 324 A. 2d 701).

— Notice of hearing

Where citizens' association had actual notice of application for further processing under zoning regulations and objected to taking part in case or in hearings that involved case for zoning which association claimed was illegal, association would not thereafter be heard to complain of method of notice provided by regulation. *Dupont Circle Citizens Association v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 364 A.2d 610).

— Public meetings

Provision of this section providing that all "meetings" of Board of Zoning Adjustment shall be open to public requires public hearings, but does not require that conference at which Board considers and decides a case be public. *Dupont Circle Citizens Association v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 364 A.2d 610).

— Scope of hearing

Where applicants submitted plans to Board of Zoning Adjustment which were based upon Zoning Commission's order and were virtually identical to those approved by Commission, and applicants purposely attempted to avoid changes in order to accelerate decision-making process, Board properly limited scope of its hearing to those matters provided in zoning regulations, and properly prevented petitioning citizens' association from reopening issues decided by the Zoning Commission. *Dupont Circle Citizens Association v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 364 A.2d 610).

Arbitrary or capricious

Board of Zoning Adjustment, being a creature of statute with discretionary and fact-finding authority, may

not exercise its discretion in an arbitrary manner but rather is subject to statutory and regulatory directives and guidelines. *Rose Lees Hardy Home and School Association et ano. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 324 A. 2d 701).

Construction

Interpretation of relevant statutes and zoning regulations by the Board of Zoning Adjustment, which, in respect to application for "special exception" to allow the construction of a private school in single-family residential area, refused to consider the purposes set forth in section 5-414 as adjudicatory standards in making the "special exception" determination, and which refused to allow the introduction of factual evidence regarding the impact upon public schools in the area, is not plainly erroneous or inconsistent with the statutes or regulations. *Rose Lees Hardy Home and School Association et al. v. District of Columbia Board of Zoning Adjustment et al.* (D.C. App. 1975, 343 A. 2d 564).

Construction of zoning regulations

Section of District of Columbia zoning regulations concerning findings to be made by Board of Zoning Adjustment is to be read in context of other provisions and regulations, defining scope of Board's review, and does not demand findings as to each requirement of regulation but only findings "related to" matters listed in such section; it is limitation on scope of review and not grant of authority. *Dupont Circle Citizens Association v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 364 A. 2d 610).

Evidence before Board of Zoning Adjustment sustains finding that nonprofit society organized to advocate and maintain principles of citizen participation in government does not constitute a "private club" within meaning of zoning regulations. *Legislative Study Club, Inc. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 359 A.2d 153).

When Court of Appeals reviews Zoning Board's construction of regulations adopted by Zoning Commission, Board's interpretation is controlling, unless it is plainly erroneous or inconsistent with regulation. *N. K. Dietrich et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 320 A. 2d 282).

With respect to zoning regulation requiring for high school and accessory uses two parking spaces for each three teachers plus one for each 20 classroom seats "OR" one for each ten auditorium seats whichever is greater, it was reasonable for Board of Zoning Adjustment to consider "OR" as dividing line between alternatives so that number of parking spaces required was either "two for each three teachers plus one for each 20 classroom seats" or "one for each ten auditorium seats," whichever alternative was greater. *Id.*

Board of Zoning Adjustment's construction of Zoning Commission's regulations to include high school gymnasium within high school and accessory use provision of regulations for purposes of determining number of parking spaces required rather than as a place of public assemblage was not plainly erroneous or inconsistent with regulations. *Id.*

Decision

Decision of Board of Zoning Adjustment on application for special exception must not be controlled by head count as in a political election, but by evidence adduced as it relates to requirements for special exception. *N. K. Dietrich et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 320 A. 2d 282).

Ex parte contacts

Board of Zoning Adjustment's action with respect to university's application for special exceptions necessary to permit uses enumerated in campus master plan was not invalid on ground that one Board member had contact ex parte with university in his capacity as advisor to National Capital Planning Commission. *Citizens Association of Georgetown et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 365 A. 2d 372).

Person designated by Zoning Commission to represent Commission on Board of Zoning Adjustment is authorized to express Zoning Commission's concerns and to cast his vote with full knowledge of attitudes and policy

positions of Commission's members, but he is bound to cast his vote with the Board based exclusively upon the record of proceedings before the Board. *Sheridan-Kalorama Neighborhood Council et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 341 A.2d 312).

While channel for communication between Zoning Commission and Board of Zoning Adjustment may become a conduit for pressures external to the Zoning Commission, which abuse might invalidate a Board decision, such communications, if they occur should be made a part of the public record so that interested parties may comment. *Id.*

Where neighboring property owner, who objected to application for special exception to zoning plan, addressed ex parte letter on merits of controversy to member of Board of Zoning Adjustment the member, instead of sending an ex parte reply to the property owner, should have placed his improper submission in the public record and had copies thereof served on the other parties, notwithstanding fact that record technically was closed and the case had been decided. *Rose Lees Hardy Home and School Association et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 324 A.2d 701).

Exception

Board of Zoning Adjustment was not required, through a liberal interpretation of zoning regulation, to carve out a special exception so as to legalize a use which was presently and had been since its inception an illegal use where it was clear under facts disclosed by record that it would not be in harmony with general purpose and intent of zoning regulations to provide for strict regulation of nonconforming uses. *N. Bernstein et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1977, 376 A.2d 816).

University's application which ostensibly sought only approval of its campus master plan constituted a request for all special exceptions necessary to permit uses enumerated in master plan, to extent that evidence was introduced before Board of Zoning Adjustment in support of special exceptions. *Citizens Association of Georgetown et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 365 A.2d 372).

Applicants for special exceptions to permit the construction and use of an office building in a special purpose district failed to meet their required burden to obtain a special exception. *E. A. Shay et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 337 A.2d 506).

Board of Zoning Adjustment may exercise its discretion to grant a special exception only when in its judgment the exception sought is in accord with the purpose of the zoning regulations. *Rose Lees Hardy Home and School Association et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 324 A.2d 701).

Community center

Where proposed facility was to be located on property zoned residential, was to house indoor tennis, squash, handball, sauna baths and indoor swimming and was not to be open to members of the community at large, but was to be operated as a club with use limited to members and their guests, and where memberships offered would be limited in number, the proposed facility was a private club and not a "community center" facility operated by a local "community organization" within zoning ordinance authorizing granting of special exception for such a community facility. *D. C. Stewart et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1973, 305 A.2d 516).

Conditional

Where conditions imposed by Board of Zoning Adjustment for granting of exception to permit university uses in residential district were beyond power of university to fulfill because they were contingent upon widening and perhaps relocation of public street, Board would be required to reconsider its action in granting exception. *Citizens Association of Georgetown et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 365 A.2d 372).

Halfway house

No one section of community should have to bear disproportionate share of environmental burden which halfway houses and social service centers necessarily impose on neighboring property. *H. B. Hubbard v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 366 A.2d 427).

Private school

Interpretation of relevant statutes and zoning regulations by the Board of Zoning Adjustment, which, in respect to application for "special exception" to allow the construction of a private school in single-family residential area, refused to consider the purposes set forth in section 5-414 as adjudicatory standards in making the "special exception" determination, and which refused to allow the introduction of factual evidence regarding the impact upon public schools in the area, is not plainly erroneous or inconsistent with the statutes or regulations. *Rose Lees Hardy Home and School Association et al. v. District of Columbia Board of Zoning Adjustment et al.* (D.C. App. 1975, 343 A.2d 564).

Evidence established that requirements had been met for special exception to permit private high school to be located in building situated in median density apartment house zone. *N. K. Dietrich et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 320 A.2d 282).

Findings of fact

Facts found by Board of Zoning Adjustment were insufficient to sustain grant of exception to permit university uses in residential district, in view of board's failure to find as matter of fact that it was not likely that noise, traffic, number of students, and other conditions generated by university's presence in residential district would become objectionable to neighboring property, and in view of significant inaccuracies in Board's findings of fact with respect to a report of Department of Highway and Traffic, and with respect to traffic generated by university. *Citizens Association of Georgetown et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 365 A.2d 372).

Findings of Board of Zoning Adjustment supports action of Board in reversing decision by Zoning Administrator which had permitted, as "accessory use," operation by hotel of laundry plant which also served another nearby hotel owned by same corporation. *Hilton Hotels Corporation v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 363 A.2d 670).

Evidence before Board of Zoning Adjustment sustains finding that nonprofit society organized to advocate and maintain principles of citizen participation in government does not constitute a "private club" within meaning of zoning regulations. *Legislative Study Club, Inc. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 359 A.2d 153).

Order of Zoning Board of Adjustment reversing grant to property owner of building permit to construct a sun deck at rear of his home would have to be reversed, and the case remanded, where Board made no findings whatever concerning issue raised by owner, who asserted that because of seven-month delay between issuance of permit and filing of appeal with the Board five months after deck was completed, because of lack of complaints by neighbors while construction was in progress, and because of good-faith reliance by owner on building permit issued, zoning appeal should be dismissed on ground of laches and estoppel. *S. A. Smith et ux. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 342 A.2d 356).

Board of Zoning Adjustment's findings of fact which were devoid of any delineation of factors weighed in reaching its conclusions of law thereby precluding determination on review as to which factors or considerations influenced Board's decision are inadequate and require remand to Board for proper entry of findings of fact and conclusions of law. *E. A. Shay et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 334 A.2d 175).

Findings of Board of Zoning Adjustment in denying application for variance from a C-1 (neighborhood shopping) nonconforming use to a C-2 (community business center) use were insufficient for reviewing court to discern the necessary rational basis for the decision. *L. Sals-*

bery v. District of Columbia Board of Zoning Adjustment (D.C. App. 1974, 318 A.2d 894).

Consideration by Board of Zoning Adjustment of costs of converting to residential use building for which petitioner sought variance from a C-1 conforming use to a C-2 use did not obviate necessity for findings required by zoning statute. *Id.*

In action by college for review of order of Board of Zoning Adjustment denying application for amendment to campus plan to allow college to offer short-term, continuing education type courses on year-around basis, evidence sustained findings of the Board that new programs would introduce large number of transient men and women onto college property, substantially increase number of people entering or leaving neighborhood, usually in automobiles, adversely affect use of neighboring property in residential zone and cause continuing instability and alarm in community because of uncertainty about nature of uses which could be anticipated. *Marjorie Webster Junior College, Inc. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1973, 309 A. 2d 314).

Hardship

Denial of variance to permit an office use in an R-5-C district was not error where only hardship petitioners were able to point to that peculiarly affected their interest in property was cost of remodeling unit for residential purposes and anticipated difficulty in renting it because of close proximity to restaurant-caterer, whereas an examination of record revealed that there were other residential units near restaurant-caterer and that vacancy rate among residential apartments on ground floor was no greater than vacancy rate on upper floors of buildings that were completely residential in character. *N. Bernstein et al v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1977, 376 A. 2d 816).

Where purchasers of building were aware of litigation pending before court to obtain use variance, they assumed risk that use of building might be limited; thus any hardship based on misapprehension as to available uses cannot be attributed to them, although their grantor in her primary claim of hardship had contended a strict application of zoning regulations requiring use of building as one-family residence would cause economic loss to her by reason of her large financial expenditure in purchasing property, thinking that it could be used as a flat. *H. J. Silverstone et ano. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1977, 372 A.2d 1286).

Where property for which zoning variance was sought could reasonably be used for row-type townhouses and where such a development was permissible in the district, exceptional and undue hardship necessary to enable the grant of a variance does not exist. *L. Salsbery v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 357 A.2d 402).

Where any hardship to petitioner for zoning variance stemmed from fact that petitioner had contracted to purchase the subject property without conditioning the contract on the securing of a use variance, hardship is self-inflicted and not such as to support grant of a use variance. *Id.*

There was rational basis for conclusion of District of Columbia Board of Zoning Adjustment that owner of building in residential area had failed to make the required showing of hardship to warrant a variance to permit use of property for general office purposes. *M. Dwyer v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 320 A. 2d 306).

Under zoning statute, grant of variance on basis of hardship was not restricted to case where required hardship inheres in "land" as opposed to "property." *Clerics of Saint Viator, Inc. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 320 A. 2d 291).

Owner of seminary was not precluded on application for variance from claiming hardship on theory that any hardship was self-imposed, where it was not building of structure which gave rise to complained-of hardship but hardship was caused by extraordinary drop in enrollment of seminarians due solely to historical circumstances and beyond control of seminary administration. *Id.*

On application for variance to convert seminary to nursing home on claim of hardship, necessary element of

proof of hardship was evidence showing inability of applicant to make a reasonable disposition of property for a permitted use. *Id.*

Application of zoning regulation which allowed only detached single family homes with minimum lot dimensions of 50 feet in width and 5,000 total square feet to property which was shallow and had extreme topography and was in close proximity to small district of neighborhood shopping and a general residence district did not result in an undue hardship upon landowner warranting the granting of variance to build 27 row houses of just over 2,000 square feet. *W. W. Taylor v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1973, 308 A. 2d 230).

Shallowness of lots was a self-imposed hardship which was entitled to only slight weight, if any, in determining uniqueness of hardship to justify granting of variance in zoning. *Id.*

Nonconforming use

Where premises were being used as one-family residence at time of adoption of zoning regulation precluding use of building in district as flat, premises which were built for flat use and used as such until some years prior to regulation could not be converted to flat use subsequent to regulation, even if right to flat use continued and became nonconforming because of regulation, in view of regulation to effect that once existing nonconforming use has been changed to conforming use, it shall not be changed back to nonconforming use. *H. J. Silverstone et ano. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1977, 372 A.2d 1286).

Powers

Sole authority for any amendment of zoning regulations relating to parking is in Zoning Commission, not Board of Zoning Adjustment. *Citizens Association of Georgetown, Inc. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 337 A.2d 495).

Board of Zoning Adjustment is without direct or indirect power to amend a zoning map and regulations. *W. W. Taylor v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1973, 308 A. 2d 230).

Precedents

While Board of Zoning Adjustment is not bound for all time by its prior positions, Board should have considered, not only in connection with Board's decision on the merits of the case but also as it related to owner's claim of estoppel, contention of property owner that zoning administrator's approval of construction of sun deck was given pursuant to a long-standing interpretation of zoning regulations which had been approved in the past by the Board. *S. A. Smith et ux. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 342 A.2d 356).

—Indexing of

Applicant for certificate of occupancy to use building in specified zoning district as private club is not entitled to receive from Board of Zoning Adjustment list of all Board decisions from preceding 15 years dealing with question of what constitutes a "private club" within meaning of zoning regulations, in absence of statute requiring Board to maintain index of Board decisions. *Legislative Study Club, Inc. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 359 A.2d 153).

Reasons for decision

Order of Zoning Board of Adjustment which reversed grant to property owner of building permit to construct a sun deck at the rear of his property improperly fails to articulate the relationship between the Board's findings of fact and conclusions of law, which is a responsibility of the Board, where the facts were stated and where the ultimate conclusion followed, but where the Court of Appeals cannot determine from the order the manner in which the Board construed its regulations in arriving at its conclusion that "the structure" violated the zoning regulations. *S. A. Smith, et ux. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 342 A.2d 356).

Where Board of Zoning Adjustment's reasons for denying area variance merely quoted pertinent standards in subsection of code without explaining how proposed variance would violate such standards, except for one terse

sentence dealing with property owner's alleged self-imposition of hardship, Board's conclusions and findings are insufficient. *A. L. W., Inc. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 338 A.2d 428).

Rehearing

Where order of Board of Zoning Adjustment granting rehearing following dismissal with prejudice of application for special exception to operate halfway house or social service center is invalid due to fact there were only three affirmative votes in favor of same, Board's subsequent action on rehearing motion is invalid and motion has to be treated as denied, thus requiring one-year waiting period before reapplication can be made. *H. B. Hubbard v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 365 A.2d 427).

Review by court

Decision of lower court must be affirmed if result is correct, although lower court relied upon wrong ground or gave wrong reasons, since it would be wasteful to send case back to lower court to reinstate decision which it had already made but which appellate court concluded should properly be based on another ground within power of appellate court to formulate and like considerations govern review of administrative orders. *H. J. Silverstone et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1977, 372 A.2d 1286).

Actions of the Board of Zoning Adjustment were to be accorded presumption of regularity, and where chairman had been present at hearings and had heard all testimony and did not designate someone else to vote for him but rather cast his vote in absentia and Board accepted it, presumption is not overcome. *Dupont Circle Citizens Association v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 364 A.2d 610).

Failure of chairman and a member of Board of Zoning Adjustment to recuse themselves, in respect to application for a "special exception" to allow the construction of a private school in a residential area, is waived by the failure of those opposing the application to timely raise that issue at the administrative level and at the earlier review proceeding in the Court of Appeals, irrespective of the fact that the recusal issue was listed in the petition for review in the first Court of Appeals proceeding. *Rose Lees Hardy Home and School Association et al. v. District of Columbia Board of Zoning Adjustment et al.* (D.C. App. 1975, 343 A.2d 564).

On review of order of Board of Zoning Adjustment, Court of Appeals must determine whether findings made are supported and in accordance with reliable, probative and substantial evidence in the whole administrative record and whether conclusions of Board flow rationally from these findings. *N. K. Dietrich et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 320 A.2d 282).

Scope of review of decision of Board of Zoning Adjustment which denied variance would not permit court to grant variance sought; the proper disposition because of insufficient findings was remand. *L. Salsbery v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 318 A.2d 894).

In reviewing order of Board of Zoning Adjustment denying college's application for amendment to its campus plan to allow college to offer short-term, continuing education type courses on a year-around basis on its campus located in residential zone, court must determine whether detailed findings of the Board were made upon each material contested issue of fact, whether those findings were supported by and in accordance with reliable, probative and substantial evidence in the whole of the administrative record and whether conclusions of the Board flowed rationally from those findings. *Marjorie Webster Junior College, Inc. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1973, 309 A.2d 314).

Review by Court of Appeals of decision of Board of Zoning Adjustment is limited to a determination of whether the decision reached follows as a matter of law from facts stated as its basis, and also whether facts so stated have any substantial support in the evidence; if Board's decision follows from its findings and those findings are supported by substantial evidence, Court of Appeals must affirm even though it might have reached an-

other result. *D. C. Stewart et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1973, 305 A.2d 516).

Review by Zoning Commission

Statutory scheme for processing zoning exceptions was adhered to and petitioners who sought judicial review of Board of Zoning Adjustment action which granted a special exception were afforded a fair and impartial hearing which satisfied requirements of procedural due process where, inter alia, following indication by Board member who was also a member of Zoning Commission, that Commission would review denial of application, one Board member dissented and expressed apprehension that improper pressure had been brought to bear from "upstairs," Commission's order of remand disavowed any intention on Commission's part influence independent decision-making process of Board, and Board's final order was based upon criteria made applicable by zoning regulations. *Sheridan-Kalorama Neighborhood Council et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 341 A.2d 312).

Review of unfair hearing

Since two petitioners who sought judicial review of Board of Zoning Adjustment's action granting a special exception communicated to Zoning Commission their dissatisfaction with Board's action almost simultaneously with Commission's decision to review such action, petitioners are not in a position to claim prejudice as a result of fact that Commission assumed both the authority to review the matter, regardless of whether any party appealed, and the authority to remand. *Sheridan-Kalorama Neighborhood Council et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 341 A.2d 312).

Scope of review

On review of decision of Board of Zoning Adjustment, Court of Appeals could not consider new issues raised by petitioners concerning parking requirements with respect to operation of private high school but would look to the exclusive record or portions of it designated by parties. *N. K. Dietrich et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 320 A.2d 282).

Standing

Cooperative apartment, in view of its geographical location vis-a-vis hotel and testimony describing manner in which operation of hotel's laundry plant obstructed nearby streets, had standing to complain, as intervenor in proceedings before Board of Zoning Adjustment, of hotel's laundry practices. *Hilton Hotels Corporation v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 363 A.2d 670).

Variance

Fact that homeowners might incur expenses of 50% to 90% more in pursuing methods of expansion of their kitchen other than one which would require variance and that other methods would require elimination of either interior living space or backyard space, relocation of existing utilities and diminishment of their enjoyment of their home does not entitle them to variance from side yard requirements of zoning regulations. *E. L. Barbour et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1976, 358 A.2d 326).

"Variance" is an authorization to a property owner to depart from literal requirements of zoning regulations in utilization of his property in cases in which strict enforcement of the zoning regulations would cause undue hardship. *C. Daniel et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 329 A.2d 773).

Neighborhood detriment, as such, is not a criterion under zoning statute authorizing variance where strict application of regulation would result in exceptional and undue hardship upon owner. *L. Salsbery v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 318 A.2d 894).

Where board of zoning adjustment ruled against petitioner on hardship claim on basis of which variance from C-1 nonconforming use to a C-2 use was sought, board should not have reached consideration of statutory proviso whether the intended use would have an adverse effect upon the character and development of the

neighborhood and would substantially impair the purpose, intent or integrity of the zoning regulations and maps. *Id.*

Even though landowner seeking variance from zoning which allowed only detached single family houses with minimum lot dimensions of 50 feet in width and 5,000 total square feet wished to build single-family dwellings on land, where requested variance would allow construction of 27 row houses on lots of approximately 2,000 square feet and allow landowner to almost triple family density allowed under zoning and row houses would not be in character with other properties in zoned district, requested variance was not an area variance but a use-area variance; thus, landowner was properly required to prove undue hardship in order to be entitled to variance. *W. W. Taylor v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1973, 308 A.2d 230).

Board of zoning adjustment does not have authority to grant a variance in order to assure landowner a profit. *Id.*

— Use

Applicant seeking use variance must show "exceptional and undue hardship", but where substandard lot is subject of application for area variance, proof of only "peculiar and exceptional difficulties" is involved. *A. L. W., Inc. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 338 A.2d 428).

Landowner seeking area variance for substandard lot is required only to prove "peculiar and exceptional difficulties" even though he knew or should have known of area restrictions before he purchased property. *Id.*

On application for variance to convert seminary to nursing home, it would be proper for zoning board to require applicant to present evidence to show that his proposed use would not create traffic flow and parking problems inconsistent with R-1-B residential neighborhood, and board must give applicant sufficient notice of issues on which it seeks proof. *Clerics of Saint Viator, Inc. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 320 A.2d 291).

§ 5-421. Maps and regulations of Zoning Commission—To be filed—Published.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 5-422. Building permits—Construction without obtaining—Certificates of occupancy—Use without obtaining—Construction in violation of regulations—Enforcement—Actions, parties—Penalty.

CROSS REFERENCES

Advisory Neighborhood Commissions, list of construction and demolition permits to be provided to, see § 1-171i.

Review of permits to determine safety from flood hazards, see § 5-1101.

NOTES TO DECISIONS

Defense to suit for possession

A landlord's violation of law in failing to procure required licenses is not to be treated any differently than a violation of law in failing to meet the minimum standards of habitability; in neither case does a violation arising after the lease term has commenced void the contract, and in neither case does the failure to comply with statutory requirements deprive the landlord of his right to sue for possession for nonpayment of rent. *G. Curry et al. v. Dunbar House, Inc.* (D.C. App. 1976, 362 A.2d 686).

§ 5-423. Enforcement of regulations—Power to adopt municipal regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-426. Appropriations authorized for Zoning Commission—Compensation of members of Zoning Commission and Board of Zoning Adjustment.

Appropriations are hereby authorized to carry out the provisions of sections 5-413 to 5-428 for the fiscal year ending June 30, 1938, and thereafter the Mayor of the District of Columbia is authorized and directed to include in his annual estimates such amounts as may be required for salaries and expenses incident to such purposes. Each member of the Zoning Commission and of the Board of Zoning Adjustment shall be entitled to receive compensation, according to regulations of the Mayor of the District of Columbia, of \$100 for each day actually spent performing the duties of such a member. No compensation, however, shall be paid to any such member who is also an officer or employee of the United States or of the District of Columbia government. (June 20, 1938, 52 Stat. 802, ch. 534, § 14; May 13, 1975, D.C. Law 1-1, § 1, 21 DCR 3938.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Act May 13, 1975, D.C. Law 1-1, amended the second and third sentences generally. The amendment provided new rates of compensation for members of the Zoning Commission and Board of Zoning Adjustment.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 2 of Act May 13, 1975, D.C. Law 1-1, provided: "The Act [amending § 5-426] shall take effect upon becoming law by operation of the District of Columbia Self-Government and Government Reorganization Act and upon becoming law, Sec. 1 of this Act shall be applied retroactively to February 5, 1975."

SHORT TITLE

Section 3 of Act May 13, 1975, D.C. Law 1-1, provided: "This act [amending § 5-426] may be cited as the 'Zoning Commission and Board of Zoning Adjustment Compensation Act'."

§ 5-429. Commissioner of the District of Columbia to prescribe fees for permits, certificates, and transcripts by inspector of buildings—Schedule of fees to be displayed.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 5.—UNSAFE STRUCTURES

§ 5-501. Structure reported unsafe, to be examined by Commissioner—If unsafe, notice to be given to make same secure—If safety requires, Commissioner may make secure.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SHORT TITLE

The first section of act Apr. 23, 1977, D.C. Law 1-128, provided "That this Act [amending §§ 5-504, 5-506, and 6-902] may be cited as the 'Nuisance Elimination Act of 1976'."

CROSS REFERENCE

Building, construction, and excavation requirements to minimize flood and mudslide damages, see §§ 5-1101 et seq.

§ 5-502. If dangers not remedied, premises to be surveyed by three disinterested persons—Report.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-503. Commissioner to make structure safe if responsible person does not—Owners or other interested persons not to interfere with Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-504. Nuisances to be abated—Notice given—Cost a lien on property—Penalty—Prosecution.

(a) The existence on any lot or parcel of land, in the District of Columbia, of any uncovered well, cistern, dangerous hole, excavation, any dead, dangerous or diseased tree, or part thereof, or of any abandoned vehicles of any description or parts thereof, miscellaneous materials or debris of any kind, including substances that have accumulated as the result of repairs to yards or any building operations, insofar as they affect the public health, comfort, safety, and welfare is hereby declared a nuisance dangerous to life and limb, and any person, corporation, partnership, syndicate, or company, owning a lot or parcel of land in said District on which such a nuisance exists who shall neglect or refuse to abate the same to the satisfaction of the Mayor of the District of Columbia, after five days' notice from him to do so, shall, on conviction in the Superior Court of the District of Columbia be punished by a fine of not exceeding \$50 for each and every day said person, corporation, partnership, or syndicate, fails to comply with such notice. In case the owner of, or agent or other party interested in, any lot or parcel of land in the District of Columbia, on which there exists an open well, cistern,

dangerous hole, or excavation, or any dead, dangerous, or diseased tree or part thereof, or any abandoned or unused vehicles or parts thereof, or miscellaneous accumulation of material or debris which affects public safety, health, comfort, and welfare, shall fail, after notice aforesaid, to abate said nuisance within one week after the expiration of such notice, the said Mayor may cause the lot or parcel of land on which the nuisance exists to be secured by fences or otherwise enclosed, and the removal of any abandoned vehicles, or parts thereof, any miscellaneous accumulation of material or debris or any dead or dangerous tree or part thereof, or the removal or spraying of any diseased tree adversely affecting the public safety, health, comfort, and welfare, and double the cost and expense thereof shall be assessed by said Mayor as a tax against the property on which such nuisance exists, and the tax so assessed shall be collected in the manner provided in section 5-506. Within the meaning of this section, a dead tree shall be any tree with respect to which the Mayor of the District of Columbia or his designated agent have determined that no part thereof is living; a dangerous tree is any tree or part thereof, living or dead, which the said Mayor or his designated agent shall find is in such condition and is so located as to constitute a danger to persons or property on public space in the vicinity of such tree; and a diseased tree shall be any tree on private property in such a condition of infection from a major pathogenic disease as to constitute, in the opinion of the said Mayor or his designated agent, a threat to the health of any other tree.

* * * * *

(As amended Apr. 23, 1977, D.C. Law 1-128, § 3, 23 DCR 9692.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1977—Act Apr. 23, 1977, D.C. Law 1-128, amended subsec. (a) by inserting "double" immediately before "the cost and expense".

EFFECTIVE DATE OF 1977 AMENDMENT

Section 5 of act Apr. 23, 1977, D.C. Law 1-128, provided: This act [amending §§ 5-504, 5-506, and 6-902] shall become effective in the manner provided for acts of the Council of the District of Columbia in subsection (c) (1) of section 602 of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code Supp. 1975, sec. 1-147(c) (1))."

NOTES TO DECISIONS

Abandoned vehicle

Where defendant removed automobiles, which either had valid license tags or were virtually undamaged and could not therefore have reasonably been regarded as abandoned, from parking lot under authorization by property managers, who did not have authority to contract with defendant for removal of such vehicles, defendant had no right to tow away such automobiles and thus was properly found guilty of taking property without right. *L. R. Fogle, Sr. v. United States* (D.C. App. 1975, 336 A.2d 833).

§ 5-505. Costs and expenses of removing nuisances to be determined by Commissioner and assessed against the property—Penalty for violation of sections 5-501 to 5-503.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-506. Payment and collection of costs and expenses—Interest—Sale of property for nonpayment after two years.

Any tax authorized to be levied and collected under this chapter may be paid without interest within sixty days from the date such tax was levied. Interest of twenty per centum per annum shall be charged on all unpaid amounts from the expiration of sixty days from the date such tax was levied. Any such tax may be paid in three equal installments with interest thereon. If any such tax or part thereof shall remain unpaid after the expiration of two years from the date such tax was levied, the property against which said tax was levied may be sold for such tax or unpaid portion thereof with interest and penalties thereon at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general real estate taxes, if said tax with interest and penalties thereon shall not have been paid in full prior to said sale. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 6, as added Aug. 22, 1964, 78 Stat. 600, Pub. L. 88-486, § 5; Apr. 23, 1977, D.C. Law 1-128, § 4, 23 DCR 9692.)

AMENDMENT

1977—Act Apr. 23, 1977, D.C. Law 1-128, amended section by substituting "twenty per centum per annum" for "one-half of 1 per centum for each month or part thereof".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 5 of act Apr. 23, 1977, D.C. Law 1-128, set out as a note under § 5-504.

§ 5-508. Structures found to be unsafe—Notice to owners and occupants—Use of unsafe structures may be prohibited—Penalty for violation of Commissioner's order.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 6.—INSANITARY BUILDINGS

§ 5-616. Inspection by Commissioner—Condemnation—Delegation of authority.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-617. Board for the Condemnation of Insanitary Buildings—Condemnation Review Board—Members—Procedure.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

ORDER ESTABLISHING BOARD FOR THE CONDEMNATION OF INSANITARY BUILDINGS

Organization Order No. 102, 54-2034, Sept. 27, 1954, as amended Mar. 18, 1958, June 10, 1958, May 26, 1960, July 5, 1960, Mar. 23, 1970, May 25, 1970, July 27, 1971, and Reorg. Plan No. 3 of 1975, provided as follows:

BOARD FOR THE CONDEMNATION OF INSANITARY BUILDINGS

Pursuant to the authority contained in Public Law 681, 83rd Congress, it is hereby ordered:

PART I

Board for the Condemnation of Insanitary Buildings.—A. In accordance with section 2(a)(1) of Public Law 681, 83rd Congress, there is hereby established a Board for the Condemnation of Insanitary Buildings.

B. The Board for the Condemnation of Insanitary Buildings shall consist of six members, each of whom shall serve at the pleasure of the Mayor: one representative of the Department of Housing and Community Development, who shall serve as Chairman; a representative of the Department of Economic Development; a representative of the Department of General Services; and three representatives of the Department of Environmental Services.

C. No person shall act as a member of the Board for the Condemnation of Insanitary Buildings who has any property interest, direct or indirect, in his own right or through relatives or kin, in the building the sanitary condition of which is under consideration.

D. The Department of Housing and Community Development shall furnish the Board for the Condemnation of Insanitary Buildings with such technical facilities, advice, and assistance, and with such administrative and fiscal services as may be required to permit the effective operation of said Board.

E. The Board for the Condemnation of Insanitary Buildings may in its discretion delegate to officials or employees of the Department of Housing and Community Development such ministerial duties and responsibilities as said Board shall from time to time determine. This authority shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Purpose.—The Board for the Condemnation of Insanitary Buildings is established to examine into the sanitary condition of buildings in the District of Columbia, to determine which such buildings are in such insanitary condition as to endanger the lives or health of the occupants thereof or of persons living in the vicinity and, upon completion of an investigation by the Board of the premises in question, to issue appropriate orders of condemnation requiring the correction of such condition or conditions or to require the demolition of any building, in accordance with the provisions of Public Law 681, 83rd Congress.

PART III

Powers, authorities, and jurisdiction.—All powers, authorities, and jurisdiction authorized by Public Law 681, 83rd Congress, to be exercised by the Board for the Condemnation of Insanitary Buildings are hereby assigned to such Board. The said Board shall have jurisdiction over all matters which as of the effective date of Public Law 681, 83rd Congress, were pending before the Board for the Condemnation of Insanitary Buildings established under Reorganization Order No. 56, dated June 30, 1953.

PART IV

Transfers to new Board.—All property and records of the present Board for the Condemnation of Insanitary Buildings established under Reorganization Order No. 56, dated June 30, 1953, as amended, shall be transferred to the new Board for the Condemnation of Insanitary Buildings established herein.

PART V

Abolition of existing Board.—The existing Board for the Condemnation of Insanitary Buildings established under Reorganization Order No. 56, dated June 30, 1953, as amended, is hereby abolished.

PART VI

Repeal of previous orders.—Reorganization Order No. 56, dated June 30, 1953, as amended, and all Commissioners' Orders in conflict with the provisions of this Order, are, to the extent of such conflict, repealed.

PART VII

Effective date.—This Order shall be effective on and after September 27, 1954.

§ 5-618. Condemnation procedure—Notice—Order—Remedial action by owner—Occupancy of condemned buildings.

NOTES TO DECISIONS

Constitutional rights

Demolition of property pursuant to an order of Board for Condemnation of Insanitary Buildings following a determination that property should be condemned because of its insanitary condition was only incident to a legitimate exercise of governmental power and not a direct appropriation which would bring Fifth Amendment considerations into play. *J. J. Urciolo et ano. v. W. E. Washington et al.* (D.C. App. 1973, 305 A. 2d 252).

Hearing

Record failed to establish truth of claim that owners of condemned premises were denied a fair hearing before Condemnation Review Board on motion to stay demolition of property. *J. J. Urciolo et ano. v. W. E. Washington et al.* (D.C. App. 1973, 305 A. 2d 252).

§ 5-620. Repairs or changes—Demolition—District of Columbia Building Code.

NOTES TO DECISIONS

Constitutional rights

Demolition of property pursuant to an order of Board for Condemnation of Insanitary Buildings following a determination that property should be condemned because of its insanitary condition was only incidental to a legitimate exercise of governmental power and not a direct appropriation which would bring Fifth Amendment considerations into play. *J. J. Urciolo et ano. v. W. E. Washington et al.* (D.C. App. 1973, 305 A. 2d 252).

§ 5-622. Owner's failure to comply with order—Repair or demolition by Board for the Condemnation of Insanitary Buildings—Payment of costs—Effect of appeal.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Damages

Invocation of replacement cost as measure of damage to owner of buildings demolished by District of Columbia without according owner the notice required by due process is not clearly erroneous. *A. E. Miles v. District of Columbia et ano.* (1975, 510 F.2d 188, 166 U.S. App. D.C. 235; aff'g 354 F. Supp. 577).

Hearing

Failure of board to provide property owner with a hearing in 1969 before ordering demolition of her property was

a failure to grant a hearing at a meaningful time and in a meaningful manner and board's order constituted a deprivation of owner's property and a denial of her right to repair in violation of due process even though board had granted owner a hearing six years prior to entry of 1969 order. *A. E. Miles v. District of Columbia et ano.* (1973, 354 F. Supp. 577; aff'd 510 F. 2d 188, 166 U.S. App. D.C. 235).

Although local governments have an interest in the economic and expeditious resolution of questions involving disposition of insanitary buildings, nevertheless, where governmental action seriously injures an individual or compromises his property rights, and reasonableness of the action depends on fact-findings, due process requires no less than a timely hearing, weighing of evidence and at least a brief summary of the facts and rationale which sustain the final administrative decision. *Id.*

§ 5-623. Litigation involving title to property—Notice—Report to Commissioner—Court order.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-624. Infant owner—Person non compos mentis—Appointment of guardian.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-625. Notice—Service.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

NOTES TO DECISIONS

Damages

Invocation of replacement cost as measure of damage to owner of buildings demolished by District of Columbia without according owner the notice required by due process is not clearly erroneous. *A. E. Miles v. District of Columbia et ano.* (1975, 510 F.2d 188, 166 U.S. App. D.C. 235; aff'g 354 F. Supp. 577).

Due process

Where, since original service six years before order was entered for demolition of owner's buildings, owner expended a substantial sum of money to repair and improve the buildings, and condition of the buildings materially changed, due process required no less than registered or certified mail notice of board's subsequent decision to demolish, affording owner opportunity to register her objections. *A. E. Miles v. District of Columbia et ano.* (1973, 354 F. Supp. 577; aff'd 510 F. 2d 188, 166 U.S. App. D.C. 235).

Publication in a newspaper of notice as to proposed demolition of certain property did not meet due process requirements where it did not mention property owner by name, but only listed properties by address in a group notice which included other properties. *Id.*

Service on agent

Where service of notice to show cause why premises should not be condemned because of insanitary conditions and of condemnation order upon rental agent for premises was in accordance with statute and consistent with decided agency law, defective service as against owner

of premises was not established. *J. J. Urciolo et ano. v. W. E. Washington et al.* (D.C. App. 1973, 305 A. 2d 252).

§ 5-626. Interference with work or inspection.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-628. Review of order—Application to Condemnation Review Board—Fee.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Review procedures

Statutory procedures established by Congress for review of a condemnation order made by Board for Condemnation of Insanitary Buildings are exclusive. *J. J. Urciolo et ano. v. W. E. Washington et al.* (D.C. App. 1973, 305 A. 2d 252).

§ 5-629. Appeal from order—Superior Court—Modification or vacation by court.

NOTES TO DECISIONS

Review procedures

Statutory procedures established by Congress for review of a condemnation order made by Board for Condemnation of Insanitary Buildings are exclusive. *J. J. Urciolo et ano. v. W. E. Washington et al.* (D.C. App. 1973, 305 A. 2d 252).

Scope of review

Where owners of premises failed to exercise their right to appeal condemnation order either to Condemnation Review Board or to Superior Court, question whether property was in fact in an insanitary condition when condemned was precluded and could not serve to confer jurisdiction on court in action wherein owners sought a temporary restraining order against demolition of property. *J. J. Urciolo et ano. v. W. E. Washington et al.* (D.C. App. 1973, 305 A. 2d 252).

§ 5-633. Definitions—"Commissioner"—"Owner".

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Service on agent

Where service of notice to show cause why premises should not be condemned because of insanitary conditions and of condemnation order upon rental agent for premises was in accordance with statute and consistent with decided agency law, defective service as against owner of premises was not established. *J. J. Urciolo et ano. v. W. E. Washington et al.* (D.C. App. 1973, 305 A. 2d 252).

§ 5-634. Suits and proceedings under prior law—Time limits.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 7.—HOUSING REDEVELOPMENT

Sec.

5-732b. Advisory relocation services for persons displaced by condominium conversions.

§ 5-701. General purposes.

ACT REFERRED TO IN U.S. CODE

The District of Columbia Redevelopment Act of 1945 is referred to in section 356a of title 40, U.S. Code.

§ 5-702. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-703. Establishment and powers of the Agency.

(a) The District of Columbia Redevelopment Land Agency is hereby established as an instrumentality of the District of Columbia government, and shall be composed of five members appointed by the Mayor of the District of Columbia (hereinafter referred to as the "Mayor"), with the advice and consent of the Council of the District of Columbia (hereinafter referred to as the "Council"). The Mayor shall name one member as chairman. No more than two members may be officers of the District of Columbia government. Each member shall serve for a term of five years except that of the members first appointed under this section, one shall serve for a term of one year, one shall serve for a term of two years, one shall serve for a term of three years, one shall serve for a term of four years, and one shall serve for a term of five years, as designated by the Mayor. The terms of the members first appointed under this section shall begin on or after January 2, 1975. Should any member who is an officer of the District of Columbia government cease to be such an officer, then his term as a member shall end on the day he ceases to be such an officer. Any person appointed to fill a vacancy in the Agency shall be appointed to serve for the remainder of the term during which such vacancy arose. Any member who holds no other salaried public position shall receive compensation at the rate of \$100 for each day such member is engaged in the actual performance of duties vested in the agency.

(b) The said District of Columbia Redevelopment Agency is hereby made a body corporate of perpetual duration, the powers of which shall be vested in and exercised by the board of directors thereof, consisting of the five members thereof appointed as above set forth, except that nothing in this section shall prohibit the District of Columbia government from dissolving the corporation, eliminating the board of directors, or taking such other action with respect to the powers and duties of such Agency, including those actions specified in subsection (c), as is deemed necessary and appropriate. It shall have the power to adopt, alter, and use a corporate seal which shall be judicially noticed; to make contracts; to sue and be sued, to complain and defend in its

own name in any court of competent jurisdiction, State, Federal, or municipal; to make, deliver, and receive deeds, leases, and other instruments and to take title to real and other property in its own name; to adopt, prescribe, amend, repeal, and enforce bylaws, rules, and regulations for the exercise of its powers under sections 5-701 to 5-719 or governing the manner in which its business may be conducted and the powers granted to it by sections 5-701 to 5-719 may be exercised and enjoyed, including the selection of officers other than its chairman, together with provisions for such committees and the functions thereof as it may deem necessary for facilitation of its work; to protect and enforce any right conferred upon it by sections 5-701 to 5-719, or otherwise acquired, including any lease, sale, or other agreement made by or with it; and in general to exercise all the powers necessary or proper to the performance of its duties and functions under sections 5-701 to 5-719.

(c) The Council is authorized, by act, to adopt legislation—

(1) establishing, for the purpose of assuring uniform procedures relating to the disposition of complaints and other claims involving the Redevelopment Land Agency (or its successor) and other administrative units of the District of Columbia government, a factfinding board to receive, hear, and act on such complaints and claims arising out of or in connection with administrative and other actions of such Agency or units in carrying out their powers and functions;

(2) providing that all planning, designing, construction, and supervision of public facilities which are to be contributed to any redevelopment area as the local non-cash grant-in-aid to the project under title I of the Housing Act of 1949, shall, to the extent practicable, be carried out by an appropriate District of Columbia department or agency on the basis of a contractual or other arrangement with the Redevelopment Land Agency or its successor;

(3) providing that any occupied rental property owned by the Agency shall be maintained by such Agency (or its successor) in a safe and sanitary condition; or

(4) providing that the Mayor shall have authority to waive all or any part of any special assessments levied against abutting property owners for the cost of sewers, streets, curbs, gutters, sidewalks, utilities, and other supporting facilities or project improvements where the costs therefor to the District of Columbia can be applied as a non-cash local grant-in-aid, as defined by the Secretary of the Department of Housing and Urban Development.

(Aug. 2, 1946, 60 Stat. 793, ch. 736, § 4; Dec. 24, 1973, Pub. L. 93-198, title II, § 201(a)-(c), 87 Stat. 778.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

Title I of the Housing Act of 1949, as amended, referred to in subsec. (c) (2), is classified to 42 U.S.C. § 1450 et seq.

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended section as follows:

Subsec. (a) amended generally by § 201(a) of said Act.

Subsec. (b) amended by § 201(b) of said Act by (1) inserting the exception at the end of the first sentence, and (2) substituting "officers other than its chairman" for "its chairman and other officers" in the second sentence.

Subsec. (c) added by § 201(c) of said Act.

EFFECTIVE DATE OF 1973 AMENDMENT

See sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

CONSTRUCTION OF 1973 AMENDMENT

Section 201(e) of Act Dec. 24, 1973, Pub. L. 93-198, provided: "None of the amendments [to §§ 5-703, 5-704] contained in this section shall be construed to affect the eligibility of the District of Columbia Redevelopment Land Agency to continue participation in the small business procurement programs under section 8(a) of the Small Business Act (67 Stat. 547)."

TRANSFER OF FUNCTIONS

Part 4 of Reorganization Plan No. 3 of 1975, effective July 3, 1975, provided:

"4. *Transfer of functions and delegated authorities respecting the District of Columbia Redevelopment Land Agency.* The powers, duties and functions of the District of Columbia Redevelopment Land Agency, as set forth in D.C. Code 5-701 through 5-737, are transferred to the Director of the Department of Housing and Community Development, except as herein provided.

"The Board of Directors of the Agency established pursuant to D.C. Code 5-703 shall continue to have full powers and duties with respect to the selection of any lessee or purchaser of real property acquired or to be acquired by the Agency. The Board shall also continue to have full powers and duties with respect to the adoption of resolutions and the execution of financial documents on behalf of the Agency in connection with the issuance or redemption of any bonds or notes issued or to be issued on behalf of the Agency. All proposed issuances shall be approved by the Mayor, or his designee.

"The functions of adopting, prescribing, amending and repealing bylaws, rules and regulations for the exercise of the powers of the Board or governing the manner in which the Agency's business may be conducted, which have been transferred under Reorganization Plan No. 4 of 1968, are transferred to the Director of the Department of Housing and Community Development.

"During the absence or disability of the Director, or in the event of a vacancy in the Office of the Director, such Acting Director as may be designated by the Mayor or such subordinate officer of the Department as may be designated by the Director, shall exercise the powers, duties and functions of the District of Columbia Redevelopment Land Agency that are transferred to the Director by this Plan."

NOTES TO DECISIONS

Status of Agency

For the purposes of the Uniform Relocation Assistance Act, the District of Columbia Redevelopment Land Agency is a "state agency" rather than a "federal agency." *D. Jones et al. v. District of Columbia Redevelopment Land Agency et al.* (1974, 499 F. 2d 502, 163 U.S. App. D.C. 366).

Fact that Redevelopment Land Agency was a "state agency" rather than a "federal agency" for the purposes of the Uniform Relocation Assistance Act did not preclude federal court from granting preliminary relief against the land agency with respect to the displacement of any resident of an area undergoing redevelopment. *Id.*

§ 5-704. Power to acquire and assemble real property—
Public utility relocation expenses.

(b) Condemnation proceedings for the acquisition of real property for said purposes shall be conducted in accordance with subchapter II of chapter 13 of title 16. The title to properties acquired under sections 5-701 to 5-719 shall be taken by and in the name of the Agency and proceedings for condemnation or other acquisition of property shall be brought by and in the name of the agency.

(As amended Dec. 24, 1973, Pub. L. 93-198, title II, § 201(d), 87 Stat. 779.)

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended the first sentence of subsec. (b) by substituting "subchapter II of chapter 13 of title 16" for "the procedural provisions of chapter 13 of title 16".

EFFECTIVE DATE OF 1973 AMENDMENT

See sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

CONSTRUCTION OF 1973 AMENDMENT

See note under § 5-703.

NOTES TO DECISIONS

Eminent domain—Evidence of value of land

Where, inter alia, landowner sought to introduce evidence not of comparability of two pieces of land but to demonstrate comparability of two similar business operations thereon, testimony was not so substantially based on incomparable piece of property as to override special rule permitting owners to testify as to value, and thus landowner should have been permitted to testify as to value of condemned property even though his opinion was based in part on his experience with property which had been found not comparable, with such factors as difference in size, frontage and location going to weight of testimony. *District of Columbia Redevelopment Land Agency v. Thirteen Parcels of Land etc. et al.* (1976, 534 F.2d 337, 175 U.S. App. D.C. 135).

Housing Code

Where District of Columbia Redevelopment Land Agency maintained properties acquired by it as residences only temporarily until relocation housing for residents becomes available and redevelopment or rehabilitation could be undertaken, the District of Columbia Housing Code was not directly applicable to the agency's temporary residential properties. *D. Jones et al. v. District of Columbia Redevelopment Land Agency et al.* (1974, 499 F. 2d 502, 163 U.S. App. D.C. 366).

§ 5-705. General and project area redevelopment plans—Shaw Junior High School.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Abuse of discretion

District court did not abuse its discretion by its determination that requiring the District of Columbia Redevelopment Land Agency and the National Capital Planning Commission to repeat the complex neighborhood development program approval process in a manner that comported fully with the National Environmental Protection Agency Act would not better serve Environmental Protection Acts purposes than the remedial actions taken by the agencies. *D. Jones et al. v. District of Columbia Redevelopment Land Agency et al.* (1974, 499 F. 2d 502, 163 U.S. App. D.C. 366).

Environmental impact

As part of the approval process for neighborhood development program for the District of Columbia, the National Environmental Protection Act requires that the National Capital Planning Commission prepare a draft environmental impact statement concerning each action year program for submission to city council and to Department of Housing and Urban Development, that the Redevelopment Land Agency prepare a draft impact statement for submission to the Planning Commission and that the Department of Housing and Urban Development prepare and issue final environmental impact statement. *D. Jones et al. v. District of Columbia Redevelopment Land Agency et al.* (1974, 499 F. 2d 502, 163 U.S. App. D.C. 366).

Injunctions

The Court of Appeals would not disturb the order the district court which denied and dissolved preliminary injunctions with respect to urban renewal plan in the District of Columbia except for abuse of discretion or clear error and would not consider the merits of the case further than necessary to determine whether that discretion had been abused. *D. Jones et al. v. District of Columbia Redevelopment Land Agency et al.* (1974, 499 F. 2d 502, 163 U.S. App. D.C. 366).

The imminence of physical steps to carry out action year program for neighborhood development program was not indispensable condition to preliminary injunction to require District of Columbia Redevelopment Land Agency to prepare an environmental impact statement for submission to the National Capital Planning Commission or for that agency to prepare a draft impact statement for submission to Department of Housing and Urban Development. *Id.*

Before issuing order staying for 60 days order preliminary enjoining any action pursuant to certain action year programs for neighborhood development programs pending filing of environmental impact statement, it was necessary that the district court engage in particularized analysis so as to stay the injunction only as to those elements of the project delay of which would demonstrably result in injustice or substantial public harm. *Id.*

§ 5-706. Transfer, lease, or sale of real property in project area for public and private uses.

NOTES TO DECISIONS

Housing Code

Where District of Columbia Redevelopment Land Agency maintained properties acquired by it as residences only temporarily until relocation housing for residents becomes available and redevelopment or rehabilitation could be undertaken, the District of Columbia Housing Code was not directly applicable to the agency's temporary residential properties. *D. Jones et al. v. District of Columbia Redevelopment Land Agency et al.* (1974, 499 F. 2d 502, 163 U.S. App. D.C. 366).

§ 5-707. Housing for displaced families.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EMERGENCY ACT AMENDMENTS

1977—For temporary restriction on eviction of persons residing on property acquired by the Redevelopment Land Agency, see the Emergency Relocation Regulation Act of 1977 (D.C. Act 2-81, Aug. 17, 1977, 24 DCR 1818).

For temporary provisions relating to the eviction or displacement of persons for non-payment of rent, see secs. 2 and 3 of the Emergency Relocation Regulation Act of 1976 (D.C. Act 1-210, Jan. 12, 1977, 23 DCR 5066, 5067).

§ 5-711. Modification of redevelopment plans.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Consent

Record in action for declaratory and injunctive relief to prevent modification of project area redevelopment plan presented material issue of fact as to the Redevelopment Land Agency's early interpretation of District of Columbia Redevelopment Act regarding what owners or lessees must consent to change in plan, and a collateral question, was whether Agency developed a practical definition which would identify owners and lessees with statutory right to consent to plan changes precluding summary judgment. *L'Enfant Plaza Properties, Inc., et al. v. District of Columbia Redevelopment Land Agency et al.* (1977, 564 F. 2d 515, 184 U.S. App. D.C. 30; rev'g 412 F. Supp. 211).

Procedure

Agencies in passing on amendment to project area redevelopment plan under the District of Columbia Redevelopment Act were not required to follow the contested case procedure of the Administrative Procedure Act with respect to owners and lessees of property in affected renewal project area, contrary to their claim that they were entitled to a public hearing, since administrative decisions dealing with land use control questions involved general matters of public policy. *L'Enfant Plaza Properties, Inc., et al. v. District of Columbia Redevelopment Land Agency et al.* (1977, 564 F. 2d 515, 184 U.S. App. D.C. 30; rev'g 412 F. Supp. 211).

§ 5-713. Administrative expenditure and employment.

The Agency is hereby authorized and empowered—

(a) Repealed. Aug. 2, 1946, 60 Stat. 809, ch. 744, § 9(b);

(b) to secure planning, land economics and valuation services, and other expert services related to the acquisition and disposition of real property, by contract or otherwise, at rates of pay or fees not to exceed those usual for similar services elsewhere, and without regard to section 1-808: *Provided*, That this exemption shall not apply to persons employed by the Agency on a permanent basis;

(c) to appoint and employ such officers and employees as it may find necessary for the proper performance of its duties under sections 5-701 to 5-719 and to prescribe their authorities, duties, responsibilities, and tenures and fix their compensations; such appointments and employments to be made in conformance with the civil-service laws and chapter 51 and subchapter III of chapter 53, title 5, U.S. Code [relating to the classification of government employees and related matters]; and

(d) to make such expenditures, subject to audit under the general law, for the acquisition and maintenance of adequate vehicles, furnishings, equipment, supplies, books of reference, directories, periodicals, newspapers, printing and binding, and for such other expenses as may from time to time be found necessary for the proper administration of sections 5-701 to 5-719. (Aug. 2, 1946, 60 Stat. 799, ch. 736, § 14; Aug. 2, 1946, 60 Stat. 809, ch. 744, § 9(b); Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

REFERENCE IN TEXT

The "civil-service laws", referred to in this section, are set forth in title 5, U.S.C. See, particularly, § 3301 et seq. of that title.

CODIFICATION

In subsec. (b), the exception from "the Classification Act of 1923, as amended" has been omitted as obsolete.

Sections 1202 and 1204 of the Classification Act of 1949 (63 Stat. 972, 973) repealed the 1923 Act and all laws or parts of laws inconsistent with the 1949 Act. While § 1106(a) of the 1949 Act provided that references in other laws to the 1923 Act should be held and considered to mean the 1949 Act, it did not have the effect of continuing the exception contained in this section because of § 1106(b) that provided that the application of the 1949 Act to any position, officer, or employee shall not be affected by § 1106(a). The Classification Act of 1949 was repealed by Act Sept. 6, 1966, Pub. L. 89-554, § 8(a), 80 Stat. 632 (of which § 1 revised and enacted title 5, U.S.C., into law). Section 5102 of title 5, U.S.C., now contains the applicability provisions of the 1949 Act.

In subsec. (c), the reference to "chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949" and "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89-554, set out in note under § 1-251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

AMENDMENTS

1949—Subsection (c). Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949, and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

1946—Subsection (a). Act Aug. 2, 1946, § 9(b), repealed provisions which read: "to procure services or make any purchase without regard to the provisions of section 3709 of the Revised Statutes, provided the aggregate amount involved is not more than \$100".

TRANSFER OF PERSONNEL TO DISTRICT OF COLUMBIA

Section 201(f) of Act Dec. 24, 1973, Pub. L. 93-198, title II, 87 Stat. 779, provided: "For the purposes of subsection 713(d) [set out as a note under § 1-131], employees in the District of Columbia Redevelopment Land Agency shall be deemed to be transferred to the District of Columbia as of the effective date of this title [July 1, 1974] without a break in service."

§ 5-715. Appropriations authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-716. Acquisition under District of Columbia Alley Dwelling Act.

From and after the termination of the period of one year, beginning August 2, 1946, all authority granted by sections 5-103 to 5-116, to acquire, by purchase, condemnation, or gift, lands, buildings and structures, or any interest therein, is hereby transferred to and vested in the Agency created by sections 5-701 to 5-719. During said one-year period said authority may be exercised by the National Capital Housing Authority only for projects that shall have been approved by the Planning Commission and the District Mayor: *Provided, however*, That failure of the Planning Commission or the District Mayor to approve or disapprove in writing within sixty days after the submission by the National Capital Housing Authority shall be equivalent to a formal approval. Nothing contained in sections 5-103 to 5-116 or in sections 5-701 to 5-719 shall be interpreted as precluding the inclu-

sion at any time of any alley or inhabited alley or alley dwelling or dwelling or square containing an inhabited alley in a project area to be planned, acquired, and disposed of under the provisions of sections 5-701 to 5-719. Any real property acquired by the Agency under the authority of sections 5-103 to 5-116 may be transferred or may be sold or leased by the Agency as provided in sections 5-701 to 5-719 for real property acquired for a project area redevelopment. The National Capital Housing Authority is hereby declared to be a redevelopment company and is hereby granted the power to purchase or lease redevelopment areas or parts thereof from the Agency in accordance with the provisions of sections 5-701 to 5-719. The National Capital Housing Authority shall keep regular books of account in accordance with standard auditing practices, covering all properties operated by it, showing detailed construction costs, management costs, repairs, maintenance, other operating costs, rents, subsidies, grants, allowances and exemptions; such books shall be subject to audit by the General Accounting Office; and the annual report of the National Capital Housing Authority shall include a summary of all transactions covered by such books and shall be made available to the public upon request. (Aug. 2, 1946, 60 Stat. 801, ch. 736, § 17; Jan. 2, 1975, Pub. L. 93-604, title VI, § 605, 88 Stat. 1963.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Section 605 of Pub. L. 93-604, deleted the word "annual" from the clause "such books shall be subject to annual audit by the General Accounting Office".

CROSS REFERENCE

National Capital Housing Authority as an agency of District of Columbia government, see § 5-103a.

§ 5-717a. Acceptance of financial assistance authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-718. Effect upon existing statutes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-720. Council authorized to transfer to District of Columbia Redevelopment Land Agency certain property located in Maine Avenue area.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of

the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-721. Same; determination of necessity.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-722. Same; transfer of jurisdiction to Agency.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-724. Same; reversion provisions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-725. Same; Council may not be required to transfer property needed for municipal purposes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-728. Commissioner of the District of Columbia authorized to provide relocation services to displaced persons and concerns as a result of actions by the United States or District Governments—Displaced persons to be given preference in vacancies occurring in Government houses within the District—Housing surveys authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Relocation payments and assistance, community development program activities, see § 5-1003.

§ 5-730. Determination of available housing, for displaced persons, to be made prior to acquisition of real property for public works.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-732. Council authorized to make regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-732a. Relocation payments and assistance—Persons displaced by public works programs and projects of District Government and of Washington Metropolitan Area Transit Authority.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-732b. Advisory relocation services for persons displaced by condominium conversions.

Whenever a building in the District of Columbia is converted from rental to condominium units, the Relocation Assistance Office shall provide relocation advisory services for tenants who move from the converted building. This includes: Ascertaining the relocation needs for each household; providing current information on the availability of equivalent substitute housing; supplying information concerning Federal and District housing programs; and providing other advisory services to displaced persons in order to minimize hardships in adjusting to relocation. (Mar. 29, 1977, D.C. Law 1-89, title V, § 516, 23 DCR 9532b.)

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of section, see sec. 10 of the Second Emergency Cooperative Regulation Act of 1977 (D.C. Act 2-47, June 17, 1977, 24 DCR 207) and the Third Emergency Cooperative Regulation Act of 1977 (D.C. Act 2-88, Oct. 12, 1977, 24 DCR 3177).

EFFECTIVE DATE

See section 419 of act Mar. 29, 1977, D.C. Law 1-89, set out as a note under § 5-1201.

DEFINITIONS

The definitions in §§ 5-1201, 5-1202, and 5-1296 apply to terms appearing in this section.

§ 5-733. Commissioner authorized and directed on behalf of the United States to transfer to District of Columbia Redevelopment Land Agency all right, title and interest of the United States to certain real property consisting of a part of Maryland Avenue and other streets in the southwest area.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-735. Same; Agency authorized to transfer to District of Columbia its interest in certain rights of way located on parts of Thirteen-and-a-Half Street, E Street and Thirteenth Street Southwest, for a consideration of \$82,896.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 8.—PRESERVATION OF HISTORIC PLACES AND AREAS IN THE GEORGETOWN AREA

§ 5-802. Restrictions imposed on alteration of buildings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-804. Survey of district authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-806. Old Georgetown Market as historic landmark—Use as public market.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 9.—HORIZONTAL PROPERTY REGIMES

Sec.

5-922. Sharing of reconstruction cost where project is not insured or insurance indemnity is insufficient.

5-928a. Council authorized to prohibit condominium conversions.

SUPERSEURE OF CHAPTER

Section 5-1201(c), act March 29, 1977, D.C. Law 1-89, title I, § 101(c), 23 DCR 9532b, provided that "Chapter 12 of this title shall be deemed to supersede this chapter, the Regulation 74-26 of the District of Columbia City Council, and no condominium shall be established except pursuant to chapter 12 of this title on or after March 29, 1977. But chapter 12 of this title shall not be construed to affect the validity of any provision of any condominium instrument recorded, or of any horizontal property regime complying with the requirements of this chapter and registered prior to March 29, 1977. Nor shall subchapter IV of chapter 12 of this title be deemed applicable to any condominiums established prior to March 29, 1977, except as provided in section 5-1271.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 5-1201, 5-1271.

§ 5-901. Short title—Citation of chapter.

SUPERSEURE

Section superseded, see note preceding § 5-901.

SHORT TITLE

The first section of act May 22, 1975, D.C. Law 1-3, provided: "That this act [amending §§ 5-902, 5-904, 5-906, 5-911, 5-913, 5-914, 5-915, 5-916, 5-921, 5-922] may be cited as the 'Horizontal Property Act Amendment Act of 1975'."

§ 5-902. Definitions.

(b) "Condominium" means the ownership of single units in a multiunit project with common elements.

(c) "Condominium project" or "project" means a real estate condominium project; a plan or project condominium project; a plan or project whereby five or more apartments, rooms, office spaces, buildings, or other units, which may be either contiguous or detached, in existing or proposed buildings or structures are offered or proposed to be offered for sale.

(As amended May 22, 1975, D.C. Law 1-3, § 2(1), 21 DCR 3944.)

SUPERSEURE

Section superseded, see note preceding § 5-901.

AMENDMENT

1975—Act May 22, 1975, D.C. Law 1-3, amended subsec. (b) by substituting "project" for "structure", and amended subsec. (c) generally.

EMERGENCY ACT AMENDMENT

1976—For temporary amendment of section, see sec. 2(a) of the Emergency Amendment to the Horizontal Property Act and Regulations of the District of Columbia (D.C. Act 1-128, June 2, 1976, 22 DCR 6939).

EFFECTIVE DATE OF 1975 AMENDMENT

Section 3 of Act May 22, 1975, D.C. Law 1-3, provided: "The amendments [to §§ 5-902, 5-904, 5-906, 5-911, 5-913, 5-914, 5-915, 5-916, 5-921, 5-922] made by this act shall take effect as provided in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

NOTES TO DECISIONS

Common elements

Suit by board of directors of condominium association protesting construction of subway is related to "common elements or more than one unit" within meaning of section 5-924 authorizing board to maintain actions relating to the common elements or more than one unit; matters encompassed by settlement agreement, including regulation of construction and vibration from trains, are rationally necessary for condominium's existence, upkeep and safety, which matters fall within statutory definition of "general common elements." *J. N. Owens et ux. v. Tiber Island Condominium Association et al.* (D.C. App. 1977, 373 A.2d 890).

§ 5-903. Horizontal property regimes.

SUPERSEURE

Section superseded, see note preceding § 5-901.

EMERGENCY ACT AMENDMENT

1976—For temporary amendment of section, see sec. 2(b) of the Emergency Amendment to the Horizontal Property Act and Regulations of the District of Columbia (D.C. Act 1-128, June 2, 1976, 22 DCR 6939).

§ 5-904. Status of condominium units within a horizontal property regime.

Once the property is subdivided into the horizontal property regime, a condominium unit in the project may be individually conveyed, leased, and encumbered and may be inherited or devised by will, as if it were sole and entirely independent of the other condominium units in the project of which it forms a part; the said separate units shall have the same incidents as real property and the corresponding individual titles and interests therein shall be recordable. (Dec. 21, 1963, 77 Stat. 451, Pub. L. 88-218, § 4; May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

SUPERSEURE

Section superseded, see note preceding § 5-901.

AMENDMENT

1975—Act May 22, 1975, D.C. Law 1-3, amended section by substituting "project" for "building".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 5-902.

§ 5-905. Joint tenancies, tenancies in common, tenancies by the entirety.

SUPERSEURE

Section superseded, see note preceding § 5-901.

§ 5-906. Ownership of condominium units, of common elements—Declaration—Voting—Individual unit deeds.

(c) The individual percentages shall be established at the time the horizontal property regime is constituted by the recording among the land records of the District of Columbia, of a declaration setting forth said percentages, shall have a permanent character, and shall not be changed without the acquiescence of the co-owners representing all the condominium units in the project, which said change shall be evidenced by an appropriate amendatory declaration to such effect recorded among the land records of the District of Columbia. Said share interest shall be set forth of record, in the initial individual condominium unit deeds. Said share interests in the common elements shall, nevertheless, be subject to mutual rights of ingress, egress, and regress of use and enjoyment of the other co-owners and a right of entry to officers, agents, and employees of the Government of the United States and the government of the District of Columbia acting in the performance of their official duties.

(As amended May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

SUPERSEURE

Section superseded, see note preceding § 5-901.

AMENDMENT

1975—Act May 22, 1975, D.C. Law 1-3, amended subsec. (c) by substituting "project" for "building".

EMERGENCY ACT AMENDMENT

1976—For temporary amendment of section, see sec. 2(c) of the Emergency Amendment to the Horizontal Property Act and Regulations of the District of Columbia (D.C. Act 1-128, June 2, 1976, 22 DCR 6940).

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 5-902.

§ 5-907. Indivisibility of common elements—Limitation upon partition.

SUPERSEURE

Section superseded, see note preceding § 5-901.

§ 5-908. Use of elements held in common, right to repair common elements.

SUPERSEURE

Section superseded, see note preceding § 5-901.

§ 5-909. Condominium subdivision.

SUPERSEURE

Section superseded, see note preceding § 5-901.

§ 5-910. Reference to plat.

SUPERSEURE

Section superseded, see note preceding § 5-901.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-911. Termination and waiver of regime.

(a) All the co-owners or the sole owner of a project constituted into a horizontal property regime may terminate and waive this regime and regroup or merge the individual and several condominium units with the principal property; such termination and waiver shall be by certification to such effect upon the plat of condominium subdivision establishing the particular horizontal property regime under the hands and seals of the said sole owner or co-owners, in the presence of two credible witnesses, upon the same plat or upon a paper or parchment attached thereto: *Provided*, That the said individual condominium units are unencumbered, or if encumbered, that the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided interest in the property of the debtor co-owner and said creditors or trustees under duly recorded deeds of trust, shall signify their assent to such termination and waiver upon the aforesaid plat, paper, or parchment: *Provided further*, That should the buildings or other improvements in a condominium project be more than two-thirds destroyed by fire or other disaster, the co-owners of three-fourths of the condominium project may waive and terminate the horizontal property regime and may certify to such termination and waiver: *Provided further*, That if within ninety days of the date of such damage or destruction:

(1) the council of co-owners does not determine to repair, reconstruct or rebuild as provided in sections 5-921 and 5-922 or,

(2) the insurance indemnity is delivered pro rata to the co-owners in conformity with the provisions of section 5-921 and if the co-owners do not terminate and waive the regime in conformity with this section, then any unit owner or any other person aggrieved thereby may file a petition in the Superior Court of the District of Columbia, setting forth under oath such facts as may be necessary to entitle the petitioner to the relief prayed and praying judicial termination of the horizontal property regime. Said petition may be served on the person designated in the bylaws in conformity with section 5-914(a) (7). The court may thereupon lay a rule upon the council of co-owners, unless they shall voluntarily appear and admit the allegations of the petition, to show cause, under oath, on or before the tenth day, exclusive of Sundays and legal holidays, after service of such rule, why the prayers of said petition should not be granted. If no cause be shown against the prayer of the petition by the council of co-owners, or by any one of the co-owners, the court may determine in a summary way whether the facts warrant termination and thereupon the court may decree the particular horizontal property regime terminated.

(c) Upon such termination and waiver the provisions of section 5-910 shall no longer be applicable and reference to the principal project thereupon, shall be to the plat and record of the prior land subdivision and thereupon the restraint against partition or division of the co-ownership imposed by section 5-907 shall no longer apply. In the event of such partition suit the net proceeds shall be divided among all the unit owners, in proportion to their respective undivided ownership of the common elements, after first paying off, out of the respective shares of the unit owners, all liens on the unit of each unit owner. To be valid such termination shall be recorded among the land records of the District of Columbia. (As amended May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

SUPERSEDURE

Section superseded, see note preceding § 5-901.

AMENDMENT

1975—Act May 22, 1975, D.C. Law 1-3, amended subsecs. (a) and (c) by substituting "project" for "building".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 5-902.

§ 5-912. Merger no bar to reconstitution.

SUPERSEDURE

Section superseded, see note preceding § 5-901.

§ 5-913. Bylaws, availability for examination.

(a) The administration of every project constituted into a horizontal property regime shall be governed by the bylaws as the council of co-owners may from time to time adopt, which said bylaws together with the declaration, including recorded attachments thereto, referred to in section 5-906 shall be available for examination by all the co-owners, their duly authorized attorneys or agents, at convenient hours on working days that shall be set and announced for general knowledge.

(As amended May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

SUPERSEDURE

Section superseded, see note preceding § 5-901.

AMENDMENT

1975—Act May 22, 1975, D.C. Law 1-3, amended subsec. (a) by substituting "project" for "building".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 5-902.

§ 5-914. Necessary contents of bylaws—Modification of system.

(a) The bylaws must necessarily provide for at least the following:

(3) Care, upkeep, and surveillance of the project and its general or limited common elements and services.

(5) Designation, hiring, and dismissal of the personnel necessary for the good working order of the project and for the proper care of the general or limited common elements and to provide services for the project.

(b) The sole owner of the project, or if there be more than one, the co-owners representing two-thirds of the votes provided for in section 5-906 may at any time modify the system of administration, but each one of the particulars set forth in this section shall always be embodied in the bylaws. (As amended May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

SUPERSEDURE

Section superseded, see note preceding § 5-901.

AMENDMENT

1975—Act May 22, 1975, D.C. Law 1-3, amended subsecs. (a) (3), (5), and (b) by substituting "project" for "building".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 5-902.

§ 5-915. Books of receipts and expenditures—Availability for examination.

The manager, administrator, or the board of directors, or of administration, or other form of administration specified in the bylaws, shall keep books with detailed accounts in chronological order, of the receipts and of the expenditures affecting the project and its administration and specifying the maintenance and repair expenses of the common elements and any other expenses incurred. Both said books and the vouchers accrediting the entries made thereupon shall be available for examination by the co-owners, their duly authorized agents or attorneys, at convenient hours on working days that shall be set and announced for general knowledge. All books and records shall be kept in accordance with good accounting practice and shall be audited at least once a year by an auditor outside the organization. (Dec. 21, 1963, 77 Stat. 455, Pub. L. 88-218, § 15; May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

SUPERSEDURE

Section superseded, see note preceding § 5-901.

AMENDMENT

1975—Act May 22, 1975, D.C. Law 1-3, amended section by substituting "project" for "building".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 5-902.

§ 5-916. Common profits, contributions for payment of common expenses of administration and maintenance.

* * * * *

(b) All co-owners are bound to contribute in accordance with the said percentages toward the expenses of administration and of maintenance and repairs of the general common elements, and, in proper case, of the limited common elements of the project and toward any other expenses lawfully agreed upon by the council of co-owners.

* * * * *

(As amended May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

SUPERSEDURE

Section superseded, see note preceding § 5-901.

AMENDMENT

1975—Act May 22, 1975, D.C. Law 1-3, amended subsec. (b) by substituting "project" for "building".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 5-902.

NOTES TO DECISIONS

Suits to recover assessments

Condominium association's counterclaim to recover assessment against condominium owners, who brought action challenging right of association to maintain suit protesting construction of subway and assessing costs of suit against owners, is not required to be filed in equity, on ground that the assessment is a lien against the property, since under this chapter, amounts due may be, but are not required to be, assessed as liens and association did not purport to file any such lien but proceeded in an action at law. *J. N. Owens et ux. v. Tiber Island Condominium Association et al.* (D.C. App. 1977, 373 A.2d 890).

§ 5-917. Priority of liens.

SUPERSEDURE

Section superseded, see note preceding § 5-901.

§ 5-918. Joint and several liability of purchaser and seller for amounts owing under section 5-916—Purchaser's recovery, purchaser's or lender's right to a statement setting forth amount due.

SUPERSEDURE

Section superseded, see note preceding § 5-901.

§ 5-919. Supplemental method of enforcement of lien.

SUPERSEDURE

Section superseded, see note preceding § 5-901.

§ 5-920. Insuring building against risk—Individual rights of co-owners.

SUPERSEDURE

Section superseded, see note preceding § 5-901.

§ 5-921. Application of insurance proceeds to reconstruction—Pro rata distribution in certain cases—Rules governing.

(a) In case of fire or other disaster the insurance indemnity shall, except as provided in the next succeeding paragraph of this section, be applied to reconstruct the project.

(b) Reconstruction shall not be compulsory where destruction comprises the whole or more than two-thirds of the project and other improvements in a condominium project. In such cases, and unless otherwise unanimously agreed upon by the co-owners, the indemnity shall be delivered pro rata to the co-owners entitled to it in accordance with provisions made by the bylaws or in accordance with a decision of three-fourths of the co-owners, if there be no bylaw provision, after first paying off, out of the respective shares of the unit owners, to the extent sufficient for the purpose, all liens on the unit of each co-owner. Should it be proper to proceed with the reconstruction, the provision for such eventuality made in the bylaws shall be observed, or in lieu thereof, the decision of the council of co-owners shall prevail, subject to all provisions of law and regulations of the District of Columbia then in effect. (Dec. 21, 1963, 77 Stat. 458, Pub. L. 88-218, § 21; May 22, 1975, D.C. Law 1-3, § 2(2), (3), 21 DCR 3945.)

SUPERSEDURE

Section superseded, see note preceding § 5-901.

AMENDMENT

1975—Act May 22, 1975, D.C. Law 1-3, amended section by substituting "project" for "building" and "buildings".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 5-902.

§ 5-922. Sharing of reconstruction cost where project is not insured or insurance indemnity is insufficient.

Where the project is not insured or where the insurance indemnity is insufficient to cover the cost of reconstruction the new project costs shall be paid by all the co-owners in the same proportion as their proportionate ownership of the common elements of the condominium project, and if any one or more of those composing the minority shall refuse to make such payments, the majority may proceed with the reconstruction at the expense of all the co-owners and the share of the resulting common expense may be assessed against all the co-owners and such assessment for this expense shall have the same priority as provided under section 5-917. (Dec. 21, 1963, 77 Stat. 458, Pub. L. 88-218, § 22; May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

SUPERSEDURE

Section superseded, see note preceding § 5-901.

AMENDMENT

1975—Act May 22, 1975, D.C. Law 1-3, amended section by substituting "project" for "building".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 5-902.

§ 5-923. Separate taxation.

SUPERSEDURE

Section superseded, see note preceding § 5-901.

§ 5-924. Actions—Right to separate release of judgment.

SUPERSEDURE

Section superseded, see note preceding § 5-901.

NOTES TO DECISIONS

Actions authorized

Bringing of action protesting construction of subway in area where condominium is located falls within provision of bylaw authorizing board of directors to enforce, by litigation, the bylaws as well as to maintain any proceeding authorized by this chapter, which itself authorizes suit. *J. N. Owens et ux. v. Tiber Island Condominium Association et al.* (D.C. App. 1977, 373 A.2d 890).

—Assessment of legal fees

Nonplaintiff condominium owners' due process rights were not violated by assessment scheduled basing each co-owner's share on costs of suit brought by condominium association protesting construction of subway on his percentage of ownership; there was no state action in establishment of the assessment schedule and since the non-plaintiff owners voluntarily agreed to the schedule when they bought a unit, any attempt to change it should be pursuant to attempt to alter the declaration and bylaws. *J. N. Owens et ux. v. Tiber Island Condominium Association et al.* (D.C. App. 1977, 373 A.2d 890).

Where contention that absent agreement to the contrary, legal fees in connection with suit by board of directors of condominium association protesting construction of subway should be borne by the co-owners named as plaintiffs and by the association was raised at meeting to vote on assessment for legal fees and it was explained to owners that counsel was retained only by the condominium and that other owners were invited to become parties only to make a better presentation, assessment of portion of legal fees against nonplaintiff owners would not be overturned; in any event, the co-owners agreed, by the required vote, to pay the legal fees. *Id.*

—Counterclaims

Permitting condominium association to file counterclaim in owners' suit challenging, among other things, assessment for costs of maintaining association's suit

protesting construction of subway was not abuse of discretion since had owners failed to prevail on their claim against the association the condominium would still have been obliged to file suit if owners refused to pay the assessment, as voted by the board; since claim for assessment is a compulsory counterclaim such an action would otherwise be barred. *J. N. Owens et ux. v. Tiber Island Condominium Association et al.* (D.C. App. 1977, 373 A.2d 890).

Common elements

Suit by board of directors of condominium association protesting construction of subway is related to "common elements or more than one unit" within meaning of this section authorizing board to maintain actions relating to the common elements or more than one unit; matters encompassed by settlement agreement, including regulation of construction and vibration from trains, are rationally necessary for condominium's existence, upkeep and safety, which matters fall within statutory definition of "general common elements." *J. N. Owens et ux. v. Tiber Island Condominium Association et al.* (D.C. App. 1977, 373 A.2d 890).

§ 5-925. Mechanics' and materialmen's liens, enforcement thereof—Removal from lien—Effect of part payment.

SUPERSEDURE

Section superseded, see note preceding § 5-901.

§ 5-926. Nonapplication of rule against perpetuities and of rule against unreasonable restraints on alienation to horizontal property regimes.

SUPERSEDURE

Section superseded, see note preceding § 5-901.

§ 5-927. Supplement of existing code provisions.

SUPERSEDURE

Section superseded, see note preceding § 5-901.

§ 5-928. Regulations of the Council and the Zoning Commission.

SUPERSEDURE

Section superseded, see note preceding § 5-901.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of the regulations relating to transfer of control of condominiums and bonds for expandable condominiums, see sec. 3 of the Emergency Amendment to the Horizontal Property Act and Regulations of the District of Columbia (D.C. Act 1-128, June 2, 1976, 22 DCR 6944).

For temporary amendment of the regulations relating to the recording of condominium instruments, see the Horizontal Property Regime Regulation Amendments of 1976 (D.C. Act 1-103, Mar. 30, 1976, 22 DCR 5483).

§ 5-928a. Council authorized to prohibit condominium conversions.

In addition to other authority delegated to it, and in accordance with section 406 of Reorganization Plan Numbered 2 of 1967, the District of Columbia Council is authorized, by regulation, to prohibit the establishment, after the effective date of such regulation, of any horizontal property regime, real estate condominiums project, or other conversion of units in a multiunit structure into a condominium pursuant to this chapter. (Aug. 29, 1974, Pub. L. 93-395, § 2, 88 Stat. 794.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

Reorganization Plan Numbered 2 of 1967, referred to in text, is set out in the appendix to Title 1, Administration, in the main edition of the Code.

CODIFICATION

Section was not enacted as part of the Horizontal Property Act of the District of Columbia, which comprises this chapter.

EMERGENCY ACT AMENDMENTS

1976—For temporary extension of the regulations relating to the condominium conversion moratorium, see sec. 2 of the Second Emergency Condominium Conversion Moratorium Extension Act of 1976 (D.C. Act 1-115, May 11, 1976, 22 DCR 6545).

1975—For temporary extension of the regulations relating to the condominium conversion moratorium, see sec. 2 of the Condominium Conversion Moratorium Extension Act (D.C. Act 1-17, May 28, 1975, 21 DCR 3729); the Horizontal Property Regime Regulation Extension Act, July 25, 1975, D.C. Law 1-10, 22 DCR 1286; and the Second Horizontal Property Regime Regulation Extension Act, Dec. 20, 1975, D.C. Law 1-40, 22 DCR 3305.

CROSS REFERENCE

Condominium conversions, rights and duties of landlords and tenants, see § 45-1662.

§ 5-929. Interpretation.

SUPERSEDED

Section superseded, see note preceding § 5-901.

§ 5-930. Supplemental provisions relating to sewer and water services.

SUPERSEDED

Section superseded, see note preceding § 5-901.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-931. Authority of Board of Commissioners under Reorganization Plan Numbered 5 of 1952.

SUPERSEDED

Section superseded, see note preceding § 5-901.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-932. Severability.

SUPERSEDED

Section superseded, see note preceding § 5-901.

§ 5-933. Effective date.

SUPERSEDED

Section superseded, see note preceding § 5-901.

Chapter 10.—COMMUNITY DEVELOPMENT

Sec.

5-1001. Findings and purpose.

5-1002. Community development program.

5-1003. Community development program activities.

Sec.

5-1004. Implementation of community development programs—Financial assistance—Authority of Mayor—Delegation of authority—Rules and regulations.

5-1005. Acquisition and disposition of real property.

5-1006. Rehabilitation of private property—Loans and grants—Insurance—Determination of public use.

5-1007. Construction—severability.

§ 5-1001. Findings and purpose.

(a) The Council finds and declares that the District of Columbia faces critical social, economic, and environmental problems arising in significant measures from:

(1) the concentration of poverty in areas of the city;

(2) overcrowding and deterioration of housing, exacerbated by inadequate construction of new units for the growing number of households, and inadequate resources to provide for the rehabilitation of existing units for use by residents of the affected areas;

(3) inadequate and inappropriate public and private investment and reinvestment in housing and other physical facilities, and related public and social services, resulting in the growth and persistence of urban slums and blight and the marked deterioration of the quality of the urban environment; and

(4) lack of essential commercial facilities and services in many of the city's communities; and

(5) need to improve the overall quality of the urban environment for the people of the District of Columbia.

(b) The Council further finds and declares that the future welfare of the District of Columbia and the well-being of its citizens depend on the establishment and maintenance of the District of Columbia as a viable physical, social, economic, and political community, and require for the benefit of the communities being directly affected:

(1) systematic and sustained action to eliminate blight, to conserve and renew aging urban neighborhoods, to improve the living environment of low and moderate income families, and to develop new residential and economic activity centers throughout the District;

(2) substantial expansion of and greater continuity in the scope and level of Federal and local financial assistance together with increased private investment in support of community development activities; and

(3) continuing effort at all levels of government to develop programs to meet identified needs and to improve the functioning of departments and agencies responsible for planning, implementing, and evaluating community development efforts.

(c) The primary objective of this chapter is the maintenance and development of the District of Columbia as a viable urban community, by providing decent housing, a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective the chapter provides for the support of community development activities

¹ So in original. Probably should be "of".

which are directed toward the following specific objectives:

(1) the elimination of slums and blight and the prevention of blighting influences and the deterioration of property and neighborhood and community facilities of importance to the welfare of the community;

(2) the elimination of conditions which are detrimental to health, safety, and public welfare and the establishment of programs to protect and improve the quality of the urban environment;

(3) the conservation and expansion of the District's housing stock in order to provide a suitable living environment for all persons, principally those of low and moderate income;

(4) the expansion and improvement of the quantity and quality of community services, particularly for persons of low and moderate income, which are essential for sound community development and for the development of a viable urban community;

(5) a more rational utilization of land and the better arrangement of residential, commercial, industrial, recreational, and other needed activity centers;

(6) the reduction of the isolation of income groups within the community and the promotion of an increase in the diversity and vitality of neighborhoods through the expansion of housing opportunities for persons of low and moderate income, particularly those with large families;

(7) the restoration and preservation of properties of special value for historic, architectural, or esthetic reasons;

(8) the establishment of data-gathering, planning, policy, and program development which will insure effective monitoring of and programming responsive to the changing numbers, characteristics, and needs of the people of the District of Columbia; and

(9) the continuation of development activities in those areas previously covered by urban renewal or neighborhood development plans until completed.

(Dec. 16, 1975, D.C. Law 1-39, § 2, 22 DCR 3436.)

EFFECTIVE DATE

Section 9 of act Dec. 16, 1975, D.C. Law 1-39, provided: "This act [enacting this chapter] shall become effective pursuant to operation of the provisions of section 602(c) of the 'District of Columbia Self-Government and Governmental Reorganization Act' (Public Law 93-198: 87 Stat. 814) [§ 1-147(c)]."

SHORT TITLE

Section 1 of act Dec. 16, 1975, D.C. Law 1-39 provided: "That this act [enacting this chapter] may be cited as the 'District of Columbia Community Development Act of 1975'."

§ 5-1002. Community development program.

(a) The Mayor annually shall prepare and submit to the Council a proposed Community Development Program (as such program is defined or may hereafter be defined in Title I of the Housing and Community Development Act of 1974), which—

(1) sets forth a summary of a three-year community development plan which identifies community development needs, demonstrates a com-

prehensive strategy for meeting those needs, and specifies both short and long-term community development objectives which have been developed in accordance with area-wide development planning and national urban growth policies;

(2) describes a program which—

(A) includes the activities to be undertaken to meet the identified community development needs and objectives, together with the estimated costs and location of such activities;

(B) indicates the resources which are proposed to be made available toward meeting the identified needs and objectives; and

(C) indicates the environmental review status of proposed community development activities;

(3) describes a program designed to—

(A) eliminate or prevent slums, blight, and deterioration where such conditions or needs exist; and

(B) provide improved community facilities and public improvements, including the provision of supporting health, social, and similar services where necessary and appropriate;

(4) includes a housing assistance plan which—

(A) accurately surveys the condition of the housing stock in the community and defines the housing assistance needs of lower income persons, including elderly and handicapped persons, large families, persons living in overcrowded conditions, persons paying more than 25% of their income for rent, and persons displaced or to be displaced, residing in or expected to reside in the community during the implementation of the plan;

(B) specifies a realistic annual goal for the number of dwelling units or persons to be assisted, including (i) the proposed number of new, rehabilitated, and existing dwelling units, and (ii) the sizes and types of housing units and assistance proposed to meet the needs of lower-income persons in the community as defined in the plan; and

(C) indicates the general locations of proposed housing for lower-income persons, with the objective of (i) furthering the revitalization of the community, including the restoration and rehabilitation of stable neighborhoods to the maximum extent possible, (ii) promoting greater choice of housing opportunities and avoiding concentrations of assisted persons in areas containing a high proportion of low income persons, and (iii) assuring the availability of public facilities and services adequate to serve proposed housing projects;

(5) includes such other materials, certifications, and assurances as may be required by law or regulation as conditions for financial assistance under the Housing and Community Development Act of 1974, and any other such requirements as may be specified by District of Columbia law.

(b) in¹ preparing the proposed Community Development Program, the Mayor shall:

(1) provide citizens with all information concerning the amount of funds available for pro-

¹ So in original. Probably should be "In".

posed community development and housing activities, the range of activities that may be undertaken, and other important program requirements;

(2) hold at least two public hearings to obtain the views of citizens on community development and housing needs; and

(3) provide citizens a full and meaningful opportunity to participate in the planning, development and evaluation of the annual Community Development Program and any amendments or modifications thereto.

(c) Prior to the exercise of any powers granted by this act, the Mayor shall have submitted the proposed Community Development Program to the Council, and the Council shall have approved the same by resolution following a public hearing thereon: *Provided*, That the Council may approve the program with conditions or amendments and the program as so modified shall be the approved Community Development Program: and *Provided further*, That an approved Community Development Program may be modified at any time in accordance with the procedures herein prescribed for its original approval. Notwithstanding the above, the Mayor shall have the authority to make minor modifications consistent with the intent of the approved Program, only after such modifications have been submitted to the Council and have not been disapproved within 30 days, except that the Council may approve such modifications before the 30-day period has expired. (Dec. 16, 1975, D.C. Law 1-39, § 3, 22 DCR 3439.)

REFERENCE IN TEXT

"The Housing and Community Development Act of 1974", referred to in subsec. (a), is Act Aug. 22, 1974, Pub. L. 93-383, 88 Stat. 633. Title I of that Act is classified primarily to sections 5301 et seq. of title 42, United States Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1004, 5-1006.

§ 5-1003. Community development program activities.

(a) ¹ An approved Community Development Program may include the following activities:

(1) the acquisition of real property (including air rights, water rights, and other interests therein) which is—

(A) blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth;

(B) appropriate for rehabilitation or conservation activities;

(C) appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development;

(D) to be used for the provision of public works, facilities, and improvements; or

(E) to be used for other purposes;

(2) the acquisition, construction, reconstruction, or installation of public works, facilities, and site or other improvements—including neighbor-

hood facilities, senior centers, historic properties, utilities, streets, street lights, water and sewer facilities, foundations and platforms for air right sites, pedestrian malls and walkways, and parks, playgrounds, and recreation facilities, flood and drainage facilities, parking facilities, solid waste disposal facilities, and fire protection services and facilities;

(3) code enforcement in deteriorated or deteriorating areas in which such enforcement, together with public improvements and services to be provided, may be expected to arrest the decline of the area;

(4) clearance, demolition, removal, and rehabilitation of buildings and improvements, including—

(A) interim assistance to alleviate harmful conditions in which immediate public action is needed;

(B) financing rehabilitation of privately owned properties through the use of direct loans, loan guarantees, grants, and other means when in support of Community Development Program objectives; and

(C) demolition and modernization of publicly owned low-rent housing when necessary to protect health, safety, and the public welfare;

(5) special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons;

(6) payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by program activities under this chapter;

(7) disposition (through sale, lease, donation, or otherwise) of any real property acquired pursuant to title, provided that the proceeds of any such disposition shall be expended only for approved Community Development Program activities;

(8) provision of public services not otherwise available in areas where other activities authorized by this chapter are being carried out in a concentrated manner, if such services are determined to be necessary or appropriate to support such other activities, and if such services are directed toward—

(A) improving the community's public services and facilities, including those concerned with the employment, economic development, crime prevention, child care, health, drug abuse, education, welfare, or recreation needs of persons residing in such areas; and

(B) coordinating public and private development programs;

(9) payment of the non-Federal share required in connection with the Federal grant-in-aid program undertaken as part of the Community Development Program subject to appropriations restrictions if any;

(10) payment of the cost of completing a project funded under Title I of the Housing Act of 1949;

(11) relocation payments and assistance for individuals, families, businesses, organizations, and

¹ So in original. There is no subsec. (b).

farm operations displaced by activities authorized by this chapter;

(12) activities necessary—

(A) to develop a comprehensive community development plan, and

(B) to develop a policy-planning-management capacity so that the District of Columbia may more rationally and effectively (i) determine its needs, (ii) set long-term goals and short-term objectives, (iii) devise programs and activities to meet these goals and (iv) evaluate the progress of such programs in accomplishing these goals and objectives, and (v) carry out management, coordination, and monitoring of activities necessary for effective planning implementation;

(13) payment of reasonable administrative costs and carrying charges related to the planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are proposed; and

(14) any activity made eligible for financial assistance by the Housing and Community Development Act of 1974, or any amendment thereto.

(Dec. 16, 1975, D.C. Law 1-39, § 4, 22 DCR 3443.)

REFERENCES IN TEXT

"Title I of the Housing Act of 1949", referred to in subsec. (a)(9), is title I of Act July 15, 1949, ch. 338, 63 Stat. 414, which is classified generally to sections 1450 et seq. of title 42, United States Code.

"The Housing and Community Development Act of 1974", referred to in subsec. (a)(14), is Act Aug. 22, 1974, Pub. L. 93-383, 88 Stat. 633.

CROSS REFERENCE

Relocation services, generally, see § 5-728 et seq.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-1004.

§ 5-1004. Implementation of community development programs—Financial assistance—Authority of Mayor—Delegation of authority—Rules and regulations.

(a) After the approval of a Community Development Program by the Council pursuant to section 1-1002, the Mayor is authorized to submit to the Secretary of Housing and Urban Development an application, meeting the requirements of the Housing and Community Development Act of 1974 and regulations issued pursuant thereto or amendments thereof, for financial assistance to implement said program. In connection therewith, the Mayor is authorized to:

(1) consent to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969;

(2) consent, on behalf of the District Government and himself, to accept the jurisdiction of the Federal courts for the purpose of enforcement of his responsibilities as such an official;

(3) give such other pledges, assurances, and certifications as may be required by the Housing and Community Development Act of 1974 and regulations issued pursuant thereto or amendments thereof; and

(4) accept grants, gifts, donations, bequests, and services from any source to assist in carrying out any of the purposes of this chapter.

(b) In implementing an approved Community Development Program the Mayor is authorized to perform or conduct any of the activities described in section 5-1003 and to do all other things necessary to carry out the intent of such program in accordance with any existing provisions of law not inconsistent herewith. Any power granted to the Mayor or any officer, employee, agency, or instrumentality of the District Government by any other law may, in addition to the purposes specified therein, be exercised in furtherance of the carrying out of an approved Community Development Program.

(c) Powers and functions vested in the Mayor by this chapter may be delegated by him to any officer, employee, agency, or instrumentality of the District Government by administrative order, and any officer, employee, agency, or instrumentality so designated is authorized to perform the same in accordance with the terms of the delegation.

(d) The Mayor is authorized to issue, amend, and revoke such rules and regulations as he deems necessary to carry out the purposes of this chapter. (Dec. 16, 1975, D.C. Law 1-39, § 5, 22 DCR 3448.)

REFERENCES IN TEXT

"The Housing and Community Development Act of 1974", referred to in subsec. (a), is Act Aug. 22, 1974, Pub. L. 93-383, 88 Stat. 633.

"National Environmental Policy Act of 1969", referred to in subsec. (a)(1), is the Act Jan. 1, 1970, Pub. L. 91-190, 83 Stat. 852, which is classified to sections 4321 et seq. of title 42, United States Code.

§ 5-1005. Acquisition and disposition of real property.

(a) Real property acquired for the purposes of this chapter shall be acquired pursuant to subchapter II of chapter 13 of title 16. No such property shall be acquired unless its acquisition be authorized by the Council after notice of public hearing.

(b) Real property may also be acquired through gift, donation, bequest, assignment, or voluntary sale by the owner.

(c) For the purposes of this chapter, the Mayor may dispose of any real property owned by the District of Columbia by negotiation or public or private bid, on such terms and conditions as he deems necessary to accomplish the purposes of the chapter; *Provided*, That prior to any such disposition there shall be a public hearing on the proposed terms and conditions after at least thirty (30) days' public notice. (Dec. 16, 1975, D.C. Law 1-39, § 6, 22 DCR 3450.)

§ 5-1006. Rehabilitation of private property—Loans and grants—Insurance—Determination of public use.

(a) The Mayor is hereby authorized to establish a Rehabilitation Loan and Grant Fund and to make or contract to make publicly-financed low-interest loans and grants to owners of property for the rehabilitation and improvement of such property in accordance with a Community Development Program approved pursuant to section 5-1002.

(b) The Mayor is further authorized to establish a Rehabilitations Loan Insurance Fund and to insure or contract to insure privately-financed loans to

owners of property for the rehabilitation and improvement of such property in accordance with a Community Development Program approved pursuant to section 5-1002.

(c) Any and all publicly-financed rehabilitation loans and grants made by the Mayor, and any and all insurance commitments made by the Mayor in connection with privately-financed rehabilitation loans, and any and all money used or expended by the Mayor in connection with said loans or insurance commitments pursuant to the hereinabove described authority, and any and all acts performed by the Mayor in connection with any powers granted pursuant to this section, are hereby declared to be needed, contracted for, expended, or exercised for a public use. (Dec. 16, 1975, D.C. Law 1-39, § 7, 22 DCR 3450.)

§ 5-1007. Construction—Severability.

(a) To the extent that any provisions of this chapter are inconsistent with the provisions of any other laws within the jurisdiction of the Council, the provisions of this chapter shall prevail and shall be deemed to supersede the provisions of such laws.

(b) If any provisions of this chapter be held invalid, the remainder of the chapter shall not be impaired thereby, but shall continue in full force and effect. (Dec. 16, 1975, D.C. Law 1-39, § 8, 22 DCR 3451.)

Chapter 11.—FLOOD HAZARDS

Sec.

- 5-1101. Review of building permit applications for new construction or substantial improvements—Design and construction requirements to minimize flood damage.
- 5-1102. Review of subdivision and other new development proposals to minimize flood damage and hazards.
- 5-1103. Design of new or replacement water and sanitary sewage systems and location of on-site waste disposal systems to minimize flood hazards.
- 5-1104. Review of excavation, grading, filling, or construction permit applications—Protection against mudslide hazards.
- 5-1105. Annual report.

§ 5-1101. Review of building permit applications for new construction or substantial improvements—Design and construction requirements to minimize flood damage.

The Mayor shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a location that has flood hazard, the proposed new construction of¹ substantial improvement (including prefabricated homes) must (i) be designed (or modified) and anchored to prevent flotation, collapse, or lateral movement of the structure, (ii) use construction materials and utility equipment that are resistant to flood damage, and (iii) use construction methods and practices that will minimize flood damage. (May 26, 1976, D.C. Law 1-64, § 2, 22 DCR 7146.)

EMERGENCY ACT AMENDMENT

1975—For temporary provisions relating to the implementation of the flood insurance program prior to the enactment of this chapter, see the District of Columbia Flood Insurance Implementation act (D.C. Act 1-60, Oct. 29, 1975, 22 DCR 2122b).

¹ So in original. Probably should be "or".

EFFECTIVE DATE

Section 7 of act May 26, 1976, D.C. Law 1-64, provided: "This act [enacting this chapter] shall become law according to the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)] and shall be deemed to have become effective on the last day that the emergency act of the Council act No. 1-60 [enacted Oct. 29, 1975] is in effect."

SHORT TITLE

The first section of act May 26, 1976, D.C. Law 1-64 provided "That this act [enacting this chapter] may be cited as the 'District of Columbia Applications Insurance Implementation act'."

§ 5-1102. Review of subdivision and other new development proposals to minimize flood damage and hazards.

The Mayor shall review subdivision proposals and other proposed new developments to assure that (i) all such proposals are consistent with the need to minimize flood damage, (ii) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated, and constructed to minimize or eliminate flood damage, and (iii) adequate drainage is provided so as to reduce exposure to flood hazards. (May 26, 1976, D.C. Law 1-64, § 3, 22 DCR 7147.)

§ 5-1103. Design of new or replacement water and sanitary sewage systems and location of on-site waste disposal systems to minimize flood hazards.

The Mayor shall require new or replacement water systems and sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and require on-site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding. (May 26, 1976, D.C. Law 1-64, § 4, 22 DCR 7147.)

§ 5-1104. Review of excavation, grading, filling, or construction permit applications—Protection against mudslide hazards.

The Mayor shall review each permit application for any excavation, grading, fill, or construction to determine whether the proposed site and improvements will be reasonably safe from mudslides. If a proposed site and improvements are in a location that may have mudslide hazards, a further review shall be made by persons qualified in geology and soils engineering; and the proposed new construction, substantial improvement, or grading must (i) be adequately protected against mudslide damage and (ii) not aggravate the existing hazard. (May 26, 1976, D.C. Law 1-64, § 5, 22 DCR 7147.)

§ 5-1105. Annual report.

The Mayor shall submit an annual report before April 1, of each year to the Council to advise the public of progress made under the National Flood Control Program. (May 26, 1976, D.C. Law 1-64, § 6, 22 DCR 7148.)

Chapter 12.—CONDOMINIUMS

SUBCHAPTER I.—GENERAL PROVISIONS

Sec.

- 5-1201. Applicability.
- 5-1202. Definitions.
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Sec.

- 5-1204. Separate taxation.
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- 5-1212. Release of liens.
- 5-1213. Description of condominium units.
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- 5-1241. Contents of bylaws.
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- 5-1244. Quorums.
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- 5-1246. Officers.
- 5-1247. Upkeep of condominiums.
- 5-1248. Powers of unit owners' associations.
- 5-1249. Tort and contract liability.
- 5-1250. Insurance.
- 5-1251. Rights to common profits.
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- 5-1261. Exemptions.
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- 5-1268. Conversion condominiums.
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- 5-1270. Delivery of declaration and bylaws to purchaser.
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- 5-1272. General powers and duties of the Mayor.
- 5-1273. Investigations and proceedings.
- 5-1274. Cease and desist orders.
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- 5-1276. Judicial review.
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SUBCHAPTER V.—CONDOMINIUM CONVERSION—HOUSING ASSISTANCE

PART A.—CONDOMINIUM CONVERSION

Sec.

- 5-1281. Limitations on condominium conversions.
- 5-1282. Computation and publication of vacancy rate.

PART B.—HOUSING ASSISTANCE

- 5-1291. Eligibility for housing assistance and relocation compensation—Tax exemption.
- 5-1292. Computation of housing assistance payments.
- 5-1293. Computation and payment of relocation compensation.
- 5-1294. Applications for housing assistance and relocation compensation—Notification of eligibility—Review of eligibility determinations.
- 5-1295. Deposit in and payment by banks of District housing assistance payments.
- 5-1296. Definitions.
- 5-1297. Applicability.

SUBCHAPTER I.—GENERAL PROVISIONS

§ 5-1201. Applicability.

(a) This chapter shall apply to all condominiums and to all horizontal property regimes or condominium projects.

(b) For the purposes of this chapter—

(1) the terms “horizontal property regime” and “condominium project” shall be deemed to correspond to the “condominium”;

(2) the term “co-owner” shall be deemed to correspond to the term “unit owner”;

(3) the term “council of co-owners” shall be deemed to correspond to the term “unit owners’ association”;

(4) the term “developer” shall be deemed to correspond to the term “declarant”; and

(5) the term “general common elements” shall be deemed to correspond to the term “common elements”.

(c) This chapter shall be deemed to supersede chapter 9 of this title, the Regulation 74-26 of the District of Columbia City Council, and no condominium shall be established except pursuant to this chapter on or after March 29, 1977. But this chapter shall not be construed to affect the validity of any provision of any condominium instrument recorded, or of any horizontal property regime complying with the requirements of chapter 9 of this title and registered prior to March 29, 1977. Nor shall subchapter IV of this chapter be deemed applicable to any condominiums established prior to March 29, 1977, except as provided in section 5-1271. (Mar. 29, 1977, D.C. Law 1-89, title I, § 101, 23 DCR 9532b.)

CODIFICATION

In subsec. (c), “March 29, 1977” has been substituted for “the effective date hereof” and “the effective date of this act”.

EMERGENCY ACT AMENDMENTS

1977—For temporary provisions regulating condominiums prior to the enactment of this chapter, see the Second Extension of the Emergency Condominium Regulation Act of 1976 (D.C. Act 2-1, Jan. 26, 1977, 23 DCR 6735).

1976—For temporary provisions regulating condominiums prior to the enactment of this chapter, see the Emergency Condominium Regulation Act of 1976 (D.C. Act 1-144, July 30, 1976, 23 DCR 1223) and the First Extension of the Emergency Condominium Regulation Act of 1976 (D.C. Act 1-165, Oct. 28, 1976, 23 DCR 3082).

¹ So in original. Probably should be “the term”.

EFFECTIVE DATE

Section 419 of act Mar. 29, 1977, D.C. Law 1-89, title IV, provided: "This act [enacting this chapter] shall take effect as provided for acts of the Council of the District of Columbia in Section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act Mar. 29, 1977, D.C. Law 1-89, provided: "That this act [enacting this chapter] may be cited as the 'Condominium Act of 1976'."

§ 5-1202. Definitions.

For the purposes of this chapter:

(a) "Common Elements" shall mean all portions of the condominium other than the units.

(b) "Common Expenses" shall mean all lawful expenditures made or incurred by or on behalf of the unit owners' association, together with all lawful assessments for the creation and maintenance of reserves pursuant to the provisions of the condominium instruments; "future common expenses" shall mean common expenses for which assessments are not yet due and payable.

(c) "Common Profits" shall mean all income collected or accrued by or on behalf of the unit owners' association, other than income derived by assessment pursuant to section 5-1252.

(d) "Condominium" shall mean real property and any incident thereto or interests therein, lawfully submitted to this chapter by the recordation of condominium instruments pursuant to the provisions of this chapter. No project shall be deemed a condominium within the meaning of this chapter unless the undivided interests in the common elements are vested in the unit owners.

(e) "Condominium Instruments" shall mean the declaration, bylaws, and plats and plans, recorded pursuant to the provisions of this chapter. Any exhibit, schedule, or certification accompanying a condominium instrument and recorded simultaneously therewith shall be deemed an integral part of that condominium instrument. Any amendment or certification of any condominium instrument shall, from the time of the recordation of such amendment or certification, be deemed an integral part of the affected condominium instrument, so long as such amendment or certification was made in accordance with the provisions of this chapter.

(f) "Condominium Unit" shall mean a unit together with the undivided interest in the common elements appertaining to that unit. (Cf. the definition of "unit," *infra*.)

(g) "Contractable Condominium" shall mean a condominium from which one or more portions of the submitted land may be withdrawn in accordance with the provisions of the declaration and of this chapter. If such withdrawal can occur only by the expiration or termination of one or more leases, then the condominium shall not be deemed a contractable condominium within the meaning of this chapter.

(h) "Conversion Condominium" shall mean a condominium containing structures which before the recording of the declaration were wholly or partially occupied by persons other than those who have contracted for the purchase of condominium

units and those who occupy with the consent of such purchasers.

(i) "Convertible Land" shall mean a building site; that is to say, a portion of the common elements, within which additional units or limited common elements, or both, may be created in accordance with the provisions of this chapter.

(j) "Convertible Space" shall mean a portion of a structure within the condominium, which portion may be converted into one or more units or common elements, or both, in accordance with the provisions of this chapter. (Cf. the definition of "unit," *infra*.)

(k) "Declarant" shall mean all persons who execute or propose to execute the declaration, or on whose behalf the declaration is executed or proposed to be executed. From the time of the recordation of any amendment to the declaration expanding an expandable condominium, all persons who execute the amendment or on whose behalf that amendment is executed shall also come within this definition. Any successors of the persons referred to in this subsection who come to stand in the same relation to the condominium as their predecessors did shall also come within this definition.

(l) "Dispose" or "Disposition" shall mean any voluntary transfer of a legal or equitable interest in a condominium unit, other than as security for a debt.

(m) "Executive Organ" shall mean an executive and administrative entity, by whatever name designated and designated in the condominium instruments to act for the unit owners' association in governing the condominium.

(n) "Expandable Condominium" shall mean a condominium to which additional land may be added in accordance with the provisions of the declaration and of this chapter.

(o) "Identifying Number" shall mean one or more letters or numbers, or both, that identify only one unit in the condominium.

(p) "Institutional Lender" shall mean one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts, including but not limited to, real estate investment trusts, any other entity regularly engaged directly or indirectly in financing the purchase, construction, or improvement of real estate, or any combination of any of the foregoing entities.

(q) "Land" is a three-dimensional concept and includes parcels with upper or lower boundaries, or both, parcels extending *ab solo usque ad coelum*, and any improvements thereto. Parcels of airspace constitute land within the meaning of this chapter. Any requirement in this chapter of a legally sufficient description shall be deemed to include a requirement that the upper or lower boundaries, if any, of the parcel in question be identified with reference to established datum.

(r) "Leasehold Condominium" means a condominium all or any portion of which is subject to a lease, the expiration or termination of which will

terminate the condominium or exclude a portion therefrom.

(s) "Limited Common Element" shall mean a portion of the common elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units.

(t) "Mayor" shall mean the Mayor of the District of Columbia.

(u) "Nonbinding Reservation Agreement" shall mean an agreement between the declarant and a prospective purchaser which is in no way binding on the prospective purchaser and which may be cancelled without penalty at the sole discretion of the prospective purchaser by written notice, hand-delivered or sent by United States mail, return receipt requested to the declarant at any time prior to the execution of a contract for the sale or lease of a condominium unit or an interest therein. Such agreement shall not contain any provision for waiver or any other provision in derogation of the rights of the prospective purchaser as contemplated by this subsection, nor shall any such provision be a part of any ancillary agreement.

(v) "Offer" shall mean any inducement, solicitation, or attempt to encourage any person or persons to acquire any legal or equitable interest in a condominium unit, other than as security for a debt; *Provided, however,* That "offer" shall not mean any advertisement of a condominium not located in the District of Columbia in a newspaper or other periodical of general circulation, or in any public broadcast medium if such advertisement states that it does not constitute an offer of sale and that an offer may be made only in compliance with the condominium act of the state or territory in which the condominium is located.

(w) "Officer" shall mean any member of the executive organ or official of the unit owners' association.

(x) "Par Value" shall mean a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may, but need not, be considered substantially identical within the meaning of this subsection. If par value is stated in terms of dollars, that statement shall not be deemed to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure shall affect the par value of any unit, or any undivided interest in the common elements, voting rights in the unit owners' association, liability for common expenses, or rights to common profits, assigned on the basis thereof.

(y) "Person" shall mean a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination of any of the foregoing.

(z) "Purchaser" shall mean any person or persons who acquire by means of a voluntary transfer a legal

or equitable interest in a condominium unit, other than as security for a debt.

(aa) "Registered Land Surveyor" shall mean any person or firm permitted to prepare and certify surveys and subdivision plats in the District of Columbia, including but not limited to, registered civil engineers.

(bb) "Size" shall mean the number of cubic feet or the number of square feet of ground or floor space, or both, within each unit as computed by reference to the plats and plans and rounded off to a whole number. Certain spaces within the units including, without limitation, attic, basement, or garage space, may, but need not, be omitted from such calculation or partially discounted by the use of a ratio, so long as the same basis of calculation is employed for all units in the condominium, and so long as that basis is described in the declaration.

(cc) "Surveyor" shall mean the Office of the Surveyor of the District of Columbia.

(dd) "Unit" shall mean a portion of the condominium designed and intended for individual ownership. (Cf. the definition of "condominium unit", supra.) For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with section 5-1228(d).

(ee) "Unit Owner" shall mean one or more persons who own a condominium unit, or, in the case of a leasehold condominium, whose leasehold interest or interests in the condominium extend for the entire balance of the unexpired term or terms. (Mar. 29, 1977, D.C. Law 1-89, title I, § 102, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-1216.

§ 5-1203. Separate titles.

Each condominium unit shall constitute for all purposes a separate parcel of real property, distinct from all other condominium units. Any condominium unit may be owned by more than one person as joint tenants, as tenants in common, as tenants by the entirety (in the case of husband and wife), or in any other real property tenancy relationship recognized under the laws of the District of Columbia. (Mar. 29, 1977, D.C. Law 1-89, title I, § 103, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-1236.

§ 5-1204. Separate taxation.

If there is any unit owner other than the declarant, then no tax or assessment shall be levied on the condominium as a whole, but only on the individual condominium units. Each condominium unit shall be carried on the records of the District of Columbia and assessed as a separate and distinct taxable entity. (Mar. 29, 1977, D.C. Law 1-89, title I, § 104, 23 DCR 9532b.)

§ 5-1205. Ordinances and regulations.

No zoning or other land use ordinance or regulation shall prohibit condominiums as such by reason of the form of ownership inherent therein. Neither shall any condominium be treated differently by any zoning or other land use ordinance or regulation

which would permit a physically identical project or development under a different form of ownership. No subdivision ordinance or regulation shall apply to any condominium or to any subdivision of any convertible land, convertible space, or unit unless such ordinance or regulation is by its express terms made applicable thereto. Nothing in this section shall be construed to permit application of any provision of the building code which is not expressly applicable to condominiums by reason of the form of ownership inherent therein, to a condominium in a manner different from the manner in which such provision is applied to other buildings of similar physical form and nature of occupancy. (Mar. 29, 1977, D.C. Law 1-89, title I, § 105, 23 DCR 9532b.)

§ 5-1206. Eminent domain.

(a) If any portion of the common elements is taken by eminent domain, the award therefor shall be allocated to the unit owners in proportion to their respective undivided interests in the common elements, except that the portion of the award attributable to the taking of any permanently assigned limited common element shall be allocated by the decree to the unit owner of the unit to which that limited common element was so assigned at the time of the taking. If that limited common element was permanently assigned to more than one unit at the time of the taking, then the portion of the award attributable to the taking thereof shall be allocated in equal shares to the unit owners of the units to which it was so assigned or in such other shares as the condominium instruments may specify for this express purpose. A permanently assigned limited common element is a limited common element which cannot be reassigned or which can be reassigned only with the consent of the unit owner or owners of the unit or units to which it is assigned.

(b) If one or more units is taken by eminent domain, the undivided interest in the common elements appertaining to any such unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common elements. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of any unit taken for his undivided interest in the common elements as well as for his unit.

(c) If portions of any unit are taken by eminent domain, the court shall determine the fair market value of the portions of such unit not taken, and the undivided interest in the common elements appertaining to any such units shall be reduced in the case of each such unit, in proportion to the diminution in the fair market value of such unit resulting from the taking. The portions of undivided interest in the common elements thereby divested from the unit owners of any such units shall be reallocated among those units and the other units in the condominium in proportion to their respective undivided interests in the common elements with any units partially taken participating in such reallocation on the basis of their undivided interests as

reduced in accordance with the preceding sentence. The court shall enter a decree, reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of any unit partially taken for that portion of his undivided interest in the common elements divested from him by operation of the first sentence of this subsection and not reverted in him by operation of the following sentence, as well as for that portion of his unit taken by eminent domain.

(d) If, however, the taking of a portion of any unit makes it impractical to use the remaining portion of that unit for any lawful purpose permitted by the condominium instruments, then the entire undivided interest in the common elements appertaining to that unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common elements, and the remaining portion of that unit shall thenceforth be a common element. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of such unit for the unit owner's entire undivided interest in the common elements and for the unit owner's entire unit.

(e) Votes in the unit owners' association, rights to future common profits, and liabilities for future common expenses not specially assessed, appertaining to any unit or units taken or partially taken by eminent domain, shall thenceforth appertain to the remaining units, being allocated to them in proportion to their relative voting strength in the unit owners' association, rights to future common profits, and liabilities for future common expenses not specially assessed, respectively, with any units partially taken participating in such reallocation as though the voting strength in the unit owners' association, right to future common profits, and liabilities for future common expenses not specially assessed, respectively, had been reduced in proportion to the reduction in their undivided interests in the common elements. But in any case where votes in the unit owners' association were originally assigned on the basis of equality (subject to the exception for convertible spaces) votes in the unit owners' association shall not be reallocated. The decree of the court shall provide accordingly.

(f) The decree of the court shall require the recordation thereof among the land records of the District of Columbia. (Mar. 29, 1977, D.C. Law 1-89, title I, § 106, 23 DCR 9532b.)

SUBCHAPTER II.—ESTABLISHMENT OF CONDOMINIUMS

§ 5-1211. Creation of condominiums.

No condominium shall come into existence except by the recordation of condominium instruments pursuant to the provisions of this chapter. No condominium instruments shall be recorded unless all units located or to be located on any portion of the submitted land, other than within the boundaries of any convertible lands, are depicted

on plats and plans that comply with the provisions of section 5-1224(a) and (b). The foreclosure of any mortgage, deed of trust or other lien shall not be deemed, *ex proprio vigore*, to terminate the condominium. All units shall be contiguous, or on the same square, or on contiguous squares, except that common elements need not be on contiguous squares. (Mar. 29, 1977, D.C. Law 1-89, title II, § 201, 23 DCR 9532b.)

EFFECTIVE DATE

See note under § 5-1201.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-1270.

§ 5-1212. Release of liens.

(a) At the time of the conveyance to the first purchaser of each condominium unit following the recordation of the declaration, every mortgage, deed of trust, any other perfected lien, or any mechanics' or materialmen's liens, affecting all of the condominium or a greater portion thereof than the condominium unit conveyed, shall be paid and satisfied of record, or the declarant shall forthwith have the said condominium unit released of record from all such liens not so paid and satisfied. The provisions of this subsection shall not apply, however, to any withdrawable land in a contractable condominium, nor shall any provision of this subsection be construed to prohibit the unit owners' association from mortgaging or causing a deed of trust to be placed on any portion of the condominium within which no units are located, so long as any time limit specified pursuant to section 5-1242(a) has expired, and so long as the bylaws authorize the same.

(b) No labor performed or materials furnished with the consent of or at the request of a unit owner or such unit owner's agent or contractor or subcontractor shall be the basis for the filing of a lien pursuant to the provisions of section 38-101 against the property of any unit owner not expressly consenting to the same, except that such consent shall be deemed to be given by any unit owner in the case of emergency repairs to his unit. Labor performed or materials furnished for the common elements, if duly authorized by the unit owners' association or its executive organ subsequent to any period of developer control pursuant to section 5-1242(a), shall be deemed to be performed or furnished with the express consent of every unit owner and shall be the basis for the filing of a lien pursuant to the provisions of section 38-101 against all of the condominium units. Notice of such lien shall be served on the principal officer of the unit owners' association or any member of the executive organ.

(c) In the event that any lien, other than a deed of trust or mortgage, becomes effective against two or more condominium units subsequent to the creation of the condominium, any unit owner may remove such unit owner's condominium unit from that lien by payment of the amount attributable to that condominium unit, or, in the case of any mechanic's or materialman's lien, by filing a written undertaking for such amount with surety approved by the court as provided in section 38-118. Such amount shall be computed by reference to (c). Subsequent to such payment, discharge or other

the liability for common expenses appertaining to that condominium unit pursuant to section 5-1252 satisfaction, or filing of bond, the unit owner of that condominium unit shall be entitled to have that lien released as to such unit owner's condominium unit, and the unit owners' association shall not assess, or have a valid lien against that condominium unit for any portion of the common expenses incurred in connection with that lien, notwithstanding anything to the contrary in sections 5-1252 and 5-1253. (Mar. 29, 1977, D.C. Law 1-89, title II, § 202, 23 DCR 9532b.)

§ 5-1213. Description of condominium units.

After the creation of the condominium, no description of a condominium unit shall be deemed vague, uncertain, or otherwise insufficient or infirm which sets forth the identifying number of that unit, the name of the condominium and the instrument number and date of recordation of the declaration and the condominium book and page number where the plats and plans are recorded. Any such description shall be deemed to include the undivided interest in the common elements appertaining to such unit even if such interest is not defined or referred to therein (Mar. 29, 1977, D.C. Law 1-89, title II, § 203, 23 DCR 9532b.)

§ 5-1214. Execution of condominium instruments.

The declaration and bylaws, and any amendments of either made pursuant to section 5-1238, shall be executed by or on behalf of all of the owners and lessees of the submitted land. But the phrase "owners and lessees" in the preceding sentence and in section 5-1229 does not include, in their capacity as such, any mortgagee, any trustee or beneficiary under a deed of trust, any other lien holder, any person having an inchoate dower or curtesy interest, any person having an equitable interest under any contract for the sale or lease of a condominium unit, or any lessee whose leasehold interest does not extend to any portion of the common elements. (Mar. 29, 1977, D.C. Law 1-89, title II § 204, 23 DCR 9532b.)

§ 5-1215. Recordation of condominium instruments.

All amendments and certifications of the condominium instruments shall set forth the instrument number and date of recordation of the declaration and, when necessary, shall set forth the condominium book and page number where the plats and plans are recorded. All condominium instruments and all amendments and certifications thereof shall set forth the name and address of the condominium and shall be so recorded. (Mar. 29, 1977, D.C. Law 1-89, title II, § 205, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1238, 5-1270.

§ 5-1216. Construction of terms and unit boundary descriptions of condominium instruments.

Except to the extent otherwise provided by the condominium instruments:

(a) The terms defined in section 5-1202 shall be deemed to have the meanings therein specified wherever they appear in the condominium instruments unless the context otherwise requires.

(b) To the extent that walls, floors, or ceilings are designated as the boundaries of the units or of any specified units, all doors and windows therein, and all lath, wallboard, plastering, and any other materials constituting any part of the finished surfaces thereof, shall be deemed a part of such units, while all other portions of such walls, floors, or ceilings shall be deemed a part of the common elements.

(c) If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or any other apparatus lies partially within and partially outside of the designated boundaries of a unit, any portions thereof serving only that unit shall be deemed a part of that unit, while any portions thereof serving more than one unit or any portion of the common elements shall be deemed a part of the common elements.

(d) Subject to the provisions of subsection (c) hereof, all space, interior partitions, and other fixtures and improvements within the boundaries of a unit shall be deemed a part of that unit.

(e) Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, and any other apparatus designed to serve a single unit, but located outside the boundaries thereof, shall be deemed a limited common element appertaining to that unit exclusively. (Mar. 29, 1977, D.C. Law 1-89, title II, § 206, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1220, 5-1224, 5-1246.

§ 5-1217. Construction of condominium instruments.

The condominium instruments shall be construed together and shall be deemed to incorporate one another to the extent that any requirement of this chapter as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to any of the others. If any conflict exists among the condominium instruments, the declaration controls, except that a construction consistent with the¹ chapter, controls in all cases over any inconsistent construction. (Mar. 29, 1977, D.C. Law 1-89, title II, § 207, 23 DCR 9532b.)

§ 5-1218. Validity of condominium instruments.

(a) All provisions of the condominium instruments shall be deemed severable, and any unlawful provision thereof shall be void.

(b) No provision of the condominium instruments shall be deemed void by reason of the rule against perpetuities.

(c) No restraint on alienation shall discriminate or be used to discriminate on the basis of religious conviction, race, color, sex, or national origin. The condominium instruments may provide, however, for restraints on use of some or all of the units restricting the use of such units to persons meeting requirements based upon age, sex, marital status, physical disability or, in connection with programs of the federal or District of Columbia government, income levels.

(d) Subject to the provisions of subsection (c) hereof, the rule of property law known as the rule restricting unreasonable restraints on alienation

shall not be applied to defeat any provision of the condominium instruments restraining the alienation of condominium units not restricted exclusively to residential use. (Mar. 29, 1977, D.C. Law 1-89, title II, § 208, 23 DCR 9532b.)

§ 5-1219. Suit for noncompliance with this chapter or condominium instruments.

Any lack of compliance with this chapter or with any lawful provision of the condominium instruments shall be grounds for an action or suit to recover sums due for damages or injunctive relief, or for any other available remedy, maintainable by the unit owners' association, or by its executive organ or any managing agent on behalf of such association, or, in any proper case, by one or more aggrieved persons on their own behalf or as a class action. (Mar. 29, 1977, D.C. Law 1-89, title II, § 209, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-1253.

§ 5-1220. Contents of declaration.

(a) The declaration for every condominium shall contain—

(1) the name of the condominium, which name shall include the word "condominium" or be followed by the words "a condominium";

(2) a legally sufficient description of the land submitted to this chapter;

(3) a description or delineation of the boundaries of the units, including the horizontal (upper and lower) boundaries, if any, as well as the vertical (lateral or perimetric) boundaries;

(4) a description or delineation of any limited common elements not covered by section 5-1216 (e), showing or designating the unit or units to which each is assigned;

(5) a description or delineation of all common elements not within the boundaries of any convertible lands which may subsequently be assigned as limited common elements, together with a statement that they may be so assigned and a description of the method whereby any such assignments shall be made in accordance with the provisions of section 5-1223;

(6) the allocation to each unit of an undivided interest in the common elements in accordance with the provisions of section 5-1221; and

(7) such other matters as the declarant deems appropriate.

(b) If the condominium contains any convertible land the declaration shall also contain—

(1) a legally sufficient description of each convertible land within the condominium;

(2) a statement of the maximum number of units that may be created within each such convertible land;

(3) a statement, with respect to each such convertible land, of the maximum percentage of the aggregate land and floor area of all units that may be created therein that may be occupied by units not restricted exclusively to residential use;

(4) a statement of the extent to which any structure erected on any convertible land will be compatible with structures on other portions of the submitted land in terms of quality of construc-

¹ So in original. Probably should be "this".

tion, the principal materials to be used and architectural style;

(5) a description of all other improvements that may be made in each convertible land within the condominium;

(6) a statement that any units created within each convertible land will be substantially identical to the units on other portions of the submitted land, or a statement describing in detail what other types of units may be created therein; and

(7) a description of the declarant's reserved right, if any, to create limited common elements within any convertible land, or to designate common elements therein which may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of such elements within each such convertible land; *Provided*, That the plats and plans recorded pursuant to section 5-1224 (a) and (b) may be used to supplement information furnished pursuant to items (1), (4), (5), (6), and (7) of this subsection, and that item (3) of this subsection need not be complied with if none of the units on other portions of the submitted land are restricted exclusively to residential use.

(c) If the condominium is an expandable condominium the declaration shall also contain—

(1) the explicit reservation of an option to expand the condominium;

(2) a statement of any limitations on that option, including, without limitation, a statement as to whether the consent of any unit owners shall be required, and if so, a statement as to the method whereby such consent shall be ascertained; or a statement that there are no such limitations;

(3) a time limit, not exceeding five years from the recording of the declaration, upon which the option to expand the condominium shall expire, together with a statement of the circumstances, if any, which will terminate that option prior to the expiration of the time limit so specified;

(4) a legally sufficient description of all land that may be added to the condominium, henceforth referred to as "additional land";

(5) a statement as to whether, if any of the additional land is added to the condominium, all of it or any particular portion of it must be added, and if not, a statement of any limitations as to what portions may be added or a statement that there are no such limitations;

(6) a statement as to whether portions of the additional land may be added to the condominium at different times, together with any limitations fixing the boundaries of those portions by legally sufficient descriptions regulating the order in which they may be added to the condominium;

(7) a statement of any limitations as to the locations of any improvements that may be made on any portions of the additional land added to the condominium, or a statement that no assurances are made in that regard;

(8) a statement of the maximum number of units that may be created on the additional land. If portions of the additional land may be added to the condominium and the boundaries of those por-

tions are fixed in accordance with item (6) of this subsection, the declaration shall also state the maximum number of units that may be created on each portion added to the condominium. If portions of the additional land may be added to the condominium and the boundaries of those portions are not fixed in accordance with item (6) of this subsection, then the declaration shall also state the maximum number of units per acre that may be created on any such portion added to the condominium;

(9) a statement, with respect to the additional land and to any portion or portions thereof that may be added to the condominium, of the maximum percentage of the aggregate land and floor area of all units that may be created thereon that may be occupied by units not restricted exclusively to residential use;

(10) a statement of the extent to which any structures erected on any portion of the additional land added to the condominium will be compatible with structures on the submitted land in terms of quality of construction, the principal materials to be used, and architectural style, or a statement that no assurances are made in those regards;

(11) a description of all other improvements that will be made on any portion of the additional land added to the condominium, or a statement of any limitations as to what other improvements may be made thereon, or a statement that no assurances are made in that regard;

(12) a statement that any units created on any portion of the additional land added to the condominium will be substantially identical to the units on the submitted land, or a statement of any limitations as to what types of units may be created thereon, or a statement that no assurances are made in that regard; and

(13) a description of the declarant's reserved right, if any, to create limited common elements within any portion of the additional land added to the condominium, or to designate common elements therein which may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of such elements within each such portion, or a statement that no assurances are made in those regards; *Provided*, That the plats and plans recorded pursuant to section 5-1224 (a) and (b) may be used to supplement information furnished pursuant to items (4), (5), (6), (7), (10), (11), (12) and (13) of this subsection, and that item (9) of this subsection need not be complied with if none of the units on the submitted land is restricted exclusively to residential use.

(d) If the condominium is a contractable condominium the declaration shall also contain:

(1) the explicit reservation of an option to contract the condominium;

(2) a statement of any limitations on that option, including, without limitation, a statement as to whether the consent of any unit owners shall be required, and if so, a statement as to the method whereby such consent shall be ascertained; or a statement that there are no such limitations;

(3) a time limit, not exceeding five (5) years from the recording of the declaration, upon which the option to contract the condominium shall expire, together with a statement of the circumstances, if any, which will terminate that option prior to the expiration of the time limit so specified;

(4) a legally sufficient description of all land that may be withdrawn from the condominium, henceforth referred to as "withdrawable land";

(5) a statement as to whether portions of the withdrawable land may be withdrawn from the condominium at different times, together with any limitations fixing the boundaries of those portions by legally sufficient descriptions clearly delineating such portions and regulating the order in which such portions may be withdrawn from the condominium; and

(6) a legally sufficient description of all of the submitted land to which the option to contract the condominium does not extend;

Provided, That the plats recorded pursuant to section 5-1224(a) may be used to supplement information furnished pursuant to items (4), (5) and (6) of this subsection, and that item (6) of this subsection shall not be construed in derogation of any right the declarant may have to terminate the condominium in accordance with the provisions of section 5-1237.

(e) If the condominium is a leasehold condominium, then with respect to any ground lease or other leases the expiration or termination of which will or may terminate or contract the condominium, the declaration shall set forth—

(1) the instrument number and date of recording of each such lease;

(2) the date upon which each such lease is due to expire and the rights, if any, to renew such lease and the conditions pertaining to any such renewal;

(3) a statement as to whether any land or improvements, or both, will be owned by the unit owners in fee simple, and if so, either (A) a description of the same, including without limitation a legally sufficient description of any such land, or (B) a statement of any rights the unit owners shall have to remove such improvements within a reasonable time after the expiration or termination of the lease or leases involved, or a statement that they shall have no such rights; and

(4) a statement of the rights the unit owners shall have to redeem the reversion or any of the reversions, or a statement that they shall have no such rights;

Provided, That after the recording of the declaration, no lessor who executed the same, and no successor in interest to such lessor, shall have any right or power to terminate any part of the leasehold interest of any unit owner who makes timely payment of his share of the rent to the person or persons designated in the declaration for the receipt of such rent and who otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. Acquisition or reacquisition of such a leasehold interest by the owner of the

reversion or remainder shall not cause a merger of the leasehold and fee simple interests unless all leasehold interests in the condominium are thus acquired or reacquired.

(f) Wherever this section requires a legally sufficient description of land that is submitted to this chapter or that may be added to or withdrawn from the condominium, such requirement shall be deemed to require a legally sufficient description of any easements that are submitted to this chapter or that may be added to or withdrawn from the condominium, as the case may be. In the case of each such easement, the declaration shall contain—

(1) a description of the permitted use or uses;

(2) if less than all of those entitled to the use of all the units may utilize such easement, a statement of the relevant restrictions and limitations on utilization; and

(3) if any persons other than those entitled to the use of the units may utilize such easement, a statement of the rights of others to utilization of the same.

(g) Wherever this section requires a legally sufficient description of land that is submitted to this chapter or that may be added to or withdrawn from the condominium, an added requirement shall be a separate legally sufficient description of all lands in which the unit owners shall or may be tenants in common or joint tenants with any other persons, and a separate legally sufficient description of all lands in which the unit owners shall or may be life tenants. No units shall be situated on any such lands, however, and the declaration shall describe the nature of the unit owners' estate therein. No such lands shall be shown on the same plat or plats showing other portions of the condominium, but shall be shown instead on separate plats. (Mar. 29, 1977, D.C. Law 1-89, title II, § 210, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1222, 5-1223, 5-1225, 5-1229, 5-1230, 5-1242.

§ 5-1221. Allocation of interests in common elements.

(a) The declaration may allocate to each unit depicted on plats and plans that comply with section 5-1224 (a) and (b) an undivided interest in the common elements proportionate to either the size or par value of each unit.

(b) Otherwise, the declaration shall allocate to each such unit an equal undivided interest in the common elements, subject to the following exception: each convertible space so depicted shall be allocated an undivided interest in the common elements proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining undivided interest in the common elements shall be allocated equally to the other units so depicted.

(c) The undivided interests in the common elements allocated in accordance with subsection (a) or (b) of this section shall add up to one if stated as fractions or one hundred per centum if stated as percentages.

(d) If, in accordance with subsection (a) or (b) of this section, an equal undivided interest in the

common elements is allocated to each unit, the declaration may simply state that fact and need not express the fraction or percentage so allocated.

(e) Otherwise, the undivided interest allocated to each unit in accordance with subsection (a) or (b) of this section shall be reflected by a table in the declaration, or by an exhibit or schedule accompanying the declaration and recorded simultaneously therewith, containing three columns. The first column shall identify the units, listing them serially or grouping them together in the case of units to which identical undivided interests are allocated. Corresponding figures in the second and third columns shall set forth the respective areas or par values of those units and the fraction or percentage of undivided interest in the common elements allocated thereto.

(f) Except to the extent otherwise expressly provided by this chapter, the undivided interest in the common elements allocated to any unit shall not be altered, and any purported transfer, encumbrance, or other disposition of that interest without the unit to which it appertains shall be void.

(g) The common elements shall not be subject to any suit for partition until and unless the condominium is terminated. (Mar. 29, 1977, D.C. Law 1-89, title II, § 211, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-1220.

§ 5-1222. Reallocation of interests in common elements.

(a) If a condominium contains any convertible land or is an expandable condominium, then the declaration shall not allocate undivided interests in the common elements on the basis of par value unless the declaration—

(1) prohibits the creation of any units not substantially identical to the units depicted on the plats and plans recorded pursuant to section 5-1224 (a) and (b), or

(2) prohibits the creation of any units not described pursuant to section 5-1220(b)(6) (in the case of convertible lands) section 5-1220(c)(12) (in the case of additional land), and contains from the outset a statement of the par value that shall be assigned to every such unit that may be created.

(b) No allocation of interests in the common elements to any units created within any convertible land or within any additional land shall be effective until plats and plans depicting such units are recorded pursuant to section 5-1224(c). The declarant shall reallocate the undivided interests in the common elements so that the units within the convertible land or additional land shall be allocated undivided interests in the common elements on the same basis as the units depicted on the plats and plans recorded pursuant to section 5-1224 (a) and (b). Promptly upon recording the amendment to the declaration, the declarant shall record an amendment to the plats and plans depicting the units created within the convertible land or additional land.

(c) If all of a convertible space is converted into common elements, then the undivided interest in the common elements appertaining to such space

shall thenceforth appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common elements. The principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced thereby.

(d) In the case of a leasehold condominium, if the expiration or termination of any lease causes a contraction of the condominium which reduces the number of units, then the undivided interest in the common elements appertaining to any units thereby withdrawn from the condominium shall thenceforth appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common elements. The principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced thereby. (Mar. 29, 1977, D.C. Law 1-89, title II, § 212, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1225, 5-1227, 5-1229, 5-1241.

§ 5-1223. Assignments of limited common elements.

(a) All assignments and reassignments of limited common elements shall be reflected by the condominium instruments. No limited common element shall be assigned or reassigned except in accordance with the provisions of this chapter. No amendment to any condominium instrument shall alter any rights or obligations with respect to any limited common elements without the consent of all unit owners adversely affected thereby as evidence¹ by their execution of such amendment, except to the extent that the condominium instrument expressly provided otherwise prior to the first assignment of that limited common element.

(b) Unless expressly prohibited by the condominium instruments, a limited common element may be reassigned upon written application of the unit owners concerned to the principal officer of the unit owners' association, or to such other officer or officers as the condominium instruments may specify. The officer or officers to whom such application is duly made shall forthwith prepare and execute an amendment to the condominium instruments reassigning all rights and obligations with respect to the limited common element involved. Such amendment shall be delivered forthwith to the unit owners of the units concerned upon payment by them of all reasonable costs for the preparation and acknowledgement thereof. Such amendment shall become effective when the unit owners of the units concerned have executed and recorded it.

(c) A common element not previously assigned as a limited common element shall be so assigned only in pursuance to section 5-1220(a)(6). The amendment to the declaration making such an assignment

¹ So in original. Probably should be "evidenced".

shall be prepared and executed by the principal officer of the unit owners' association, or by such other officer or officers as the condominium instruments may specify. Such amendment shall be delivered to the unit owner or owners of the unit or units concerned upon payment by them of all reasonable cost for the preparation and acknowledgement thereof. Such amendment shall become effective when the aforesaid unit owner or owners have executed and recorded it, and the recordation thereof shall be conclusive evidence that the method prescribed pursuant to section 5-1220(a) (6) was adhered to. (Mar. 29, 1977, D.C. Law 1-89, title II, § 213, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-1220.

§ 5-1224. Contents of plats and plans.

(a) There shall be recorded promptly upon recordation of the declaration, one or more plats of survey showing the location and dimensions of the submitted land, the location and dimensions of any convertible lands within the submitted land, the location and dimensions of any existing improvements, the intended location and dimensions of any contemplated improvements which are to be located on any portion of the submitted land other than within the boundaries of any convertible lands, and, to the extent feasible, the location and dimensions of all easements appurtenant to the submitted land or otherwise submitted to this chapter as a part of the common elements. If the submitted land is not contiguous, then the plats shall indicate the distances between the parcels constituting the submitted land. The plats shall label every convertible land as a convertible land, and if there be more than one such land the plats shall label each such land with one or more letters or numbers, or both, different from those designating any other convertible land and different also from the identifying number of any unit. The plats shall show the location and dimensions of any withdrawable lands, and shall label each such land with one or more letters or numbers, or both, different from those designating any other convertible land and different also from the identifying number of any unit. The plats shall show the location and dimensions of any withdrawable lands, and shall label each such land as a withdrawable land. If, with respect to any portion or portions, but less than all, of the submitted land, the unit owners are to own only an estate for years, the plats shall show the location and dimensions of any such portions, and shall label each such portion as a leased land. If there is more than one withdrawable land, or more than one leased land, the plats shall label each such land with one or more letters or numbers, or both, different from those designating any convertible land or other withdrawable or leased land, and different also from the identifying number of any unit. The plats shall show all easements to which the submitted land or any portion thereof is subject, and shall show the location and dimensions of all such easements to the extent feasible. The plats shall also show all encroachments by or on any portion of the condominium. In the case of any improvements located or to be located on any portion of the submitted

land other than within the boundaries of any convertible lands, the plats shall indicate which, if any, have not been begun by the use of the phrase "NOT YET BEGUN", and which, if any, have been begun but have not been substantially completed by the use of the phrase "NOT YET COMPLETED". In the case of any units the vertical boundaries of which lie wholly or partially outside of structures for which plans pursuant to subsection (b) are simultaneously recorded, the plats shall show the location and dimensions of such vertical boundaries to the extent that they are not shown on such plans, and the units or portions thereof thus depicted shall bear their identifying numbers. Each plat shall be certified as to its accuracy and compliance with the provisions of this subsection by a registered land surveyor, and the said surveyor shall certify that all units or portions thereof depicted thereon pursuant to the preceding sentence of this subsection have been substantially completed. The specification within this subsection of items that shall be shown on the plats shall not be construed to mean that the plats shall not also show all other items customarily shown or hereafter required for land title surveys.

(b) There shall also be recorded, promptly upon recordation of the declaration, plans of every structure which contains or constitutes all or part of any unit or units, and which is located on any portion of the submitted land other than within the boundaries of any convertible lands. The plans shall show the location and dimensions of the vertical boundaries of each unit to the extent that such boundaries lie within or coincide with the boundaries of such structures, and the units or portions thereof thus depicted shall bear their identifying numbers. In addition, each convertible space thus depicted shall be labeled a convertible space. The horizontal boundaries of each unit having horizontal boundaries shall be identified on the plans with reference to established datum. Unless the condominium instruments expressly provide otherwise, it shall be presumed that in the case of any unit not wholly contained within or constituting one or more such structures, the horizontal boundaries thus identified extend, in the case of each such unit, at the same elevation with regard to any part of such unit lying outside of such structures, subject to the following exception: in the case of any such unit which does not lie over any other unit other than basement units, it shall be presumed that the lower horizontal boundary, if any, of that unit lies at the level of the ground with regard to any part of that unit lying outside of such structures. The plans shall be certified as to their accuracy and compliance with the provisions of this subsection by a registered architect or registered engineer, and the said architect or engineer shall certify that all units or portions thereof depicted thereon have been substantially completed.

(c) When converting all or any portion of any convertible land, or adding additional land to an expandable condominium, the declarant shall record new plats of survey conforming to the requirements of subsection (a). In any case where less than all of a convertible land is being converted, such plats shall show the location and dimensions of the

remaining portion or portions of such land in addition to otherwise conforming with the requirements of subsection (a). At the same time, the declarant shall record, with regard to any structures on the land being converted, or added, either plans conforming to the requirements of subsection (b), or certifications, conforming to the certification requirements of said subsection, of plans previously recorded pursuant to section 5-1225.

(d) When converting all or any portion or¹ any convertible space into one or more units or limited common elements, the declarant shall record, with regard to the structure or portion thereof constituting that convertible space, plans showing the location and dimensions of the vertical boundaries of each unit or limited common elements formed out of such space. Such plans shall be certified as to their accuracy and compliance with the provisions of this subsection by a registered architect or registered engineer.

(e) For the purposes of subsections (a), (b), and (c), all provisions and requirements relating to units shall be deemed equally applicable to limited common elements. The limited common elements shall be labeled as such, and each limited common element depicted on the plats and plans shall bear the identifying number or numbers of the unit or units to which it is assigned, if it has been assigned, unless the provisions of section 5-1216(e) make such designations unnecessary.

(f) The Office of the Surveyor shall receive plats and plans filed pursuant to this chapter. Unless such plats and plans are filed pursuant to section 5-1225, the Office of the Surveyor shall ascertain whether such plats and plans contain the certification required by subsections (a) and (b) of this section. If plats and plans are filed pursuant to section 5-1225 or if plats and plans are filed with the required certification, the Office of the Surveyor shall record such plats and plans without further certification or review. If plats and plans filed pursuant to section 5-1225 are thereafter certified as required by this section, the Office of the Surveyor shall record such certification with such plats and plans without further certification or review. (Mar. 29, 1977, D.C. Law 1-89, title II, § 214, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1211, 5-1220 to 5-1222, 5-1225, 5-1227 to 5-1229, 5-1241, 5-1245, 5-1263.

§ 5-1225. Preliminary recordation of plans.

Plans previously recorded pursuant to the provisions set forth in section 5-1220(b) and (c) may be used in lieu of new plans to satisfy in whole or in part the requirements of section 5-1222(b), section 5-1227(b) and section 5-1229 if certifications thereof are recorded by the declarant in accordance with section 5-1224(b); and if such certifications are so recorded, the plans which they certify shall be deemed recorded pursuant to section 5-1224(c) within the meaning of the three sections aforesaid. (Mar. 29, 1977, D.C. Law 1-89, title II, § 215, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-1224.

¹ So in original. Probably should be "of".

§ 5-1226. Easement for encroachments and support.

(a) To the extent that any unit or common element encroaches on any other unit or common element, whether by reason of any deviation from the plats and plans in the construction, repair, renovation, restoration, or replacement of any improvement, or by reason of the settling or shifting of any land or improvement, a valid easement for such encroachment shall exist; *Provided*, however, such easement shall not relieve unit owners of liability in cases of willful and intentional misconduct by them or their agents or employees, nor shall the declarant or any contractor, subcontractor, or materialman be relieved of any liability which any of them may have by reason of any failure to adhere strictly to the plats and plans.

(b) Each unit and common element shall have an easement for support from every other unit and common element. (Mar. 29, 1977, D.C. Law 1-89, title II, § 216, 23 DCR 9532b.)

§ 5-1227. Conversion of convertible lands.

(a) The declarant may convert all or any portion of any convertible land into one or more units or common elements, or both, subject to any restrictions and limitations which the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection (b) hereof and section 5-1224(c).

(b) The declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to each unit formed out of a convertible land and shall reallocate undivided interests in the common elements in accordance with section 5-1222(b). Such amendment shall describe or delineate the limited common elements formed out of the convertible land, showing or designating the unit or units to which each is assigned.

(c) All convertible lands shall be deemed a part of the common elements except for such portions thereof as are converted in accordance with the provisions of this section. Until the expiration of the period during which conversion may occur or until actual conversion, whichever occurs first, real estate taxes shall be assessed against the declarant rather than the unit owners as to both the convertible land and any improvements thereon. No such conversion shall occur after five years from the recordation of the declaration, or such shorter period of time as the declaration may specify. (Mar. 29, 1977, D.C. Law 1-89, title II, § 217, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1225, 5-1229.

§ 5-1228. Conversion of convertible spaces.

(a) The declarant may convert all or any portion of any convertible space into one or more units or common elements, or both, including without limitation, limited common elements, subject to any restrictions and limitations which the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection (b) hereof and section 5-1224(d).

(b) Simultaneously with the recording of plats and plans pursuant to section 5-1224(d), the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number of each unit formed out of a convertible space and shall allocate to each unit a portion of the undivided interest in the common elements appertaining to that space. Such amendment shall describe or delineate the limited common elements formed out of the convertible space, showing or designating the unit or units to which each is assigned.

(c) If all or any portion of any convertible space is converted into one or more units in accordance with this section, the declarant shall prepare, execute, and record simultaneously with the amendment to the declaration, an amendment to the bylaws. The amendment to the bylaws shall reallocate votes in the unit owners' association, rights to future common profits, and liabilities for future common expenses not specially assessed, all as in the case of the subdivision of a unit in accordance with section 5-1236(d).

(d) Any convertible space not converted in accordance with the provisions of this section, or any portion or portions thereof not so converted, shall be treated for all purposes as a single unit until and unless it is so converted, and the provisions of this chapter shall be deemed applicable to any such space, or portion or portions thereof, as though the same were a unit. (Mar. 29, 1977, D.C. Law 1-89, title II, § 218, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1202, 5-1236.

§ 5-1229. Expansion of condominiums.

No condominium shall be expanded except in accordance with the provisions of the declaration and of this chapter. Any such expansion shall be deemed to have occurred at the time of the recordation of plats and plans pursuant to section 5-1224(c) and the recordation of an amendment to the declaration, duly executed by the declarant, including, without limitation, all of the owners and lessees of the additional land added to the condominium. Such amendment shall contain a legally sufficient description of the land added to the condominium, and shall reallocate undivided interests in the common elements in accordance with the provisions of section 5-1222(b). Such amendment may create convertible or withdrawable lands within the land added to the condominium, but this provision shall not be construed in derogation of the time limits imposed by or pursuant to sections 5-1220(d) (3) and 5-1227 (c). (Mar. 29, 1977, D.C. Law 1-89, title II, § 219, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1214, 5-1225.

§ 5-1230. Contraction of condominiums.

No condominium shall be contracted except in accordance with the provisions of the declaration and of this chapter. Any such contraction shall be deemed to have occurred at the time of the recordation of an amendment to the declaration, executed by the declarant, containing a legally sufficient

description of the land withdrawn from the condominium. If portions of the withdrawable land were described pursuant to section 5-1220(d) (5), then no such portion shall be so withdrawn after the conveyance of any unit on such portion. If no such portions were described, then none of the withdrawable land shall be withdrawn after the first conveyance of any unit thereon. (Mar. 29, 1977, D.C. Law 1-89, title II, § 220, 23 DCR 9532b.)

§ 5-1231. Easement to facilitate conversion and expansion.

Subject to any restrictions and limitations the condominium instruments may specify, the declarant shall have a transferable easement over and on the common elements for the purpose of making improvements on the submitted land and any additional land pursuant to the provisions of those instruments and of this chapter, and for the purpose of doing all things reasonably necessary and proper in connection therewith. (Mar. 29, 1977, D.C. Law 1-89, title II, § 231, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1233, 5-1249.

§ 5-1232. Easement to facilitate sales.

The declarant and the declarant's authorized agents, representatives, and employees may maintain sales offices, management offices, and model units on the submitted land if and only if the condominium instruments provide for the same and specify the rights of the declarant with regard to the number, size, location, and relocation thereof. Any such sales office, management office, or model unit which is not designated a unit by the condominium instruments shall become a common element as soon as the declarant ceases to be a unit owner, and the declarant shall cease to have any rights with regard thereto unless such sales office, management office, or model unit is removed forthwith from the submitted land in accordance with a right reserved in the condominium instruments to make such removal. (Mar. 29, 1977, D.C. Law 1-89, title II, § 232, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1233, 5-1249.

§ 5-1233. Obligation of declarant to complete and restore.

(a) No covenants, restrictions, limitations, or other representations or commitments in the condominium instruments with regard to anything that is or is not to be done on the additional land, the withdrawable land, or any portion of either, shall be binding as to any portion of either lawfully withdrawn from the condominium or never added thereto except to the extent that the condominium instruments so provide. But in the case of any covenant, restriction, limitation, or other representation or commitment in the condominium instruments, or in any other agreement requiring the declarant to add all or any portion of the additional land or to withdraw any portion of the withdrawable land, or imposing any obligations with regard to anything that is or is not to be done on or with regard to the condominium or any portion thereof, this subsection

shall not be construed to nullify, limit, or otherwise affect any such obligation.

(b) The declarant shall complete all improvements labeled "NOT YET COMPLETED" on plats recorded pursuant to the requirements of this chapter unless the condominium instruments expressly exempt the declarant from such obligation, and shall, in the case of every improvement labeled "NOT YET BEGUN" on such plats, state in the declaration either the extent of the obligation to complete the same or that there is no such obligation.

(c) To the extent that damage is inflicted on any part of the condominium by any person or persons utilizing the easements reserved by the condominium instruments or created by sections 5-1231 and 5-1232, the declarant together with the person or persons causing the same shall be jointly and severally liable for the prompt repair thereof and for the restoration of the same to a condition compatible with the remainder of the condominium. (Mar. 29, 1977, D.C. Law 1-89, title II, § 223, 23 DCR 9532b.)

§ 5-1234. Alterations within units.

(a) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, any unit owner may make any improvements or alterations within his unit that do not impair the structural integrity of any structure or otherwise lessen the support of any portion of the condominium. But no unit owner shall do anything which would change the exterior appearance of his unit or of any other portion of the condominium except to such extent and subject to such conditions as the condominium instruments may specify.

(b) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, if a unit owner acquires an adjoining unit, or an adjoining part of an adjoining unit, then such unit owner shall have the right to remove all or part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may in whole or in part be a common element, so long as no portion of any bearing wall or bearing column is weakened or removed and no portion of any common element other than that partition is damaged, destroyed, or endangered. Such creation of doorways or other apertures shall not be deemed an alteration of boundaries within the meaning of section 5-1235. (Mar. 29, 1977, D.C. Law 1-89, title II, § 224, 23 DCR 9532b.)

§ 5-1235. Relocation of boundaries between units.

(a) If the condominium instruments expressly permit the relocation of boundaries between adjoining units, then the boundaries between such units may be relocated in accordance with—

(1) the provisions of this section and

(2) any restrictions and limitations not otherwise unlawful which the condominium instruments may specify.

The boundaries between adjoining units shall not be relocated unless the condominium instruments expressly permit it.

(b) If the unit owners of adjoining units whose mutual boundaries may be relocated, desire to relocate such boundaries, then the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall, upon written application of such unit owners, forthwith prepare and execute the appropriate instruments pursuant to subsections (c), (d) and (e).

(c) An amendment to the declaration shall identify the units involved and shall state that the boundaries between those units are being relocated by agreement of the unit owners thereof, which amendment shall contain words of conveyance between those unit owners. If the unit owners of the units involved have specified in their written application, a reasonable reallocation as between the units involved of the aggregate undivided interest in the common elements appertaining to those units, the amendment to the declaration shall reflect that reallocation.

(d) If the unit owners of the units involved have specified in their written application reasonable allocations as between the units involved of the aggregate number of votes in the unit owners' association, rights to future common profits, or liabilities for future common expenses not specially assessed, then an amendment to the bylaws shall reflect any such reallocations.

(e) Such plats and plans as may be necessary to show the altered boundaries between the units involved together with their other boundaries shall be prepared, and the units depicted thereon shall bear their identifying numbers. Such plats and plans shall indicate the new dimensions of the units involved, and any change in the horizontal boundaries of either as a result of the relocation of their boundaries shall be identified with reference to establish¹ datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection—

(1) by a registered land surveyor in the case of any plat, and

(2) by a registered architect or registered engineer in the case of any plan.

(f) When appropriate instruments in accordance with the preceding subsections hereof have been prepared, executed, and acknowledged, they shall be delivered forthwith to the unit owners of the units involved upon payment by them of all reasonable costs for the preparation and acknowledgement thereof. Said instruments shall become effective when the unit owners of the units involved have executed and recorded them, and the recordation thereof shall be conclusive evidence that the relocation of boundaries thus effectuated did not violate any restrictions or limitations specified by the condominium instruments and that any reallocation made pursuant to subsections (c) and (d) were reasonable.

(g) Any relocation of boundaries between adjoining units shall be governed by this section and not by section 5-1236. Section 5-1236 shall apply only to such subdivisions of units as are intended

¹ So in original. Probably should be "established".

to result in the creation of two or more units in place of the subdivided unit. (Mar. 29, 1977, D.C. Law 1-89, title II, § 225, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-1234.

§ 5-1236. Subdivision of units.

(a) If the condominium instruments expressly permit the subdivision of any units, then such units may be subdivided in accordance with

(1) the provisions of this section, and

(2) any restrictions and limitations not otherwise unlawful which the condominium instruments may specify.

No unit shall be subdivided unless the condominium instruments expressly permit it.

(b) If the unit owner of any unit which may be subdivided desires to subdivide such unit, then the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall, upon written application of the subdivider, as such unit owner shall henceforth be referred to in this section, forthwith prepare and execute appropriate instruments pursuant to subsections (c), (d) and (e).

(c) An amendment to the declaration shall assign new identifying numbers to the new units created by the subdivision of a unit and shall allocate to those units, on a reasonable basis acceptable to the subdivider, all of the undivided interest in the common elements appertaining to the subdivided unit. The new units shall jointly share all rights, and shall be equally liable jointly and severally for all obligations, with regard to any limited common elements assigned to the subdivided unit except to the extent that the subdivider may have specified in his written application that all or any portions of any limited common elements assigned to the subdivided unit exclusively should be assigned to one or more, but less than all of the new units, in which case the amendment to the declaration shall reflect the desires of the subdivider as expressed in such written application.

(d) An amendment to the bylaws shall allocate to the new units, on a reasonable basis acceptable to the subdivider, the votes in the unit owners' association allocated to the subdivided unit, and shall reflect a proportionate allocation to the new units of the liability for common expenses and rights to common profits formerly appertaining to the subdivided unit.

(e) Such plats and plans as may be necessary to show the boundaries separating the new units together with their other boundaries shall be prepared, and the new units depicted thereon shall bear their new identifying numbers. Such plats and plans shall indicate the dimensions of the new units, and the horizontal boundaries thereof, if any, shall be identified thereon with reference to established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection,

(1) by a registered land surveyor in the case of any plat, and

(2) by a registered architect or registered engineer in the case of any plan.

(f) When appropriate instruments in accordance with the preceding subsections hereof have been prepared, executed, and acknowledged, they shall be delivered forthwith to the subdivider upon payment by the subdivider of all reasonable costs for the preparation and acknowledgment thereof. Such instruments shall become effective when the subdivider has executed and recorded them, and the recordation thereof shall be conclusive evidence that the subdivision thus effectuated did not violate any restrictions or limitations specified by the condominium instruments and that any reallocations made pursuant to subsections (c) and (d) were reasonable.

(g) Notwithstanding the provisions of sections 5-1203(28)¹ and 5-1228(d), this section shall have no application to convertible spaces, and no such space shall be deemed a unit for the purposes of this section. However, this section shall apply to any units formed by the conversion of all or any portion of any such space, and any such unit shall be deemed a unit for the purposes of this section. (Mar. 29, 1977, D.C. Law 1-89, title II, § 226, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1228, 5-1235.

§ 5-1237. Termination or amendment before conveyance of any unit.

If there is no unit owner other than the declarant, the declarant may unilaterally terminate the condominium or amend the condominium instruments, and any such termination or amendment shall become effective upon the recordation thereof if the same has been executed by the declarant. But this section shall not be construed to nullify, limit, or otherwise affect the validity or enforceability of any agreement renouncing or to renounce, in whole or in part, the right hereby conferred. (Mar. 29, 1977, D.C. Law 1-89, title II, § 227, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1220, 5-1238.

§ 5-1238. Termination or amendment after conveyance of any unit.

(a) If there is any unit owner other than the declarant, then the condominium shall be terminated only by the agreement of unit owners of units to which four-fifths of the votes in the unit owners' association appertain, or such larger majority as the condominium instruments may specify.

(b) If there is any unit owner other than the declarant, then the condominium instruments shall be amended only by agreement of unit owners of units to which two-thirds of the votes in the unit owners' association appertain, or such larger majority as the condominium instruments may specify, except in cases for which this chapter provides different methods of amendments.

(c) If none of the units in the condominium are restricted exclusively to residential use, then the condominium instruments may specify majorities

¹ So in original. There is no paragraph (28) of section 5-1203.

smaller than the minimums specified by subsections (a) and (b).

(d) Agreement of the required majority of unit owners to termination of the condominium or to any amendment of the condominium instruments shall be evidenced by execution of the termination agreement or amendment, or of ratifications thereof by such unit owners or their attorneys-in-fact, and the same shall become effective only when such agreement is so evidenced of record. For the purposes of this section and section 5-1237, an instrument terminating a condominium shall be deemed a condominium instrument subject to the provisions of section 5-1215, and for the purposes of this section, any ratification of such an amendment shall also be deemed such an instrument. Such recorded instrument shall also be recorded in the Office of the Surveyor.

(e) Except to the extent expressly permitted or expressly required by other provisions of this chapter, no amendment to the condominium instruments shall change the boundaries of any unit, the undivided interest in the common elements appertaining thereto, the liability for common expenses or rights to common profits appertaining thereto, or the number of votes in the unit owners' association appertaining thereto.

(f) Upon recordation of an instrument terminating a condominium, all of the property constituting the same shall be owned by the unit owners as tenants in common in proportion to their respective undivided interests in the common elements immediately prior to such recordation. But as long as such tenancy in common lasts, each unit owner or the heirs, successors, or assigns thereof shall have an exclusive right of occupancy of that portion of such property which formerly constituted such unit owner's unit.

(g) Upon recordation of an instrument terminating a condominium, the rights of the unit owners to the net assets of the unit owners' association shall be in proportion to their respective liabilities for common expenses as set forth in the bylaws pursuant to section 5-1252(c) prior to such recordation.

(h) No provision of this chapter shall be construed in derogation of any requirement of the condominium instruments that all or a specified number of the beneficiaries of mortgages or deeds of trust encumbering the condominium units approve specified actions contemplated by the unit owners' association. (Mar. 29, 1977, D.C. Law 1-89, title II, § 228, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-1214.

§ 5-1239. Requirements for residential leasehold condominiums.

(a) The declarant of a leasehold condominium shall record with the condominium instruments any lease pursuant to which the condominium is a leasehold condominium ("condominium lease") *Provided, however,* it shall be sufficient for the declarant to record a statement of the book, page and date of recordation of such lease if such lease has previously been recorded among the land rec-

ords of the District of Columbia. Condominium instruments establishing a leasehold condominium containing more than three residential units shall not be effective unless the condominium lease(s) comply with the requirements of subsections (b), (c) and (d) of this section.

(b) If a condominium is a leasehold condominium subject to the provisions of this section, any condominium lease shall be for a term of not less than 99 years with a right of renewal for consecutive additional terms of not less than 99 years. The lease shall provide for level, periodic payments which may not be increased during the first 10 years of the leasehold term. If provided in the lease, the lessor may petition the Mayor for an increase in leasehold payments to be effective beginning with the eleventh year of the leasehold term, and the Mayor shall approve such increase if he finds that:

(1) costs borne by the lessor in connection with the lease have increased, or

(2) costs of living, as measured by a standard statistical index computed and published by the United States Government and available for the period of the leasehold term, have increased, and

(3) the increase in the lease payments is in reasonable proportion to such increased costs.

An increase in lease payments shall be effective for a minimum period of 10 years, after which the lessor may again petition for an increase subject to the provisions of this subsection. The lessor shall not require or accept lease payments which do not meet the requirements of this paragraph.

(c) A lessor of a condominium lease may sell or assign the lease only after offering the unit owners' association of the condominium the right to purchase the leasehold estate at a price and on terms offered to any other prospective purchaser. The lessor shall give the unit owners' association a period of at least 60 days within which to accept or reject the offer.

(d) The lessor of a condominium lease shall give the lessee of such lease a statement not less than five years prior to the expiration of such lease of whether the lease is to be renewed and on what terms the lease is to be renewed. If the lessor offers to renew the lease, the lessor shall give the lessee a period of at least 180 days within which to accept or reject the offer. (Mar. 29, 1977, D.C. Law 1-89, title II, § 229, 23 DCR 9532b.)

SUBCHAPTER III.—CONTROL AND GOVERNANCE OF CONDOMINIUMS

§ 5-1241. Contents of bylaws.

(a) There shall be recorded simultaneously with the declaration a set of bylaws providing for the self-government of the condominium by an association of all the unit owners. The unit owners' association may be incorporated.

(b) The bylaws shall provide whether or not the unit owners' association shall have an executive organ. The executive organ, if any, shall, subsequent to the expiration of the period of declarant control specified pursuant to section 5-1242(a), be elected by the unit owners unless the unit owners vote to amend

the bylaws to provide otherwise. If there is to be such an organ, the bylaws shall specify the powers and responsibilities of the same and the number and terms of its numbers.¹ The bylaws may delegate to such organ, *inter alia*, any of the powers and responsibilities assigned by this chapter to the unit owners' association. The bylaws shall also specify which, if any, of its powers and responsibilities the unit owners' association or its executive organ may delegate to a managing agent.

(c) The bylaws shall provide whether or not there shall be officers in addition to the members of the executive organ. If there are to be such additional officers, the bylaws shall specify the powers and responsibilities of the same, the manner of their selection and removal, their number and their terms. The bylaws may delegate to such additional officers, *inter alia*, any of the powers and responsibilities assigned by this chapter to the unit owners' association.

(d) In any case where an amendment to the declaration is required by section 5-1222(b), (c), or (d), the person or persons required to execute the same shall also prepare and execute, and record simultaneously with such amendment, an amendment to the bylaws. The amendment to the bylaws shall allocate to the new units votes in the unit owners' association, rights to future common profits, and liabilities for future common expenses not specially assessed, on the same bases as were used for such allocations to the units depicted on plats and plans recorded pursuant to section 5-1224(a) and (b); or shall abolish the votes appertaining to former units and reallocate their rights to future common profits, and their liabilities for future common expenses not specially assessed, to the remaining units in proportion to the relative rights and liabilities of the remaining units immediately prior to the amendment.

(e) The bylaws shall be so worded as to indicate by whom the deductible, if any, or any policy insurance on the common elements, will be paid. (Mar. 29, 1977, D.C. Law 1-89, title III, § 301, 23 DCR 9532b.)

EFFECTIVE DATE

See note under § 5-1201.

§ 5-1242. Control by declarant.

(a) The condominium instruments may authorize the declarant, or a managing agent or some other person or persons selected or to be selected by the declarant, to appoint and remove some or all of the officers of the unit owners' association or members of its executive organ, or both, or to exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter to the unit owners' association, the officers, or the executive organ. But no amendment to the condominium instruments shall increase the scope of such authorization if there is any unit owner other than the declarant and no such authorization shall be valid after the time set by the condominium instruments or after units to which three-fourths of the undivided interests in the common elements appertain have been conveyed, whichever occurs first. For the

purposes of the preceding sentence only, the calculation of the fraction of undivided interest shall be based upon the total undivided interests assigned or to be assigned to all units registered with the Mayor according to section 5-1261. The time limit initially set by the condominium instruments shall not exceed three years in the case of an expandable condominium or a condominium containing convertible land, or two years in the case of any other condominium containing any convertible land, or two years in the case of any other condominium. Such period shall commence upon settlement of the first unit to be sold in any portion of the condominium.

(b) (1) If entered into at any time prior to the expiration of the period of declarant control contemplated by subsection (a), no contract or lease entered into with the declarant (other than leases subject to section 5-1220(e)) or any entity affiliated with the declarant, management contract, employment contract or lease of recreational or parking areas or facilities, which is directly or indirectly made by or on behalf of the unit owners' association, or the unit owners as a group, shall be entered into for a period in excess of two years. Any such contract or agreement may be renewed for periods not in excess of two years; however, at the end of any two year period the unit owners' association or its executive organ may terminate any further renewals or extensions thereof.

(2) If entered into at any time prior to the expiration of the period of declarant control contemplated by subsection (a), any contract, lease or agreement, other than those subject to the provisions of subsection (b) (1), may be entered into by or on behalf of the unit owners' association, its executive organ, or the unit owners as a group, if such contract, lease or agreement is bona fide and is commercially reasonable to the unit owners' association at the time entered into under the circumstances.

(c) If the unit owners' association is not in existence or does not have officers at the time of the creation of the condominium, the declarant shall, until there is such an association with such officers, have the power and the responsibility to act in all instances where this chapter or the condominium instruments require or permit action by the unit owners' association, its executive organ, or any officer or officers.

(d) Notwithstanding subsection (a) of this section, the bylaws shall provide that: (1) not later than the time that units to which twenty-five percent of the undivided interests in the common elements appertain have been conveyed, the unit owners' association shall cause a special meeting to be held at which not less than twenty-five percent of the members of the executive organ shall be selected by unit owners other than declarant; and (2) not later than the time units to which fifty percent of the undivided interests in the common elements appertain have been conveyed, the unit owners' association shall cause a special meeting to be held at which not less than thirty-three and one-third percent of the members of the executive

¹ So in original. Probably should be "members".

organ shall be selected by unit owners other than declarant.

(e) A person or entity is "affiliated with" the declarant for the purposes of this section if; (1) such person controls or has a substantial financial interest in the declarant or (2) the declarant controls or has a substantial financial interest in such person or entity.

(f) This section shall be strictly construed to protect the rights of the unit owners. (Mar. 29, 1977, D.C. Law 1-89, title III, § 302, 23 DCR 9532b.)

REFERENCE IN TEXT

In subsec. (c), "this chapter" appeared in the original. Since the act did not contain chapters, it probably should have been either "this act" which would be translated "this chapter" or "this title" which would be translated "this subchapter".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1212, 5-1241, 5-1249, 5-1267.

§ 5-1243. Meetings.

Meeting of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of such association. The bylaws shall specify an officer who shall, at least twenty-one days in advance of any annual or regularly scheduled meeting, and at least seven days in advance of any other meeting, send to each unit owner notice of the time, place, and purpose or purposes of such meeting. Such notice shall be sent by United States mail, to all unit owners of record at the address of their respective units and to such other addresses as any of them may have designated to such officer; or such notice may be hand-delivered by the said officer, provided he obtains a receipt of acceptance of such notice from the unit owner. (Mar. 29, 1977, D.C. Law 1-89, title III, § 303, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-1250.

§ 5-1244. Quorums.

(a) Unless the condominium instruments otherwise provide, a quorum shall be deemed to be present throughout any meeting of the unit owners' association until adjourned if persons entitled to cast more than the thirty-three and one-third percent of the votes are present at the beginning of such meeting. The bylaws may provide for a larger percentage, or for a smaller percentage not less than twenty-five percent.

(b) Unless the condominium instruments specify a larger majority, a quorum shall be deemed to be present throughout any meeting of the executive organ if persons entitled to cast one-half of the votes in that body are present at the beginning of such meeting. (Mar. 29, 1977, D.C. Law 1-89, title III, § 304, 23 DCR 9532b.)

§ 5-1245. Voting.

(a) The bylaws may allocate to each unit depicted on plats and plans that comply with section 5-1224(a) and (b) a number of votes in the unit owners' association proportionate to the liability for common expenses as established pursuant to section 5-1252(c).

(b) Otherwise, the bylaws shall allocate to each such unit an equal number of votes in the unit owners' association, subject to the following exception: each convertible space so depicted shall be allocated a number of votes in the unit owners' association proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining votes in the unit owners' association shall be allocated equally to the other units so depicted.

(c) Since a unit owner may be more than one person, if only one of such persons is present at a meeting of the unit owners' association, that person shall be entitled to cast the votes appertaining to that unit. But if more than one of such persons is present, the vote appertaining to that unit shall be cast only in accordance with their unanimous agreement unless the condominium instruments expressly provide otherwise, and such consent shall be conclusively presumed if any one of them purports to cast the votes appertaining to that unit without protest being made forthwith by any of the others to the person presiding over the meeting. Since a person need not be a natural person, the word "person" shall be deemed for the purposes of this subsection to include, without limitation, any natural person having authority to execute deeds on behalf of any person, excluding natural persons, which is, either alone or in conjunction with another person or persons, a unit owner.

(d) The votes appertaining to any unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the unit owner, or, in cases where the unit owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the unit owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice as foresaid, or if the signatures of any of those executing the same has not been duly acknowledged. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Any proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy.

(e) If fifty percent or more of the votes in the unit owners' association appertain to twenty-five percent or less of the units, then in any case where a majority vote is required by the condominium instruments or by this chapter, the requirement for such a majority shall be deemed to include, in addition to the specified majority of the votes, assent by the unit owners of a like majority of the units.

(f) Anything in this section to the contrary notwithstanding, no votes in the unit owners' association shall be deemed to appertain to any condominium unit during such time as the unit owner thereof is the unit owners' association. (Mar. 29, 1977, D.C. Law 1-89, title III, § 305, 23 DCR 9532b.)

§ 5-1246. Officers.

(a) If the condominium instruments provide that any officer or officers must be unit owners, then any such officer who disposes of all of his units in fee or

for a term or terms of six months or more shall be deemed to have disqualified himself from continuing in office unless the condominium instruments otherwise provide, or unless he acquires or contracts to acquire another unit in the condominium under terms giving him a right of occupancy thereto effective on or before the termination of his right of occupancy under such disposition or dispositions.

(b) If the condominium instruments provide that any officer or officers must be unit owners, then notwithstanding the provisions of section 5-1216(a), the term "unit owner" in such context shall, unless the condominium instruments otherwise provide, be deemed to include, without limitation, any director, officer, partner in, or trustee of any person, which is, either alone or in conjunction with another person or persons, a unit owner. Any officer who would not be eligible to serve as such were he not a director, officer, partner in, or trustee of such a person, shall be deemed to have disqualified himself from continuing in office if he ceases to have any such affiliation with that person, or if that person would itself have been deemed to have disqualified itself from continuing in such office under subsection (a) were it a natural person holding such office. (Mar. 29, 1977, D.C. Law 1-89, title III, § 306, 23 DCR 9532b.)

§ 5-1247. Upkeep of condominiums.

(a) Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities with regard to maintenance, repair, renovation, restoration, and replacement of the condominium shall belong (1) to the unit owners' association in the case of the common elements, and (2) to the individual unit owner in the case of any unit or any part thereof. Each unit owner shall afford to the other unit owners and to the unit owners' association and to any agents or employees of either such access through such unit owners' unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. But to the extent that damage is inflicted on the common elements or any unit through which access is taken, the unit owner causing the same, or the unit owners' association if it caused the same, shall be liable for the prompt repair thereof.

(b) Notwithstanding anything in this section to the contrary the declarant shall warrant against structural defects, each of the units for one year from the date each is conveyed and all of the common elements for two years. The two years referred to in the preceding sentence shall begin as to each of the common elements, whenever the same has been completed, or if later, (1) as to any common element within any additional land or portion thereof at the time the first unit therein is conveyed, (2) as to any common element within any convertible land or portion thereof at the time the first unit therein is conveyed, and (3) as to any common element within any other portion of the condominium at the time the first unit therein is conveyed. For the purposes of this subsection, no unit shall be deemed conveyed unless conveyed to a bona fide purchaser. For the purposes of this subsection, structural defects shall be those defects in components constituting any unit or common element which reduce the stability

or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and which require repair, renovation, restoration, or replacement. Nothing in the subsection shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements. No action to enforce the warranty created by this subsection may be brought after one year from the date such warranty period has expired, except for structural defects which occurred within the warranty period but which are latent and undetected in fact; in the case of such latent defects, no action shall be brought after six months from the date such defect is detected.

(c) The declarant shall post a bond with the Mayor in the sum of 10 percent of the estimated construction or conversion costs, or shall provide such other security as the Mayor shall prescribe. Such bond or other security shall be available to meet the costs arising from the declarant's failure to meet the requirements of this section. Such land or other security shall be posted or given prior to conveyance of the first unit and shall be continued until the end of the warranty period on each unit and on the common elements. (Mar. 29, 1977, D.C. Law 1-89, title III, § 307, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1248, 5-1264.

§ 5-1248. Powers of unit owners' associations.

(a) Except to the extent expressly prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, the unit owners' association shall have the—

(1) power to govern all matters relating to the condominium;

(2) power to sue on behalf of all unit owners;

(3) power to employ, dismiss, and replace agents and employees who exercise and discharge the powers and responsibilities of such association arising under section 5-1247;

(4) power to make or cause to be made additional improvements on and as a part of the common elements;

(5) power to manage the common elements and to provide for the use, rental or operation of common elements or limited common elements;

(6) right to any income derived from payments, fees or charges for the use, rental or operation of the common elements of the condominium;

(7) right to grant or withhold approval of any action by one or more unit owners or other persons entitled to the occupancy of any unit which would change the exterior appearance of any unit or of any other portion of the condominium, or elect to provide for the appointment of an architectural control committee, the members of which must have the same qualifications as officers, to grant or withhold such approval;

(8) right to acquire, hold, convey and encumber title to real property, including but not limited to condominium units; and

(9) right to make contracts and incur liabilities.

(b) Except to the extent prohibited by the condominium instruments, and subject to any restric-

tions and limitations specified therein, the executive organ of the unit owners' association, if any, and if not, then the unit owners' association itself, shall have the irrevocable power as attorney-in-fact on behalf of all the unit owners and their successors in title to grant easements through the common elements and accept easements benefiting the condominium or any part thereof. (Mar. 29, 1977, D.C. Law 1-89, title III, § 308, 23 DCR 9532b.)

§ 5-1249. Tort and contract liability.

(a) An action for tort alleging a wrong done (1) by any agent or employee of the declarant or of the unit owners' association, or (2) in connection with the condition of any portion of the condominium which the declarant or the association has the responsibility to maintain, shall be brought against the declarant or the association, as the case may be. No unit owner shall be precluded from bringing such an action by virtue of ownership of an undivided interest in the common elements or by reason of membership in the association or status as an officer.

(b) Unit owners other than the declarant shall not be liable for torts caused by agents or employees of the declarant within any convertible land or using any easement reserved in the declaration or created by sections 5-1231 and 5-1232.

(c) An action arising from a contract made by or on behalf of the unit owners' association, its executive organ, or the unit owners as a group, shall be brought against the association, or against the declarant if the cause of action arose during the exercise by the declarant of control reserved pursuant to section 5-1242(a). No unit owner shall be precluded from bringing such an action by reason of membership in the association or status as an officer.

(d) A judgment for money against the unit owners' association shall be a lien against any property owned by the association, and against each of the condominium units in proportion to the liability of each unit owner for common expenses as established pursuant to section 5-1252(c), but no unit owner shall be otherwise liable on account of such judgment. Any such judgment shall be satisfied first out of the property of the association. Such judgment shall be otherwise subject to the provisions of title 15 of the District of Columbia Code. (Mar. 29, 1977, D.C. Law 1-89, title III, § 309, 23 DCR 9532b.)

§ 5-1250. Insurance.

When any policy insurance has been obtained by or on behalf of the unit owners' association, written notice of the procurement thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each unit owner by the officer required to send notices of meetings of the unit owners' association. Such notices shall be sent in accordance with the provisions of the last sentence of 5-1243. (Mar. 29, 1977, D.C. Law 1-89, title III, § 310, 23 DCR 9532b.)

§ 5-1251. Rights to common profits.

The common profits shall be applied to the payment of common expenses or to the creation and

maintenance of reserves, or shall be distributed to the unit owners in proportion to the liability for common expenses as established pursuant to section 5-1252(c), as the bylaws shall provide. (Mar. 29, 1977, D.C. Law 1-89, title III, § 311, 23 DCR 9532b.)

§ 5-1252. Liability for common expenses.

(a) Except to the extent that the condominium instruments provide otherwise, any common expenses associated with the maintenance, repair, renovation, restoration, or replacement of any limited common element shall be specially assessed against the condominium unit to which that limited common element was assigned at the time such expenses were made or incurred. If the limited common element involved was assigned at that time to more than one condominium unit, however, such expenses shall be specially assessed against each such condominium unit equally so that the total of such special assessments equals the total of such expenses, except to the extent that the condominium instruments provide otherwise.

(b) To the extent that the condominium instruments expressly so provide, any other common expenses benefiting less than all of the condominium units, or caused by the conduct of less than all those entitled to occupy the same or by their licensees or invitees, shall be specially assessed against the condominium unit or units involved, in accordance with such reasonable provisions as the condominium instruments may make for such cases.

(c) The amount of all common expenses not specially assessed pursuant to subsections (a) or (b) shall be assessed against the condominium unit, including those units owned by the declarant, in accordance with the provisions of the condominium instruments. The bylaws may establish the fraction or percentage of liability for such expenses appertaining to each condominium unit proportionate to either the size or par value of such condominium unit. Otherwise, the bylaws shall allocate to each such condominium unit an equal liability for such expenses, subject to the following exception: each convertible space shall be allocated a liability for common expenses proportionate to the size of each such space, vis-a-vis the aggregate size of all units, while the remaining liability for common expenses shall be allocated equally to the other units. Such assessments shall be made by the unit owners' association annually, or more often if the condominium instruments so provide. No change in the number of votes in the unit owners' association appertaining to any condominium unit shall enlarge, diminish, or otherwise affect any liabilities arising from assessments made prior to such change.

(d) If the condominium instruments provide for any common expense assessments to be paid in installments, such instruments may further provide that upon default in the payment of any one or more of such installments, the balance thereof shall be accelerated, or that the said balance may be accelerated at the option of the unit owners' association, its executive organ, or the managing agent.

(e) Unless the condominium instruments provide otherwise, unpaid assessments for common expense and unpaid installments of such assessments shall become past due on the fifteenth day from the day such assessment or installment thereof first became due and payable, and any past due assessment of¹ installment thereof shall bear interest at the lesser of ten percent per annum or the maximum rate permitted to be charged in the District of Columbia to natural persons on first mortgage loans at the time such assessment or installment became past due. (Mar. 29, 1977, D.C. Law 1-89, title III, § 312, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1202, 5-1212, 5-1238, 5-1245, 5-1249, 5-1251, 5-1253.

§ 5-1253. Lien for assessments.

(a) All assessments levied against a condominium unit in accordance with the provisions of this chapter and all lawful provisions of the condominium instruments shall, from the time such assessments became due and payable, constitute a lien in favor of the unit owners' association on the condominium unit to which such assessments pertain. If an assessment is payable in installments, the full amount of such assessment shall be a lien from the time the first installment thereof becomes due and payable. Such lien shall be prior to all other liens and encumbrances except: (1) liens and encumbrances recorded prior to the recordation of the declaration; (2) liens of any first priority mortgage or deed of trust on such unit recorded prior to the due date of such assessment or the due date of the first installment payable on such assessment; and (3) liens for real estate taxes and municipal assessments or charges against the unit. The provisions of this subsection shall not affect the priority of mechanics or materialmen's liens.

(b) The recording of the condominium instruments pursuant to the provisions of this chapter shall constitute record notice of the existence of such lien and no further recordation of any claim of lien for assessment shall be required.

(c) A lien for assessments against a condominium unit may be enforced against such condominium unit by a power of sale in favor of the unit owners' association if assessments are past due, unless the condominium instruments provide otherwise. A unit owner shall have the right to cure any default in payment of assessments at any time prior to the foreclosure sale by tendering payment in full of past due assessments, plus any late charges and interest due thereon and reasonable attorney's fees and costs incurred in connection with the enforcement of the lien for such assessments. Such power of sale may be exercised by the executive organ on behalf of the unit owners' association, and the executive organ shall have the authority to deed a unit sold at a foreclosure sale by the unit owners' association to the purchaser at such sale. The recitals in such deed shall be prima facie evidence of the truth of the statement made therein and conclusive evidence in favor of bona fide purchasers for value. No fore-

closure sale shall be held until thirty days after notice is sent by certified mail to a unit owner at the mailing address of the unit and at any other address designated by a unit owner to the executive organ for purposes of such a notice. The notice shall specify the amount of the assessments past due, together with any accrued interest thereon and late charges, if any, as of the date of the notice and shall further notify the unit owner that if such past due assessments and accrued interest and any late charges are not paid within thirty days after the date such notice is mailed, the executive organ shall sell the unit at a public sale at the time and place and on a date stated in the notice. Such date of sale shall not be sooner than thirty-one days from the date such notice is mailed. The executive organ shall give public notice of the foreclosure sale by advertisement in at least one newspaper of general circulation in the District of Columbia and by such other means it deems necessary and appropriate to give notice of sale, if any. Such newspaper advertisement shall appear on at least three separate days during the fifteen day period prior to the date of the sale. The proceeds of sale shall be applied—

- (i) to unpaid assessments with interest thereon and later¹ charges, if any;
- (ii) to the cost of foreclosure including but not limited to, reasonable attorney's fees; and
- (iii) the balance to the person or persons legally entitled thereto.

(d) Unless the condominium instruments provide otherwise, the executive organ shall have the power to purchase on behalf of the unit owners' association any unit at any foreclosure sale held on such unit. The executive organ may take title to such unit in the name of the unit owners' association and may hold, lease, encumber or convey the same on behalf of the unit owners' association.

(e) The lien for assessments provided herein shall lapse and be of no further effect as to unpaid assessments (or installments thereof) together with interest accrued thereon and late charges, if any, if such lien is not discharged or if foreclosure or other proceedings to enforce the lien have not been instituted within three years from the date such assessment (or any installment thereof) become due and payable.

(f) The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for costs and attorneys' fees.

(g) Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection (a) creates a lien, maintainable pursuant to section 5-1219.

(h) Any unit owner or purchaser of a condominium unit shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that unit. Such request shall be in writing, directed to the principal officer of the unit owners' association or to such other officer as the condominium instruments may specify. Failure to furnish or make available such a statement within five business days from the receipt of such request shall extinguish the lien

¹ So in original. Probably should be "or".

¹ So in original. Probably should be "late".

created by subsection (a) as to the condominium unit involved. Such statement shall be binding on the unit owners' association, the executive organ, and every unit owner. Payment of a reasonable fee may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

(i) Upon any voluntary transfer of a legal or equitable interest in a condominium unit, except as security for a debt, all unpaid common expense assessments or installments thereof then due and payable from the grantor shall be paid or else the grantee shall become jointly and severally liable with the grantor subject to the provisions of subsection (h). Upon any involuntary transfer of a legal or equitable interest in a condominium unit, however, the transferee shall not be liable for such assessments or installments thereof as became due and payable prior to his acquisition of such interest. To the extent not collected from the predecessor in title of such transferee, such arrears shall be deemed common expenses, collectible from all unit owners (including such transferee) in proportion to their liabilities for common expenses pursuant to section 5-1252(c). (Mar. 29, 1977, D.C. Law 1-89, title III, § 313, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1212, 5-1271.

§ 5-1254. Financial records.

The unit owners' association shall cause to be kept books with detailed accounts in chronological order of the associations' income and expenditures. Said books and the vouchers accrediting the entries therein shall be made available for examination by the unit owners and their attorneys, accountants, and authorized agents during reasonable hours on business days. Such books shall be kept in accordance with generally accepted accounting principles and shall be subjected to an independent audit at least once each year. (Mar. 29, 1977, D.C. Law 1-89, title III, § 314, 23 DCR 9532b.)

§ 5-1255. Restraints on alienation.

If the condominium instruments create any rights of first refusal or other restraints on free alienability of any of the condominium units, such rights and restraints shall be void unless the condominium instruments make provisions for promptly furnishing to any unit owner or purchaser requesting the same a recordable statement certifying to any waiver of, or failure or refusal to exercise, such rights and restraints, in all cases where such waiver, failure, or refusal does in fact occur. Failure or refusal to furnish promptly such a statement in such circumstances in accordance with the provisions of the condominium instruments shall make all such rights and restraints inapplicable to any disposition of a condominium unit in contemplation of which such statement was requested. Any such statement shall be binding on the association of unit owners, its executive organ, and every unit owner. Payment of a reasonable fee may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide. (Mar. 29, 1977, D.C. Law 1-89, title III, § 315, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-1271.

SUBCHAPTER IV.—REGISTRATION AND OFFERING OF CONDOMINIUMS

§ 5-1261. Exemptions.

Unless the method of offer or disposition is adopted for the purpose of evasion of this chapter, the provisions of sections 5-1263, 5-1264, 5-1265, 5-1266, 5-1267, 5-1268, 5-1269, and 5-1272 do not apply to—

- (a) dispositions in a condominium in which all units are restricted to commercial, industrial, or other nonresidential use;
- (b) dispositions pursuant to court order;
- (c) dispositions by any government or government agency; or
- (d) solicitation and acquisition by the declarant of nonbinding reservation agreements.

(Mar. 29, 1977, D.C. Law 1-89, title IV, § 401, 23 DCR 9532b.)

EFFECTIVE DATE

See note under § 5-1201.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1242, 5-1271.

§ 5-1262. Prohibitions on dispositions of units.

(a) Neither declarant nor any person on behalf of declarant may offer or dispose of any interest in a condominium unit located in the District of Columbia, nor dispose in the District of Columbia of any interest in a condominium unit located without the District of Columbia prior to the time the condominium including such unit is registered in accordance with this chapter; and

(b) No declarant may dispose of any interest in a condominium unit unless there is delivered to the purchaser a current public offering statement by the time of such disposition and such disposition is expressly and without qualification or condition subject to cancellation by the purchaser within fifteen days after the contract date of such disposition, or within 15 days after delivery of the current public offering statement, whichever is later. A public offering statement is not current unless any necessary amendments are incorporated therein or attached thereto. Unless otherwise stated herein, the foreclosure of lien provisions should be in accord with section 45-615(b). If the purchaser elects to cancel, he may do so by notice thereof hand-delivered or sent by United States mail, return receipt requested, to the declarant. Such cancellation shall be without penalty, and any deposit made by the purchaser shall be promptly refunded in its entirety.

(c) The public offering statement and sales contract shall contain a clause and its Spanish equivalent in a form prescribed by the Mayor which shall clearly state the purchaser's right to cancel. (Mar. 29, 1977, D.C. Law 1-89, title IV, § 402, 23 DCR 9532b.)

§ 5-1263. Application for registration.

(a) The application for registration of the condominium shall be filed as prescribed by the Mayor's

rules and shall contain the following documents and information:

(1) An irrevocable appointment of an agent in the District of Columbia, and in the absence of such an agent, the agency to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or applicant's personal representative.

(2) The states or jurisdictions in which an applicant for registration or similar document pertaining to the condominium has been filed, and any adverse order, judgment, or decree by any regulatory authority or by any court entered against declarant or any other person referred to in paragraph (3) in connection with (A) any registration, offer of sale of any condominium or condominium units; (B) any violation of any condominium statute or any lack of compliance with a condominium instrument; and (C) any breach of contract, fraud or misrepresentation perpetrated against any unit owner, unit owner association or unit purchaser.

(3) The name, address, and principal occupation for the past five years of every officer of the applicant or person occupying a similar status or performing similar functions; the extent and nature of such person's interest in the applicant or the condominium as of a specified date within thirty days of the filing of the application.

(4) A statement, in a form acceptable to the Mayor, of the condition of the title to the condominium project including encumbrances as of a specified date within thirty days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer or director of the applicant or owner, or by other evidence of title acceptable to the Mayor.

(5) Copies of any management agreements, employment contracts or other contracts or agreements affecting the use or maintenance of, or access to, all or a part of the condominium.

(6) Plats and plans of the condominium that comply with the provisions of section 5-1224 other than the certification requirements thereof, and which show all units and buildings containing units to be built anywhere within the submitted land other than within the boundaries of any convertible lands; except that the Mayor may by regulation or order waive or modify this requirement or the requirements of section 5-1224 for plats and plans of a condominium located outside the District of Columbia.

(7) The proposed public offering statement.

(8) Any other information, including any current financial statement, which the Mayor by his regulations requires for the protection of purchasers.

(b) If the declarant registers additional units to be offered for disposition in the same condominium he may consolidate the subsequent registration with any earlier registration offering units in the condominium for disposition under the same promotional plan.

(c) The declarant shall maintain a copy of the application for registration at the declarant's principal office at the condominium. The application for registration shall be made available for public in-

spection upon request at reasonable times, *Provided*, however, that the Mayor may grant confidential status to any information required pursuant to section 5-1264(a)(11). The declarant shall promptly report any material changes in the information contained in an application for registration and amend the application accordingly.

(d) Each application shall be accompanied by a fee in an amount determined by the Mayor. The amount of such fee shall be established at a rate adequate to cover the costs related to processing such application and to provide additional funds to be available to defray the costs of administering this chapter. (Mar. 29, 1977, D.C. Law 1-89, title IV, § 403, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1261, 5-1291.

§ 5-1264. Public offering statement.

(a) A public offering statement shall disclose fully and accurately the characteristics of the condominium and the units therein offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the condominium. The proposed public offering statement submitted to the Mayor shall be in a form prescribed by his rules and shall include—

(1) the name and principal address of the declarant and the condominium;

(2) the applicant's name, address, and the form, date, and jurisdiction of organization, the address of each of its offices in the District of Columbia, the names and addresses of all general partners if applicant is a partnership, and all directors and owners of ten percent or more of the beneficial interest in the stock of applicant if applicant is a corporation;

(3) to the extent that such information is reasonably available to applicant, the names and addresses of the attorney primarily responsible for the preparation of the condominium documents, the general contractor, if any, all contractors who are primarily responsible for the construction, reconstruction or renovation of the electrical, plumbing or mechanical systems or the roof of the condominium, and the architect and engineer primarily responsible for the design, construction or renovation of the condominium;

(4) a general narrative description of the condominium stating the total number of units in the offering; the total number of units planned to be sold and the number of units to be rented; the total number of units that may be included in the condominium by reason of future expansion or merger of the project by the declarant;

(5) a copy of the declaration and bylaws, with a brief narrative statement describing each and including (A) information on declarant control, (B) a projected budget for at least the first year of the condominium's operation (including projected common expense assessments for each unit), (C) provisions for enforcement of liens for assessments, (D) provisions for reserves for capital expenditures, (E) the estimated amount of any initial or special condominium fee due from the purchaser on or before settlement of the

purchase contract and the basis of such fee; and (F) a description of any restraints on alienation;

(6) copies of the instruments which will be delivered to a purchaser to evidence his interest in the unit and of the contracts and other agreements which a purchaser will be required to agree to or sign.

(7) a copy of any management contract, lease of recreational areas, and any other contract or agreement substantially affecting the use or maintenance of, or access to all or any part of the condominium with a brief narrative statement of the effect of each such agreement upon a purchaser, the condominium unit owners and the condominium, and a statement of the relationship, if any, between the declarant and the managing agent or firm;

(8) a general statement of (A) the status of construction, (B) the project's compliance with zoning, site plan and building permit regulations, (C) source of financing available and the estimated amount necessary to complete all improvements shown on the plats and plans as "NOT YET COMPLETED" or "NOT YET BEGUN" which declarant is obligated to complete and (D) the projected date of completion of construction or renovation of the major amenities of the condominium;

(9) the significant terms of any encumbrances, easements, liens and matters of title affecting the condominium;

(10) the significant terms of any financing offered by or through the declarant to purchasers of units in the condominium;

(11) the provisions and any significant limitations of any warranties provided by the declarant on the units and the common elements, other than the warranty prescribed by section 5-1247(b);

(12) a statement that the contract purchaser of a condominium unit from the declarant may cancel the purchase transaction within fifteen days following the date of execution of the contract by the purchaser or the receipt of a current public offering statement, whichever is later;

(13) a statement as to whether or not the condominium satisfies, or is expected to satisfy, the special requirements pertaining to condominiums established by federal, federally chartered or District of Columbia institutions which insure, guarantee or maintain a secondary market for condominium unit mortgages;

(14) additional information required by the Mayor to assure full and fair disclosure to prospective purchasers; and

(15) plans of the condominium which clearly locate all units and buildings and all common elements.

(b) The public offering statement shall not be used for any promotional purposes before registration of the condominium project and afterwards only if it is used in its entirety. No person may advertise or represent that the Mayor approves or recommends the condominium or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or

heavier or different color type than the remainder of the statement if such emphasis is intended to mislead the prospective purchaser or to otherwise conceal material facts, except that there may be a cover sheet for such public offering statement using such design, pictures and words as the Mayor may deem reasonable. The form, content, and layout of the public offering statement shall be subject to approval by the Mayor.

(c) The declarant shall file with the Mayor a statement of any material change in the information contained in the public offering statement. Such statement shall be filed within fifteen days after the date on which the declarant knows or should have known about the change. The Mayor may require the declarant to amend the public offering statement if necessary to assure full and fair disclosure to prospective purchasers. A public offering statement is not current unless any necessary amendments are incorporated therein or attached thereto. Such amendments must be mailed by United States registered mail, return receipt requested. Such receipt shall be kept on file for review.

(d) The provisions of this section shall be deemed to be complied with if the public offering statement filed pursuant to the provisions of subsection (a) (9) is for offers of units currently registered as securities with the Securities and Exchange Commission. (Mar. 29, 1977, D.C. Law 1-89, title IV, § 404, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-1261, 5-1263, 5-1268.

§ 5-1265. Inquiry and investigation.

Upon receipt of an application for registration in proper form, the Mayor may forthwith initiate an investigation to determine—

(a) that there is reasonable assurance that the declarant can convey or cause to be conveyed the units offered for disposition if the purchaser complies with the terms or¹ the offer;

(b) that there is reasonable assurance that all proposed improvements will be completed as represented;

(c) that the advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the Mayor in its rules and afford full and fair disclosures;

(d) whether the declarant has, or if a corporation its officers and principals have, been convicted of a crime involving condominium unit dispositions or any aspect of the land sales business in the United States or any foreign country within the past ten years, or has been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions; and

(e) the public offering statement requirements of this chapter have been satisfied.

(Mar. 29, 1977, D.C. Law 1-89, title IV, § 405, 23 DCR 9532b.)

¹ So in original. Probably should be "of".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1261, 5-1266.

§ 5-1266. Notice of filing and registration.

(a) Upon receipt of the application for registration in proper form, the Mayor shall, within five business days, issue a notice of filing to the applicant. Within sixty days from the date of the notice of filing, the Mayor shall enter an order registering the condominium or rejecting the registration. If no order of rejection is entered within sixty days from the date of notice of filing, the condominium shall be deemed registered unless the applicant has consent¹ in writing to a delay.

(b) If the Mayor affirmatively determines, upon inquiry and examination, that the requirements of section 5-1265 have been met, he shall enter an order registering the condominium and may require any additions, deletions, or modifications in and to the public offering statement in order to assure full and fair disclosure.

(c) If the Mayor determines upon inquiry and examination, that any of the requirements of section 5-1265 have not been met, he shall notify the applicant that the application for registration must be corrected in the particulars specified within fifteen days or such longer period as he may prescribe. If the requirements are not met within the time allowed the Mayor shall enter an order rejecting the registration which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty days after the lapse of the aforesaid period during which twenty-day period the applicant may petition for reconsideration and shall be entitled to a hearing to contest the particulars specified in the Mayor's notice. Such order of rejection shall not take effect during the pendency of a hearing, if requested. (Mar. 29, 1977, D.C. Law 1-89, title IV, § 406, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1261, 5-1276.

§ 5-1267. Annual Report—Termination of registration.

The declarant shall, during any period of control of the condominium by the declarant pursuant to section 5-1242, file a report in the form prescribed by the rules of the Mayor within thirty days of each anniversary date of the order registering the condominium. The report shall reflect any material changes in information contained in the original application for registration. In the event that the annual report reveals that all of the units in the condominium have been disposed of, and that all period² for conversion or expansion have expired, the Mayor shall issue an order terminating the registration of the condominium. (Mar. 29, 1977, D.C. Law 1-89, title IV, § 407, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-1261.

§ 5-1268. Conversion condominiums.

(a) Any declarant of a conversion condominium shall include in his public offering statement in addition to the requirements of section 5-1264—

(1) A description of any provisions made in the budget for reserves for capital expenditures, contingencies and improvements and an explanation of the basis for such reserves, or, if no provision is made for such reserves, a statement to that effect; and

(2) a statement by the declarant based upon a report of a qualified architect or engineer as to the present condition of all structural components and major utility installations in the condominium. The statement still include:

(A) the approximate dates of construction, installation, and major repairs of structural components and major utility installations and a general description of each installed system as particularly suitable or unsuitable for use in a conversion condominium;

(B) an evaluation of the adequacy of each system to perform its intended function both before and after completion of the condominium conversion; and

(C) the estimated life of the system components, and the estimated cost (in current dollars) of replacing each component that has a rated life that is evaluated to be less than the rated life of the entire structure.

The architect's or engineer's report upon which the statement required by this subsection is based shall be filed with the Mayor as a part of the application for registration.

(b) In the case of a conversion condominium:

(1) The declarant shall give each of the tenants or subtenants of the building or buildings which the declarant submits to the provisions of this chapter at least one hundred twenty days notice of the conversion before any such tenant or subtenant may be served with notice to vacate. Such notice of conversion shall be given no later than ten days after the date the declarant's application for registration of the condominium units is approved. The notice shall be in such form as the Mayor may require and shall set forth generally the rights of tenants and subtenants pursuant to this section. Such notice shall be hand-delivered or sent by United States mail, return receipt requested. Such notice shall contain a statement indicating that such notice shall not be construed as abrogating any rights any tenant may have under a valid existing written lease.

(2) During the first sixty days of the one hundred twenty-day notice period, each of the tenants who entered into an agreement with declarant or declarant's predecessor in interest to lease the apartment unit shall have the exclusive right to contract for the purchase of such apartment unit. If the tenants do not contract for the purchase of their apartment unit, during the second sixty days of such one hundred twenty-day period, each of the subtenants, if any, who occupy the apartment unit under an agreement with the tenants shall have the exclusive right to contract for the purchase of such apartment unit. The exclusive right to contract for the purchase of such apartment units shall be on terms and conditions at least as favorable to the tenants or subtenants as those being offered by declarant to the general public. The right to contract for purchase granted to the tenants and subtenants, if any, of an apart-

¹ So in original. Probably should be "consented".

² So in original. Probably should be "periods".

ment unit shall be granted only where the tenant or subtenant has remained, and on the date of the notice is, in substantial compliance with the terms of the lease or sublease agreement, and if such apartment unit is to be retained in the conversion condominium without substantial renovation or alteration in its physical layout. If there is more than one tenant, then each such tenant shall be entitled to contract for the purchase of a proportionate share of the apartment unit and of a proportionate share of the share of any tenant who elects not to purchase. If the tenants do not contract for the purchase of the apartment unit and if there is more than one subtenant occupying the apartment unit, then each such subtenant shall be entitled to contract for the purchase of a proportionate share of the apartment unit occupied, and of a proportionate share of the share of any subtenant who elects not to purchase. In no case shall this subsection be deemed to authorize the purchase of less than the entire interest in the apartment unit to be conveyed.

(3) If the notice of conversion specifies a date by which the apartment unit shall be vacated, then such notice shall constitute and be the equivalent of a valid statutory notice to vacate. Otherwise, the declarant shall give the tenant or subtenant occupying the apartment unit to be vacated the statutory notice to vacate where required by law in compliance with the requirements applicable thereto.

(Mar. 29, 1977, D.C. Law 1-89, title IV, § 408, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1261, 5-1294.

§ 5-1269. Escrow of deposits.

Any deposit made in regard to any disposition of a unit, including a nonbinding reservation agreement, shall be held in escrow until either delivered at settlement or returned to the prospective purchaser. Such escrow funds shall be deposited in a separate account for each condominium in a financial institution the accounts of which are insured by a federal or state agency. These deposits shall bear interest at the passbook rate then prevailing in the District of Columbia beginning with the first business day after the date deposited with declarant or declarant's agent. Earned interest shall be credited to the prospective purchaser's deposit. Such escrow funds shall not be subject to attachment by the creditors of either the purchaser or the declarant. (Mar. 29, 1977, D.C. Law 1-89, title IV, § 409, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-1261.

§ 5-1270. Delivery of declaration and bylaws to purchaser.

Unless previously furnished, an exact copy of the recorded declaration and bylaws shall be furnished to each purchaser by the declarant within ten days of recordation thereof as provided for in sections 5-1211 and 5-1215. (Mar. 29, 1977, D.C. Law 1-89, title IV, § 410, 23 DCR 9532b.)

§ 5-1271. Resale by purchaser.

(a) In the event of any resale of a condominium unit by a unit owner other than the declarant, such owner shall obtain from the unit owners' association and furnish to the purchaser, prior to the contract date of the disposition, the following, or else the contract shall be enforceable only at the option of the purchaser—

(1) appropriate statements pursuant to section 5-1253(h) and, if applicable, section 5-1255;

(2) a statement of any capital expenditures anticipated by the unit owners' association within the current or succeeding two fiscal years;

(3) a statement of the status and amount of any reserves for capital expenditures, contingencies, and improvements, and any portion of such reserves earmarked for any specified project by the executive organ;

(4) a copy of the statement of financial condition for the unit owners' association for the then most recent fiscal year for which such statement is available and the current operating budget, if any;

(5) a statement of the status of any pending suits or any judgments to which the unit owners' association is a party;

(6) a statement setting forth what insurance coverage is provided for all unit owners by the unit owners' association and a statement whether such coverage includes public liability, loss or damage, or fire and extended coverage insurance with respect to the unit and its contents;

(7) a statement that any improvements or alterations made to the unit, or the limited common elements assigned thereto, by the prior unit owner are not in violation of the condominium instruments; and

(8) a statement of the remaining term of any leasehold estate affecting the condominium or the condominium unit and the provisions governing any extension or renewal thereof.

(b) The principal officer of the unit owners' association or such other officer or officers as the condominium instruments may specify, shall furnish the statements prescribed by subsection (a) hereof upon the written request of any unit owner or purchaser within ten days of the receipt of such request.

(c) Subject to the provisions of section 5-1261, but notwithstanding any other provisions of this chapter, the provisions and requirements of this section shall apply to any such resale of a condominium unit created under the provisions of chapter 9 of this title. (Mar. 29, 1977, D.C. Law 1-89, title IV, § 411, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-1201.

§ 5-1272. General powers and duties of the Mayor.

(a) This chapter shall be administered by the Mayor or his designee. The Mayor shall prescribe reasonable rules which shall be adopted, amended or repealed in accordance with the provisions of the District of Columbia Administrative Procedure Act (D.C. Code secs. 1-1501 et seq.). The rules shall include but not be limited to provisions for adver-

tising standards to assure full and fair disclosure; provisions for operating procedures; and such other rules as are necessary and proper to accomplish the purposes of this chapter. The initial such regulations shall be promulgated by the Mayor within 120 days after March 29, 1977.

(b) The Mayor by regulation, rule or order, after reasonable notice and hearing may require the filing of advertising material relating to condominiums prior to the distribution of such material.

(c) The Mayor may by regulation, rule or order approve the filing and use of an abbreviated public offering statement if the agency determines that the public interest and the interests of purchasers would best be served thereby. The Mayor shall determine whether or not such abbreviated disclosure will be permitted based upon consideration of the following factors among others:

(1) the total number of units being offered is small, which shall mean generally less than ten;

(2) adequate disclosure of relevant information will otherwise be readily available to prospective purchasers;

(3) the class of purchasers will be comprised substantially of persons having the ability to protect their own interests (such as the present tenants); and

(4) in the case of a conversion condominium, no substantial renovation or remodeling of the units will be done.

(d) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter, or a rule, regulation or order hereunder, the Mayor, with or without prior administrative proceedings may bring an action in the Superior Court of the District of Columbia to enjoin the acts or practices and to enforce compliance with this chapter or any rule, regulation or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted. The Mayor is not required to post a bond in any court proceedings or prove that any other adequate remedy at law exists.

(e) The Mayor may intervene in any suit involving the rights and liabilities of declarant with respect to the condominium being registered and any transactions related thereto. The Mayor may require the declarant to notify the Mayor of any suit by or against the declarant involving a condominium established or sold by the declarant.

(f) The Mayor may—

(1) accept registrations filed in other jurisdictions or with the Federal Government;

(2) contract with similar agencies in this or other jurisdictions to perform investigative functions; and

(3) accept grants in aid from any governmental source.

(g) The Mayor shall notify the Rental Accommodations Commission whenever an application is made to register a conversion condominium and at such time as any application to register a conversion condominium is approved. (Mar. 29, 1977, D.C. Law 1-89, title IV, § 412, 23 DCR 9532b.)

CODIFICATION

In subsec. (a), "March 29, 1977" has been substituted for "the effective date of this act".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1261, 5-1277.

§ 5-1273. Investigations and proceedings.

(a) The Mayor may make necessary public or private investigations in accordance with law within or outside of the District of Columbia to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder.

(b) For the purpose of any investigation or proceeding under this chapter, the Mayor or any officer designated by rule may administer oaths or affirmations, and upon the Mayor's own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

(c) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the Mayor may apply to the Superior Court of the District of Columbia for an order compelling compliance. (Mar. 29, 1977, D.C. Law 1-89, title IV, § 413, 23 DCR 9532b.)

§ 5-1274. Cease and desist orders.

(a) If the Mayor determines after notice and hearing that a person has

(1) violated any provision of this chapter;

(2) directly or through an agent or employee knowingly engaged in any false, deceptive or misleading advertising, promotional, or sales method to offer or dispose of a unit;

(3) made any substantial change in the plan of disposition and development of the condominium subsequent to the order of registration without notifying the agency;

(4) disposed of any units which have not been registered with the agency; or

(5) violated any lawful order or rule of the agency;

the Mayor may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in his judgment will carry out the purposes of this chapter.

(b) If the Mayor makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order the Mayor may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the Mayor shall give notice of the proposal to issue a temporary cease and desist order to the person affected. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not such order becomes permanent.

(Mar. 29, 1977, D.C. Law 1-89, title IV, § 414, 23 DCR 9532b.)

§ 5-1275. Revocation of registration.

(a) A registration may be revoked after notice and hearing upon a written finding of fact that the declarant has—

(1) failed to comply with the terms of a cease and desist order;

(2) been convicted in any court subsequent to the filing of the application for registration for a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;

(3) disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of unit purchasers;

(4) failed faithfully to perform any stipulation or agreement made with the Mayor as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement; or

(5) made intentional misrepresentations or concealed material facts in an application for registration.

Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(b) If the Mayor finds after notice and hearing that the declarant has been guilty of a violation for which revocation could be ordered, the agency may issue a cease and desist order instead. (Mar. 29, 1977, D.C. Law 1-89, title IV, § 415, 23 DCR 9532b.)

§ 5-1276. Judicial review.

Proceedings for judicial review of Mayoral actions shall be subject to and be in accordance with the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 et seq.) applicable to "rule-making"; *Provided*, however, that review of Mayoral actions pursuant to section 5-1266 shall be subject to provisions applicable to "contested cases". (Mar. 29, 1977, D.C. Law 1-89, title IV, § 416, 23 DCR 9532b.)

§ 5-1277. Penalties.

Any person who willfully violates any provision of this chapter or any rule adopted under or order issued pursuant to section 5-1272 or any person who willfully in an application for registration makes any untrue statement of a material fact or omits to state a material fact shall be fined not less than \$1,000 or double the amount of gain from the transaction, whichever is the larger but not more than \$50,000; or such person may be imprisoned for not more than six months; or both, for each offense. Prosecution for violations of this chapter shall be brought in the name of the District of Columbia by the Corporation Counsel or his assistants. (Mar. 29, 1977, D.C. Law 1-89, title IV, § 417, 23 DCR 9532b.)

§ 5-1278. Severability.

If any provision of this chapter, or any paragraph, section, sentence, clause, phrase or word or the application thereof, in any circumstances is held invalid, the validity of the remainder of this chapter,

and of the application of any such provision, paragraph, section, sentence, clause, phrase or word in any circumstances shall not be affected thereby and to this end, the provisions of this chapter are declared severable. (Mar. 29, 1977, D.C. Law 1-89, title IV, § 418, 23 DCR 9532b.)

SUBCHAPTER V.—CONDOMINIUM CONVERSION—HOUSING ASSISTANCE

PART A.—CONDOMINIUM CONVERSION

§ 5-1281. Limitations on condominium conversions.

(a) Notwithstanding any other provision of law, no person may convert nor shall the Mayor permit the conversion of any housing accommodation or rental unit in the District of Columbia into a condominium, except as provided in this subchapter.

(b) (1) A housing accommodation or rental unit in the District of Columbia may be converted into a condominium—

(A) if that housing accommodation is a high rent housing accommodation or if that rental unit is located in a high rent housing accommodation, at any time after March 29, 1977; or

(B) except as provided in paragraph (2), if that housing accommodation is not a high rent housing accommodation or if that rental unit is located in a housing accommodation which is not a high rent housing accommodation, at any time after March 29, 1977, at which the most recently computed vacancy rate (computed according to the procedure set forth upon the enactment of the Condominium act of 1976, Bill 1-179, adopted by the Council July 20, 1976 effective at the end of the thirty day period, provided for Congressional review of acts of the Council under section 1-147(c)) higher than 3 percent.

For the purposes of this subchapter, the term "high rent housing accommodation" includes any housing accommodation in the District of Columbia for which the total monthly rent exceeds an amount computed for such housing accommodation as follows:

(i) multiply the number of rental units in the following categories by the corresponding rent: (I) \$212.50 for one bedroom rental units; (II) \$267 for two bedroom rental units; (III) \$375 for three or more bedroom rental units; and (IV) \$162.50 for efficiency rental units; and

(ii) total the results obtained in phase (i).

(2) Any housing accommodation which is not a high rent housing accommodation may be converted to a condominium, notwithstanding a vacancy rate of 3 percent or less, if at least a majority of the heads of households actually residing in such housing accommodation, as of the first day of the month in which the application relating to the registration of such housing accommodation is filed, have signed a written agreement consenting to such conversion. If a majority of the heads of households in such housing accommodation have signed such written agreements, but the conversion has not taken place, then the landlord of that housing accommodation shall notify each prospective tenant of

that housing accommodation that a majority of the heads of households in that housing accommodation have signed such agreements. No landlord or declarant shall use any means whatsoever to coerce any person into signing such an agreement. (Mar. 29, 1977, D.C. Law 1-89, title V, § 501, 23 DCR 9532b.)

REFERENCE IN TEXT

The Condominium act of 1976, referred to in subsec. (b) (1) (B), is act Mar. 29, 1977, D.C. Law 1-89, which is classified to this chapter.

CODIFICATION

In subsec. (b) (1), "March 29, 1977" has been substituted for "the effective date of this title".

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subsec. (b) (1) (B) (i) and temporary provision relating to the definition of high rent housing accommodation, see the Condominium Conversion Emergency Act of 1977 (D.C. Act 2-116, Dec. 9, 1977, 24 DCR 5291).

EFFECTIVE DATE

See note under § 5-1201.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-1282.

§ 5-1282. Computation and publication of vacancy rate.

Within ninety days after March 29, 1977, the Mayor shall, according to a procedure developed by him which may include the use of a scientific random sample, compute and certify the percentage of all privately owned rental units in the District of Columbia located in housing accommodations which are not high rent housing accommodations. At least once every twelve months thereafter the Mayor shall, according to such procedure, compute and publish in the District of Columbia Register a preliminary percentage. During the immediately following 30 days the Mayor shall conduct hearings on that percentage, and based upon the record of those hearings, he shall certify a final percentage. When certified, the percentage so certified by the Mayor shall be the vacancy rate for the purposes of section 5-1281 until another percentage is computed and certified by the Mayor. (Mar. 29, 1977, D.C. Law 1-89, title V, § 502, 23 DCR 9532b.)

CODIFICATION

"March 29, 1977" has been substituted for "the effective date of this act".

PART B.—HOUSING ASSISTANCE

§ 5-1291. Eligibility for housing assistance and relocation compensation—Tax exemption.

(a) In addition to all other requirements of this chapter, and to all other applicable provisions of law, each declarant of a conversion condominium shall pay housing assistance, in an amount calculated according to section 5-1292, to any eligible recipient who—

- (1) makes application for such assistance;
- (2) has been living, for at least one year immediately prior to the first day of the month in which the application for registration relating to such conversion is filed, in the rental unit from which he is being displaced;
- (3) is displaced from a rental unit because such rental unit is being converted to a condominium by the declarant; and

- (4) relocates in the District of Columbia.

Such housing assistance shall be paid in one lump sum payment within 30 days after the date such recipient relocates. Beginning with the twenty-fifth month occurring immediately after the month in which such recipient relocated, and for the immediately succeeding 35 months thereafter, housing assistance payments to such recipient shall be made by the Mayor of the District of Columbia if, as of the first day of the twenty-fifth month occurring after his relocation, the recipient is eligible for such payment. In lieu of monthly payments, the Mayor may make a lump sum payment to an eligible recipient equal to the amount to which he is entitled to receive under this subchapter.

(b) In addition to all other requirements of this chapter, and to all other applicable provisions of law, each declarant of a conversion condominium shall pay relocation compensation to any eligible recipient in each rental unit in the building converted if such rental unit is occupied primarily for residential purposes on the date the notice required by subsection 5-1263(b) is given. Such relocation assistance shall be calculated according to the provisions of section 5-1293.

(c) No part of any housing assistance payment or any relocation compensation made under this subchapter shall be considered income to the recipient for the purposes of subchapter II of chapter 15 of title 47. Any such housing assistance payment or any relocation compensation made to any person or family entitled to receive any other payment from the District of Columbia government related to paying the costs of housing or shelter shall be in addition to and shall not affect the amount of or entitlement to such other payment. (Mar. 29, 1977, D.C. Law 1-89, title V, § 511, 23 DCR 9532b.)

EFFECTIVE DATE

See note under § 5-1201.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-1294.

§ 5-1292. Computation of housing assistance payments.

(a) The amount of each housing assistance payment to be made under this subchapter shall be calculated as follows:

(1) If the amount of an applicant's average monthly housing expense, during the twelve consecutive month period ending with the month preceding the month during which he relocated as a result of his rental unit being converted to a condominium, is an amount which is less than 25 percent of the average net monthly family income, computed for such period, then the amount of the monthly housing assistance payment to such applicant shall be in an amount equal to the difference between an amount equal to 25 percent of such average net monthly family income and the amount of the monthly housing expense to be paid by the applicant for the first full month after such relocation, (excluding security deposit, if any).

(2) If the amount of a recipient's average monthly housing expense, during such period, is an amount which is more than 25 percent of such average net monthly family income, then the

amount of the monthly housing assistance payment payable to such applicant shall be in an amount equal to the difference between such average monthly housing expense during such period and the amount of the monthly housing expense to be paid by the applicant for the first full month after such relocation (excluding security deposit, if any).

(3) To obtain the total housing assistance payment to be made by a declarant to any eligible recipient, multiply the figure obtained under either paragraph (1) or (2), as appropriate, by twenty-four. To obtain the total housing assistance payment to be made by the Mayor to any eligible recipient, multiply such appropriate figure by thirty-six.

(b) The Mayor shall determine, from time to time and at least once every twelve months, the range of rents being charged in the District of Columbia by landlords of privately owned housing accommodations for generally available one bedroom, two bedroom, three bedroom or more, and efficiency rental units. The Mayor shall publish his preliminary range of rents in the District of Columbia Register and, during the next immediately occurring 30 days, hold hearings on that preliminary range. Based on the record of those hearings, the Mayor shall certify a final range of rents to be used by him for the purposes of this subchapter. The figure obtained under either paragraph (1) or (2) of subsection (a), as appropriate, shall not exceed the difference between the highest rent in the range of rents of comparable rental units of suitable size, as determined by the Mayor at the time of the housing assistance payment is made to such recipient, and the amount of the recipient's average monthly housing expense for the twelve month period referred to in section (a) (1). (Mar. 29, 1977, D.C. Law 1-89, title V, § 512, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-1291.

§ 5-1293. Computation and payment of relocation compensation.

(a) The amount of relocation compensation payable shall be calculated as follows:

(1) Relocation compensation in the amount of one hundred twenty-five dollars for each room in the apartment unit shall be payable to the tenants if the tenants are occupying the apartment unit or if the tenants are not occupying the apartment unit, to the tenants or subtenants bearing the cost of removing the majority of the furnishings. For the purposes of the preceding sentence a "room" in an apartment unit shall mean any space sixty square feet or larger which has a fixed ceiling and floor and is subdivided with fixed partitions on all sides, but shall not mean bathrooms, balconies, closets, pantries, kitchens, foyers, hallways, storage areas, utility rooms or the like.

(2) The Mayor shall adjust the amounts to be paid as relocation compensation from time to time solely to reflect changes in the cost of moving within the Washington Metropolitan Area. Such adjustment shall be made no more than once in

any calendar year and shall be made only after prior notice and hearing.

(b) Relocation compensation shall be paid no later than 24 hours prior to the date the apartment unit is to be vacated by the tenants or subtenants if the declarant has received at least ten days advance written notice of the date upon which the apartment unit is to be vacated. If no such notice has been received, then relocation compensation shall be paid within thirty days after the apartment unit is vacated.

(c) If there is more than one person entitled to relocation compensation with respect to an apartment unit, each such person shall be entitled to share equally in the amount of relocation compensation. In any case in which there is a dispute as to whether relocation compensation shall be paid for an apartment unit, or the proper amount of such compensation or the persons entitled to such compensation, the declarant may pay to the Mayor the maximum possible relocation compensation allowable for such apartment unit and shall thereby be relieved of any further obligation under this subsection (d) with respect to such apartment unit. The Mayor shall hold such payment and shall determine whether relocation compensation is payable with respect to the apartment unit, the amount of relocation compensation payable, if any, and the person or persons entitled thereto. The Mayor shall refund any remainder of such payment to the declarant.

(d) Payment of relocation compensation shall not be required with respect to any apartment unit which is the subject of an outstanding judgment for possession obtained by the declarant or declarant's predecessor in interest against the tenants or subtenants for a cause of action whether such cause of action arises before or after the service of the notice of conversion. If, however, the judgment for possession is based on nonpayment and arises after the notice of conversion has been given, then relocation compensation shall be required in an amount reduced by the amount determined to be due and owing to declarant by the court rendering the judgment for possession. (Mar. 29, 1977, D.C. Law 1-89, title V, § 513, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-1291.

§ 5-1294. Applications for housing assistance and relocation compensation—Notification of eligibility—Review of eligibility determinations.

(a) Each declarant of a conversion condominium, in addition to and at the same time that he sends tenants in the building to be converted, the notices required under section 5-1268(b), shall send to each such tenant the necessary application forms (with instructions), provided by the Mayor, for making application for the housing assistance payments and relocation compensation payable under the provisions of this subchapter. Each applicant for such assistance or compensation shall give to the Mayor such reasonable information as he may require in order to determine whether such applicant is eligible for the payments for which he applied. All information provided to the Mayor under this section shall be confidential and shall not be disclosed to any

person or governmental or private entity in such a manner as to identify the applicant to whom the information relates.

(b) If the information provided by an applicant on the form filed with the Mayor indicates that such applicant is eligible for the relocation compensation payable under section 5-1291(b), then such applicant shall be presumed to be an eligible recipient and the Mayor shall notify the appropriate declarant of the amount of payment due, to whom it shall be paid, and the address at which such payment should be delivered. Each declarant shall make each relocation compensation payment in a lump sum payment equal to the total amount of the payment for which he is liable to that recipient.

(c) In the event that a declarant believes that either the recipient is not an eligible recipient, or that the payment to that recipient should be lower than the amount indicated by the Mayor, for either housing assistance payments or for relocation compensation, he may seek review of both the eligibility of the recipient and the amount of such payment by (1) making the payment as indicated by the Mayor, and (2) filing a notice of appeal and request for a hearing with the Mayor within 10 days after making such payment. The Mayor shall conduct such requested hearing as soon as possible after such request is made. Based on the record of the hearing held as requested by a declarant, the Mayor shall determine whether the recipient is actually eligible for the payment received, or whether the amount of such payment is correct, as appropriate. In the event the Mayor determines that the recipient is not eligible, or that the amount of the payment made should be reduced, he shall issue an order to that effect, requiring the recipient to return to the declarant any payment received to which he was not entitled.

(d) The eligibility of a recipient for housing assistance payments shall be reviewed by the Mayor biannually. (Mar. 29, 1977, D.C. Law 1-89, title V, § 514, 23 DCR 9532b.)

§ 5-1295. Deposit in and payment by banks of District housing assistance payments.

The Mayor may enter into contracts with any bank or other financial institution in the District of Columbia providing that such bank or other financial institution shall make the monthly payments of housing assistance for which the District of Columbia is liable (if the Mayor elects not to make a lump sum payment) from sums of money deposited in such bank or financial institution by the Mayor for that purpose. (Mar. 29, 1977, D.C. Law 1-89, title V, § 515, 23 DCR 9532b.)

§ 5-1296. Definitions.

(a) For the purposes of this subchapter, the term "suitable size" means for a one person family, an efficiency rental unit; for a two person family, a one bedroom rental unit; for a family of three or four persons, a two bedroom rental unit; for a family of five or six persons, a three bedroom rental unit; and for a family of seven or more persons, a four bedroom rental unit; except, adjustments shall be made to allow children and unmarried adults of the opposite sex, to have separate sleeping rooms. In deter-

mining suitable size for a comparable rental unit, one person living in a one bedroom rental unit before relocation as a result of condominium conversion shall be eligible for assistance at the level of a one bedroom comparable rental unit.

(b) An eligible recipient, for the purposes of this subchapter, means the head of household in which the household has a combined annual income totaling less than the following percentages of the median annual family income (for a household of four persons) for the District of Columbia, as such median is determined by the United States Bureau of the Census and adjusted yearly by historic trends of that median, and as may be further adjusted by an interim census of District of Columbia incomes collected under contract by local or regional government agencies:

	Percent
One-person household.....	50
Two-person household.....	60
Three-person household or a one-or-two person household containing any person who is 60 years of age or older or who is handicapped as defined by the Mayor	90
Four-person household.....	100
Five person household.....	110
More than five-person household.....	120

(c) For the purposes of this subchapter "housing accommodation" means any structure or building in the District of Columbia containing one or more rental units, and the land appurtenant thereto. Such term shall not include any hotel, motel, or other structure, including any room therein, used primarily for transient occupancy and in which at least 60 percent of the rooms devoted to living quarters for tenants or guests are used for transient occupancy, any rental unit in an establishment which has as its primary purpose the providing of diagnostic care and treatment of diseases, including but not limited to hospitals, convalescent homes, nursing homes, and personal care homes; or any dormitory of an institute of higher education, or a private boarding school, in which¹ are provided for students.

(d) For the purposes of this subchapter, the term "housing project" means a group of housing accommodations which are managed as a single business entity.

(e) For the purposes of this subchapter, the term "head of household" means an individual who maintains a rental unit as his principal place of abode, is a bona fide resident and domiciliary of the District of Columbia, and contributes more than one half the cost of maintaining such rental unit. An individual may be considered a head of household without regard as to whether such individual would qualify as a head of household for the purposes of any other law.

(f) For the purposes of this subchapter, the term "comparable rental units" means rental units of corresponding facilities and with the same or similar benefits or services included in the price of the rent.

(g) For the purposes of this subchapter, the term "total monthly rent" shall include the rents asked

¹ So in original.

for vacant units. (Mar. 29, 1977, D.C. Law 1-89, title V, § 517, 23 DCR 9532b.)

§ 5-1297. Applicability.

(a) The provisions of this subchapter shall not apply to any housing accommodation, any housing project, or any rental unit in any housing accommodation, if—

(1) the initial condominium instruments relating to the conversion of the housing accommodation, the housing project (including any housing accommodation which is part of the housing project), or the rental unit was filed with the Recorder of Deeds in the District of Columbia before the beginning of the first moratorium on condominium conversions in the District of Columbia; and

(2) the actual conversion process for not less than 50 percent of the units in the proposed condominium was begun before June 1, 1976; or

(3) the housing accommodation or housing project has been vacant for the twelve consecutive months ending on June 1, 1976.

(b) In addition, this subchapter shall not apply to a housing accommodation owned by a cooperative association.

(c) The provisions of this subchapter shall not apply to any housing accommodation or building owned by the government of the District of Columbia. (Mar. 29, 1977, D.C. Law 1-89, title V, § 518, 23 DCR 9532b.)

TITLE 6.—HEALTH AND SAFETY

Chap.	Sec.
17. Programs for the Aging.....	6-1701
18. Firearms Control.....	6-1801
19. Latino Community Development.....	6-1901
20. Youth Services.....	6-2001
21. Child Abuse and Neglect.....	6-2101
22. Human Rights.....	6-2201

Chapter 1.—HEALTH DEPARTMENT— ORGANIZATION

§ 6-101. Director of Public Health—Appointment and duties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-104. Sanitary inspectors, appointment, qualifications—Removal of subordinates.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-106. Report by Director of Public Health.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-107. Clerks to Director of Public Health—Appointment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-114. Council authorized to make health regulations and alter, amend, or repeal certain legalized ordinances.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-117. Tuberculosis Sanatoria under direction of Health Department.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Rate schedule for Glenn Dale Hospital, see § 47-2215.
Volunteer services, see §§ 32-327 to 32-329.

§ 6-118. Council to promulgate regulations to prevent spread of diseases.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-119. "Communicable disease" defined.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-119b. Authority for detention—Expiration of order—Hearing—Minors.

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 6-119h. Penalties—Prosecutions—Imposition of conditions by court.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-119j-1. Immediate treatment of minor with venereal disease.

CROSS REFERENCE

Age of majority, see § 21-101 note.

Chapter 3.—VITAL STATISTICS

§ 6-301. Births to be reported—Details of report—Certain stillbirths not to be reported—Receipt of report to be acknowledged to parent—Name of child—Delayed registrations—Definitions.

(a) Any physician or midwife who attends at the birth of any child within the District of Columbia, and any person whosoever who, in the absence of a physician or midwife, performs any of the offices usually rendered by such shall execute or cause to be executed and shall file with the Director of Public Health of said District not later than the Saturday first ensuing after the expiration of three secular

days immediately following the date of such birth a proper report thereof, written in ink, on a blank furnished by said Director of Public Health, embodying all such data as may be necessary for the purposes of the Bureau of the Census of the Department of Commerce, and such other data, if any, as the Mayor of said District deems needful. So far as relates to any data aforesaid not based upon the personal observation of the physician, midwife, or other person by whom report is made, every such report shall show the name and address of the informant and the relationship of said informant to the child born: *Provided, however*, That if the child born be illegitimate it shall in no case be necessary for any physician, midwife, or other person to indicate on any report required by this chapter any fact or facts whereby the identity of the father or of the mother or of the child born will be disclosed: *And provided further*, That no report need be made of stillbirths when the fetus delivered has apparently not passed the fifth month of utero-gestation.

Upon receipt of any report aforesaid, the Director of Public Health shall forward to the parents of the child, or, if one parent's address is not known, to the parent whose address is known, an acknowledgement of the receipt of such report, and if the infant delivered be not stillborn, and such report does not contain the given name of the child born, a blank form on which the father or mother may certify over his or her signature the name of such child, which form, if thus executed and returned to said Director, shall be a part of the official record of such birth. In those cases in which no given name of a child has been certified to said Director, and a certificate cannot be executed by a parent because both parents are deceased, unknown, or physically or mentally incapacitated, the Director is authorized to accept and make a part of the official record of the birth of such child a certificate made in accordance with such rules and regulations as may be promulgated by the Council of the District of Columbia, which is hereby authorized to make rules and regulations governing the certification of the given name of a child where the birth record pertaining to such child does not include such given name.

* * * * *

(As amended Oct. 1, 1976, D.C. Law 1-87, § 10, 23 DCR 2544.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended the second paragraph of subsec. (a) by substituting "shall forward to the parents of the child, or, if one parent's address is not known, to the parent whose address is known," for "shall forward to the father of the child, or, if his address is unknown, to the mother,".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 6-303. Reports to be part of records—Records open to persons interested—Custodian of reports—Abstracts and analysis of data to be published annually.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 4.—DRAINAGE OF LOTS

Sec.

6-405. Repair, maintenance, and renewal by District of water service pipes and building sewers—Compensation to property owners for past repairs—Funds—Determination of eligibility—False claims—Regulations—Severability.

§ 6-401. Buildings to be connected with water mains and lots drained into public sewers.

SHORT TITLE AND PURPOSE OF D.C. LAW 1-98

The first section of act Mar. 29, 1977, D.C. Law 1-98, provided "That this act [enacting § 6-405 and provisions thereunder] may be cited as the 'Water and Sewer Repair and Compensation Act of 1976', the purpose of which is to provide that the District of Columbia shall be responsible for the repair and maintenance of water service pipes and building sewers connecting lots with water mains and the public sewer and shall compensate property owners for such prior repairs under certain circumstances."

CROSS REFERENCE

Drainage requirements for new subdivisions or developments to reduce flood hazards, see § 5-1102.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-402, 6-403, 6-405.

§ 6-402. Notice to connect with water mains and sewers to be given by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-404. Notice to nonresident—How given—Upon failure of owner, Commissioner to make such connections—Cost of connections by Commissioner's lien on property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 6-405. Repair, maintenance, and renewal by District of water service pipes and building sewers—Compensation to property owners for past repairs—Funds—Determination of eligibility—False claims—Regulations—Severability.

(a) For the purpose of this section certain words and terms are defined as follows:

"Parking" means that area of public space which lies between the property line and the edge of the actual or planned sidewalk which is nearer to such property line, as such property line and sidewalk are shown on the records of the Surveyor of the District of Columbia.

"Property" means real property.

"Property line" means the line beyond which a private property owner has no legal or vested property rights in any fronting or abutting public space or street; the line of demarcation between privately owned property and any public space or street as may be shown on the records of the Surveyor of the District of Columbia.

"Public Space" means all the publicly owned property between lines on a street, as such property lines are shown on the records of the Surveyor of the District of Columbia, and includes any roadway, tree space, sidewalk, or parking between such property lines.

"Street" means a public highway as shown on the records of the Surveyor of the District of Columbia whether designated as a street, alley, avenue, freeway, road, drive, lane, place, boulevard, parkway, circle, or by some other term.

(b) The Mayor of the District of Columbia is authorized to repair and maintain and, where necessary, to renew all water service pipes and building sewers from the water main or the public sewer to the property line of each lot in the District of Columbia required to be so connected by section 6-401 at the costs of such owner or owners and to perform all such repairs, as are necessary, to maintain or improve any roadway, alley, minor street, highway or other public space above such repaired or renewed water service pipes or building sewers. The Mayor, where he deems such action necessary, may also perform maintenance or repair work on private property, in which case, the cost, including overhead expense, shall be paid by the property owner. The cost of any repair or maintenance work on water service pipes or building sewers beyond the property line away from the house or structure, made necessary by the negligence or through the action of a property owner or tenant as reasonably determined by the Mayor, shall be charged to the property owner.

(c) The Mayor is further authorized and directed to compensate property owners for any and all expenses incurred at the direction of the District of Columbia for the direct repair of water service pipes or building sewers within the past three (3) years from March 29, 1977, *Provided That* such repairs at the time of their performances have met the requirements of subsection (b) of this section. Compensation shall be in the form of payment or the removal of a lien or assessment against such property by the District of Columbia only to owners who establish under the requirements of subsection (e) of this section proof of actual payment of repairs under a permit issued by the District of Columbia. All rights to compensation under the terms of this subsection shall terminate two (2) years from March 29, 1977.

(d) All prior year compensation payments authorized by subsection (c) of this section and all

work required to be done in the repair, maintenance or renewal of water service pipes and building sewers as authorized under subsection (b) of this section including surface repair work not within the right-of-way of streets or alleys shall be paid for from water and sewer rate revenue appropriated to the District of Columbia, except that all surface repair work to be done upon public space within the roadway, tree space or actual sidewalk right-of-way of any street shall be paid for out of highway revenues appropriated to the District of Columbia.

(e) Before compensation is granted, the Mayor shall determine whether the repair, made under a permit issued by the District of Columbia, would have been authorized under subsection (b) of this section, noting such other pertinent findings of fact as he deems necessary. If the Mayor determines that the repair work would have been eligible under subsection (b) of this section had it been in effect at the time of repair, he shall compensate any person, who was the property owner at the time the repairs were made, for the cost of such repairs, provided such owner can establish proof of payment for the cost of the repairs to the reasonable satisfaction of the Mayor up to the full value thereof for each separate occurrence.

(f) Any person who by means of false statement, or impersonation, or by other fraudulent device obtains or attempts to obtain or any person who knowingly aids or abets such person in obtaining or attempting to obtain (1) any award or payment of compensation under the provisions of this section to which he is not entitled, (2) a larger amount or greater relief in compensation than that to which he is entitled, shall be guilty of a misdemeanor and, shall be sentenced to pay a fine of not more than \$500.00 or imprisoned not to exceed one year, or both. Prosecutions under the provisions of this subsection shall be in the name of the District of Columbia by the Office of the Corporation Counsel.

(g) The Mayor is further authorized to prescribe rules and regulations governing the maintenance and repair of such water service pipes and building sewers by the District of Columbia and the compensation of property owners by the District of Columbia for eligible prior year repairs of water service pipes, building sewers and the roadway above such water service pipes and sewers.

(h) If any section, subsection, or provision of this chapter is held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the remaining sections, subsections, or provisions of this chapter. (May 19, 1896, ch. 206, § 5, as added Mar. 29, 1977, D.C. Law 1-98, § 2, 23 DCR 9532b.)

CODIFICATION

In subsec. (c), "March 29, 1977" has been substituted for "the enactment of this section".

EFFECTIVE DATE

Section 4 of act Mar. 29, 1977, D.C. Law 1-98, provided: "This act [enacting this section] shall take effect at the end of the 30 day period provided for Congressional review of acts of the Council in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SUPERSURE OF OTHER LAWS BY D.C. LAW 1-98

Section 3 of act Mar. 29, 1977, D.C. Law 1-98, provided: "To the extent that the provisions of this act [enacting

this section] are inconsistent with the provisions of any other Act or regulation the provisions of this act shall be deemed to supersede the provisions of such laws."

NOTES TO DECISIONS

Repairs at owner's expense

Rules and regulations regarding the repair of water pipes by residents of District do not violate equal protection and due process clauses of Constitution, in absence of showing of invidious discrimination by District in favor of some citizens at the expense of others; action taken by District in repairing pipes of certain property owners who were either unable or unwilling to do so was within proper scope of its police power. *District of Columbia, etc. v. North Washington Neighbors, Inc., et al.* (D.C. App. 1976, 367A.2d 143; cert. denied 98 S.Ct. 68, —U.S.—).

Provision of section 5-313 governing property owner's failure to correct conditions violative of law, read in conjunction with regulation governing repair of water pipes and provisions of plumbing code, confers on District authority to order property owners to repair leaking water pipes and enforce such authority by fine or by termination of property owner's water service, or, in the discretion of the Mayor and his representatives, to repair pipes and assess costs of such repair against property served; requiring property owner to bear costs of excavation, refilling of excavation, and resurfacing of streets is reasonable because such costs are incidental to cost of repairing pipes. *Id.*

Evidence in action brought against District was insufficient to sustain finding that acts or omissions of District with respect to construction of city streets and water pipes proximately caused damage to property owners' water pipes. *Id.*

Property owners who are financially able to repair broken water service pipes connecting District's main water pipe with their private plumbing systems have an adequate remedy against district in seeking money damages; hence preliminary injunction requiring the District to repair or replace the pipes was improvidently issued. *District of Columbia et al. v. North Washington Neighbors, Inc., et al.* (D.C. App. 1975, 336 A. 2d 828).

Chapter 5.—GARBAGE

§ 6-501. Regulations for the collection and disposal of garbage to be made by Council—penalties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Discrimination in services provided

In claim that District of Columbia had discriminated in provision of municipal services, evidence failed to show a significant difference in level of refuse collection services accorded to various areas of city. *M. Burner et al. v. W. E. Washington et al.* (1975, 399 F. Supp. 44).

Solid waste disposal

As the business of disposing of solid waste is not a business or calling otherwise listed in licensing statutes, the District of Columbia may fix a license fee for the disposal of such wastes in such amount as will be commensurate with the cost to the District of regulating the disposal of such wastes, but any fee would be illegal to the extent that the revenue therefrom exceeded applicable costs. *Metropolitan D.C. Refuse Haulers Association et al. v. W. E. Washington, Commissioner, et al.* (1973, 479 F. 2d 1191, 156 U.S. App. D.C. 208; aff'g 360 F. Supp. 281).

Where licenses issued for collection and transportation of solid wastes in or through the District of Columbia did not cover disposal of solid wastes in the District, separate disposal fee of \$5 per ton was a "license fee" authorized by statute, to the extent that the revenue therefrom was commensurate with the costs of supervision and regulation. *Id.*

§ 6-502. Commissioner may contract for collection and disposal of garbage and refuse.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-503. Disposition by feeding to live stock.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-504. Collection and disposal of refuse a municipal function—Facilities to be purchased or leased—Sale of products—Employees to accept no gratuities—Penalty.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Solid waste disposal

As the business of disposing of solid waste is not a business or calling otherwise listed in licensing statutes, the District of Columbia may fix a license fee for the disposal of such wastes in such amount as will be commensurate with the cost to the District of regulating the disposal of such wastes, but any fee would be illegal to the extent that the revenue therefrom exceeded applicable costs. *Metropolitan D.C. Refuse Haulers Association et al. v. W. E. Washington, Commissioner, et al.* (1973, 479 F. 2d 1191, 156 U.S. App. D.C. 208; aff'g 360 F. Supp. 281).

Where licenses issued for collection and transportation of solid wastes in or through the District of Columbia did not cover disposal of solid wastes in the District, separate disposal fee of \$5 per ton was a "license fee" authorized by statute, to the extent that the revenue therefrom was commensurate with the costs of supervision and regulation. *Id.*

§ 6-505. Incinerators for combustible refuse—Condemnation of site authorized—Alleys, highways.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-506. Construction of incinerator authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-507. Commissioner to fix time when plant shall begin to function—Other methods of disposal prohibited—Sale of salvageable material—Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-508. Penalties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-509. Machinery and personnel authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-510. Appropriation authorized—Abandonment of leased plant.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-511. Use of incinerator by certain Maryland and Virginia municipalities authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 6.—MANUFACTURE, RENOVATION, AND SALE OF MATTRESSES

§ 6-601. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-603. Tag requirements.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-606. Administration by Director of Public Health—Commissioner to make regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 7.—PRIVIES

§ 6-703. Regulation of construction and maintenance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-704. Penalty for violation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 8.—AIR POLLUTION CONTROL

§ 6-811. Declaration of purpose.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-812. Emission and air quality standards established by the District of Columbia Council.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Citizen suit

Nonprofit corporation with 430 members residing and working in District of Columbia, which is directed to preservation and enhancement of environmental values and enforcement of laws relating to environmental protection, has standing to bring citizen suit under Clean Air Act for enforcement of District of Columbia visible emissions regulation; and organization members who reside and/or work in District of Columbia also have standing. *Friends of the Earth et al. v. Potomac Electric Power Company* (1976, 419 F. Supp. 528).

Regulations

District of Columbia regulation wholly prohibiting visible emissions is enforceable, notwithstanding fact that Environmental Protection Agency had disapproved as too stringent and impracticable a proposed amended regulation allowing visible emissions for certain periods under abnormal operating conditions. *Friends of the Earth et al. v. Potomac Electric Power Company* (1976, 419 F. Supp. 528).

Solid waste disposal

As the business of disposing of solid waste is not a business or calling otherwise listed in licensing statutes, the District of Columbia may fix a license fee for the disposal of such wastes in such amount as will be commensurate with the cost to the District of regulating the disposal of such wastes, but any fee would be illegal to the extent that the revenue therefrom exceeded applicable costs. *Metropolitan D.C. Refuse Haulers Association et al. v. W. E. Washington, Commissioner, et al.* (1973, 479 F.2d 1191, 156 U.S. App. D.C. 208; aff'g 360 F. Supp. 281).

Where licenses issued for collection and transportation of solid wastes in or through the District of Columbia did not cover disposal of solid wastes in the District, sepa-

rate disposal fee of \$5 per ton was a "license fee" authorized by statute, to the extent that the revenue therefrom was commensurate with the costs of supervision and regulation. *Id.*

Violations—Defenses

Alleged technological and economic infeasibility of absolute prohibition on visible emissions contained in District of Columbia regulation does not constitute defense charge of violation of regulation. *Friends of the Earth et al. v. Potomac Electric Power Company* (1976, 419 F. Supp. 528).

§ 6-813. Air pollution control program for the District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Injunctions

In action to prevent completion of two buildings at a waterfront area of District of Columbia, evidence failed to establish that defendant corporations were in violation of an emission standard or limitation as defined by Clean Air Act, that buildings were in violation of District's regulations applicable to "stationary sources" of pollutants or that defendants' developments would cause national ambient air quality standards to be exceeded in 1977. *Citizens Association of Georgetown et al. v. W. E. Washington, Commissioner etc., et al.* (1974, 383 F. Supp. 136, rev'd in part 535 F. 2d 1318, 175 U.S. App. D.C. 356).

In absence of a threat of immediate injury from construction of buildings in Georgetown waterfront area of Washington, D.C., in view of unlikelihood that the developments would violate national air quality standards, and in light of intervening determination by Environmental Protection Agency that preconstruction review procedures relevant to the facilities would not be applied retroactively to dates when construction commenced, preliminary injunction would not be issued against construction of the projects. *Citizens Association of Georgetown et al. v. W. E. Washington, Commissioner etc., et al.* (1974, 370 F.Supp. 1101).

Review

Controversy over refusal of mayor-commissioner and his designated agents to grant petitioners' request to take immediate steps to correct by appropriate action an alleged air pollution emergency in District of Columbia was not a "contested case" within purview of the D.C. Administrative Procedure Act granting limited judicial review to District of Columbia Court of Appeals in respect to orders or decisions of a District of Columbia agency made "after a hearing before the Commissioner or the Council or before an agency" in a "contested case." *Environmental Defense Fund, Inc., et al. v. Mayor-Commissioner of the District of Columbia et al.* (D.C. App. 1974, 317 A.2d 515).

Chapter 9.—WEEDS AND PLANT DISEASES

Sec.

6-902. Removal of weeds by Mayor.

§ 6-902. Removal of weeds by Mayor.

Whenever there are upon any unoccupied land aforesaid weeds of four or more inches in height, and no person can be found in the District of Columbia who either is or claims to be the owner thereof, or who either represents or claims to represent such owner as aforesaid, the Mayor of the District of Columbia shall give notice, by publication twice a week in one daily newspaper published in the city of Washington aforesaid, requiring their removal. Said

notice shall specify the land from which such weeds are to be removed, the character of the work to be done, and the time allowed for doing the same; and if such weeds be not removed within the time so specified it shall be the duty of said Mayor to cause their removal; and double the cost of such removal, including the cost of advertising, shall be a lien upon and shall be assessed by said Mayor as a tax against the property on which said weeds were located, and the said tax so assessed shall bear interest at the rate of twenty per centum per annum till paid, and shall be carried on the regular tax rolls of said District and be collected in the manner provided for the collection of general taxes. (Mar. 1, 1899, 30 Stat. 959, ch. 326, § 2; Apr. 23, 1977, D.C. Law 1-128, § 2, 23 DCR 9692.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1977—Act. Apr. 23, 1977, D.C. Law 1-128, amended section by inserting "double" immediately before "the cost of such removal" and by substituting "twenty" for "ten".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 5 of act Apr. 23, 1977, D.C. Law 1-128, set out as a note under § 5-504.

Chapter 10.—BLACK-OUTS IN WAR TIME

§ 6-1001. Commissioner authorized to order black-outs—Regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1002. Cooperation with Maryland and Virginia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1003. Secretary of the Army to assist and cooperate.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1006. Appointment of special police during war.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1007. Volunteer services for government of District during war.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Acceptance of volunteer services, generally, see §§ 1-215a et seq.

§ 6-1008. Evacuation from District during war.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1009. Establishment of organizations for civilian defense—Use of District of Columbia employees—Right of eminent domain—Funds for supplies and personnel—Hospitalization—Use of private property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1010. Penalties for violation of chapter.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1013. Extent of power and duties of Commissioner and Council.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1014. Limitation on expenditures.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1015. Services to veterans and war workers.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 11.—FEDERAL GOVERNMENT RESTAURANTS

§ 6-1101. Health regulations applicable to federal government restaurants—Exceptions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 12.—OFFICE OF CIVIL DEFENSE

§ 6-1202. Office of civil defense authorized—Director and other personnel—Compensation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TRANSFER OF FUNCTIONS

Organization Order No. 51 of the Commissioner of the District of Columbia, dated Dec. 27, 1974, established in the Executive Office of the Commissioner, a new Office of Civil Defense, headed by a Director, and prescribed the purposes and functions thereof. The Order replaced and rescinded Commissioner's Order [Organization Action] No. 71-259, dated July 26, 1971, as amended by C.O. No. 73-156, July 5, 1973. The name of the Office of Civil Defense was changed to The Office of Emergency Preparedness by Mayor's Order No. 76-49, Jan. 23, 1976.

Organization Order No. 51 is set out in the appendix to title 1, Administration.

§ 6-1202a. Appointment of member of Metropolitan Police Department or member of Fire Department to position in office performing functions of Office of Civil Defense.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1203. Powers and duties.

The Office of Civil Defense is authorized and directed, subject to the direction and control of the Mayor of the District—

* * * *

(b) to institute training programs and public information programs; to organize, equip, and train civil defense units, and to utilize regularly employed personnel of the government of the District of Columbia for service in and within such civil defense units and to train such personnel for such service; to expand existing agencies of the District government concerned with civil defense; and to take all other preparatory steps including the partial or full mobilization of civil defense organizations in advance of actual disaster;

* * * *

(h) to utilize the services, equipment, supplies, and facilities of existing departments, offices, and

agencies of the District to the maximum extent practicable, and the officers and personnel of all such departments, offices, and agencies are directed to cooperate with and extend such services and supply such equipment, supplies, and facilities to the said Director upon request, and, when authorized by the Mayor, appropriations available to the District of Columbia may be used to match financial contributions made by any department or agency of the United States to the government of the District for the purchase of civil defense equipment and supplies;

(As amended Oct. 26, 1973, Pub. L. 93-140, § 17, 87 Stat. 507; June 28, 1977, D.C. Law 2-12, § 6(c), 24 DCR 1442.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1977—Act June 28, 1977, D.C. Law 2-12, amended par. (b) by striking "volunteers and other" immediately following "to organize, equip, and train" and by striking "volunteers and" immediately following "to utilize".

1973—Act Oct. 26, 1973, amended subsec. (h) by striking out the semicolon after "request" and by inserting in lieu thereof a comma and the following: "and, when authorized by the Commissioner, appropriations available to the District of Columbia may be used to match financial contributions made by any department or agency of the United States to the government of the District for the purchase of civil defense equipment and supplies;".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 9 of act June 28, 1977, D.C. Law 2-12, set out as a note under § 1-215a.

APPROPRIATIONS

See note under § 1-226a.

CROSS REFERENCE

Acceptance of volunteer services, see §§ 1-215a et seq.

§ 6-1206. Yearly report of activities and expenditures.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1207. Interstate civil defense compacts.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 13.—CANCER AND MALIGNANT NEOPLASTIC DISEASES

§ 6-1301. Council authorized to promulgate regulations requiring reports.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1304. Penalties for violations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 15.—RIGHTS OF BLIND AND PHYSICALLY DISABLED PERSONS

§ 6-1502. Equal access to public accommodations and conveyances.

CROSS REFERENCE

Federal contribution to make subway and rapid rail transit system accessible to handicapped persons, see § 1-1442a.

§ 6-1507. White Cane Safety Day.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 16.—INTERSTATE COMPACT ON MENTAL HEALTH

§ 6-1601. Authority to enter into compact.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Public medical assistance—Adequacy of facilities

Before trial court exercises any authority it may have to order 14-year-old involuntarily committed orphan treated at public expense outside the District of Columbia, on ground that no suitable facilities are available within the District, the District is entitled to reasonable time to attempt to design a program for alternate local care and court is also to consider the public's as well as the patient's interest; public interest requires that a request for commitment of an extraordinary amount of public funds for treatment of a single patient be given closest administrative and judicial scrutiny. *District of Columbia v. In the Matter of H. J. B.* (D.C. App. 1976, 359 A. 2d 285).

—Residence

Section 21-551 providing that a person committed to a public hospital but found not to be a resident of the District of Columbia is to be transferred to his state of residence if an appropriate institution in that state is willing to accept him may not be used to bar claim of a newly-arrived resident for medical public assistance since to do so would be unjustifiably discriminatory in violation of Fifth Amendment right to due process; also, resort to section 32-405 providing that all indigent insane persons residing in the District at the time they become insane are entitled to benefits of St. Elizabeths Hospital would also be invalid for such reason. *District of Columbia v. In the Matter of H. J. B.* (D.C. App. 1976, 359 A. 2d 285).

In view of fact that custodian of mentally retarded orphan, who was brought to the United States for purpose of adoption, was a District of Columbia corporation, the orphan acquired a colorable claim to District of Columbia "residence" for purpose of medical treatment at public

expense once she was placed directly in custody of officials operating from corporation's District of Columbia office absent evidence that transfer from New York office was intended as anything less than an indefinite arrangement for her care or some residue of permanent attachment to another jurisdiction, the District is liable for her care. *Id.*

§ 6-1602. Compact administrator — Designation — Authority—Cooperation with government agencies.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1604. Payments.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1606. Distribution of copies of law.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 17.—PROGRAMS FOR THE AGING

SUBCHAPTER I.—GENERAL PROVISIONS

Sec.

- 6-1701. Purpose.
- 6-1702. Definitions.

SUBCHAPTER II.—OFFICE ON AGING

- 6-1711. Establishment of Office.
- 6-1712. Executive Director—Staffing of Office.
- 6-1713. Functions of Executive Director.
- 6-1714. Impact statements.
- 6-1715. Standards for grant and contract awards.
- 6-1716. Transfer of funds and positions.

SUBCHAPTER III.—COMMISSION ON AGING

- 6-1721. Establishment of Commission.
- 6-1722. Membership.
- 6-1723. Qualifications for membership.
- 6-1724. Terms of office.
- 6-1725. Filling vacancies.
- 6-1726. Rules of procedure.
- 6-1727. Selection of chairperson.
- 6-1728. Compensation.
- 6-1729. Staff assistance.
- 6-1730. Functions.

SUBCHAPTER I.—GENERAL PROVISIONS

§ 6-1701. Purpose.

It is the intent of the Council of the District of Columbia that the District government shall insure a full range of health, education, employment, and social services shall be available to the aged in the District of Columbia, and the planning and operation of such programs will be undertaken as a partnership of older citizens, families, community leaders, private agencies, and the District of Columbia

government. (Oct. 29, 1975, D.C. Law 1-24, title I, § 101, 22 DCR 2456.)

EFFECTIVE DATE

Section 501 of act Oct. 29, 1975, D.C. Law 1-24, title V, provided: "This act [enacting this chapter] shall be effective immediately at the end of the thirty day period (excluding Saturdays, Sundays, holidays, and days on which either House of Congress is not in session) beginning on the date this act is submitted to the Congress, as provided in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLES

The first section of act Sept. 14, 1976, D.C. Law 1-83, provided "That this act [amending §§ 6-1713 and 6-1730] may be cited as the 'District of Columbia Aging Act Amendments'."

The first section of act Oct. 29, 1975, D.C. Law 1-24, provided "That this act [enacting this chapter] may be cited as 'the District of Columbia Act on the Aging'."

ABOLISHMENT OF ADVISORY COMMITTEE ON AGING

Section 411 of act Oct. 29, 1975, D.C. Law 1-24, title IV, provided: "The District of Columbia Advisory Committee on Aging, established by Organization Order No. 20, dated May 12, 1969, as amended by Order No. 75-67, is hereby abolished."

§ 6-1702. Definitions.

(a) "Office" means the Office on Aging created by section 6-1711.

(b) "Director" means the Executive Director of the Office on Aging.

(c) "Commission" means the Commission on the Aging created by section 6-1721.

(d) "Aged" means a person 60 years of age or older.

(e) "Services to the aged" means those services designed to provide assistance to the aged, including nutritional programs, transportation and legal services, health and financial assistance, employment and housing programs, recreational opportunities, and information, referral, and counseling services. (Oct. 29, 1975, D.C. Law 1-24, title II, § 201, 22 DCR 2456.)

SUBCHAPTER II.—OFFICE ON AGING

§ 6-1711. Establishment of Office.

There is established within the Executive Office of the Mayor of the District of Columbia an Office on Aging. The Office shall provide within the District government a single administrative unit, responsible to the Mayor, to administer the provisions of the Older Americans Act (P.L. 89-73, as amended) [42 U.S.C. 3001 et seq.], such other programs as shall be delegated to it by the Mayor or the Council of the District of Columbia, and to promote the welfare of the aged. (Oct. 29, 1975, D.C. Law 1-24, title III, § 301, 22 DCR 2457.)

EFFECTIVE DATE

See note under § 6-1701.

CROSS REFERENCE

Review and report on activities of Office on Aging by Commission on Aging, see § 6-1730.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-1702, 6-1716.

§ 6-1712. Executive Director—Staffing of Office.

The Office shall be headed by an Executive Director, who shall be appointed by the Mayor with the

advice and consent of the Council of the District of Columbia, from a list of not more than three names submitted to him by the Commission. The Director shall devote his full time to the duties of his office. His annual compensation shall be fixed in accordance with chapter 51 of Title 5, U.S. Code (relating to the classification of government employees and related matters), but shall be not less than a GS-15, step one. He shall have such staff as is approved in the current District government budget and Federal grants, plus any temporary staff approved by the Office of Budget and Management Systems. (Oct. 29, 1975, D.C. Law 1-24, title III, § 302, 22 DCR 2457.)

REFERENCE IN TEXT

"GS-15, step one", referred to in the text, is contained in the General Schedule which is set out under section 5332 of title 5, United States Code.

CROSS REFERENCE

Commission on Aging to submit list of persons recommended for appointment to position of Director of Office on Aging, see § 6-1730.

§ 6-1713. Functions of Executive Director.

In order to carry out the purpose of this chapter, the Director shall:

1. Serve as an advocate for the aged in the District of Columbia.
2. Contract with, and make grants to, public and private agencies using Older Americans Act funds, other Federal funds received by the Office, and District government appropriated funds.
3. Provide information and technical assistance with respect to programs and services for the aged to the Mayor, the Commission on Aging, the Council of the District of Columbia, other District government agencies and departments, and the community. This shall include, when necessary, contracting for consultant assistance outside the District government.
4. Consider the advice and recommendations of the Commission in carrying out his responsibilities under this chapter.
5. File an annual report on the operation of the Office and an analysis of the needs of the aged with the Mayor and the Council of the District of Columbia, and make it available to the public.
6. Publish a directory of services available to the aged through the District government and including, to the maximum extent possible, sources of non-public assistance and programs for the aged in the District of Columbia. The directory shall be revised at least every two years.
7. Identify areas of need for service or improvement of service and bring them to the attention of the Mayor and Commission, with suggestions for meeting such needs, including conducting or funding research and demonstration projects to test such suggestions.
8. Carry responsibility for assuring necessary control, evaluation, audit, and reporting on programs funded through the office.
9. Prepare in timely fashion the state plan required under the Older Americans Act [42 U.S.C. 3001 et seq.] and forward it to the Commission for comment and Mayor for approval.
10. Develop, with the advice of the Commission, a five-year plan of policies, programs, services and ac-

tivities to benefit aged residents of the District of Columbia. Such plan shall be reviewed and up-dated annually.

11. Review and comment on proposed District and Federal legislation, regulations, policies, and programs and make policy recommendations on issues affecting the health, safety, and welfare of the aged. (Oct. 29, 1975, D.C. Law 1-24, title III, § 303, 22 DCR 2457; Sept. 14, 1976, D.C. Law 1-83, § 2, 23 DCR 2462.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-83, amended section by inserting in par. 5 "and an analysis of the needs of the aged" after "Office"; by inserting in par. 9 "for comment" after "Commission"; and by adding par. 11.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 4 of act Sept. 14, 1976, D.C. Law 1-83, provided: "This act [amending this section and § 6-1730] shall be effective immediately at the end of the thirty-day period (excluding Saturdays, Sundays, holidays, and days on which either House of Congress is not in session) beginning on the date this act is submitted to the Congress, as provided in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-1729.

§ 6-1714. Impact statements.

All heads of departments and agencies of the District government are required at least 30 days prior to implementation of any proposed policies or programs that will have a major impact on the aged to submit such proposals to the Director for comment. If the impact of the proposal is determined by the Director to be adverse, he shall file a statement of this finding with the Mayor, the Commission, and the Council of the District of Columbia, as well as the originating department or agency. (Oct. 29, 1975, D.C. Law 1-24, title III, § 304, 22 DCR 2459.)

§ 6-1715. Standards for grant and contract awards.

After consultation with the Commission on Aging established by section 6-1721, the Director shall develop and publish the standards that the Office will use in making decisions on the award of grants and contracts. (Oct. 29, 1975, D.C. Law 1-24, title III, § 305, 22 DCR 2459.)

§ 6-1716. Transfer of funds and positions.

The Division of Services to the Aging presently located within the Department of Human Resources, and all positions and unexpended funds presently allocated to this Division are hereby transferred to the new office created under section 6-1711. (Oct. 29, 1975, D.C. Law 1-24, title III, § 306, 22 DCR 2459.)

SUBCHAPTER III.—COMMISSION ON AGING

§ 6-1721. Establishment of Commission.

There is hereby established in the Executive Office of the Mayor of the District of Columbia a Commission on Aging to advise the Mayor, the Director of the Office on Aging, the Council of the District of Columbia, and the public concerning the views and needs of the aged in the District of Columbia. (Oct. 29, 1975, D.C. Law 1-24, title IV, § 401, 22 DCR 2460.)

EFFECTIVE DATE

See note under § 6-1701.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-1702, 6-1715.

§ 6-1722. Membership.

The Commission shall consist of fifteen public (voting) members appointed by the Mayor, with the advice and consent of the Council of the District of Columbia. At least one-half of the membership of the Commission shall consist of actual consumers of services under this program, including low income, and minority older persons, at least in proportion to the number of minority older persons in the District of Columbia. There shall also be the following ex-officio members: The Directors of the Department of Human Resources, the Office of Housing and Community Development, the Department of Recreation, the Department of Highways and Traffic, the Office of Manpower Administration, the Public Library; the Chief of the Metropolitan Police Department (or the Director or chief of such successor agencies), and a member of the Council of the District of Columbia. (Oct. 29, 1975, D.C. Law 1-24, title IV, § 402, 22 DCR 2460.)

§ 6-1723. Qualifications for membership.

Members shall be appointed with due consideration for fair geographical distribution, representation from organizations of older persons, public and voluntary agencies concerned with the aged, and members of the general public who have given evidence of particular dedication to and understanding of the needs of the aged. At least eight members shall be 60 years of age or over, and all must be residents of the District of Columbia. (Oct. 29, 1975, D.C. Law 1-24, title IV, § 403, 22 DCR 2460.)

§ 6-1724. Terms of office.

Members of the Commission shall serve terms of three years except, that, of the initial membership, five shall be appointed for a term of three years, five for a term of two years, and five for one year. Members may be reappointed but may serve no more than two consecutive terms. Terms shall regularly begin on the anniversary of the effective date of this chapter [October 29, 1975]. (Oct. 29, 1975, D.C. Law 1-24, title IV, § 404, 22 DCR 2461.)

§ 6-1725. Filling vacancies.

When a vacancy develops on the Commission, the Mayor with the advice and consent of the Council of the District of Columbia may appoint a successor to fill the unexpired portion of the term. No member may continue to serve beyond the expiration date of his term. If within 30 calendar days of development of a vacancy on the Commission the Mayor fails to transmit to the Council of the District of Columbia a nomination for that vacancy, the Council of the District of Columbia may make the appointment. If within 60 calendar days of submission of a nomination for the Commission the Council of the District of Columbia fails to act, the nomination shall be deemed confirmed. (Oct. 29, 1975, D.C. Law 1-24, title IV, § 405, 22 DCR 2461.)

§ 6-1726. Rules of procedure.

The Commission shall develop its own rules of procedure, except they shall provide, the Commis-

sion shall meet at least every other month. (Oct. 29, 1975, D.C. Law 1-24, title IV, § 406, 22 DCR 2461.)

§ 6-1727. Selection of chairperson.

The Commission shall select its own Chairperson, by vote. (Oct. 29, 1975, D.C. Law 1-24, title IV, § 407, 22 DCR 2461.)

§ 6-1728. Compensation.

All members shall serve without compensation, but expenses incurred by the Commission as a whole, or by its individual members, when duly authorized, will become an obligation against appropriate District government and Federal funds designated for that purpose. (Oct. 29, 1975, D.C. Law 1-24, title IV, § 408, 22 DCR 2462.)

§ 6-1729. Staff assistance.

Necessary staff services shall be supplied in accordance with positions and funding approved in the current District government budget. In addition, the Director of the Office on Aging shall provide information and technical assistance as required under section 6-1713. (Oct. 29, 1975, D.C. Law 1-24, title IV, § 409, 22 DCR 2462.)

§ 6-1730. Functions.

The Commission on Aging shall:

A. Serve as an advocate for older persons in the District of Columbia.

B. Review and submit to the Mayor, the Council of the District of Columbia, and the Office of Aging, an annual report including comments on the analysis of the needs of the aged in the District of Columbia made in the report of the Director.

C. Advise the Director on cooperation with Federal, state, and private agencies concerned with activities pertaining to the aged.

D. Review and comment on the annual state plan required under the Older Americans Act [42 U.S.C. 3001 et seq.] The statement of the Commission shall be transmitted to the Department of Health, Education and Welfare with the plan.

E. Develop a list of not more than three persons the Commission recommends for the position of Director of the Office on Aging, whenever that position is vacant, and submit that list to the Mayor.

F. Conduct or participate in public hearings and other forums to determine views of older persons and other members of the public on matters affecting the health, safety and welfare of the aged in the District of Columbia.

G. Bring to the attention of the Mayor and the Office on Aging cases of neglect and abuse of the aged and incidents of bias against the aged in the administration of the laws of the District of Columbia.

H. Review and comment on the Director's review of proposed District and Federal legislation, regulations, policies and programs, and comment on the Director's policy recommendations on issues affecting the health, safety, and welfare of the aged.

I. Provide a continuing review of the activities of the Office on Aging and issue reports thereon at least annually.

(Oct. 29, 1975, D.C. Law 1-24, title IV, § 410, 22 DCR 2462; Sept. 14, 1976, D.C. Law 1-83, § 3, 23 DCR 2462.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-83, amended pars. B, C, D, and H generally.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 4 of act Sept. 14, 1976, D.C. Law 1-83, set out as a note under § 6-1713.

Chapter 18.—FIREARMS CONTROL

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SUBCHAPTER I.—GENERAL PROVISIONS

§ 6-1801. Findings and purpose.

The Council of the District of Columbia finds that in order to promote the health, safety and welfare of the people of the District of Columbia it is necessary to:

(1) Require the registration of all firearms that are owned by private citizens;

(2) Limit the types of weapons persons may lawfully possess;

(3) Assure that only qualified persons are allowed to possess firearms;

(4) Regulate deadly weapons dealers; and

(5) Make it more difficult for firearms, destructive devices, and ammunition to move in illicit commerce within the District of Columbia. (Sept. 24, 1976, D.C. Law 1-85, § 2, 23 DCR 2464.)

SHORT TITLE

The first section of act Sept. 24, 1976, D.C. Law 1-85, provided "That this act [enacting this chapter] may be cited as the 'Firearms Control Regulations Act of 1975'."

EFFECTIVE DATE

Section 712 of act Sept. 24, 1976, D.C. Law 1-85, title VII, provided: "This act [enacting this chapter] shall take effect pursuant to the provisions of section 602(c) (1) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c) (1)]."

REPEAL OF POLICE REGULATIONS BY D.C. LAW 1-85

Section 708 of act Sept. 24, 1976, D.C. Law 1-85, title VII, provided:

"(a) District of Columbia Regulations Nos. 68-15 and 69-7 (Articles 50 to 55 inclusive of the Police Regulations of the District of Columbia) are hereby repealed.

"(b) Regulation 74-33 approved December 1, 1974, (relating to bounty payments for the turning in of firearms) is repealed.

"(c) Article 9 of the Police Regulations of the District of Columbia is repealed to the extent such article is in conflict with the provisions of this act."

§ 6-1802. Definitions.

As used in this chapter the term—

(1) "Acts of Congress" means (A) chapter 32 of title 22; (B) Omnibus Crime Control and Safe Streets Act of 1968, as amended (Title VII, Unlawful Possession or Receipt of Firearms (82 Stat. 236; 18 U.S.C. Appendix)); and (c) an Act to Amend Title 18, United States Code, to Provide for Better Control of the Interstate Traffic in firearms Act of 1968 (82 Stat. 1213; 18 U.S.C. 921, et seq.).

(2) "Ammunition" means cartridge cases, shells, projectiles (including shot), primers, bullets, propellant powder, or other devices or materials designed, redesigned, or intended for use in a firearm or destructive device.

(3) "Antique firearm" means—

(A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and

(B) any replica of any firearm described in subparagraph (1) if such replica—

(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(ii) uses rimfire or conventional ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(4) "Chief" means the Chief of Police of the Metropolitan Police Department of the District of Columbia or his designated agent.

(5) "Crime of Violence" means a crime of violence as defined in section 22-3201, committed in any jurisdiction, but does not include larceny or attempted larceny.

(6) "Dealer's license" means a license to buy or sell, repair, trade, or otherwise deal in firearms, destructive devices, or ammunition as provided for in subchapter IV of this chapter.

(7) "Destructive device" means—

(A) an explosive, incendiary, or poison gas bomb, grenade, rocket, missile, mine, or similar device;

(B) any device by whatever name known which will, or is designed or redesigned, or may be readily converted or restored to expel a projectile by the action of an explosive or other propellant through a smooth bore barrel, except a shotgun.¹

(C) any device containing tear gas or a chemically similar lacrimator or sternutator by whatever name known;

(D) any device designed or redesigned, made or remade, or readily converted or restored, and intended to stun or disable a person by means of electric shock;

(E) any combination of parts designed or intended for use in converting any device into any destructive device; or from which a destructive device may be readily assembled:

Provided, That the term shall not include—

(i) any pneumatic, spring, or B-B gun which expels a single projectile not exceeding .18 inch in diameter;

(ii) any device which is neither designed nor redesigned for use as a weapon;

(iii) any device originally a weapon which has been redesigned for use as a signaling, line throwing, or safety device; or,

(iv) any device which the Chief finds is not likely to be used as a weapon.

(8) "District" means District of Columbia.

(9) "Firearm" means any weapon which will, or is designed or redesigned, made or remade, readily converted or restored, and intended to, expel a projectile or projectiles by the action of an explosive; the frame or receiver of any such device; or any firearm muffler or silence:² *Provided*, That such term shall not include—

(A) antique firearms; and/or

(B) destructive devices;

(C) any device used exclusively for line throwing, signaling, or safety, and required or recom-

mended by the Coast Guard or Interstate Commerce Commission; or

(D) any device used exclusively for firing explosive rivets, stud cartridges, or similar industrial ammunition and incapable for use as a weapon.

(10) "Machine gun" means any firearm which shoots, is designed to shoot, or can be readily converted or restored to shoot:

(A) automatically, more than one shot by a single function of the trigger;

(B) semiautomatically, more than twelve shots without manual reloading.

(11) "Organization" means any partnership, company, corporation, or other business entity, or any group or association of two or more persons united for a common purpose.

(12) "Pistol" means any firearm originally designed to be fired by use of a single hand.

(13) "Registration certificate" means a certificate validly issued pursuant to this chapter evincing the registration of a firearm pursuant to this chapter.

(14) "Rifle" means a grooved bore firearm using a fixed metallic cartridge with a single projectile and designed or redesigned, made or remade, and intended to be fired from the shoulder.

(15) "Sawed-off shotgun" means a shotgun having a barrel of less than 18 inches in length; or a firearm made from a shotgun if such firearm as modified has an overall length of less than 26 inches or any barrel of less than 18 inches in length.

(16) "Shotgun" means a smooth bore firearm using a fixed shotgun shell with either a number of ball shot or a single projectile, and designed or redesigned, made or remade, and intended to be fired from the shoulder.

(17) "Short barreled rifle" means a rifle having any barrel less than 16 inches in length, or a firearm made from a rifle if such firearm as modified has an overall length of less than 26 inches or any barrel of less than 16 inches.

(18) "Weapons offense" means any violation in any jurisdiction of any law which involves the sale, purchase, transfer in any manner, receipt, acquisition, possession, having under control, use, repair, manufacture, carrying, or transportation of any firearm, ammunition, or destructive device. (Sept. 24, 1976, D.C. Law 1-85, title I, § 101, 23 DCR 2464.)

REFERENCE IN TEXT

An Act to Amend Title 18, United States Code, to Provide for Better Control of the Interstate Traffic in firearms Act of 1968, referred to in par. (1), is the Gun Control Act of 1968, Pub. L. 90-618, Oct. 22, 1968. For complete classification of this Act to the United States Code, see Short Title note set out under section 921 of Title 18, United States Code, and the Tables volume of the United States Code.

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of section, see sec. 2(a), (b) of the Emergency Firearms Control Regulations Act Technical Amendments Act of 1977 (D.C. Act 2-72, Aug. 11, 1977, 24 DCR 1778) and sec. 2(a) of the Second Emergency Firearms Control Regulations Act Technical Amendments Act of 1977 (D.C. Act 2-105, Nov. 23, 1977, 24 DCR 4713).

¹ So in original. Probably should be a semicolon.

² So in original. Probably should be "silencer".

SUBCHAPTER II.—FIREARMS AND DESTRUCTIVE DEVICES

§ 6-1811. Registration requirements.

(a) Except as otherwise provided in this chapter, no person or organization shall within the District receive, possess, have under his control, transfer, offer for sale, sell, give, or deliver any destructive device, and no person or organization shall, within the District possess or have under his or its control any firearm, unless such person or organization is the holder of a valid registration certificate for such firearm. In the case of an organization, a registration certificate shall be issued (1) only to an organization which has in its employ one or more commissioned special police officers or other employees licensed to carry firearms, and which arms such employees with firearms during such employees duty hours and (2) only to such organization in its own name and in the name of its president or the chief executive.

(b) Subsection (a) shall not apply to—

(1) Any law enforcement officer or agent of the District or the United States, or any law enforcement officer or agent of the government of any State or subdivision thereof, or any member of the Armed Forces of the United States, the National Guard or Organized Reserves, when such officer, agent, or member is authorized to possess such a firearm or device while on duty in the performance of official authorized functions.

(2) Any person holding a dealer's license; *Provided*, That the firearm or destructive device is—

(A) acquired by such person in the normal conduct of business;

(B) is kept at the place described in the dealer's license; and

(C) is not kept for such person's private use or protection, or for the protection of his business.

(3) With respect to firearms, any non-resident of the District participating in any lawful recreational firearm-related activity in the District, or on his way to or from such activity in another jurisdiction: *Provided*, That such person, whenever in possession of a firearm, shall upon demand of any member of the Metropolitan Police Department, or other bona fide law enforcement officer, exhibit proof that he is on his way to or from such activity, and that his possession or control of such firearm is lawful in the jurisdiction in which he resides: *Provided further*, that such weapon shall be unloaded, securely wrapped, and carried in open view.

(Sept. 24, 1976, D.C. Law 1-85, title II, § 201, 23 DCR 2464.)

EFFECTIVE DATE

See note under § 6-1801.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-1841, 6-1872.

§ 6-1812. Registration of certain firearms prohibited.

No registration certificate shall be issued for any of the following types of firearms:

- (a) Sawed-off shotgun;
- (b) Machine gun;
- (c) Short-barreled rifle;

(d) Pistol not validly registered to the current registrant in the District prior to September 24, 1976; and

(e) Pistol not possessed by the current registrant in conformity with the regulations in effect immediately prior to September 24, 1976. (Sept. 24, 1976, D.C. Law 1-85, title II, § 202, 23 DCR 2464.)

CODIFICATION

In pars. (d) and (e), "September 24, 1976" has been substituted for "the effective date of this act".

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of subsec. (d) and (e), see sec. 2(c) of the Emergency Firearms Control Regulations Act Technical Amendments Act of 1977 (D.C. Act 2-72, Aug. 11, 1977, 24 DCR 1778) and sec. 2(b) of the Second Emergency Firearms Control Regulations Act Technical Amendments Act of 1977 (D.C. Act 2-105, Nov. 23, 1977, 24 DCR 4713).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-1819, 6-1841, 6-1852.

§ 6-1813. Qualifications for registration—Information required for registration.

(a) No registration certificate shall be issued to any person (and in the case of a person between the ages of 18 and 21, to the person and his signatory parent or guardian) or organization unless the Chief determines that such person (or the president or chief executive in the case of an organization):

(1) is twenty-one years of age or older: *Provided*, That the Chief may issue to an applicant between the ages of eighteen and twenty-one years old, and who is otherwise qualified, a registration certificate if the application is accompanied by a notarized statement of the applicant's parent or guardian—

(A) that the applicant has the permission of his parent or guardian to own and use the firearm to be registered; and

(B) the parent or guardian assumes civil liability for all damages resulting from the actions of such applicant in the use of the firearm to be registered: *Provided further*, that such registration certificate shall expire on such person's twenty-first birthday;

(2) Has not been convicted of a crime of violence, weapons offense, or of a violation of this chapter;

(3) Is not under indictment for a crime of violence or a weapons offense;

(4) Has not been convicted within five years prior to the application of any

(A) violation in any jurisdiction of any law restricting the use, possession, or sale of any narcotic or dangerous drug; or

(B) a violation of section 22-507, regarding threats to do bodily harm, or section 22-504, regarding assaults and threats, or any similar provision of the law of any other jurisdiction so as to indicate a likelihood to make unlawful use of a firearm;

(5) Within the five year period immediately preceding the application, has not been acquitted of any criminal charge by reason of insanity or has not been adjudicated a chronic alcoholic by any court, *Provided*, That this paragraph shall not

apply if such person shall present to the Chief with the application, a medical certification indicating that the applicant has recovered from such insanity or alcoholic condition and is capable of safe and responsible possession of a firearm;

(6) Within the five years immediately preceding the application, has not been voluntarily or involuntarily committed to any mental hospital or institution: *Provided*, That this paragraph shall not apply, if such person shall present to the Chief with the applicant¹ a medical certification that the applicant has recovered from whatever malady prompted such commitment;

(7) Does not appear to suffer from a physical defect which would tend to indicate that the applicant would not be able to possess and use a firearm safely and responsibly;

(8) Has not been adjudicated negligent in a firearm mishap causing death or serious injury to another human being;

(9) Is not otherwise ineligible to possess a pistol under section 22-3203;

(10) Has not failed to demonstrate satisfactorily a knowledge of the laws of the District of Columbia pertaining to firearms and the safe and responsible use of the same in accordance with tests and standards prescribed by the Chief: *Provided*, That once this determination is made with respect to a given applicant for a particular type of firearm, it need not be made again for the same applicant with respect to a subsequent application for the same type of firearm; and

(11) Has vision better than or equal to that required to obtain a valid driver's license under the laws of the District of Columbia: *Provided*, That current licensure by the District of Columbia, of the applicant to drive, shall be prima facie evidence that such applicant's vision is sufficient and, *Provided further*, that this determination need not be made more than once per year per applicant.

(b) Every person applying for a registration certificate shall provide on a form prescribed by the Chief:

(1) The full name or any other name by which the applicant is known.

(2) The present address and each home address where the applicant has resided during the five year period immediately preceding the application.

(3) The present business or occupation and any business or occupation in which the applicant has engaged during the five-year period immediately preceding the application and the addresses of such businesses or places of employment.

(4) The date and place of birth of the applicant.

(5) The sex of the applicant.

(6) Whether (and if so, the reasons) the District, the United States or the government of any State or subdivision of any State has denied or revoked the applicant's license, registration certificate, or permit pertaining to any firearm.

(7) A description of the applicant's role in any mishap involving a firearm, including the date,

place, time, circumstances, and the names of the person¹ injured or killed.

(8) The intended use of the firearm.

(9) The caliber, make, model, manufacturer's identification number, serial number, and any other identifying marks on the firearm.

(10) The name and address of the person or organization from whom the firearm was obtained, and in the case of a dealer, his dealer's license number.

(11) Where the firearm will generally be kept.

(12) Whether the applicant has applied for other registration certificates issued and outstanding.

(13) Such other information as the Chief determines is necessary to carry out the provisions of this chapter.

(c) Every organization applying for a registration certificate shall—

(1) with respect to the president or chief executive of such organization, comply with the requirements of subsection (b); and

(2) provide such other information as the Chief determines is necessary to carry out the provisions of this chapter.

(Sept. 24, 1976, D.C. Law 1-85, title II, § 203, 23 DCR 2464.)

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of subsec. (a), see sec. 2(d) and (e) of the Emergency Firearms Control Regulations Act Technical Amendments Act of 1977 (D.C. Act 2-72, Aug. 11, 1977, 24 DCR 1779) and sec. 2 (c) and (d) of the Second Emergency Firearms Control Regulations Act Technical Amendments Act of 1977 (D.C. Act 2-105, Nov. 23, 1977, 24 DCR 4714).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-1814, 6-1815, 6-1818, 6-1819, 6-1842.

§ 6-1814. Fingerprints and photographs of applicants— Application in person required.

(a) The Chief may require any person applying for a registration certificate to be fingerprinted if, in his judgment, this is necessary to conduct an efficient and adequate investigation into the matters described in section 6-1813(a) and to effectuate the purpose of this chapter: *Provided*, That any person who has been fingerprinted by the Chief within five years prior to submitting the application need not, in the Chief's discretion, be fingerprinted again if he offers other satisfactory proof of identity.

(b) Each applicant, other than an organization, shall submit with the application two full-face photographs of himself, 1¾ by 1⅞ inches in size which shall have been taken within the thirty-day period immediately preceding the filing of the application.

(c) Every applicant (or in the case of an organization, the president or chief executive, or a person authorized in writing by him), shall appear in person at a time and place prescribed by the Chief, and may be required to bring with him the firearm for which a registration certificate is sought, which shall be unloaded and securely wrapped, and carried in open view. (Sept. 24, 1976, D.C. Law 1-85, title II, § 204, 23 DCR 2464.)

¹ So in original. Probably should be "application".

¹ So in original. Probably should be "persons".

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subsec. (a), see sec. 2(f) of the Emergency Firearms Control Regulations Act Technical Amendments Act of 1977 (D.C. Act 2-72, Aug. 11, 1977, 24 DCR 1779).

§ 6-1815. Application under oath—Fees.

(a) Each applicant (the president or chief executive in the case of an organization) shall sign an oath or affirmation attesting to the truth of all the information required by section 6-1813.

(b) Each application required by this subchapter shall be accompanied by a non-refundable fee to be established by the Mayor; *Provided*, That such fee shall, in the judgment of the Mayor, reimburse the District for the cost of services provided under this subchapter. (Sept. 24, 1976, D.C. Law 1-85, title II, § 205, 23 DCR 2464.)

§ 6-1816. Time for filing registration applications.

(a) An application for a registration certificate shall be filed (and a registration certificate issued) prior to taking possession of a firearm from a licensed dealer or from any person or organization holding a registration certificates¹ therefor. In all other cases, an application for registration shall be filed immediately after a firearm is brought into the District. It shall be deemed compliance with the preceding sentence if such person personally communicates with the Metropolitan Police Department (as determined by the Chief to be sufficient) and provides such information as may be demanded: *Provided*, That such person files an application for a registration certificate within 48 hours after such communication.

(b) Any firearm validly registered under prior regulations must be registered pursuant to this chapter in accordance with procedures to be promulgated by the Chief. An application to register such firearm shall be filed pursuant to this chapter within 60 days of September 24, 1976. (Sept. 24, 1976, D.C. Law 1-85, title II, § 206, 23 DCR 2464.)

CODIFICATION

In subsec. (b), "September 24, 1976" has been substituted for "the effective date of this act".

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of subsec. (a), see sec. 2(g) of the Emergency Firearms Control Regulations Act Technical Amendments Act of 1977 (D.C. Act 2-72, Aug. 11, 1977, 24 DCR 1779).

For temporary amendment of subsec. (b) substituting "on or before December 31, 1976." for "within 60 days of September 24, 1976", see sec. 2 of the Emergency Act to Amend the Firearms Control Regulations Act of 1975 (D.C. Act 1-196, Jan. 3, 1977, 23 DCR 4978).

§ 6-1817. Issuance of registration certificate—Time period—Corrections.

(a) Upon receipt of a properly executed application for registration certificate, the Chief, upon determining through inquiry, investigation, or otherwise, that the applicant is entitled and qualified under the provisions of this chapter, thereto, shall issue a registration certificate. Each registration certificate shall be in duplicate and bear a unique registration certificate number and such other information as the Chief determines is necessary to

identify the applicant and the firearm registered. The duplicate of the registration certificate shall be delivered to the applicant and the Chief shall retain the original.

(b) The Chief shall approve or deny an application for a registration certificate within a 60 day period beginning on the date the Chief receives the application, unless good cause is shown, including non-receipt of information from sources outside the District government; *Provided*, That in the case of an application to register a firearm validly registered under prior regulations, the Chief shall have 365 days after the receipt of such application to approve or deny such application. The Chief may hold in abeyance an application where there is a revocation preceeding¹ pending against such person or organization.

(c) Upon receipt of a registration certificate, each applicant shall examine same to ensure that the information thereon is correct. If the registration certificate is incorrect in any respect, the person or organization names² thereon shall return it to the Chief with a signed statement showing the nature of the error. The Chief shall correct the error, if it occurred through administrative error. In the event the error resulted from information contained in the application, the applicant shall be required to file an amended application setting forth the correct information, and a statement explaining the error in the original application. Each amended application shall be accompanied by a fee equal to that required for the original application.

(d) In the event the Chief learns of an error in a registration certificate other than as provided in subsection (c), he may require the holder to return the registration certificate for correction. If the error resulted from information contained in the application, the person or organization named therein shall be required to file an amended application as provided in subsection (c).

(e) Each registration certificate issued by the Chief shall be accompanied by a statement setting forth the registrant's duties under this chapter. (Sept. 24, 1976, D.C. Law 1-85, title II, § 207, 23 DCR 2464.)

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subsecs. (a) and (c), see sec. 2(h), (i) of the Emergency Firearms Control Regulations Act Technical Amendments Act of 1977 (D.C. Act 2-72, Aug. 11, 1977, 24 DCR 1779).

§ 6-1818. Duties of registrants.

Each person and organization holding a registration certificate, in addition to any other requirements imposed by this chapter, or the Acts of Congress, shall:

(a) notify the Chief in writing of:

(1) the loss, theft, or destruction of the registration certificate or of a registered firearm (including the circumstances, if known) immediately upon discovery of such loss, theft, or destruction;

(2) a change in any of the information appearing on the registration certificate or required by section 6-1813;

¹ So in original. Probably should be "proceeding".

² So in original. Probably should be "named".

¹ So in original. Probably should be "certificate".

(3) the sale, transfer or other disposition of the firearm not less than forty-eight hours prior to delivery, pursuant to such sale, transfer or other disposition, including—

(A) identification of the registrant, the firearm and the serial number of the registration certificate;

(B) the name, residence, and business address and date of birth of the person to whom the firearm has been sold or transferred; and

(C) whether the firearm was sold or how it was otherwise transferred or disposed of.

(b) Return to the Chief, the registration certificate for any firearm which is lost, stolen, destroyed, or otherwise transferred or disposed of, at the time he notified¹ the Chief of such loss, theft, destruction, sale, transfer, or other disposition.

(c) Have in his possession, whenever in possession of a firearm, the registration certificate for such firearm, and exhibit the same upon the demand of a member of the Metropolitan Police Department, or other law enforcement officer. (Sept. 24, 1976, D.C. Law 1-85, title II, § 208, 23 DCR 2464.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-1819.

§ 6-1819. Revocation of registration certificate.

A registration certificate shall be revoked if—

(1) any of the criteria in section 6-1813 are not currently met;

(2) the registered firearm has become an unregistrable firearm under the terms of section 6-1218, or a destructive device;

(3) the information furnished to the Chief on the application for a registration certificate proves to be intentionally false; or

(4) there is a violation or omission of the duties, obligations or requirements imposed by section 6-1818. (Sept. 24, 1976, D.C. Law 1-85, title II, § 209, 23 DCR 2464.)

§ 6-1820. Procedure for denial and revocation of registration certificate.

(a) If it appears to the Chief that an application for a registration certificate should be denied or that a registration certificate should be revoked, the Chief shall notify the applicant or registrant of the proposed denial or revocation, briefly stating the reason or reasons therefor. Service may be made by delivering a copy of the notice to the applicant or registrant personally, or by leaving a copy thereof at the place of residence identified on the application or registration with some person of suitable age and discretion then residing therein, or by mailing a copy of the notice by certified mail to the residence address identified on the application or certificate, in which case service shall be complete as of the date the return receipt was signed. In the case of an organization, service may be made upon the president, chief executive, or other officer, managing agent or person authorized by appointment or law to receive such notice as described in the preceding sentence at the business address of the organization identified

in the application or registration certificate. The person serving the notice shall make proof thereof with the Chief in a manner prescribed by him. In the case of service by certified mail, the signed return receipt shall be filed with the Chief together with a signed statement showing the date such notice was mailed; and if the return receipt does not purport to be signed by the person named in the notice, then specific facts from which the Chief can determine that the person who signed the receipt meets the appropriate qualifications for receipt of such notice set out in this subsection. The applicant or registrant shall have 15 days from the date the notice is served in which to submit further evidence in support of the application or qualifications to continue to hold a registration certificate, as the case may be: *Provided*, That if the applicant does not make such a submission within fifteen days from the date of service, the applicant or registrant shall be deemed to have conceded the validity of the reason or reasons stated in the notice, and the denial of revocation shall become final.

(b) Within ten days of the date upon which the Chief receives such a submission, he shall serve upon the applicant or registrant in the manner specified in subsection (a) notice of his final decision. The Chief's decision shall become effective at the expiration of the time within which to file a notice of appeal pursuant to the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501, et seq.) or, if such a notice of appeal is filed, at the time the final order or judgment of the District of Columbia Court of Appeals becomes effective.

(c) Within seven days of a decision unfavorable to the applicant or registrant becoming final, the applicants or registrant shall (1) peaceably surrender to the Chief the firearm for which the registration certificate was revoked in the manner provided in section 6-1874,¹ or (2) lawfully remove such firearm from the District for so long as he has an interest in such firearm, or, (3) otherwise lawfully dispose of his interest in such firearm. (Sept. 24, 1976, D.C. Law 1-85, title II, § 210, 23 DCR 2464.)

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subsec. (c), see sec. 2(j) of the Emergency Firearms Control Regulations Act Technical Amendments Act of 1977 (D.C. Act 2-72, Aug. 11, 1977, 24 DCR 1779).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-1846, 6-1875.

§ 6-1821. Certain information not to be used as evidence in criminal proceedings.

No information obtained from a person under this subchapter or retained by a person in order to comply with any section of this subchapter, shall be used as evidence against such person in any criminal proceeding with respect to a violation of this chapter, occurring prior to or concurrently with the filing of the information required by this subchapter: *Provided*, That this section shall not apply to any violation of section 22-2501, or section 6-1873. (Sept. 24, 1976, D.C. Law 1-85, title II, § 211, 23 DCR 2464.)

¹ So in original. Probably should be "notifies".

¹ So in original. Probably should be "6-1875".

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of section, see sec. 2(k) of the Emergency Firearms Control Regulations Act Technical Amendments Act of 1977 (D.C. Act 2-72, Aug. 11, 1977, 24 DCR 1780).

SUBCHAPTER III.—ESTATES CONTAINING FIREARMS

§ 6-1831. Rights and responsibilities of executors and administrators.

(a) The executor or administrator of an estate containing a firearm shall notify the Chief of the death of the decedent within thirty days of his appointment or qualification, whichever is earlier.

(b) Until the lawful distribution of such firearm to an heir or legatee or the lawful sale, transfer, or disposition of the firearm by the estate; the executor or administrator of such estate shall be charged with the duties and obligations which would have been imposed by this chapter upon the decedent, if the decedent were still alive: *Provided*, That such executor or administrator shall not be liable to the criminal penalties of section 6-1875.¹ (Sept. 24, 1976, D.C. Law 1-85, title III, § 301, 23 DCR 2464.)

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subsec. (b), see sec. 2(l) of the Emergency Firearms Control Regulations Act Technical Amendments Act of 1977 (D.C. Act 2-72, Aug. 11, 1977, 24 DCR 1780).

EFFECTIVE DATE

See note under § 6-1801.

SUBCHAPTER IV.—LICENSING OF FIREARMS BUSINESSES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 6-1802, 6-1861.

§ 6-1841. Prohibition of manufacturing—Exception—Dealer's license requirements.

(a) No person or organization shall manufacture any firearm, destructive device or parts thereof, or ammunition, within the District: *Provided* That persons holding registration certificates may engage in hand loading, reloading, or custom loading ammunition for his registered firearms: *Provided further*, That such person may not hand load, reload, or custom load ammunition for others.

(b) No person or organization shall engage in the business of selling, purchasing, or repairing any firearm, destructive device, parts therefor, or ammunition, without first obtaining a dealer's license, and no licensee shall engage in the business of selling, purchasing, or repairing firearms which are unregistrable under section 6-1812, destructive devices, or parts therefor, except pursuant to a valid work or purchase order, for those persons specified in section 6-1811(b)(1). (Sept. 24, 1976, D.C. Law 1-85, title IV, § 401, 23 DCR 2464.)

EFFECTIVE DATE

See note under § 6-1801.

§ 6-1842. Qualifications for dealer's license—Application—Fee.

(a) Any person eligible to register a firearm under this chapter and who, if a registrant, has not previously failed to perform any of the duties imposed by

this chapter; and, any person eligible under the Acts of Congress to engage in such business, may obtain a dealer's license, or a renewal thereof, which shall be valid for a period of not more than one year from the date of issuance. The license required by this chapter, shall be in addition to any other license or licensing procedure required by law.

(b) Each application for a dealer's license and each application for renewal thereof shall be made on a form prescribed by the Chief, shall be sworn to or affirmed by the applicant, and shall contain—

(1) the information required by section 6-1813 (a);

(2) the address where the applicant conducts or intends to conduct his business;

(3) whether the applicant, prior to September 24, 1976, held a license to deal in deadly weapons in the District; and

(4) such other information as the chief may require, including fingerprints and photographs of the applicant, to carry out the purposes of this chapter.

(c) Each application for a dealer's license, or renewal shall be accompanied by a fee established by the Mayor: *Provided*, That such fee shall in the judgment of the Mayor, reimburse the District for the cost of services provided under this subchapter. (Sept. 24, 1976, D.C. Law 1-85, title IV, § 402, 23 DCR 2464.)

CODIFICATION

In subsec. (b)(3), "September 24, 1976" has been substituted for "the effective date of this act".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-1844.

§ 6-1843. Issuance of dealer's license—Time period—Corrections.

(a) Upon receipt of a properly executed application for a dealer's license, or renewal thereof, the Chief, upon determining through further inquiry, investigation, or otherwise, that the applicant is entitled and qualified under the provisions of this chapter thereto, shall issue a dealer's license. Each dealer's license shall be in duplicate and bear a unique dealer's license number, and such other information as the Chief determines is necessary to identify the applicant and premises. The duplicate of the dealer's license shall be delivered to the applicant and the Chief shall retain the original.

(b) The Chief shall approve or deny an application for a registration certificate within a 60-day period beginning on the date the Chief receives the application, unless good cause is shown, including non-receipt of information from sources outside the District Government. The Chief may hold in abeyance an application where there is any firearms revocation proceeding pending against such person.

(c) Upon receipt of a dealer's license, each applicant shall examine the same to ensure that the information thereon is correct. If the dealer's license is incorrect in any respect, the person named thereon shall return the same to the Chief with a signed statement showing the nature of the error. The Chief shall correct the error, if it occurred through administrative error. In the event the error resulted from information contained in the application, the applicant shall be required to file an amended application

¹ So in original. Probably should be "6-1876".

explaining the error in the original application. Each amended application shall be accompanied by a fee equal to that required for the original application.

(d) In the event the Chief learns of an error in a dealer's license, other than as provided in subsection (c), he may require the holder to return the dealer's license for correction. If the error resulted from information contained in the application, the person named therein shall be required to file an amended application as provided in subsection (c).

(e) Each dealer's license issued by the Chief shall be accompanied by a statement setting forth a dealer's duties under this chapter. (Sept. 24, 1976, D.C. Law 1-85, title IV, § 403, 23 DCR 2464.)

§ 6-1844. Duties of licensed dealers—Records required.

(a) Each person holding a dealer's license, in addition to any other requirements imposed by this chapter, the Acts of Congress, and other law, shall—

(1) display the dealer's license in a conspicuous place on the premises;

(2) notify the Chief in writing—

(A) of the loss, theft, or destruction of the dealer's license (including the circumstances, if known) immediately upon the discovery of such loss, theft, or destruction;

(B) of a change in any of the information appearing on the dealer's license or required by section 6-1842 immediately upon the occurrence of any such change;

(3) keep at the premises identified in the dealer's license a true and current record in book form of

(A) the name, address, home phone, and date of birth of each employee handling firearms, ammunition, or destructive devices;

(B) each firearm or destructive device received into inventory or for repair including the—

(i) serial number, caliber, make, model, manufacturer's number (if any), dealer's identification number (if any), registration certificate number (if any) of the firearm, and similar descriptive information for destructive devices;

(ii) name, address, and dealer's license number (if any) of the person or organization from whom the firearm or destructive device was purchased or otherwise received;

(iii) consideration given for the firearm or destructive device, if any;

(iv) date and time received by the licensee and in the case of repair, returned to the person holding the registration certificate; and

(v) nature of the repairs made.

(C) each firearm or destructive device sold or transferred including the—

(i) serial number, caliber, make, model, manufacturer's number or dealer's identification number, and registration certificate number (if any) of the firearm or similar information for destructive devices;

(ii) name, address, registration certificate number or license number (if any) of the person or organization to whom transferred;

(iii) the consideration for transfer; and,

(iv) time and date of delivery of the firearm or destructive device to the transferee;

(D) ammunition received into inventory including the—

(i) brand and number of rounds of each caliber or gauge;

(ii) name, address, and dealer's license or registration number (if any) of the person or organization from whom received;

(iii) consideration given for the ammunition; and

(iv) date and time of the receipt of the ammunition;

(E) ammunition sold or transferred including—

(i) brand and number of rounds of each caliber or gauge;

(ii) name, address and dealer's license number (if any) of the person or organization to whom sold or transferred;

(iii) if the purchaser or transferee is not a licensee, the registration certificate number of the firearm for which the ammunition was sold or transferred;

(iv) the consideration for the sale and transfer; and

(v) the date and time of sale or transfer;

(b) The records required by subsection (a) shall upon demand be exhibited during normal business hours to any member of the Metropolitan Police Department.

(c) Each person holding a dealer's license shall, when required by the Chief in writing, submit on a form and for the periods of time specified, any record information required to be maintained by subsection (a), and any other information reasonably obtainable therefrom. (Sept. 24, 1976, D.C. Law 1-85, title IV, §404, 23 DCR 2464.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-1845.

§ 6-1845. Revocation of dealer's license.

A dealer's license shall be revoked if—

(a) Any of the criteria in section 6-1844 is not currently met, or

(b) The information furnished to the Chief on the application for a dealer's license proves to be intentionally false; or

(c) there is a violation or omission of the duties, obligations, or requirements imposed by section 6-1844. (Sept. 24, 1976, D.C. Law 1-85, title IV, § 405, 23 DCR 2464.)

§ 6-1846. Procedure for denial and revocation of dealer's license.

(a) If it appears to the Chief that an application for a dealer's license should be denied or that a dealer's license should be revoked, the Chief shall notify the applicant or registrant of the proposed denial or revocation briefly stating the reason or reasons therefor. Service may be made as provided for in section 6-1820(a). The applicant or dealer shall have fifteen days from the date of service in which to submit further evidence in support of the application or qualifications to continue to hold a

dealer's license, as the case may be: *Provided*, That if the applicant or dealer does not make such a submission within 15 days from the date of service, the applicant or dealer shall be deemed to have conceded the validity of the reason or reasons stated in the notice, and the denial or revocation shall become final.

(b) Within 10 days of the date upon which the Chief receives such a submission, the Chief shall serve upon the applicant or registrant in the manner provided in section 6-1820(a) notice of his final decision. The Chief's decision shall become effective at the expiration of the time within which to file a notice of appeal pursuant to the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501, et seq.) or, if such a notice of appeal is filed, at the time the final order or judgment of the District of Columbia Court of Appeals becomes effective.

(c) Within 45 days of a decision becoming effective, which is unfavorable to a licensee or to an applicant for a dealer's license, the licensee or applicant shall—

(1) if he is eligible to register firearms pursuant to this chapter, register such firearms in his inventory as are capable of registration pursuant to this chapter;

(2) peaceably surrender to the Chief any firearms in his inventory which he does not register, and all destructive devices in his inventory in the manner provided for in section 6-1875;

(3) lawfully remove from the District any firearm in his inventory which he does not register and all destructive devices and ammunition in his inventory for so long as he has an interest in them; or

(4) otherwise lawfully dispose of any firearms in his inventory which he does not register and all destructive devices and ammunition in his inventory.

(Sept. 24, 1976, D.C. Law 1-85, title IV, § 406, 23 DCR 2464.)

CODIFICATION

In subsec. (c) (2), "section 6-1875" read in the original "section 604". Since the act Sept. 24, 1976, D.C. Law 1-85, did not contain a section 604, this reference has been translated to reflect the probable intent of the Council.

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subsec. (c) (2), see sec. 2(m) of the Emergency Firearms Control Regulations Act Technical Amendments Act of 1977 (D.C. Act 2-72, Aug. 11, 1977, 24 DCR 1780).

§ 6-1847. Display of firearms or ammunition by dealers—Security—Employees of dealers.

(a) No licensed dealer shall display any firearm or ammunition in windows visible from a street or sidewalk. All firearms, destructive devices, and ammunition shall be kept at all times in a securely locked place affixed to the premises except when being shown to a customer, being repaired, or otherwise being worked on.

(b) No licensee shall knowingly employ any person in his establishment if such person would not be eligible to register a firearm under this chapter. (Sept. 24, 1976, D.C. Law 1-85, title IV, § 407, 23 DCR 2464.)

§ 6-1848. Firearm markings.

No licensee shall sell or offer for sale any firearm which does not have imbedded into the metal portion of such firearm a unique manufacturer's identification number or serial number, unless the licensee shall have imbedded into the metal portion of such firearm a unique dealer's identification number (Sept. 24, 1976, D.C. Law 1-85, title IV, § 408, 23 DCR 2464.)

§ 6-1849. Certain information obtained from or retained by dealers not to be used as evidence in criminal proceedings.

No information obtained from or retained by a licensed dealer to comply with this subchapter shall be used as evidence against such licensed dealer in any criminal proceeding with respect to a violation of this chapter occurring prior to or concurrently with the filing of such information; *Provided*, That this section shall not apply to any violation of section 22-2501, or of section 6-1873. (Sept. 24, 1976, D.C. Law 1-85, title IV, § 409, 23 DCR 2464.)

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of section, see sec. 2(n) of the Emergency Firearms Control Regulations Act Technical Amendments Act of 1977 (D.C. Act 2-72, Aug. 11, 1977, 24 DCR 1780).

SUBCHAPTER V.—SALE AND TRANSFER OF FIREARMS, DESTRUCTIVE DEVICES, AND AMMUNITION

§ 6-1851. Sales and transfers prohibited.

No person or organization shall sell, transfer or otherwise dispose of any firearm, destructive device or ammunition in the District except as provided in sections 6-1852 or 6-1875. (Sept. 24, 1976, D.C. Law 1-85, title V, § 501, 23 DCR 2464.)

CODIFICATION

"Section 6-1875" read in the original "section 604 of this act". Since the act Sept. 24, 1976, D.C. Law 1-85, did not contain a section 604, this reference has been translated to reflect the probable intent of the Council.

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of section, see sec. 2(o) of the Emergency Firearms Control Regulations Act Technical Amendments Act of 1977 (D.C. Act 2-72, Aug. 11, 1977, 24 DCR 1780).

EFFECTIVE DATE

See note under § 6-1801.

§ 6-1852. Permissible sales and transfers.

(a) Any person or organization eligible to register a firearm may sell or otherwise transfer ammunition or any firearm, except those which are unregistrable under section 6-1812, to a licensed dealer.

(b) Any licensed dealer may sell or otherwise transfer ammunition and any firearm or destructive device which is lawfully a part of such licensee's inventory to—

(1) any nonresident person or business licensed under the Acts of Congress and the jurisdiction where such person resides or conducts such business;

(2) any other licensed dealer;

(3) any law enforcement officer or agent of the District or the United States when such officer or agent is on duty, and acting within the scope

of his duties when acquiring such firearm, ammunition, or destructive device, if the officer or agent has in his possession a statement from the head of his agency stating that the item is to be used in such officer's or agent's official duties.

(c) Any licensed dealer may sell or otherwise transfer a firearm except those which are unregistrable under section 6-1812, to any person or organization possessing a registration certificate for such firearm; *Provided*, That if the Chief denies a registration certificate, he shall so advise the licensee who shall thereupon (1) withhold delivery until such time as a registration certificate is issued, or, at the option of the purchaser, (2) declare the contract null and void, in which case consideration paid to the licensee shall be returned to the purchaser; *Provided further* That this subsection shall not apply to persons covered by subsection (b).

(d) Except as provided in subsections (b) and (f),¹ no licensed dealer shall sell or otherwise transfer ammunition unless—

(1) the sale or transfer is made in person; and
(2) the purchaser exhibits, at the time of sale or other transfer, a valid registration certificate, or in the case of a nonresident, proof that the weapon is lawfully possessed in the jurisdiction where such person resides;

(3) the ammunition to be sold or transferred is of the same caliber or gauge as the firearm described in the registration certificate, or other proof in the case of nonresident; and

(4) the purchaser signs a receipt for the ammunition which (in addition to the other records required under this chapter shall be maintained by the licensed dealer for a period of one year from the date of sale.

(e) Any licensed dealer may sell ammunition to any person holding an ammunition collector's certificate on September 24, 1976; *Provided*, That the collector's certificate shall be exhibited to the licensed dealer whenever the collector purchases ammunition for his collection *Provided further* That the collector shall sign a receipt for the ammunition, which shall be treated in the same manner as that required under subsection (d) (4) of this section. (Sept. 24, 1976, D.C. Law 1-85, title V, § 502, 23 DCR 2464.)

CODIFICATION

In subsec. (e), "September 24, 1976" has been substituted for "the effective date of this act."

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subsec. (d), see sec. 2(p) of the Emergency Firearms Control Regulations Act Technical Amendments Act of 1977 (D.C. Act 2-72, Aug. 11, 1977, 24 DCR 1780).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-1851.

SUBCHAPTER VI.—POSSESSION OF AMMUNITION

§ 6-1861. Persons permitted to possess ammunition.

No person shall possess ammunition in the District of Columbia unless:

(a) He is a licensed dealer pursuant to subchapter IV.

¹ So in original. There is no subsec. (f).

(b) He is an officer, agent, or employee of the District of Columbia or the United States of America, on duty and acting within the scope of his duties when possessing such ammunition.

(c) He is the holder of the valid registration certificate for a firearm of the same gauge or caliber as the ammunition he possesses.

(d) He holds an ammunition collector's certificate on September 24, 1976. (Sept. 24, 1976, D.C. Law 1-85, title VI, § 601, 23 DCR 2464.)

CODIFICATION

In subsec. (d), "September 24, 1976" has been substituted for "the effective date of this act".

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of section, see sec. 2(q) of the Emergency Firearms Control Regulations Act Technical Amendments Act of 1977 (D.C. Act 2-72, Aug. 11, 1977, 24 DCR 1780).

EFFECTIVE DATE

See note under § 6-1801.

SUBCHAPTER VII.—MISCELLANEOUS

§ 6-1871. Securing mortgages, deposits, or pawns with firearms, destructive devices, or ammunition prohibited—Loan or rental of firearms, destructive devices, or ammunition prohibited.

(a) No firearm, destructive device, or ammunition shall be security for, or be taken or received by way of any mortgage, deposit, pledge, or pawn.

(b) No person may loan, borrow, give, or rent to or from another person, any firearm, destructive device, or ammunition. (Sept. 24, 1976, D.C. Law 1-85, title VII, § 701, 23 DCR 2464.)

EFFECTIVE DATE

See note under § 6-1801.

§ 6-1872. Firearms required to be unloaded and disassembled or locked.

Except for law enforcement personnel described in section 6-1811(b) (1), each registrant shall keep any firearm in his possession unloaded and disassembled or bound by a trigger lock or similar device unless such firearm is kept at his place of business, or while being used for lawful recreational purposes within the District of Columbia. (Sept. 24, 1976, D.C. Law 1-85, title VII, § 702, 23 DCR 2464.)

§ 6-1873. Firing ranges.

Any person operating a firing range in the District, shall in addition to any other requirement imposed by law, register with the Chief, on a form prescribed by him, which shall include the business name of the range, the location, the names and home addresses of the owners and principal officers, the types of weapons fired there, the number and types of weapons normally stored there, the days and hours of operation, and such other information as the Chief shall require. (Sept. 24, 1976, D.C. Law 1-85, title VII, § 703, 23 DCR 2464.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-1821, 6-1849.

§ 6-1874. False information—Forgery or alteration.

(a) It shall be unlawful for any person purchasing any firearm or ammunition, or applying for any registration certificate or dealer's license under this chapter, or in giving any information pursuant to

the requirements of this chapter, to knowingly give false information or offer false evidence of identity.

(b) It shall be unlawful for anyone to forge or alter any application, registration certificate, or dealer's license submitted, retained or issued under this chapter. (Sept. 24, 1976, D.C. Law 1-85, title VII, § 704, 23 DCR 2464.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-1820.

§ 6-1875. Voluntary surrender of firearms, destructive devices, or ammunition—Immunity from prosecution—Determination of evidentiary value of firearm.

(a) If a person or organization within the District voluntarily and peaceably delivers and abandons to the Chief any firearm, destructive device or ammunition at any time, such delivery shall preclude the arrest and prosecution of such person on a charge of violating any provision of this chapter with respect to the firearm, destructive device, or ammunition voluntarily delivered. Delivery under this section may be made at any police district, station, or central headquarters, or by summoning a police officer to the person's residence or place of business. Every firearm and destructive device to be delivered and abandoned to the Chief under this section shall be unloaded and securely wrapped in a package, and, in the case of delivery to a police facility, the package shall be carried in open view. No person who delivers and abandons a firearm, destructive device, or ammunition under this section, shall be required to furnish identification, photographs, or fingerprints. No amount of money shall be paid for any firearm, destructive devices, or ammunition delivered and abandoned under this section.

(b) Whenever any firearm, destructive device, or any ammunition is surrendered under this section or pursuant to section 6-1820(c)(1), the Chief shall inquire of the United States Attorney and the Corporation Counsel for the District whether such firearm is needed as evidence; *Provided*, That if the same is not needed as evidence, it shall be destroyed. (Sept. 24, 1976, D.C. Law 1-85, title VII, § 705, 23 DCR 2464.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-1820, 6-1831, 6-1846, 6-1851.

§ 6-1876. Penalties.

Any person who violates any provision of this chapter shall upon conviction for the first time be fined not more than \$300 or be imprisoned for not more than ten (10) days, or both. Any subsequent conviction for a violation of this chapter shall be punishable by a fine of \$300 and by imprisonment of not less than 10 days nor more than 90 days. (Sept. 24, 1976, D.C. Law 1-85, title VII, § 706, 23 DCR 2464.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-1831, 6-1878.

§ 6-1877. Public education program.

The Chief shall carry on a suitable publicity program designed to inform the citizens of the District of the provisions of this chapter and the rights and obligations created by it. (Sept. 24, 1976, D.C. Law 1-85, title VII, § 707, DCR 2464.)

§ 6-1878. Construction.

Nothing in this chapter shall be construed, or applied to necessarily require, or excuse noncompliance with any provision of any Federal Law. This chapter and the penalties prescribed in section 6-1876, for violations of this chapter, shall not supersede but shall supplement all statutes of the District and the United States in which similar conduct is prohibited or regulated. (Sept. 24, 1976, D.C. Law 1-85, title VII, § 709, 23 DCR 2464.)

CODIFICATION

"Section 6-1876" read in the original "section 605 of this act". Since the act Sept. 24, 1976, D.C. Law 1-85, did not contain a section 605, this reference has been translated to reflect the probable intent of the Council.

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of section, see sec. 2(r) of the Emergency Firearms Control Regulations Act Technical Amendments Act of 1977 (D.C. Act 2-72, Aug. 11, 1977, 24 DCR 1780).

§ 6-1879. Applicability of District of Columbia Administrative Procedure Act.

The provisions of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.) shall apply to each proceeding, decision, or other administrative action specified in this chapter, unless otherwise specifically provided. (Sept. 24, 1976, D.C. Law 1-85, title VII, § 710, 23 DCR 2464.)

§ 6-1880. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby. (Sept. 24, 1976, D.C. Law 1-85, title VII, § 711, 23 DCR 2464.)

Chapter 19.—LATINO COMMUNITY DEVELOPMENT

SUBCHAPTER I.—GENERAL PROVISIONS

Sec.

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SUBCHAPTER I.—GENERAL PROVISIONS

§ 6-1901. Purpose.

It is the intent of the Council of the District of Columbia that the District Government shall ensure that a full range of health, education, employment, and social services shall be available to the Latino community in the District of Columbia. The planning and monitoring of programs undertaken by the Office on Latino Affairs and the Commission in partnership with members of the Latino community, families, community leaders, private agencies, and the District of Columbia Government, shall serve as an impetus to making the Latino community an integral part of the District of Columbia community. (Sept. 29, 1976, D.C. Law 1-86, title I, § 101, 23 DCR 2543.)

EFFECTIVE DATE

Section 601 of act Sept. 29, 1976, D.C. Law 1-86, title VI, provided: "This act [enacting this chapter] shall be effective immediately at the end of the thirty day period (excluding Saturdays, Sundays, holidays, and days on which either House of Congress is not in session), as provided in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 1-147(c)), Provided, that the act shall not become effective prior to October 1, 1976."

SHORT TITLE

The first section of act Sept. 29, 1976, D.C. Law 1-86, provided "That this act [enacting this chapter] may be cited as the 'District of Columbia Latino Community Development Act'."

OFFICE OF SPANISH AFFAIRS ABOLISHED; TRANSFER OF POSITIONS AND FUNDS

Section 305 of act Sept. 29, 1976, D.C. Law 1-86, title III, provided: "The Office of Spanish Affairs presently located within the Department of Human Resources is abolished, and all positions presently allocated to this Division are hereby authorized to be transferred to the new Office created under section 301 of this act [§ 6-1911]; and all unexpended funds presently allocated to this Division are authorized to be transferred to the new Office created under such section 301."

REPEAL OF ORGANIZATION ORDER NO. 26

Section 306 of act Sept. 29, 1976, D.C. Law 1-86, title III, provided: "Organization Order No. 26 (D.C. Code, title 1, Appendix), C.O. No. 70-284, July 30, 1970 is hereby repealed."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-1914.

§ 6-1902. Definitions.

For the purposes of this chapter the term—

- (a) "Office" means the Office on Latino Affairs created by section 6-1911.
- (b) "Director" means the Executive Director of the Office of¹ Latino Affairs.
- (c) "Commission" means the Commission on Latino Community Development created by section 6-1921.
- (d) "Latino" or "Latino Community" shall mean the people of Spanish origin who are residents of the District of Columbia.
- (e) "Services to the Latino Community" means those services designed to provide assistance, including but not limited to, nutritional programs, trans-

portation services, health and financial assistance, employment and housing programs, recreational opportunities, information, referral, and counseling services.

(f) "Council" means the Council of the District of Columbia, (Sept. 29, 1976, D.C. Law 1-86, title II, § 201, 23 DCR 2543.)

SUBCHAPTER II.—OFFICE ON LATINO AFFAIRS

§ 6-1911. Establishment of Office.

There is established within the executive office of the Mayor of the District of Columbia an Office on Latino Affairs. The Office shall provide within the District of Columbia government a single administrative unit, responsible to the Mayor, to administer such programs as shall be delegated to it by the Mayor, the Council, and the Commission, to promote the welfare of the Latino community. (Sept. 29, 1976, D.C. Law 1-86, title III, § 301, 23 DCR 2543.)

EFFECTIVE DATE

See note under § 6-1901.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-1902.

§ 6-1912. Appointment of Executive Director—Compensation—Staff.

The Office shall be headed by an Executive Director, who shall be appointed by the Mayor from a list of three or more names submitted to him or her by the Commission. The Director shall devote his or her full time to the duties of the Office. His or her annual compensation shall be fixed in accordance with chapter 51 of Title 5, United States Code (relating to the classification of government employees and related matters), but shall be not lower than a GS 15, step one. He or she shall have such staff as is approved in the District of Columbia budget and Federal or private grants, plus any temporary staff approved by the Office of Budget and Management Systems. (Sept. 29, 1976, D.C. Law 1-86, title III, § 302, 23 DCR 2543.)

REFERENCE IN TEXT

GS 15, step one, referred to in the text, is contained in the General Schedule set out under section 5332 of title 5, United States Code.

§ 6-1913. Functions of Director.

In order to carry out the purpose of this chapter, the Director shall:

- (1) Serve as an advocate for the Latino community in the District of Columbia.
- (2) Assist community organizations and the Commissions in developing and submitting grant applications.
- (3) Provide information and technical assistance with respect to programs and services for the Latino community to the Mayor, the Commission on Latino Community Development, the Council, other District of Columbia agencies and departments, and the community.
- (4) Respond to recommendations and policy statements from the Commission within 30 days of written submission unless extended by mutual agreement of the Commission and the Office.

¹ So in original. Probably should be "on".

(5) File an annual report on the operation of the Office with the Mayor, the Council, and the Commission.

(6) Identify areas of need for service or improvement of service and bring them to the attention of the Mayor and Commission, with suggestions for meeting such needs, including conducting or funding research and demonstration projects to test such suggestions.

(7) Carry responsibility for assuring necessary control, evaluation, audit, and reporting on programs funded through the Office.

(8) Accept volunteer services and funds from public and private sector to supplement the budget in carrying out the planning duties and responsibilities of the Office.

(9) Meet with the Spanish Program Coordinators within each department and agency of the District of Columbia government having such offices as a group, at least once a month to coordinate activities within the government involving the Latino community. (Sept. 29, 1976, D.C. Law 1-86, title III, § 303, 23 DCR 2543.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-1929.

§ 6-1914. Spanish Program Coordinators.

All District of Columbia government agencies with at least 500 employees shall have a Spanish Program Coordinator who shall devote at least one-fourth time to developing and implementing policies and programs in their agencies that insure that the intent of this chapter as set forth in section 6-1901 is carried out. The Spanish Program Coordinator shall meet with the Director of the Office of¹ Latino Affairs at least once a month to assist the Director in coordinating plans and policies which are beneficial to the Latino community of the District of Columbia. (Sept. 29, 1976, D.C. Law 1-86, title III, § 304, 23 DCR 2543.)

SUBCHAPTER III.—COMMISSION ON LATINO COMMUNITY DEVELOPMENT

§ 6-1921. Establishment of Commission.

There is hereby established in the executive office of the Mayor of the District of Columbia a Commission on Latino Community Development to advise the Mayor, the Director of the Office on Latino Affairs, the Council, and the public concerning the views and needs of the Latino community in the District of Columbia. (Sept. 29, 1976, D.C. Law 1-86, title IV, § 401, 23 DCR 2543.)

EFFECTIVE DATE

See note under § 6-1901.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-1902.

§ 6-1922. Membership of Commission.

The Commission shall consist of fifteen public (voting) members appointed by the Mayor, with the advice and consent of the Council. There shall also be the following ex-officio non-voting members: The Directors of the Department of Human Resources, Department of Housing and Community Development, Recreation, Department of Transportation,

Department of Manpower, the librarian of the District of Columbia Public Library, the Chief of Metropolitan Police Force, and the Director of the Department of Economic Development. (Sept. 29, 1976, D.C. Law 1-86, title IV, § 402, 23 DCR 2543.)

§ 6-1923. Qualifications for membership.

Members shall be appointed with due consideration for representation from established public, non-profit and voluntary community organizations and agencies concerned with the Latino community and members of the general public who have given evidence of particular dedication to, and knowledge of the needs of the Latino community. The membership of the Commission shall have at least two resident aliens. (Sept. 29, 1976, D.C. Law 1-86, title IV, § 403, 23 DCR 2543.)

§ 6-1924. Term of office.

Members of the Commission shall serve terms of three years except, that, of the initial membership, five shall be appointed for a term of three years, five for a term of two years, and five for one year. Members may be reappointed but may serve no more than two consecutive terms. (Sept. 29, 1976, D.C. Law 1-86, title IV, § 404, 23 DCR 2543.)

§ 6-1925. Appointments to vacancies.

When a vacancy develops on the commission, the Mayor with the advice and consent of the Council shall appoint a successor to fill the unexpired portion of the term. No member may continue to serve beyond the expiration date of his or her term. If within 60 calendar days of submission of a nomination for the Commission the Council fails to act, the nomination shall be deemed confirmed. (Sept. 29, 1976, D.C. Law 1-86, title IV, § 405, 23 DCR 2543.)

§ 6-1926. Rules of procedure.

The Commission shall develop its own rules of procedure. The Commission shall develop its own rules of procedure, except they shall provide the Commission shall meet at least every other month. The meetings shall be held in those areas of the District of Columbia with the largest concentration of Latino residents. All meetings shall be open to the public. A quorum to transact business shall consist of a majority plus one of the voting members. (Sept. 29, 1976, D.C. Law 1-86, title IV, § 406, 23 DCR 2543.)

§ 6-1927. Selection of Chairperson.

The Commission shall elect its own Chairperson. (Sept. 29, 1976, D.C. Law 1-86, title IV, § 407, 23 DCR 2543.)

§ 6-1928. Compensation of members.

All members shall serve without compensation, but expenses incurred by the Commission as a whole, or by its individual members, when duly authorized by the Chairperson, will become an obligation against appropriated District of Columbia and Federal funds designated for that purpose. (Sept. 29, 1976, D.C. Law 1-86, title IV, § 408, 23 DCR 2543.)

§ 6-1929. Staff assistance.

The Commission shall have one paid staff person. In addition, the Director of the Office on Latino

¹ So in original. Probably should be "on".

Affairs shall provide information and technical assistance as required under section 6-1913. (Sept. 29, 1976, D.C. Law 1-86, title IV, § 409, 23 DCR 2543.)

§ 6-1930. Functions of Commission.

The Commission shall:

(1) Serve as an advocate for Latino persons in the District of Columbia.

(2) Review and submit to the Mayor, the Council, the Office on Latino Affairs and the community an annual report including analysis of the needs of the Latino community in the District of Columbia.

(3) Cooperate with other agencies (Federal, state, private) concerned with activities pertaining to the Latino community.

(4) Develop a list of at least three persons the Commission recommends for the position of Director of the Office on Latino Affairs and submit that list to the Mayor.

(5) Conduct or participate in public hearings and other forums to determine views of the Latino community and other members of the public on matters affecting the health, safety and welfare of the Latino community in the District of Columbia.

(6) Bring to the attention of the Mayor and the Office on Latino Affairs cases of neglect, abuse and incidents of bias against the Latino community in the administration of the laws of the District of Columbia.

(7) Review and comment on proposed District and Federal legislation, regulations, policies and programs and make policy recommendations on issues affecting the health, safety and welfare of the Latino community.

(8) Develop policy and provide continuing review of the planning undertaken by the Office.

(9) The Commission is authorized to make any reasonable request for information necessary to aid the Commission in the discharge of its responsibilities. (Sept. 29, 1976, D.C. Law 1-86, title IV, § 410, 23 DCR 2543; Apr. 23, 1977, D.C. Law 1-126, title I, § 101, 24 DCR 2372.)

AMENDMENT

1977—Act Apr. 23, 1977, D.C. Law 1-126, amended par. (4) by substituting "at least" for "not more than".

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of par. (4), see sec. 101 of the Elections and Latino Community Development Emergency Amendments Act of 1976 (D.C. Act 1-215, Jan. 12, 1977, 23 DCR 5093).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 404 of act Apr. 23, 1977, D.C. Law 1-126, set out as a note under § 1-1102.

SUBCHAPTER IV.—MISCELLANEOUS

§ 6-1941. Authorization.

There is hereby authorized to be appropriated from the general operating budget of the District of Columbia the sum of \$200,000 to carry out the purpose of this chapter. This sum does not include monies spent on existing programs for the Latino community. (Sept. 29, 1976, D.C. Law 1-86, title V, § 501, 23 DCR 2543.)

EFFECTIVE DATE

See note under § 6-1901.

§ 6-1942. Spanish translations of certain District publications.

The Mayor shall make available to persons whose primary language of communication is Spanish a Spanish text version of any District of Columbia government published application, informational brochure or pamphlet which is essential to the obtaining of services relating to the health, safety, and welfare of Latino residents of the District of Columbia. The Mayor, not later than sixty (60) days after October 26, 1977, and in consultation with the Commission on Latino Community Development, with each Spanish Program Coordinator, and with the Office of Latino Affairs, shall by regulation designate such applications, brochures and pamphlets. (Oct. 26, 1977, D.C. Law 2-31, § 2, 24 DCR 3724.)

CODIFICATION

Section was enacted as a part of the Bilingual Translation Services Act of 1977, and not as part of the District of Columbia Latino Community Development Act which comprises this chapter.

"October 26, 1977," was substituted for "the effective date of this act".

EFFECTIVE DATE

Section 7 of act Oct. 26, 1977, D.C. Law 2-31, provided: "This act [enacting §§ 6-1942 to 6-1946] shall become effective as provided for acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act Oct. 26, 1977, D.C. Law 2-31, provided "That this act [enacting §§ 6-1942 to 6-1946] may be cited as the 'Bilingual Translation Services Act of 1977'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-1944, 6-1945, 6-1946.

§ 6-1943. Spanish translations of agreements or contracts with the District.

The Mayor shall provide, if requested by an individual whose primary language of communication is Spanish, a written Spanish translation of any agreement or contract with the District of Columbia government requiring the signature of the individual. (Oct. 26, 1977, D.C. Law 2-31, § 3, 24 DCR 3724.)

CODIFICATION

Section was enacted as a part of the Bilingual Translation Services Act of 1977, and not as part of the District of Columbia Latino Community Development Act which comprises this chapter.

EFFECTIVE DATE

See section 7 of act Oct. 26, 1977, D.C. Law 2-31, set out as a note under § 6-1942.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-1944, 6-1945, 6-1946.

§ 6-1944. Record of distribution and use of translations.

The Mayor shall maintain a statistical record of the distribution and use of materials provided to the public pursuant to sections 6-1942 and 6-1943. (Oct. 26, 1977, D.C. Law 2-31, § 4, 24 DCR 3724.)

CODIFICATION

Section was enacted as a part of the Bilingual Translation Services Act of 1977, and not as part of the District of Columbia Latino Community Development Act which comprises this chapter.

EFFECTIVE DATE

See section 7 of act Oct. 26, 1977, D.C. Law 2-31, set out as a note under § 6-1942.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-1945, 6-1946.

§ 6-1945. Regulations to implement translation program.

The Mayor may issue regulations to implement sections 6-1942 to 6-1946 in accordance with the provisions of the "District of Columbia Administrative Procedure Act" (D.C. Code, sec. 1-1501). (Oct. 26, 1977, D.C. Law 2-31, § 5, 24 DCR 3724.)

CODIFICATION

Section was enacted as a part of the Bilingual Translation Services Act of 1977, and not as part of the District of Columbia Latino Community Development Act which comprises this chapter.

EFFECTIVE DATE

See section 7 of act Oct. 26, 1977, D.C. Law 2-31, set out as a note under § 6-1942.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-1946.

§ 6-1946. Authorization for translation program.

There is hereby authorized to be expended, for the purposes of sections 6-1942 to 6-1946, a sum in an amount not to exceed fifty thousand dollars (\$50,000) in each fiscal year. (Oct. 26, 1977, D.C. Law 2-31, § 6, 24 DCR 3724.)

CODIFICATION

Section was enacted as a part of the Bilingual Translation Services Act of 1977, and not as part of the District of Columbia Latino Community Development Act which comprises this chapter.

EFFECTIVE DATE

See section 7 of act Oct. 26, 1977, D.C. Law 2-31, set out as a note under § 6-1942.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-1945.

Chapter 20.—YOUTH SERVICES

Sec.

- 6-2001. Definitions.
- 6-2002. Purpose.
- 6-2003. Office of Youth Opportunity Services abolished—Transfer of functions—Establishment of division of community-based programs for children and youth in Department of Recreation.
- 6-2004. Office of Youth Advocacy.
- 6-2005. Powers of the Office.
- 6-2006. Transfer of positions and funds.
- 6-2007. Accounting and voucher systems.
- 6-2008. Conflict of interest procedures.
- 6-2009. Rules of operation.
- 6-2010. Budget request.
- 6-2011. Severability.

§ 6-2001. Definitions.

As used in this chapter, the term—

(a) "youth" means those residents of the District of Columbia between the ages of thirteen and seventeen, inclusive;

(b) "children" means those residents of the District of Columbia ages twelve and under;

(c) "Neighborhood Planning Council" means the structure designated for adult and youth participation in the development, implementation, and evaluation of programs for children and

youth, pursuant to Commissioner's Order No. 68-219, March 25, 1968;

(d) "councilmember" means any person thirteen years and over who lives within the geographic area of a Neighborhood Planning Council who has registered his/her name, address, and telephone number with that particular council;

(e) "Council of Chairpersons" means the body of assembled chairpersons of each of the Neighborhood Planning Councils;

(f) "Office", "Director" and other such terms mean the Office of Youth Advocacy, established in section 6-2004, and further specified in other parts of this chapter; and,

(g) "division", "director" and other such terms mean the division of community-based programs for children and youth of the Department of Recreation, established in section 6-2003, and further specified in other parts of this chapter. (Mar. 29, 1977, D.C. Law 1-93, § 2, 23 DCR 9532b.)

EMERGENCY ACT AMENDMENT

1976—For temporary provisions to reorganize youth service programs of the District prior to the enactment of this chapter, see the District of Columbia Youth Services Emergency Act of 1976 (D.C. Act 1-164, Oct. 22, 1976, 23 DCR 3069).

EFFECTIVE DATE

Section 13 of act Mar. 29, 1977, D.C. Law 1-93, provided: "This act [enacting this chapter] shall become effective according to the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act Mar. 29, 1977, D.C. Law 1-93, provided "That this act [enacting this chapter] may be cited as the 'District of Columbia Youth Services Act of 1976.'"

§ 6-2002. Purpose.

It is the purpose of this chapter to:

(a) Promote and support programs for children and youth in existing agencies of the District of Columbia government;

(b) Reorganize the current pattern of programs and services for children and youth offered through the Office of Youth Opportunity Services;

(c) Ensure that an effective mechanism exists to facilitate youth employment;

(d) Provide a review and evaluation mechanism for existing services and programs for children and youth; and

(e) Promote and support programs for Hispanic youth in D.C. Agencies. (Mar. 29, 1977, D.C. Law 1-93, § 3, 23 DCR 9532b.)

§ 6-2003. Office of Youth Opportunity Services abolished—Transfer of functions—Establishment of division of community-based programs for children and youth in Department of Recreation.

(a) The Commissioner's Order No. 70-93 (approved March 17, 1970) establishing the Office of Youth Opportunity Services, is hereby repealed and that Office is hereby abolished. All of the powers, duties, and functions assigned to that Office under any provision of law are hereby transferred to the departments and agencies as indicated in the following provisions of this chapter.

(b) There are hereby transferred to the Department of Recreation (Organization Order No. 10;

Commissioner's Order No. 68-440, June 27, 1968; amended August 6, 1968, October 3, 1968, and March 14, 1970) the following functions, previously performed by the Office of Youth Opportunity Services:

(1) Assist and facilitate programs for children and youth carried on by Neighborhood Planning Councils (Commissioner's Order No. 68-219, March 25, 1968) and other community organizations including, but not limited to any and all organizations providing services to Hispanic youth pursuant to programs, under programs, previously funded by the Office of Youth Opportunity Services, providing maximal community participation in decision-making.

(2) As directed by the Mayor, conduct special and citywide youth programs.

(3) Operate juvenile delinquency prevention programs.

(c) (1) There is hereby established in the Department of Recreation, a division of community-based programs for children and youth, which shall provide administrative and operational support for programs for children and youth conducted by the Neighborhood Planning Councils and other community organizations.

(2) The division of community-based programs for children and youth will have the responsibility for the administration of community recreational, educational, cultural, and economic development programs of the Neighborhood Planning Councils. All appropriated and grant funds for the operation of such programs will be administered separately within the division, under the auspices of the Department of Recreation. All youth development block grant funds received by the District Government from the federal Community Services Administration, as designated for such purposes, shall be obligated in programs for children and youth conducted by the Neighborhood Planning Councils.

(3) Local program planning, project selection, and designation of project grants will be performed by the Neighborhood Planning Councils. There will be an equitable allocation of funds, based on children and youth population, for each Neighborhood Planning Council.

(4) The authority and fiscal responsibility to manage community elections for the Neighborhood Planning Councils will be assigned to the division of community-based programs for children and youth, under the direction of the Department of Recreation.

(5) The director of the division of community-based programs for children and youth shall be appointed by the Director of the Department of Recreation.

(6) The division of community-based programs for children and youth shall, in consultation with the Council of Chairpersons, prepare an operational manual for the development and implementation of programs.

(7) The director of the division of community-based programs for children and youth will be responsible for coordinating all community-based programs for children and youth. Decisions on com-

munity program priorities will be made by each Neighborhood Planning Council, according to criteria, specified in the operational manual developed by the division. The director of the division of community-based programs for children and youth will serve as liaison to the Neighborhood Planning Councils and the Council of Chairpersons, and be accountable to both the Neighborhood Planning Councils and the Department of Recreation for the effective administration of community-based programs for children and youth. The director of the division will insure that adequate technical assistance is available to the Council of Chairpersons and each Neighborhood Planning Council.

(8) The Neighborhood Planning Councils shall continue to abide by their uniform Constitution and By-laws, consistent with this chapter and other District laws. Changes and amendments to the uniform Constitution and By-laws shall be made only by the consent of the Council of Chairpersons.

(d) There are hereby transferred to the Department of Manpower (Organization Order No. 46, Commissioner's Order No. 74-144, June 29, 1974) the functions of the Office of Youth Opportunity Services relating to the coordination of programs designed to provide jobs for youth.

(e) There are hereby transferred to the School of Continuing Education, Federal City College, University of the District of Columbia (D.C. Law 1-36) the functions of the Office of Youth Opportunity Services with respect to the administration and supervision of the District of Columbia Street Academy.

(f) There are hereby assigned to the Board of Education of the District of Columbia, the functions of the Office of Youth Opportunity Services with respect to the summer lunch program for children and youth. (Mar. 29, 1977, D.C. Law 1-93, § 4, 23 DCR 9532b.)

REFERENCES IN TEXT

Commissioner's Order No. 70-93, referred to in subsec. (a), is set out as an Organization Action of the Commissioner of the District of Columbia in the Appendix to title 1 in the 1973 edition of the Code.

Organization Order No. 10, referred to in subsec. (b), is set out in the Appendix to title 1.

Organization Order No. 46, referred to in subsec. (d), is set out in the Appendix to title 1.

D.C. Law 1-36, referred to in subsec. (e), is The District of Columbia Public Postsecondary Education Reorganization Act Amendments, Nov. 1, 1975, which is classified to chapter 17 of title 31.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-2001.

§ 6-2004. Office of Youth Advocacy.

(a) There is hereby established in the executive branch an Office of Youth Advocacy which shall perform a planning, review and evaluation function for all programs operated by the District of Columbia government impacting on children and youth, including employment, health, counseling, recreation and training.

(b) The Director of the Office of Youth Advocacy shall be appointed by the Mayor. The Director may hold no other public office.

(c) The following positions and their associated funding are hereby authorized to be transferred

from the Office of Youth Opportunity Services to the Office of Youth Advocacy:

1 Special Assistant to the Mayor (Subject to the prior approval of the Civil Service Commission pursuant to 5 U.S.C. 5108)	GS-16
1 Manpower Specialist	GS-14
1 Recreation Specialist	GS-14
1 Education Specialist	GS-12
1 Program Analyst Officer	GS-13
1 Computer Analyst	GS-13
1 Secretary	GS-7
1 Secretary (Typist)	GS-6

(d) Consistent with this chapter and other District laws, the Director may hire employees, assign work, and delegate the duties, exercise the powers, and carry out the functions of the Office.

(e) All positions and personnel so transferred shall continue to be governed by personnel legislation enacted by Congress, and rules and regulations promulgated pursuant thereto, until such time as the District Government personnel system is established in accordance with section 1-162(3). Such positions and personnel may be reclassified, realigned, or found in excess and separated from the service in accordance with this chapter or an administrative order of the Director. (Mar. 29, 1977, D.C. Law 1-93, § 5, 23 DCR 9532b.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-2001, 6-2005.

§ 6-2005. Powers of the Office.

The Director of the office shall—

(a) systematically review and evaluate the full array of programs operated by the District of Columbia impacting on children and youth, as specified in section 6-2004(a);

(b) plan and develop demonstration youth programs for transfer to other operating agencies upon their validation after no more than three years of operation;

(c) present the interest of children and youth before other administrative and regulatory agencies and legislative bodies of the District of Columbia government;

(d) assist, advise, and cooperate with local, federal, and private agencies to promote the interest of children and youth in the District of Columbia;

(e) develop criteria for the validation of programs for children and youth which shall be widely disseminated and utilized in the review and evaluation of programs;

(f) issue an annual report on the current status of programs for children and youth on a city-wide basis, both governmental and private; and

(g) perform such other functions and duties consistent with the purpose of this chapter which may be deemed necessary and appropriate to promote the welfare of children and youth. (Mar. 29, 1977, D.C. Law 1-93, § 6, 23 DCR 9532b.)

§ 6-2006. Transfer of positions and funds.

(a) The following positions and their associated funding are hereby transferred from the Office

of Youth Opportunity Services to the Department of Manpower:

1 Deputy Director	GS-15
1 Program Analyst Officer	GS-12
1 Social Scientist Analyst	GS-11
1 Computer Program Analyst	GS-11
1 Research Assistant	GS-11
1 Research Assistant	GS-9
2 Program Analysts	GS-9
1 Research Assistant	GS-7
2 Clerks (Typist)	GS-4

(b) The following positions and their associated funding, initially transferred in the "Budget Act of 1977" to the Department of Manpower, are hereby transferred from the Office of Youth Opportunity Services to the Department of Recreation for the support of Neighborhood Planning Council programs:

1 Program Analyst Officer	GS-12
1 Program Director	GS-11
4 Field Technical Assistants	GS-9
2 Clerks	GS-4

(c) The funds available to the Office of Youth Advocacy, Department of Manpower, Department of Recreation, Federal City College, and District of Columbia Public Schools to carry out the purposes of this chapter will be as delineated in the "Budget Act of 1977", Act 1-94 (March 9, 1976) except as altered in subsections (a) and (b) of this section.

(d) All positions and personnel so transferred shall continue to be governed by personnel legislation enacted by Congress, and rules and regulations promulgated pursuant thereto, until such time as the District of Columbia government personnel system is established in accordance with section 1-162(3). Such positions and personnel may be reclassified or found in excess and separated from the service in accordance with this chapter or an administrative order of the Directors or President of the aforementioned agencies and departments. (Mar. 29, 1977, D.C. Law 1-93, § 7, 23 DCR 9532b.)

§ 6-2007. Accounting and voucher systems.

The Mayor shall instruct the Office of Budget and Management Systems to coordinate with the Department of Recreation, the establishment of a bookkeeping and accounting system to allow for timely allocation of monies from the District of Columbia government to Neighborhood Planning Council Programs, and shall establish a regular voucher system to facilitate the swift transference of funds from the District of Columbia government to the Neighborhood Planning Councils. (Mar. 29, 1977, D.C. Law 1-93, § 8, 23 DCR 9532b.)

§ 6-2008. Conflict of interest procedures.

The Neighborhood Planning Councils shall, with the assistance of the Department of Recreation, establish procedures in their By-laws and Constitution to handle conflicts of interest in the award of subgrants to programs, when any Councilmember has either a structural or fiduciary relationship with a

grant applicant or grantee. (Mar. 29, 1977, D.C. Law 1-93, § 9, 23 DCR 9532b.)

§ 6-2009. Rules of operation.

The Neighborhood Planning Councils shall establish under the auspices of the Director of the Department of Recreation, uniform rules governing their operation and internal structure. These rules shall include a statement of Neighborhood Planning Council responsibilities, voting procedures, the establishment of standing committees, the manner of selecting chairpersons and other officers, procedures for prompt review and action on committee recommendations, and procedures for receipt and action upon community recommendations at both the local Neighborhood Planning Council and city-wide Council of Chairpersons levels. Said rules shall be filed with the Director of the Department of Recreation and published in the D.C. Register. (Mar. 29, 1977, D.C. Law 1-93, § 10, 23 DCR 9532b.)

§ 6-2010. Budget request.

The Department of Recreation shall develop an annual fiscal year budget request to administer and support programs of the Neighborhood Planning Councils; such budget requests shall be submitted to the Neighborhood Planning Councils each year for their review and comment. The budget shall be submitted by the Mayor to the Council, accompanied by such comments, on such date which may be required to conform with the District of Columbia Budget schedule. (Mar. 29, 1977, D.C. Law 1-93, § 11, 23 DCR 9532b.)

§ 6-2011. Severability.

If any provision of this chapter is held invalid, the remainder of this chapter shall not be affected. (Mar. 29, 1977, D.C. Law 1-93, § 12, 23 DCR 9532b.)

Chapter 21.—CHILD ABUSE AND NEGLECT

SUBCHAPTER I.—REPORTING ABUSE AND NEGLECT

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SUBCHAPTER I.—REPORTING ABUSE AND NEGLECT

§ 6-2101. Definitions.

For the purposes of this act:

(a) "Child Protection Register" means the confidential index of all reports established pursuant to section 6-2111.

(b) "credible evidence" means any evidence which indicates that a child is an abused or neglected child, including the statement of any person worthy of belief.

(c) except where used in Title IV of this act, "Division" means the Child Protective Services Division of the District of Columbia Department of Human Resources.

(d) "guardian ad litem" means an attorney appointed by the Superior Court of the District of Columbia to represent the child's best interests in neglect proceedings.

(e) "Police" means the Metropolitan Police Department of the District of Columbia.

(f) "report" means a report to the Police or the Division of a suspected or known neglected child.

(g) "source" means the person or institution from whom a report originates.

(h) "supported report" means a report, made pursuant to section 103(d) of Title I of this act, which is supported by credible evidence.

(i) "unsupported report" means a report, made pursuant to section 103(d) of Title I of this act, which is not supported by credible evidence. (Sept. 23, 1977, D.C. Law 2-22, title I, § 102, 24 DCR 3341.)

REFERENCES IN TEXT

This act, referred to in material preceding par. (a), is the Prevention of Child Abuse and Neglect Act of 1977, Sept. 23, 1977, D.C. Law 2-22. Title IV of this act, referred to in par. (c), is title IV of such act. For classification of the act to the Code, see the Parallel Reference Tables. Section 103(d) of Title I of this act, referred to in pars. (h) and (i), is section 103(d) of such act which amended section 2-163.

EFFECTIVE DATE

Section 411 of act Sept. 23, 1977, D.C. Law 2-22, title IV, provided: "This act [for classification of act see Tables] shall take effect pursuant to the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act Sept. 23, 1977, D.C. Law 2-22, provided "That this act [for classification of act see Tables] may be cited as the 'Prevention of Child Abuse and Neglect Act of 1977'."

§ 6-2102. Handling of reports by the Division.

(a) Upon the receipt of an oral report, the Division shall immediately inform the Police of the contents of the report, if it alleges a child is or may have been an abused child.

(b) The Division shall commence an investigation of all reports alleging neglect other than abuse within twenty-four (24) hours of the receipt of the report except that when:

(1) a report alleges that a child is left alone or with inadequate supervision, the Division shall commence an investigation immediately. If the Division is unable to dispatch a worker to the child forthwith, it shall inform the Police of the report.

(2) a report indicates the existence of an immediate danger to a child and the immediate removal of the child from his or her surroundings appears necessary despite the available resources, the Division shall inform the Police of the contents of the report and request the Police to investigate. The Division shall immediately commence a social investigation.

(c) In all cases occurring after normal working hours or when it is otherwise deemed necessary, the Division may request the assistance of the Police. (Sept. 23, 1977, D.C. Law 2-22, title I, § 104, 24 DCR 3341.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-2133, 6-2134.

§ 6-2103. Handling of reports by the Police.

(a) The Police shall, as soon as possible after the receipt of a report of a neglected child other than an abused child, inform the Division of its contents and any action the Police are taking or have taken.

(b) The Police may, upon the receipt of a report of an abused child, inform the Division of its contents and shall, as soon as possible when the report is a supported report, inform the Division of its contents and any action they are taking or have taken.

(c) The Police shall immediately after a report is received commence an investigation of the circumstances alleged in the report.

(d) The Police shall immediately after a report is received commence an investigation of a case of a neglected child in immediate danger which case was referred from the Division or reported directly to the Police.

(e) Upon the receipt of a report alleging a child is or has been left alone or without adequate supervision, the Police shall respond to the report immediately and shall take such steps as are necessary to safeguard the child until a Division staff member arrives: *Provided, however,* That if the Division does not arrive within a reasonable time, the Police may transport the child to the Division. The transporting of a child to the Division pursuant to this subsection shall not be considered a taking into custody as described in section 16-2309. (Sept. 23, 1977, D.C. Law 2-22, title I, § 105, 24 DCR 3341.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-2134.

§ 6-2104. Investigation.

(a) The primary responsibility for the initial investigation is with the Police in cases of an allegedly abused child and with the Division in other cases of an allegedly neglected child: *Provided, however,* That the investigation of a report involving acts or omissions of either the Department of Human Resources or the Police shall be conducted by the Department which is not involved.

(b) The purpose of the initial investigation shall be to determine:

(1) the nature, extent, and cause of the abuse or neglect;

(2) the identity of the person responsible for the abuse or neglect;

(3) the name, age, sex, and condition of the abused or neglected child and all other children in the home;

(4) the conditions in the home at the time of the investigation;

(5) whether there is any child in the home whose health, safety, or welfare is in jeopardy because of his or her treatment in the home or his or her home environment; and

(6) whether any child who is in jeopardy because of treatment in the home or his or her home environment should be removed from the home or can be protected by the provision of resources such as those listed in section 6-2134.

(Sept. 23, 1977, D.C. Law 2-22, title I, § 106, 24 DCR 3341.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-2106, 6-2133.

§ 6-2105. Removal of children.

(a) In cases in which a child is alleged to be a neglected, but not an abused, child the Division shall determine whether the child should be removed from the home or can be protected by the provision of services or resources. If in the opinion of the Division the available services or resources are insufficient to protect the child and there is insufficient time to petition for removal, the Division shall request the Police to remove the child pursuant to section 16-2309 (3) or (4).

(b) In all cases for which the Police are responsible for the initial investigation but which do not involve an immediate danger to a child, the Police shall seek from the Division and the Division shall provide assistance in the determination of whether the child can be protected by the provision of services or resources or whether removal is necessary. Whenever possible the Division shall dispatch a worker to the scene to provide assistance in this determination.

(c) In all cases for which the Police are responsible for the initial investigation and which do involve an immediate danger to a child and require removal pursuant to section 16-2309(3), the Police shall immediately notify the Division of the removal and the latter shall investigate alternative placements for the child.

(d) When, prior to a shelter care hearing, the Division locates a suitable alternative placement pursuant to subsection (c) of this section, the Police may release the child pursuant to section 16-2311(a) (1). (Sept. 23, 1977, D.C. Law 2-22, title I, § 107, 24 DCR 3341.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-2133, 16-2309.

§ 6-2106. Photographs and x-rays.

If there is a supported report, any person responsible for the investigation under section 6-2104 may take, or have taken, color photographs of each area of trauma visible on the child or photographs of the conditions surrounding the neglect of the child and, if medically indicated, have radiological examinations performed on the child. (Sept. 23, 1977, D.C. Law 2-22, title I, § 108, 24 DCR 3341.)

§ 6-2107. Social investigation and services

(a) If the initial investigation results in a supported report, the information from the initial investigation shall be immediately referred to the Police or the Division, as appropriate. A social investigation shall be commenced immediately by the Intrafamily Branch of the Social Services Division of the Superior Court of the District of Columbia in all cases of an allegedly abused child which are referred for petition to the Family Division of the Superior Court of the District of Columbia and by the Division in all other cases, except that cases which are or were recently active with the Division may be investigated by the Division. The purpose of the social investigation shall be to determine what services are required by the family to remedy the conditions of abuse or neglect.

(b) If there is a supported report, the agency responsible for the social investigation shall as soon as possible prepare a plan for each child and family for whom services are required on more than an emergency basis and shall forthwith take such steps to ensure the protection of the child and the preservation, rehabilitation and, when appropriate, reunification of the family as may be necessary to achieve the purposes of this act. Such steps may include but need not be limited to:

(1) arranging for necessary protective, rehabilitative, and financial services to be provided to the child and the child's family in a manner which maintains the child in his or her home;

(2) referring the child and the child's family for placement in a family shelter or other appropriate facility;

(3) securing services aimed at reuniting (with his or her family) a child taken into custody;

(4) providing or making specific arrangements for the case management of each case when child protective services are required.

To the maximum extent possible, the resources of the community (public and private) shall be utilized for the provision of services and case management.

(c) A report of the social investigation required under subsection (a) of this section and the plan required under subsection (b) shall be submitted to all counsel at least five (5) days prior to the date of the fact-finding hearing in cases in which a petition was filed pursuant to section 16-2305: *Provided*, That nothing added to the report or the plan subsequent to either an initial appearance or shelter care hearing shall be considered by the court prior to the completion of the fact-finding hearing unless the parent, guardian, or custodian alleged to be responsible for the neglect consents to such consideration. (Sept. 23, 1977, D.C. Law 2-22, title I, § 109, 24 DCR 3341.)

REFERENCE IN TEXT

This act, referred to in subsec. (b), is the Prevention of Child Abuse and Neglect Act of 1977, Sept. 23, 1977, D.C. Law 2-22. For classification of the act to the Code, see the Parallel Reference Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16-2319.

SUBCHAPTER II.—CHILD PROTECTION REGISTER

§ 6-2111. Establishment and purpose.

(a) There is hereby established a Child Protection Register to be maintained by the Division.

(b) The purposes of the Register are to:

(1) maintain a confidential index of cases of abused and neglected children;

(2) assist in the identification and treatment of abused and neglected children and their families; and

(3) serve as a resource for the evaluation, management, and planning of programs and services for abused and neglected children.

(c) The staff of the Department of Human Resources assigned to maintain the Child Protection Register shall maintain twenty-four (24) hour, seven (7) day a week telephone lines which may be combined with the twenty-four (24) hour intake components described in subchapter III of this chapter.

(d) Said staff shall:

(1) receive reports and information necessary for the operation of the Child Protection Register and make appropriate entries in such Register as required by section 6-2112(a); and

(2) release information contained in the Child Protection Register in a manner consistent with this act.

(Sept. 23, 1977, D.C. Law 2-22, title II, § 201, 24 DCR 3341.)

REFERENCE IN TEXT

This act, referred to in subsec. (d) (2), is the Prevention of Child Abuse and Neglect Act of 1977, Sept. 23, 1977, D.C. Law 2-22. For classification of the act to the Code, see the Parallel Reference Tables.

EFFECTIVE DATES

Section 210 of act Sept. 23, 1977, D.C. Law 2-22, title II, provided:

"(a) This title [enacting this subchapter] shall not become effective until funds sufficient to meet the expenses of staffing and operating the Child Protection Register are available and the rules implementing this title are adopted by the Mayor pursuant to the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code, sec. 1-1501).

"(b) No later than ten (10) days after the date the requirements of this section have been met, the Mayor shall publish in the District of Columbia Register a notice that this title is in effect."

For effective date of act Sept. 23, 1977, D.C. Law 2-22, see section 411 of that act set out as a note under § 6-2101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-2101.

§ 6-2112. Information to be retained.

(a) There shall be retained in the Child Protection Register the following information concerning each supported report:

(1) the recipient of the report, the date and the time of the receipt of the report;

(2) the information required in the report pursuant to section 2-163;

(3) the census tract and ward in which the child lives and other demographic information concerning the incident referred to in the report;

(4) the agencies to which the report was referred and the date and the time of the referral;

(5) the agency or agencies making the initial investigation, the summary of the results of the initial investigation and the dates and the times the investigations were begun and terminated;

(6) the agency or agencies making the social investigation, the summary of the results of the social investigation, the dates and the times said investigation was begun and terminated, the services offered and when they were offered;

(7) the agency or agencies to which the referrals were made and the services requested, with the dates of the opening and the closing of the case;

(8) the placements of the child and the dates of each placement;

(9) court actions concerning the child and the dates thereof; and

(10) the date the case was closed.

(b) There may be retained in the Child Protection Register other information required for research, planning, evaluation and management purposes pursuant to rules adopted according to the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501).

(c) Information in an unsupported report shall be retained in a separate index in which all information that could identify any person referred to in the unsupported report shall be destroyed.

(d) The staff which maintains the Child Protection Register shall review all open cases every six (6) months to assure that information in said Register is current and shall request updated information from the appropriate agencies as indicated.

(e) The public agencies responsible for receiving reports, making investigations and providing or securing case management shall be responsible for supplying the information required under this section to the Child Protection Register on a timely basis. (Sept. 23, 1977, D.C. Law 2-2, title II, § 202, 24 DCR 3341.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-2111.

§ 6-2113. Access to the Register.

(a) The staff which maintains the Child Protection Register shall grant access to information contained in said Register only to the following persons:

(1) officers of the Police for the purpose of an investigation of a report;

(2) the Corporation Counsel of the District of Columbia or his or her agent for the purpose of fulfilling his or her official duties concerning cases of an allegedly neglected child;

(3) the personnel of the Division and the Social Services Division of the Superior Court of the District of Columbia for the purpose of investigating a report or providing services to a family or child who is the subject of a report;

(4) the guardian ad litem of a child who is the subject of a report;

(5) each person identified in a report as a person responsible for the neglect of the child or that person's attorney; and

(6) the parent, guardian, custodian or attorney of the child who is the subject of the report.

(b) The investigators of a report may divulge the information obtained from the Child Protection Register to medical professionals for the purpose of obtaining a diagnosis of the child who is the subject of the report.

(c) Each person seeking access to the Child Protection Register shall show identification satisfactory to the staff which maintains said Register before access is allowed.

(d) The staff which maintains the Child Protection Register shall not release to those persons identified in subparagraphs (5) and (6) of subsection (a) of this section any information that identifies the source of a report or the witnesses to the incident referred to in a report unless said staff first obtains permission from the source of the report and/or from the witnesses named in the report.

(e) The staff which maintains the Child Protection Register shall release only that information which is necessary for the purpose of the request and which does not violate the confidentiality of the persons identified in the report.

(f) The staff which maintains the Child Protection Register shall not release the information contained in said Register to another jurisdiction unless:

(1) that jurisdiction has comparable safeguards for ensuring the confidentiality of information regarding persons identified in the report and for withholding the identity of the source of the report; or

(2) the staff obtains permission for the release of the information from each person identified in the report and from the source of the report.

(g) The staff which maintains the Child Protection Register shall maintain a record of each release of information, which record shall contain the following information:

(1) the date of the release of the information;

(2) to whom the information was released and the address of that person or institution; and

(3) the purpose for which the information was released.

(h) The information in the Child Protection Register shall be released orally only to the Police and to personnel of the Division and of the Social Services Division of the Superior Court of the District of Columbia when they are investigating a report. Any release of information to other persons listed in subsection (a) of this section or pursuant to section 6-2114 shall be preceded by a written request from the person requesting the information. (Sept. 23, 1977, D.C. Law 2-22, title II, § 203, 24 DCR 3341.)

§ 6-2114. Release of information for research and evaluation.

The staff which maintains the Child Protection Register may release information from said Register for research and evaluation only upon an order of the Superior Court of the District of Columbia: *Provided, however*, That no information identifying the persons named in a report shall be made available to the researcher or evaluator. (Sept 23, 1977, D.C. Law 2-22, title II, § 204, 24 DCR 3341.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-2113.

§ 6-2115. Notification of persons identified in a report.

(a) The staff which maintains the Child Protection Register shall, within seven (7) days from the date that a report is entered in said Register, give notice to each person identified in the report of the fact that the report identifies him or her as responsible for the alleged abuse or neglect of the child who is the subject of the report.

(b) This notice shall include the following information:

(1) the date that the report identifying the person was entered in the Child Protection Register;

(2) the right of the person to review the entire report, except information which identifies other persons mentioned in the report; and

(3) the administrative procedures through which the person may seek the correction of information which he or she alleges is incorrect.

(Sept. 23, 1977, D.C. Law 2-22, title II, § 205, 24 DCR 3341.)

§ 6-2116. Challenges to information in the Register.

The Mayor shall establish, by rules adopted pursuant to the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501) procedures to permit a person identified in the Child Protection Register to challenge information which he or she alleges is incorrect. (Sept. 23, 1977, D.C. Law 2-22, title II, § 206, 24 DCR 3341.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-2117.

§ 6-2117. Expungement.

(a) The staff which maintains the Child Protection Register shall expunge from each report all information that identifies any person in the report upon:

(1) the eighteenth birthday of the child, if there is no reasonable suspicion or evidence that a younger sibling is being abused or neglected; or

(2) the end of the fifth year after the termination of the social rehabilitation services directed toward the abuse and neglect, whichever occurs first.

(b) The staff which maintains the Child Protection Register shall expunge, pursuant to the rules adopted under section 6-2116, material successfully challenged as incorrect. (Sept. 23, 1977, D.C. Law 2-22, title II, § 207, 24 DCR 3341.)

§ 6-2118. Penalty for unauthorized release of information.

Any staff member of the Child Protection Register who willfully releases information obtained from the Register in violation of this act shall be fined not more than one thousand dollars (\$1,000). (Sept. 23, 1977, D.C. Law 2-22, title II, § 208, 24 DCR 3341.)

REFERENCE IN TEXT

This act, referred to in text, is the Prevention of Child Abuse and Neglect Act of 1977, Sept. 23, 1977, D.C. Law 2-22. For classification of the act to the Code, see the Parallel Reference Tables.

§ 6-2119. Prosecution.

All violations of this act shall be prosecuted by the Corporation Counsel of the District of Columbia or his or her designee in the name of the District of Columbia. (Sept. 23, 1977, D.C. Law 2-22, title II, § 209, 24 DCR 3341.)

REFERENCE IN TEXT

This act, referred to in text, is the Prevention of Child Abuse and Neglect Act of 1977, Sept. 23, 1977, D.C. Law 2-22. For classification of the act to the Code, see the Parallel Reference Tables.

SUBCHAPTER III.—CHILD PROTECTIVE SERVICES DIVISION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 6-2111.

§ 6-2131. Establishment and purpose.

(a) There shall be maintained within the Department of Human Resources a separate and distinct Division. The Division shall have as its purposes and functions:

(1) safeguarding the rights and protecting the welfare of children whose parents are unable to do so;

(2) offering highly specialized diagnostic and treatment services to families when there is specific harm to the child's physical or emotional well-being;

(3) ensuring that neglected and abused children are protected from further experiences and conditions detrimental to their healthy growth and development; and

(4) providing services on behalf of the child designed to help parents recognize and remedy the conditions harmful to the child and to fulfill their parental roles more adequately.

(b) The Division shall have no other function which is not directly related to its child protective service purpose, except that the twenty-four (24) hour intake unit may on an emergency basis, after normal office hours, offer crisis assistance to adults.

(c) The Department of Human Resources shall support the purpose and function of the Division by obtaining substitute care for a child whose parents are unable, even with available help, to meet the child's minimum needs and, where appropriate, by providing to the family of such child services which are aimed at reuniting the family as quickly as possible. (Sept. 23, 1977, D.C. Law 2-22, title III, § 301, 24 DCR 3341.)

EFFECTIVE DATE

See note under § 6-2101.

§ 6-2132. Organization.

(a) The Division shall be administered by a full-time Chief who shall be qualified by reason of training and experience to further the purposes of this act.

(b) The Chief of the Division shall be responsible for all child protective services provided by the Department of Human Resources, for monitoring child protective services provided by compact or contract with the Department of Human Resources and for coordinating activities with the Social Services Division of the Superior Court of the District of Columbia.

(c) The Division shall have sufficient staff, supervisory personnel, and resources to accomplish the purposes of this act, including the capacity to provide emergency and continuing service resources to abused and neglected children and their families.

(d) Staff qualifications, caseload levels, and supervision requirements shall be guided by standards set by the Child Welfare League of America or other child welfare organizations, shall be published in the District of Columbia Register for public comments, and shall be reviewed by the Mayor's Interagency Interdepartmental Committee on Abuse and Neglect.

(e) There shall be within the Division a twenty-four (24) hour intake component staffed by workers specially trained in intake and crisis intervention. The unit shall be staffed at all times, twenty-four (24) hours a day, seven (7) days a week. This component shall maintain the capacity for receiving reports and for responding promptly with investigation and emergency services. This component shall maintain a widely publicized telephone number for receiving reports at all times and shall maintain sufficient telephone lines and qualified staff so that all calls will be answered immediately by a trained worker. (Sept. 23, 1977, D.C. Law 2-22, title III, § 302, 24 DCR 3341.)

REFERENCE IN TEXT

This act, referred to in subsecs. (a) and (c), is the Prevention of Child Abuse and Neglect Act of 1977, Sept. 23, 1977, D.C. Law 2-22. For classification of the act to the Code, see the Parallel Reference Tables.

§ 6-2133. Duties and responsibilities.

(a) The Chief of the Division shall have the following duties and responsibilities, any of which may be contracted for with private or other public agencies:

(1) to receive and investigate reports of neglect as provided in section 103 of this act sections 6-2102 and 6-2104 and to assist in the determination of the need for the removal of an abused child as provided in section 6-2105;

(2) within ninety (90) days of taking a child into custody pursuant to subparagraph (i) of subsection (c) of section 6-2134, to return the child to the home or to request the filing of a neglect petition in the Family Division of the Superior Court of the District of Columbia;

(3) to maintain a program of treatment and services for families of neglected and abused children;

(4) to prepare annually a plan for child protective services which shall be reviewed and commented on by the Mayor's Interagency Interdepartmental Committee on Abuse and Neglect. The plan shall:

(A) describe the Division's implementation of this act, including its organization, staffing, method of operations and financing, and programs and procedures for the receipt, investigation and verification of reports;

(B) describe the provisions for the determination of protective and the treatment of ameliorative service needs, and the provision of such services;

(C) state the guidelines for referrals to the Family Division of the Superior Court of the District of Columbia; and

(D) state the provisions for monitoring, evaluation and planning. The first plan shall be made available to the public within ninety (90) days of September 23, 1977;

(5) to encourage and assist in the formation of child abuse/neglect teams in hospitals, health and mental health clinics and other appropriate facilities in the District of Columbia; and

(6) to take whatever additional actions are necessary to accomplish the purposes of this act.

(b) The Director of the Department of Human Resources, in addition to his or her other responsibilities, shall have the following duties and responsibilities, any of which may be contracted for with private or other public agencies:

(1) when a child has been adjudicated a neglected child and committed to the Department of Human Resources, to offer rehabilitative services to the child's family;

(2) when rehabilitative services have failed to reunite a committed child and his or her family within a reasonable time, to prepare a permanent plan for the child;

(3) to establish or attempt to secure priority access for protective service clients, by contract or agreement with private organizations, other public agencies, or other Department of Human Resources units to, services necessary for the preservation or reunification of families. These services may include but shall not be limited to:

(A) emergency financial aid;

(B) emergency caretakers;

(C) homemakers;

(D) family shelters;

(E) emergency foster homes;

(F) facilities providing medical, psychiatric or other therapeutic services;

(G) day care;

(H) parent aides/lay therapists;

(4) to monitor and evaluate services to and needs of neglected children and their families;

(5) to compile and publish training materials and provide technical assistance on neglect prevention, identification and treatment; and

(6) to prepare and submit to the Mayor, the Council of the District of Columbia and the public an annual report which shall include a description of the specific actions taken to implement this act and an evaluation of the Division's performance. The report shall include a full statistical analysis of case reports received, an evaluation of services offered, recommendations for additional legislation or services needed to fulfill the purposes of this act and the comments submitted by the Mayor's Interagency Interdepartmental Committee on Abuse and Neglect. The first report shall be submitted not later than one (1) year and ninety (90) days after September 23, 1977.

(Sept. 23, 1977, D.C. Law 2-22, title III, § 303, 24 DCR 3341.)

REFERENCES IN TEXT

This act, referred to in in subsecs. (a) (4) (A), (a) (6), and (b) (6), is the Prevention of Child Abuse and Neglect Act of 1977, Sept. 23, 1977, D.C. Law 2-22. Section 103 of this act, referred to in subsec. (a) (1), is section 103 of such act. For classification of the act to the Code, see the Parallel Reference Tables.

CODIFICATION

In subsecs. (a) (4) (D) and (b) (6), "September 23, 1977" has been substituted for "the effective date of this act".

§ 6-2134. Authority.

(a) When an investigation made pursuant to sections 6-2102 and 6-2103 indicates that a child is an abused or neglected child and in need of services, the Chief of the Division is authorized to provide or secure any necessary services which may include:

(1) emergency financial aid;

(2) temporary third-party placement with responsible neighbors or relatives for the child and his or her siblings: *Provided*, That the person with whom the child is placed shall not be considered an agent of the Department of Human Resources;

(3) emergency caretaker(s) who enter the home and provide temporary care for the child and his or her siblings in appropriate cases, when the consent of the parent or other custodian cannot be obtained, notwithstanding the provisions of the Act of March 3, 1901, as amended (31 Stat. 1324);

(4) the placement of homemakers in the home to maintain the child and his or her siblings or to assist the parent or other caretaker in discharging his or her responsibilities to the child;

(5) day care for the child and his or her siblings;

(6) counselling services for the child and his or her family;

(7) medical evaluation and/or emergency treatment of the child by a qualified physician; and

(8) other appropriate services or resources available in the community.

(b) When an investigation indicates that a child has been left alone or with inadequate supervision and a third-party placement cannot be made, the Division is authorized to make a temporary custodial placement of the child: *Provided*, That:

(1) notice is left for the parent or custodian which shall state the procedure for reclaiming the child;

(2) efforts continue to locate the parent;

(3) the child is returned forthwith upon the request of the parent or custodian, unless there is additional evidence of immediate danger to the child and Police action is taken pursuant to section 16-2309 (3) or (4); and

(4) a complaint alleging neglect is filed with the Superior Court of the District of Columbia:

(A) at the end of five days if the parent or custodian fails to claim the child within that time, or

(B) immediately upon the discovery of additional evidence of immediate danger to the child.

(c) When an investigation made pursuant to section 6-2102 or 6-2103 indicates that a child is an abused or a neglected child and when it has been determined that the child cannot be adequately protected by any of the services set forth in subsections (a) or (b) of this section or by any other services, the Chief of the Division is authorized to:

(1) remove the child with the consent of the parent, guardian, or other person acting in loco parentis;

(2) request the Corporation Counsel of the District of Columbia to petition the Family Division of the Superior Court of the District of Columbia for a finding of neglect and, where appropriate, the removal of the child; and

(3) request the Police to remove the child when the consent of a parent, guardian or other custodian cannot be obtained and the need to protect the child does not allow sufficient time to obtain a court order.

(Sept. 23, 1977, D.C. Law 2-22; title III, § 304, 24 DCR 3341.)

REFERENCE IN TEXT

The Act of March 3, 1901, referred to in subsec. (a) (3), enacted a code of laws for the District of Columbia. For classification of that Act to the Code, see the Parallel Reference Tables. The reference to the provisions of that Act in 31 Stat. 1324 was probably intended to be a reference to section 824 of that Act which is classified to section 22-3102.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-2104, 6-2133, 6-2135.

§ 6-2135. Authority to provide medical care.

When the Department of Human Resources has physical custody of a child pursuant to subsection (b) or (c) of section 6-2134 or pursuant to sections 16-2313 or 16-2320, it may:

(1) authorize a medical and psychiatric evaluation and/or emergency medical, surgical, dental, or psychiatric treatment at any time; and

(2) authorize non-emergency medical, surgical, dental or psychiatric treatment, or autopsy, when reasonable efforts to consult the parent have been made but a parent cannot be consulted.

(Sept. 23, 1977, D.C. Law 2-22, title III, § 305, 24 DCR 3341.)

Chapter 22.—HUMAN RIGHTS

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SUBCHAPTER I.—GENERAL PROVISIONS

§ 6-2201. Purpose.

It is the intent of the Council of the District of Columbia, in enacting this chapter, to secure an end in the District of Columbia, to discrimination for any reason other than that of individual merit, including, but not limited to discrimination by reason of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, physical handicap, source of income, and place of residence or business. (Dec. 13, 1977, D.C. Law 2-38, title I, § 101, 24 DCR 6038.)

EFFECTIVE DATE

Section 319 of act Dec. 13, 1977, D.C. Law 2-38, title III, provided: "This act [enacting this chapter] shall take effect upon becoming law pursuant to the 'District of Columbia Self-Government and Governmental Reorganization Act,' approved December 24, 1973 (87 Stat. 814; D.C. Code, sec. 1-147(c) (1))."

SHORT TITLE

The first section of act Dec. 13, 1977, D.C. Law 2-38, provided: "That this act [enacting this chapter] may be cited as the 'Human Rights Act of 1977'."

REPEAL OF REGULATION No. 73-22

Section 318 of act Dec. 13, 1977, D.C. Law 2-38, title III, provided:

"(a) 'A Regulation Governing Human Rights—Title 34,' enacted November 16, 1973 (Reg. No. 73-22) is hereby repealed: *Except*, That any proceeding instituted

under Regulation No. 73-22 or Articles 40, 45 or 47 of the 'Police Regulations of the District of Columbia' or any violation thereof, which occurred prior to the effective date of this act [Dec. 13, 1977], shall not be nullified by this act [this chapter].

"(b) The procedures and remedies set forth in this act are to apply to any civil litigation or administrative proceeding pending on or instituted after the effective date of this act as a result of any act, omission or violation of Regulation No. 73-22 or Articles 40, 45, or 47 of the 'Police Regulations of the District of Columbia,' (as they were before they were repealed by Regulation No. 73-22) which act, omission or violation occurred prior to the effective date of this act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-2281.

§ 6-2202. Definitions.

The following words and terms when used in this chapter have the following meanings:

(a) "Administrative Procedure Act" means the "District of Columbia Administrative Procedure Act," (D.C. Code, sec. 1-1501 et seq.);

(b) "Age" means eighteen (18) years of age or older except that, in a case of employment, age shall be defined as eighteen (18) to sixty-five (65) years of age, unless otherwise prohibited by law;

(c) "Chairman" means the duly appointed Chairman of the District of Columbia Commission on Human Rights;

(d) "Commission" means the District of Columbia Commission on Human Rights, as established by Commissioner's Order No. 71-224, dated July 8, 1971;

(e) "Council" means the Council of the District of Columbia as established by section 1-141(a);

(f) "Director" means the Director of the District of Columbia Office of Human Rights, or a designate;

(g) "District" means the District of Columbia;

(h) "Educational Institution" means any public or private institution including an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system or university; and a business, nursing, professional, secretarial, technical, or vocational school; and includes an agent of an educational institution;

(i) "Employee" means any individual employed by or seeking employment from an employer;

(j) "Employer" means any person who, for compensation, employs an individual, except for the employer's parent, spouse, children or domestic servants, engaged in work in and about the employer's household; any person acting in the interest of such employer, directly or indirectly; and any professional association;

(k) "Employment Agency" means any person regularly undertaking or attempting, with or without compensation, to procure employees for an employer or to procure for employees, opportunities to work for an employer, and includes an agent of such a person;

(l) "Family Responsibilities" means the state of being, or the potential to become, a contributor to the support of a person or persons in a dependent relationship, irrespective of their number;

(m) "Hearing Tribunal" means members of the Commission, or one or more hearing examiners, appointed by the Commission to conduct a hearing;

(n) "Housing Business" means a business operated under the authority of a license issued by the Mayor, or other authorized District agent, pursuant to section 47-2328 and the regulations promulgated thereunder;

(o) "Labor Organization" means any organization, agency, employee representation committee, group, association, or plan in which employees participate directly or indirectly; and which exists for the purpose, in whole or in part, of dealing with employers, or any agent thereof, concerning grievances, labor disputes, wages, rates of pay, hours, or other terms, conditions, or privileges of employment; and any conference, general committee, joint or system board, or joint council, which is subordinate to a national or international organization;

(p) "Make public" means disclosure to the public or to the news media of any personal or business data obtained during the course of an investigation of a complaint filed under the provisions of this chapter, but not to include the publication of EEO-1, EEO-2, or EEO-3 reports as required by the Equal Employment Opportunities Commission, or any other data in the course of any administrative or judicial proceeding under this chapter; or any judicial proceeding under Title VII of the Civil Rights Act of 1964 [42 U.S.C. 2000e et seq.] involving such information; nor shall it include access to such data by staff or the Office of Human Rights, members of the Commission on Human Rights, or parties to a proceeding, nor shall it include publication of aggregated data from individual reports;

(q) "Marital status" means the state of being married, single, divorced, separated, or widowed and the usual conditions associated therewith, including pregnancy or parenthood;

(r) "Matriculation" means the condition of being enrolled in a college, or university; or in a business, nursing, professional, secretarial, technical or vocational school; or in an adult education program;

(s) "Office" means the District of Columbia Office of Human Rights, as established by Commissioner's Order No. 71-224, dated July 8, 1971, as amended;

(t) "Owner" means one of the following:

(1) any person, or any one of a number of persons in whom is vested all or any part of the legal or equitable ownership, dominion, or title to any real property;

(2) the committee, conservator, or any other legal guardian of a person who for any reason is non sui juris, in whom is vested the legal or equitable ownership, dominion or title to any real property; or

(3) a trustee, elected or appointed or required by law to execute a trust, other than a trustee under a deed of trust to secure the payment of money; or one who, as agent of, or fiduciary, or officer appointed by the court for the estate of the person defined in paragraph (1) of this definition shall have charge, care or control of any real property.

The term "owner" shall also include the lessee, the sublessee, assignee, managing agent, or other person having the right of ownership or possession of, or the right to sell, rent or lease, any real property;

(u) "Person" means any individual, firm, partnership, mutual company, joint stock company, corporation, association, organization, unincorporated organization, labor union, government agency, incorporated society, statutory or common law trust, estate, executor, administrator, receiver, trustee, conservator, liquidator, trustee in bankruptcy, committee, assignee, officer, employee, principal or agent, legal or personal representative, real estate broker or salesman or any agent or representative of any of the foregoing;

(v) "Personal appearance" means the outward appearance of any person, irrespective of sex, with regard to bodily condition or characteristics, manner or style of dress, and manner or style of personal grooming, including, but not limited to, hair style and beards. It shall not relate, however, to the requirement of cleanliness, uniforms, or prescribed standards, when uniformly applied for admittance to a public accommodation, or when uniformly applied to a class of employees, for a reasonable business purpose; or when such bodily conditions or characteristics, style or manner of dress or personal grooming presents a danger to the health, welfare or safety of any individual;

(w) "Physical handicap" means a bodily or mental disablement which may be the result of injury, illness or congenital condition for which reasonable accommodation can be made;

(x) "Place of public accommodation" means all places included in the meaning of such terms as inns, taverns, road houses, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest; restaurants or eating houses, or any place where food is sold for consumption on the premises; buffets, saloons, barrooms, or any store, park or enclosure where spirituous or malt liquors are sold; ice cream parlors, confectionaries, soda fountains and all stores where ice cream, ice and fruit preparation or their derivatives, or where beverages of any kind are retailed for consumption on the premises; wholesale and retail stores, and establishments dealing with goods or services of any kind, including, but not limited to the credit facilities thereof; banks, savings and loan associations, establishments of mortgage bankers and brokers, all other financial institutions, and credit information bureaus; insurance companies and establishments of insurance policy brokers; dispensaries, clinics, hospitals, bath-houses, swimming pools, laundries and all other cleaning establishments; barber shops, beauty parlors, theatres, motion picture houses, air-dromes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, trailer camps, resort camps, fairs, bowling alleys, golf courses, gymnasiums, shooting galleries, billiards and pool parlors; garages, all public conveyances operated on land or water or in the air, as well as the stations and terminals thereof; travel or tour advisory services, agencies or bureaus; public halls and public elevators of buildings and structures, occupied by two (2) or more tenants, or by the owner and one (1) or more tenants. Such term shall not include any institution, club, or place of accommodation which is in its nature distinctly pri-

vate except, that any such institution, club or place of accommodation shall be subject to the provisions of section 6-2277;

(y) "Political affiliation" means the state of belonging to or endorsing any political party;

(z) "Real Estate and Business Brokers' License Act" means sections 45-1401 to 45-1418.

(aa) "Real estate broker (or salesman)" means any person duly licensed as such in accordance with the provisions of the "Real Estate and Business Brokers' License Act";

(bb) "Real Estate Commission" mean the agency by that name created to carry out the provisions of chapter 14 of title 45;

(cc) "Sexual orientation" means male or female homosexuality, heterosexuality and bisexuality, by preference or practice;

(dd) "Source of income" means the point, the cause, or the form of the origination, or transmittal, of gains of property accruing to a person in a stated period of time; including, but not limited to, money and property secured from any occupation, profession or activity, from any contract, agreement or settlement, from federal payments, court-ordered payments, from payments received as gifts, bequests, annuities, life insurance policies and compensation for illness or injury, except in a case where conflict of interest may exist;

(ee) "Transaction in real property" means the exhibiting, listing, advertising, negotiating, agreeing to transfer or transferring, whether by sale, lease, sublease, rent, assignment or other agreement, any interest in real property or improvements thereon, including, but not limited to, leaseholds and other real chattels; and

(ff) "Unlawful discriminatory practice" means those discriminatory practices which are so specified in subchapter II of this chapter. (Dec. 13, 1977, D.C. Law 2-38, title I, § 102, 24 DCR 6038.)

REFERENCE IN TEXT

Commissioner's Order No. 71-224, referred to in pars. (d) and (s), is set out as an Organization Action of the Commissioner of the District of Columbia in the Appendix to title 1.

§ 6-2203. Exceptions.

(a) Any practice which has a discriminatory effect and which would otherwise be prohibited by this chapter shall not be deemed unlawful if it can be established that such practice is not intentionally devised or operated to contravene the prohibitions of this chapter and can be justified by business necessity. Under this chapter, a "business necessity" exception is applicable only in each individual case where, it can be proved by a respondent that, without such exception, such business cannot be conducted; a "business necessity" exception cannot be justified by the factors of increased cost to business, business efficiency, the comparative characteristics of one group as opposed to another, the stereotyped characterization of one group as opposed to another, and the preferences of co-workers, employers, customers or any other person.

(b) Nothing contained in the provisions of this chapter shall be construed to bar any religious or political organization, or any organization operated

for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious or political organization, from limiting employment, or sales, or rental of housing accommodations, or admission to or giving preference to persons of the same religion or political persuasion as is calculated by such organization to promote the religious or political principles for which it is established or maintained.

(c) Nothing in this chapter shall be construed to supercede any federal rule, regulation or act. (Dec. 13, 1977, D.C. Law 2-38, title I, § 103, 24 DCR 6038.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-2251.

§ 6-2204. Severability.

If any provision, or part thereof of this chapter or application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of the provision, or part thereof, to other persons not similarly situated or to other circumstances is not to be affected thereby. (Dec. 13, 1977, D.C. Law 2-38, title I, § 104, 24 DCR 6038.)

SUBCHAPTER II.—PROHIBITED ACTS OF DISCRIMINATION

PART A.—RIGHTS OF INDIVIDUALS

§ 6-2211. Equal opportunities.

Every individual shall have an equal opportunity to participate fully in the economic, cultural and intellectual life of the District and to have an equal opportunity to participate in all aspects of life, including, but not limited to, in employment, in places of public accommodation, resort or amusement, in educational institutions, in public service, and in housing and commercial space accommodations. (Dec. 13, 1977, D.C. Law 2-38, title II, § 201, 24 DCR 6038.)

EFFECTIVE DATE

See note under § 6-2201.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-2281.

PART B.—EMPLOYMENT

§ 6-2221. Prohibitions.

(a) *General.* It shall be an unlawful discriminatory practice to do any of the following acts, wholly or partially for a discriminatory reason based upon the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, or political affiliation, of any individual:

(1) *By an employer.* To fail or refuse to hire, or to discharge, any individual; or otherwise to discriminate against any individual, with respect to his compensation, terms, conditions, or privileges of employment, including promotion; or to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect his status as an employee;

(2) *By an employment agency.* To fail or refuse to refer for employment, or to classify or

refer for employment, any individual, or otherwise to discriminate against, any individual; or

(3) *By a labor organization.* To exclude or to expel from its membership, or otherwise to discriminate against, any individual; or to limit, segregate, or classify its membership; or to classify, or fail, or refuse to refer for employment any individual in any way, which would deprive such individual of employment opportunities, or would limit such employment opportunities, or otherwise adversely affect his status as an employee or as an applicant for employment; or

(4) *By an employer, employment agency or labor organization.* (A) To discriminate against any individual in admission to or the employment in, any program established to provide apprenticeship or other training or retraining, including an on-the-job training program;

(B) To print or publish, or cause to be printed or published, any notice or advertisement, or use any publication form, relating to employment by such an employer, or to membership in, or any classification or referral for employment by such a labor organization, or to any classification or referral for employment by such an employment agency, unlawfully indicating any preference, limitation, specification, or distinction, based on the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, physical handicap, or political affiliation of any individual.

(b) *Subterfuge.* It shall further be an unlawful discriminatory practice to do any of the above said acts for any reason that would not have been asserted but for, wholly or partially, a discriminatory reason based on the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, physical handicap, or political affiliation of any individual. (Dec. 13, 1977, D.C. Law 2-38, title II, § 211, 24 DCR 6038.)

NOTES TO DECISIONS UNDER PRIOR LAW

Sex discrimination

Employer's determination not to allow employees on maternity leave to use accumulated sick leave did not constitute sex-based discrimination. *Group Hospitalization, Inc. v. District of Columbia Commission on Human Rights* (D.C. App. 1977, 380 A.2d 170).

§ 6-2222. Exception.

It shall not be an unlawful discriminatory practice for an employer to observe the conditions of a bona fide seniority system or a bona fide employee benefit system such as retirement, pension or insurance plan which is not a subterfuge to evade the purposes of this chapter, except that no such employee seniority system or benefit plan shall excuse the failure to hire any individual. (Dec. 13, 1977, D.C. Law 2-38, title II, § 212, 24 DCR 6038.)

§ 6-2223. Reports and records.

Every employer, employment agency, and labor organization, subject both to this chapter and to Title VII of the Civil Rights Act of 1964 as amended [42 U.S.C. 2000e et seq.], is to furnish to the Office, all reports that may be required by the Equal Em-

ployment Opportunities Commission established under the Civil Rights Act of 1964. (Dec. 13, 1977, D.C. Law 2-38, title II, § 213, 24 DCR 6038.)

PART C.—HOUSING AND COMMERCIAL SPACE

§ 6-2231. Prohibitions.

(a) *General.* It shall be an unlawful discriminatory practice to do any of the following acts, wholly or partially for a discriminatory reason based on the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, or place of residence or business of any individual:

(1) To interrupt or terminate, or refuse or fail to initiate or conduct any transaction in real property; or to require different terms for such transaction; or to represent falsely that an interest in real property is not available for transaction;

(2) To include in the terms or conditions of a transaction in real property, any clause, condition or restriction;

(3) To refuse to lend money, guarantee a loan, accept a deed of trust or mortgage, or otherwise refuse to make funds available for the purchase, acquisition, construction, alteration, rehabilitation, repair or maintenance of real property; or impose different conditions on such financing; or refuse to provide title or other insurance relating to the ownership or use of any interest in real property;

(4) To refuse or restrict facilities, services, repairs or improvements for a tenant or lessee;

(5) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to a transaction, or proposed transaction, in real property, or financing relating thereto, which notice, statement, or advertisement unlawfully indicates or attempts unlawfully to indicate any preference, limitation, or discrimination based on race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, or place of residence or business, of any individual; or

(6) To discriminate in any financial transaction involving real property, on account of the location of residence or business (i.e. to "red-line").

(b) *Subterfuge.* It shall further be an unlawful discriminatory practice to do any of the above said acts for any reason that would not have been asserted but for, wholly or partially, a discriminatory reason based on the race, color, religion, national origin, sex, responsibilities, physical handicap, matriculation, political affiliation, source of income, or place of residence or business of any individual. (Dec. 13, 1977, D.C. Law 2-38, title II, § 221, 24 DCR 6038.)

§ 6-2232. Blockbusting and steering.

It shall be an unlawful discriminatory practice for any person, whether or not acting for monetary gain, directly or indirectly to engage in the practices

of "blockbusting" and "steering", including, but not limited to the commission of any one or more of the following acts:

(a) To promote, induce, influence, or attempt to promote, induce, or influence a transaction in real property through any representation, means or device whatsoever calculated to induce a person to discriminate or to engage in such transaction wholly or partially in response to discrimination, prejudice, fear or unrest adduced by such means, device or representation.

(b) To place a sign, or display any other device, either purporting to offer or tending to lead to the belief that an offer is being made for a transaction in real property that is not in fact available or offered for transaction, or which purports that any transaction in real property has occurred that in fact has not. (Dec. 13, 1977, D.C. Law 2-38, title II, § 222, 24 DCR 6038.)

§ 6-2233. Acts of discrimination by broker or salesman.

Any real estate broker or real estate salesman, who commits any act of discrimination prohibited under the provisions of this chapter, if such act or the property involved is within the District of Columbia, or if such act occurs outside of the District of Columbia, in a place where such act is prohibited by State or local law, ordinance or regulation, without regard to location of the property, shall be considered by the Real Estate Commission, for the purposes of the section 45-1408(h), as having endangered the interests of the public; and shall be subject to the procedures set forth in section 6-2297. (Dec. 13, 1977, D.C. Law 2-38, title II, § 223, 24 DCR 6038.)

§ 6-2234. Exceptions.

(a) Nothing in this chapter is to be construed to apply to the rental or leasing of housing accommodations in a building in which the owner, or members of his family occupy one of the living units and in which there are, or the owner intends that there be, accommodations for not more than:

(1) five (5) families, and only with respect to a prospective tenant, not related to the owner-occupant with whom the owner-occupant anticipates the necessity of sharing a kitchen or bath; and

(2) two (2) families living independently of each other.

(b) Nothing contained in the provisions of this chapter, shall be deemed to permit any rental or occupancy otherwise prohibited by any statute, or by any regulation previously enacted and not repealed herein. (Dec. 13, 1977, D.C. Law 2-38, title II, § 224, 24 DCR 6038.)

PART D.—PUBLIC ACCOMMODATIONS

§ 6-2241. Prohibitions.

(a) *General.* It shall be an unlawful discriminatory practice to do any of the following acts, wholly or partially for a discriminatory reason based on the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matricu-

lation, political affiliation, source of income, or place of residence or business, of any individual:

(1) to deny, directly or indirectly, any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodations;

(2) to print, circulate, post, or mail, or otherwise cause, directly or indirectly, to be published a statement, advertisement, or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation will be unlawfully refused, withheld from or denied an individual; or that an individual's patronage of, or presence at, a place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable.

(b) *Subterfuge.* It is further unlawful to do any of the above said acts for any reason that would not have been asserted but for, wholly or partially, a discriminatory reason based on the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, or place of residence or business, of any individual. (Dec. 13, 1977, D.C. Law 2-38, title II, § 231, 24 DCR 6038.)

CROSS REFERENCE

Public accommodations licensed by District, discrimination prohibited, see §§ 47-2901, 47-2902, 47-2907.

PART E.—EDUCATIONAL INSTITUTIONS

§ 6-2251. Prohibitions.

It is an unlawful discriminatory practice, subject to the exemptions in section 6-2203(b), for an educational institution:

(1) to deny, restrict, or to abridge or condition the use of, or access to, any of its facilities and services to any person otherwise qualified, wholly or partially, for a discriminatory reason, based upon the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, political affiliation, source of income or physical handicap of any individual; or

(2) to make or use a written or oral inquiry, or form of application for admission, that elicits or attempts to elicit information, or to make or keep a record, concerning the race, color, religion, or national origin of an applicant for admission, except as permitted by regulations of the Office.

(Dec. 13, 1977, D.C. Law 2-38, title II, § 241, 24 DCR 6038.)

§ 6-2252. Exceptions regarding sex discrimination.

Nothing in this chapter regarding sex discrimination in admission policy shall apply to any private undergraduate college or to any private preschool, elementary or secondary school; except that, when any of the above exempted colleges offers a course nowhere else available in the District, opportunity for admission to that course must be open to students of both sexes who otherwise meet lawful requirements for admission. (Dec. 13, 1977, D.C. Law 2-38, title II, § 242, 24 DCR 6038.)

PART F.—GENERAL REQUIREMENTS**PART REFERRED TO IN OTHER SECTIONS**

This part is referred to in section 6-2274.

§ 6-2261. Posting of notice.

Every person subject to this chapter shall post and keep posted in a conspicuous location where business or activity is customarily conducted or negotiated, a notice whose language and form has been prepared by the Office, setting forth excerpts from or summaries of, the pertinent provisions of this chapter and information pertinent to the filing of a complaint. (Dec. 13, 1977, D.C. Law 2-38, title II, § 251, 24 DCR 6038.)

§ 6-2262. Records and reports.

(a) Every person subject to this chapter shall preserve any regularly kept business records for a period of six (6) months from the date of the making of the record, or from the date of the action which is the subject of the record, whichever is longer; such records shall include, but not be limited to, application forms submitted by applicants, sales and rental records, credit and reference reports, personnel records, and any other records pertaining to the status of an individual's enjoyment of the rights and privileges protected or granted under this chapter.

(b) Where a charge of discrimination has been filed against a person under this chapter, the respondent shall preserve all records which may be relevant to the charge or action, until a final disposition of the charge in accordance with subsection (c) of this section.

(c) All persons subject to this chapter shall furnish to the Office, at the time and in the manner prescribed by the Office, such reports relating to information under their control as the Office may require. The identities of persons and properties contained in reports submitted to the Office under the provisions of this section shall not be made public. (Dec. 13, 1977, D.C. Law 2-38, title II, § 252, 24 DCR 6038.)

§ 6-2263. Affirmative action plans.

It shall not be an unlawful discriminatory practice for any person to carry out an affirmative action plan that has been approved by the Office. An affirmative action plan is any plan devised to effectuate remedial or corrective action in response to past discriminatory practices prohibited under this chapter and may also include those plans devised to provide preferential treatment for a class or classes of persons, which preferential treatment by class would otherwise be prohibited by this chapter and which plan is not devised to contravene the intent of this chapter. (Dec. 13, 1977, D.C. Law 2-38, title II, § 253, 24 DCR 6038.)

PART G.—OTHER PROHIBITED PRACTICES**§ 6-2271. Coercion or retaliation.**

(a) It shall be an unlawful discriminatory practice to coerce, threaten, retaliate against, or interfere with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided or encouraged any other

person in the exercise or enjoyment of any right granted or protected under this chapter.

(b) It shall be an unlawful discriminatory practice for any person to require, request, or suggest that a person retaliate against, interfere with, intimidate or discriminate against a person, because that person has opposed any practice made unlawful by this chapter, or because that person has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing authorized under this chapter.

(c) It shall be an unlawful discriminatory practice for any person to cause or coerce, or attempt to cause or coerce, directly or indirectly, any person to prevent any person from complying with the provisions of this chapter. (Dec. 13, 1977, D.C. Law 2-38, title II, § 261, 24 DCR 6038.)

§ 6-2272. Aiding or abetting.

It shall be an unlawful discriminatory practice for any person to aid, abet, invite, compel or coerce the doing of any of the acts forbidden under the provisions of this chapter or to attempt to do so. (Dec. 13, 1977, D.C. Law 2-38, title II, § 262, 24 DCR 6038.)

§ 6-2273. Conciliation agreements.

It shall be an unlawful discriminatory practice for a party to a conciliation agreement, made under the provisions of this chapter, to violate the terms of such agreement. (Dec. 13, 1977, D.C. Law 2-38, title II, § 263, 24 DCR 6038.)

§ 6-2274. Resisting the Office or Commission.

(a) Any person who shall willfully resist, prevent, impede or interfere with the Office or the Commission, or any of their representatives, in the performance of any duty under the provisions of this chapter; or shall willfully violate an order of the Commission, shall upon conviction, be punished by imprisonment for not more than ten (10) days, or by a fine of not more than three hundred dollars (\$300), or by both, except, that filing a petition for review of an order, pursuant to the provisions of this chapter, shall not be deemed to constitute such willful conduct, nor shall compliance with any procedure regarding a subpoena in accord with section 1-237, be deemed to constitute such willful conduct.

(b) It shall be an unlawful discriminatory practice for a person subject to this chapter to fail to post notices, maintain records, file reports, as required by Part F of this subchapter, or to supply documents and information requested by the Office in connection with a matter under investigation. (Dec. 13, 1977, D.C. Law 2-38, title II, § 264, 24 DCR 6038.)

§ 6-2275. Falsifying documents and testimony.

It shall be unlawful to willfully falsify documents, records or reports, which are required or subpoenaed pursuant to this chapter, or willfully to falsify testimony, or to intimidate any witness or complainant; such violations shall be punishable by imprisonment for not more than ten (10) days, or by a fine of not more than three hundred dollars (\$300), or by both. (Dec. 13, 1977, D.C. Law 2-38, title II, § 265, 24 DCR 6038.)

§ 6-2276. Arrest records.

It shall be an unlawful practice, punishable by a fine of not more than three hundred dollars (\$300) or imprisonment for not more than ten (10) days, or both, for any person to require the production of any arrest record or any copy, extract, or statement thereof, at the monetary expense of any individual to whom such record may relate. Such "arrest records" shall contain only listings of convictions and forfeitures of collateral that have occurred within ten (10) years of the time at which such record is requested. (Dec. 13, 1977, D.C. Law 2-38, title II, § 266, 24 DCR 6038.)

§ 6-2277. District of Columbia licenses.

All permits, licenses, franchises, benefits, exemptions or advantages issued by or on behalf of the Government of the District of Columbia, shall specifically require and be conditioned upon full compliance with the provisions of this chapter; and shall further specify that the failure or refusal to comply with any provision of this chapter shall be a proper basis for revocation of such permit, license, franchise, benefit, exemption or advantage. (Dec. 13, 1977, D.C. Law 2-38, title II, § 267, 24 DCR 6038.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-2202.

§ 6-2278. Effects clause.

Any practice which has the effect or consequence of violating any of the provisions of this chapter shall be deemed to be an unlawful discriminatory practice. (Dec. 13, 1977, D.C. Law 2-38, title II, § 268, 24 DCR 6038.)

SUBCHAPTER III.—PROCEDURES

§ 6-2281. Authority of the Director and Commission.

(a) The activities of the Office and the Commission, under the provisions of this chapter, shall be considered investigations or examinations of municipal matters, within the meaning of section 1-237; and the Commission, the individual members thereof, and the Director, shall possess the powers vested in the Council of the District of Columbia.

(b) The Office is hereby empowered to undertake its own investigations and public hearings on any racial, religious, and ethnic group tensions, prejudice, intolerance, bigotry and disorder; and on any form of, or reason for, discrimination, in accordance with sections 6-2201 and 6-2211, against any person, group of persons, organization, or corporations, whether practiced by private persons, associations, corporations, city officials or city agencies; for the purpose of making appropriate recommendations for action, including legislation, against such discrimination.

(c) The Office and the Commission may make, issue, adopt, promulgate, amend and rescind such rules and procedures as they deem necessary to effectuate and which are not in conflict with, the provisions of this chapter. Such rules and procedures and amendments thereto, shall be adopted and promulgated in accordance with procedures promulgated pursuant to the D.C. Administrative Procedure Act.

(d) In taking any action authorized or required by the provisions of this chapter, the Commission may act through panels or a division of not less than three (3) of its members, a majority of whom shall constitute a quorum.

(e) The Mayor shall recommend to the Council, any additional regulations.

(f) Investigations relating to the enforcement of provisions of this chapter shall be given priority over all other duties and activities of the Office.

(g) The Mayor shall report annually to the Council as to the progress with regard to the enforcement of this chapter, and any other activity related to the field of human rights deemed valuable to the Council in the pursuit of its responsibilities. (Dec. 13, 1977, D.C. Law 2-38, title III, § 301, 24 DCR 6038.)

EFFECTIVE DATE

See note under § 6-2201.

§ 6-2282. Complaints filed with other District agencies.

Nothing in the provisions of this chapter is deemed to relieve any agency or authority of the government of the District of its obligation to take immediate and independent action regarding a matter filed with it, in accord with its jurisdiction, that also may be the subject of a complaint filed with the Office. (Dec. 13, 1977, D.C. Law 2-38, title III, § 302, 24 DCR 6038.)

§ 6-2283. Complaints against District agencies.

Notwithstanding any other provision of this chapter, the Mayor shall establish rules of procedure for the investigation, conciliation and hearing of complaints filed against District government agencies, officials and employees alleging violations of this chapter. The final determination in such matters shall be made by the Mayor or his designee. (Dec. 13, 1977, D.C. Law 2-38, title III, § 303, 24 DCR 6038.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-2284.

§ 6-2284. Filing of complaints.

(a) Any person or organization, whether or not an aggrieved party, may file with the Office a complaint of a violation of the provisions of this chapter, including a complaint of general discrimination, unrelated to a specific person or instance. The complaint shall state the name and address of the person alleged to have committed the violation, hereinafter called the respondent, and shall set forth the substance thereof, and such other information as may be required by the Office. The Director, sua sponte, may investigate individual instances and patterns of conduct prohibited by the provisions of this chapter and may initiate complaints in connection therewith. Any complaint under this chapter shall be filed with the Office within one (1) year of the occurrence of the unlawful discriminatory practice, or the discovery thereof, except as may be modified in accordance with section 6-2283.

(b) Complaints filed with the Office under the provisions of this chapter may be voluntarily withdrawn at the request of the complainant at any time prior to the completion of the Office's investigation and findings as specified in section 6-2285,

except that the circumstances accompanying said withdrawal may be fully investigated by the Office. (Dec. 13, 1977, D.C. Law 2-38, title III, § 304, 24 DCR 6038.)

NOTES TO DECISIONS

Election of remedies

Employee who filed employment discrimination complaint with Equal Employment Opportunity Commission pursuant to Civil Rights Act of 1964, which complaint was then referred to local Commission of Human Rights empowered to determine employment discrimination claims, did not divest Commission of jurisdiction over complaint merely by subsequently filing civil action based on that discrimination in appropriate federal district court. *Communications Workers of America, AFL-CIO v. District of Columbia Commission on Human Rights* (D.C. App. 1976, 367 A.2d 149).

§ 6-2285. Investigation.

(a) After the filing of any complaint, the Office shall serve, within fifteen (15) days of said filing, a copy thereof upon the respondent, and upon all persons it deems to be necessary parties; and shall make prompt investigation in connection therewith.

(b) Within one hundred and twenty (120) days, after service of the complaint upon all parties thereto, the Office shall determine whether, in accord with its own rules, it has jurisdiction; and if so, whether there is probable cause to believe that the respondent has engaged or is engaging in an unlawful discriminatory practice.

(c) If the Office finds, with respect to any respondent, that it lacks jurisdiction or that probable cause does not exist the Director forthwith shall issue and cause to be served on the appropriate parties, an order dismissing the allegations of the complaint. (Dec. 13, 1977, D.C. Law 2-38, title III, § 305, 24 DCR 6038.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-2284, 6-2297.

§ 6-2286. Conciliation.

(a) If, in the judgment of the Office, the circumstances so warrant, it may, at any time after the filing of the complaint, endeavor to eliminate such unlawful discriminatory practice by conference, conciliation or persuasion.

(b) The terms of a conciliation agreement may require a respondent to refrain, in the future, from committing specified discriminatory practices, and to take such affirmative action as, in the judgment of the Office, will effectuate the purposes of this chapter; and may include consent, by the respondent, to the entry in court of a consent decree, embodying the terms of the conciliation agreement.

(c) Upon agreement of all parties to a complaint and upon notice to all parties thereto, a conciliation agreement shall be deemed an order of the Commission, and shall be enforceable as such. Except for the terms of the conciliation agreement, employees of the Office shall not make public, without the written consent of the respondent, information concerning conciliation efforts. (Dec. 13, 1977, D.C. Law 2-38, title III, § 306, 24 DCR 6038.)

§ 6-2287. Injunctive relief.

If, at any time after a complaint has been filed, the Office believes that appropriate civil action to preserve the status quo or to prevent irreparable

harm appears advisable, the Office shall certify the matter to the Corporation Counsel, who shall bring, in the name of the District of Columbia, any action necessary to preserve such status quo or to prevent such harm, including the seeking of temporary restraining orders and preliminary injunctions. The appropriate parties shall be notified of such certification and the complainant may initiate independently, or in cooperation with the Corporation Counsel, appropriate civil action to seek a temporary restraining order or preliminary injunction. (Dec. 13, 1977, D.C. Law 2-38, title III, § 307, 24 DCR 6038.)

§ 6-2288. Posting of housing accommodations.

If a finding of probable cause has been made, as to a complaint of discrimination in housing, and the property owner, or his duly authorized agent, will not agree voluntarily to withhold from the market the subject housing accommodations for a period of ten (10) days from the date of such finding of probable cause, the Office may cause to be posted on the door of said housing accommodations for a period of ten (10) days from the date of said finding a notice advising that said accommodations are the subject of a complaint before the Office and that prospective transferees will take such housing accommodations at their peril. Any destruction, defacement, alteration or removal of the notice thereof, by the owner or his agents, servants and employees, shall be punishable, upon conviction, by a fine of up to three hundred dollars (\$300), or by imprisonment for not more than ten (10) days, or both. (Dec. 13, 1977, D.C. Law 2-38, title III, § 308, 24 DCR 6038.)

§ 2289. Service of notice.

In all cases where the Office is required to effect service, it shall be accomplished by registered or certified mail, return receipt requested or by personal service and shall otherwise be in accordance with rules of the Office regarding service and notice. (Dec. 13, 1977, D.C. Law 2-38, title III, § 309, 24 DCR 6038.)

§ 6-2290. Notice of hearing.

In case of failure of conciliation efforts, or in advance of conciliation efforts, as determined by the Office, and after a finding of probable cause, the Office shall cause to be issued and served in the name of the Commission, a written notice, together with a copy of the complaint, as the same may have been amended, requiring the respondent to answer the charges of such complaint at a public hearing before one (1) or more members of the Commission or before a hearing examiner, such hearing to be scheduled not less than ten (10) days or not more than thirty (30) days after such service and at a place to be specified in such notice. Notice shall be served by registered or certified mail, return receipt requested, or by personal service. (Dec. 13, 1977, D.C. Law 2-38, title III, § 310, 24 DCR 6038.)

§ 6-2291. Hearing tribunal.

(a) After a complaint has been noticed for hearing, a hearing tribunal consisting of three (3) members of the Commission, sitting as the Commission, shall be appointed to make a determination upon such complaint. At the discretion of the Commission,

one (1) or more hearing examiners may be delegated to hear and report back to the Commission, on any case or question before the Commission.

(b) A hearing examiner may be an employee of the District Government or may be selected from a list of qualified hearing examiners prepared by the Commission. Commission members may serve as hearing examiners. Hearing examiners shall be paid on a per diem basis, while actually sitting and hearing a case: *Provided*, That funds are available for such purpose. (Dec. 13, 1977, D.C. Law 2-38, title III, § 311, 24 DCR 6038.)

§ 6-2292. Conduct of hearing.

(a) The hearing shall be conducted in accordance with procedures promulgated pursuant to the Administrative Procedure Act.

(b) The case in support of the complaint shall be presented by an agent or attorney of the Office.

(c) Any Commissioner or hearing examiner, who has participated in the investigation, conciliation or processing of a complaint, or has participated in any decision related to the merits of a complaint, may not sit with a hearing tribunal appointed to make a determination upon such complaint.

(d) Efforts at conciliation by the Office, or the parties, shall not be received in evidence.

(e) If the respondent fails to answer the complaint, the hearing tribunal, or the hearing examiner designated to conduct the hearing, may enter the default; and the hearing shall proceed on the basis of the evidence in support of the complaint. Such default may be set aside only for good cause shown, and upon equitable terms and conditions. (Dec. 13, 1977, D.C. Law 2-38, title III, § 312, 24 DCR 6038.)

§ 6-2293. Decision and order.

(a) If, at the conclusion of the hearing, the Commission determines that a respondent has engaged in an unlawful discriminatory practice or has otherwise violated the provisions of this chapter, the Commission shall issue, and cause to be served upon such respondent, a decision and order, accompanied by findings of fact and conclusions of law, requiring such respondent to cease and desist from such unlawful discriminatory practice, and to take such affirmative action, including but not limited to:

(1) the hiring, reinstatement or upgrading of employees, with or without back pay;

(2) the restoration to the membership in any respondent labor organization, admission to or participation in a program, apprenticeship training program, on-the-job training program or other occupational training or retraining program;

(3) the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons;

(4) the payment of compensatory damages to the person aggrieved by such practice;

(5) the payment of reasonable attorney fees; and

(6) the payment of hearing costs, as, in the judgment of the Commission, will effectuate the purposes of this chapter, and including a requirement for a report as to the manner of compliance with such decision and order. With regard to

compensatory damages and attorney's fees, the Commission shall develop guidelines which shall be submitted to the Council for review prior to implementation.

(b) If, upon all the evidence, the Commission finds that a respondent has not engaged in any unlawful discriminatory practice, the Commission shall issue and cause to be served on the complainant, an order dismissing the complaint as to such respondent.

(c) Whenever a case has been heard by one (1) or more hearing examiners who do not have the power to render a final order or decision, the Commissioners, assigned to decide the case, shall serve upon the parties a proposed order or decision, including findings of fact and conclusions of law, with a notice providing that each party adversely affected may file exceptions and present arguments to the Commissioners, on a date not less than ten (10) days from the date of service of the proposed order or decision.

(d) Findings of fact and conclusions of law shall be supported by, and in accordance with, reliable, probative, and substantial evidence. (Dec. 13, 1977, D.C. Law 2-38, title III, § 313, 24 DCR 6038.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-2296.

NOTES TO DECISIONS UNDER PRIOR LAW

Evidence—Substantial

Conclusion of District of Columbia Commission on Human Rights that employee was discriminated against on basis of sex when promotion offered to her was withdrawn because she would be absent from work due to pregnancy was not supported by and in accordance with reliable, probative and substantial evidence. *Group Hospitalization, Inc. v. District of Columbia Commission on Human Rights* (D.C. App. 1977, 380 A.2d 170).

Findings of fact

"Findings" in which the Commission on Human Rights merely set forth what complainant's testimony was or what other witnesses said, without stating it found statements to be factual or testimony credible, did not constitute findings of fact by Commission and could not be treated as such by appellate court. *Newsweek Magazine, et al. v. District of Columbia Commission on Human Rights* (D.C. App. 1977, 376 A.2d 777; cert. denied 98 S.Ct. 729, — U.S. —).

Commission of Human Rights' findings as to sex discrimination complaint were inadequate for meaningful review by the Court of Appeals because they did not, as they should have, resolve basic issues of fact raised by evidence adduced at hearing and, accordingly, case would be remanded for further findings and conclusions. *Communications Workers of America, AFL-CIO v. District of Columbia Commission on Human Rights* (D.C. App. 1976, 367 A.2d 149).

Remedies

Former article of police regulations, which provided only that Commission on Human Rights' predecessor, the former Council on Human Relations, should make conclusions and recommendations for correction of illegal practice, with notice that if illegal employment practice is not corrected within 15 days, Commission will refer matter to corporation counsel for enforcement, was applicable to sex employment discrimination proceeding before District of Columbia Commission on Human Rights based on events taking place between January 1, 1972, to March 2, 1973, and consequently, Commission's awards of damages and of back pay and accrued annual sick leave exceeded its authority and had to be vacated. *Group Hospitalization, Inc. v. District of Columbia Commission on Human Rights* (D.C. App. 1977, 380 A.2d 170).

¹ So in original. Probably should be "not".

Police regulation authorizing Commission on Human Rights to make recommendations for correction of illegal employment practice when violation is established, with notice that if practice is not corrected within 15 days, matter will be referred to corporation counsel for enforcement did not authorize Commission's decision ordering employer to implement affirmative action program and to make monthly reports to human rights office. *Newsweek Magazine, et al. v. District of Columbia Commission on Human Rights* (D.C. App. 1977, 376 A.2d 777; cert. denied 98 S.Ct. 729, — U.S. —).

Given specific mandate of Council in enacting new regulation empowering Commission of Human Rights in employment discrimination cases to award money damages and counsel fees, but providing that any regulation superseded by provisions of new regulation shall remain in full force and effect for purpose of any administrative proceeding pending at effective date of new regulation, prior regulation which failed to empower Commission with power to award money damages and counsel fees and which was in effect at time of filing of sex discrimination complaint and hearing thereon governed decision of Commission as to that complaint. *Communications Workers of America, AFL-CIO v. District of Columbia Commission on Human Rights* (D.C. App. 1976, 367 A.2d 149).

§ 6-2294. Review.

Any person suffering a legal wrong, or adversely affected or aggrieved by, an order or decision of the Commission in a matter, pursuant to the provisions of this chapter is entitled to a judicial review thereof, in accordance with section 1-1510, upon filing, in the District of Columbia Court of Appeals, a written petition for such review. (Dec. 13, 1977, D.C. Law 2-38, title III, § 314, 24 DCR 6038.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-2295.

NOTES TO DECISIONS

Review

Function of the Court of Appeals in review of administrative action is not to weigh testimony and substitute themselves for trier of fact who heard conflicting testimony, observed adversary witnesses and determined weight to be accorded their testimony, but rather to assure that agency has given full and reasoned consideration to all material facts and issues, which function can only be performed by Court when agency discloses basis of its order by articulation with reasonable clarity of its reasons for decision; there must be demonstration of rational connection between facts found and choice made and findings must support end result in discernible manner. *Communications Workers of America, AFL-CIO v. District of Columbia Commission on Human Rights* (D.C. App. 1976, 367 A.2d 149).

§ 6-2295. General enforcement provision.

(a) The decision and order of the Commission shall be served on the respondent, with notice that, if the Commission determines that the respondent has not, after thirty (30) calendar days following service of its order, corrected the unlawful discriminatory practice and complied with the order, the Commission will certify the matter to the Corporation Counsel, and to such other agencies as may be appropriate for enforcement.

(b) The Corporation Counsel shall institute in the name of the District, civil proceedings including the seeking of such restraining orders and temporary or permanent injunctions, as are necessary to obtain complete compliance with the Commission's orders. In the event that successful civil proceedings do not result in securing such compliance, the Corporation Counsel shall institute criminal action.

(c) No enforcement action shall be instituted pending review as provided in section 6-2294.

(d) Nothing in this section shall to¹ deprive any person of rights in the criminal justice process. (Dec. 13, 1977, D.C. Law 2-38, title III, § 315, 24 DCR 6038.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-2297.

§ 6-2296. Enforcement by a private person.

(a) Any person claiming to be aggrieved by an unlawful discriminatory practice shall have a cause of action in any court of competent jurisdiction for damages and such other remedies as may be appropriate, unless such person has filed a complaint hereunder: *Provided*, That where the Office has dismissed such complaint on the grounds of administrative convenience, or where the complainant has withdrawn a complaint, such person shall maintain all rights to bring suit as if no complaint had been filed. No person who maintains in a court of competent jurisdiction, any action based upon an act which would be an unlawful discriminatory practice under this chapter may file the same complaint with the Office.

(b) The court may grant such relief as it deems appropriate, including but not limited to, such relief as is provided in section 6-2293(a). (Dec. 13, 1977, D.C. Law 2-38, title III, § 316, 24 DCR 6038.)

§ 6-2297. District licenses.

(a) Whenever it appears that the holder of a permit, license, franchise, benefit, or advantage, issued by any agency or authority of the government of the District is a person against whom the Office has made a finding of probable cause pursuant to section 6-2285, the Office, notwithstanding any other action it may take or may have taken under the authority of the provision of this chapter, may refer to the proper agency or authority the facts and identities of all persons involved in the complaint, for such action as such agency or authority, in its judgment, considers appropriate, based upon the facts thus disclosed to it.

(b) The Commission, upon a determination of a violation of any of the provisions of this chapter by a holder of, or applicant for any permit, license, franchise, benefit, exemption or advantage issued by or on behalf of the government of the District of Columbia, and upon failure of the respondent to correct the unlawful discriminatory practice and comply with its order, in accordance with section 6-2295(a), shall refer this determination to the appropriate agency or authority. Such determination shall constitute prima facie evidence that the respondent, with respect to the particular business in which the violation was found is not operating in the public interest. Such agency or authority shall, upon notification, issue to said holder or applicant an order to show cause why such privileges related to that business should not be revoked, suspended, denied or otherwise restricted. (Dec. 13, 1977, D.C. Law 2-38, title III, § 317, 24 DCR 6038.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-2233.

¹ So in original.

TITLE 7.—HIGHWAYS, STREETS, BRIDGES

Chapter 1.—HIGHWAY PLANS

Sec.

7-107. Repealed.

7-112a. Applicability of sections 7-108 to 7-112 to Interstate System.

7-133. Repealed.

7-135b. Federal-aid highway projects—Contract authority.

7-135c. Federal-aid highway projects—Elimination of grade-crossings.

§ 7-101. Commissioner to have control of streets—Power to make regulations for repairs.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Snow and ice removal, appropriations, see § 7-807.

NOTES TO DECISIONS

Attorney fees, recovery from District

Common benefit theory is not applicable to shift to District of Columbia government burden of paying attorney fees of plaintiffs who brought action to enjoin construction of bridge across Potomac River, where action did not result in determination that bridge could not be built but in a determination that government officials had to follow certain procedures before making decision to build bridge with a resulting delay during which time bridge plan was abandoned and where class of beneficiaries included residents of Maryland and Virginia and not just District of Columbia taxpayers. *D.C. Federation of Civic Associations et al. v. J. A. Volpe, et al.* (1976, 71 F.R.D. 206).

§ 7-102. Commissioner to have jurisdiction over public roads and bridges—Exceptions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-103. Abutment of Highway Bridge under control of Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-106. Council may change names of streets when two streets have same name.

The Council of the District of Columbia shall have the power and authority to change the name of any street, road, avenue, or other highway, whenever any two of such highways have the same name, as pro-

vided by section 1-244(f). (June 30, 1898, 30 Stat. 532, ch. 540; Apr. 7, 1977, D.C. Law 1-109, § 3, 23 DCR 8739.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-109, amended section by adding “, as provided by section 1-244(f)” at the end thereof.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 6 of act Apr. 7, 1977, D.C. Law 1-109, set out as a note under § 1-244.

§ 7-107. Repealed. Apr. 7, 1977, D.C. Law 1-109, § 3(2), 23 DCR 8739.

Section, Act Feb. 16, 1904, 33 Stat. 14, ch. 159, § 1, authorized the Council of the District of Columbia to name streets outside the city limits.

EFFECTIVE DATE OF REPEAL

See section 6 of act Apr. 7, 1977, D.C. Law 1-109, set out as a note under § 1-244.

§ 7-108. Permanent highway plan—Preparation by Commissioner—Width of highways.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Applicability to Interstate System, see § 7-112a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1009, 5-718, 7-109, 7-112, 7-112a, 7-114, 7-116, 7-118, 7-122.

NOTES TO DECISIONS

Attorney fees, recovery from District

Common benefit theory is not applicable to shift to District of Columbia government burden of paying attorney fees of plaintiffs who brought action to enjoin construction of bridge across Potomac River, where action did not result in determination that bridge could not be built but in a determination that government officials had to follow certain procedures before making decision to build bridge with a resulting delay during which time bridge plan was abandoned and where class of beneficiaries included residents of Maryland and Virginia and not just District of Columbia taxpayers. *D.C. Federation of Civic Associations et al. v. J. A. Volpe, et al.* (1976, 71 F.R.D. 206).

§ 7-109. Permanent highway—Plans to be prepared in sections—Conformity to subdivisions—Plans to be submitted to National Capital Planning Commission—Recordation—Landowners to submit plat of proposed highways.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Applicability to Interstate System, see § 7-112a.

NOTES TO DECISIONS

Attorney fees, recovery from District

Common benefit theory is not applicable to shift to District of Columbia government burden of paying attorney fees of plaintiffs who brought action to enjoin construction of bridge across Potomac River, where action did not result in determination that bridge could not be built but in a determination that government officials had to follow certain procedures before making decision to build bridge with a resulting delay during which time bridge plan was abandoned and where class of beneficiaries included residents of Maryland and Virginia and not just District of Columbia taxpayers. *D.C. Federation of Civic Associations et al. v. J. A. Volpe, et al.* (1976, 71 F.R.D. 206).

§ 7-111. Entry upon property authorized for purposes of survey.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-112. Council authorized to name streets.

The Council of the District of Columbia is authorized to name all streets, avenues, alleys, and reservations laid out or adopted under the provisions of sections 7-108 to 7-112, as provided by section 1-244 (f). (Mar. 2, 1893, 27 Stat. 534, ch. 197, § 5; Apr. 7, 1977, D.C. Law 1-109, § 3, 23 DCR 8739.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-109, amended section by adding “, as provided by section 1-244 (f)” at the end thereof.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 6 of act Apr. 7, 1977, D.C. Law 1-109, set out as a note under § 1-244.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1009, 7-109, 7-112a, 7-114, 7-116, 7-118.

§ 7-112a. Applicability of sections 7-108 to 7-112 to Interstate System.

None of the provisions of sections 7-108 to 7-112 shall apply to any segment of the Interstate System within the District of Columbia. (Aug. 13, 1973, Pub. L. 93-87, title I, § 135, 87 Stat. 268.)

§ 7-113. Abandonment or readjustment of streets to provide ground for educational, religious, or similar institutions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-114. Use of property by owner until condemnation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-115. Public notice to owners of plan—Opportunity to be heard.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Attorney fees, recovery from District

Common benefit theory is not applicable to shift to District of Columbia government burden of paying attorney fees of plaintiffs who brought action to enjoin construction of bridge across Potomac River, where action did not result in determination that bridge could not be built but in a determination that government officials had to follow certain procedures before making decision to build bridge with a resulting delay during which time bridge plan was abandoned and where class of beneficiaries included residents of Maryland and Virginia and not just District of Columbia taxpayers. *D.C. Federation of Civic Associations et al. v. J. A. Volpe, et al.* (1976, 71 F.R.D. 206).

§ 7-116. Powers may be exercised through Beatty and Hawkins's addition to Georgetown.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-117. Acceptance of dedicated streets—Building restrictions—Right-of-way for sewers and water-mains.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-119. Resubdivision of property affected by highway plan pending condemnation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-122. New highway plans authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Attorney fees, recovery from District

Common benefit theory is not applicable to shift to District of Columbia government burden of paying attorney fees of plaintiffs who brought action to enjoin construction of bridge across Potomac River, where action did not result in determination that bridge could not be built but in a determination that government officials had to follow certain procedures before making decision to build bridge with a resulting delay during which time bridge plan was abandoned and where class of beneficiaries included residents of Maryland and Virginia and not just District of Columbia taxpayers. *D.C. Federation of Civic Associations et al. v. J. A. Volpe, et al.* (1976, 71 F.R.D. 206).

§ 7-123. Commissioner of the District of Columbia to close certain streets, roads, or highways in the District of Columbia rendered useless or unnecessary by the highway plan—Consent of owners.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-124. Plat to be filed—Assessment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-125. Subdivision to conform to plan of Washington—Approval of Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-126. District of Columbia authorized to use certain land owned by United States for street purposes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-127. Relocation of Michigan Avenue—Relocation authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-128. Use of part of Soldiers' Home.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-129. Portion of Michigan Avenue abandoned.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-130. Surveyor to prepare plats showing relocation of Michigan Avenue—Recordation of plats to transfer title.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-131. Right-of-way to Washington Railway and Electric Company.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-133. Repealed. Dec. 24, 1973, Pub. L. 93-198, title VII, § 743(d), 87 Stat. 832.

Section, Acts May 18, 1954, 68 Stat. 110, ch. 218, title IV, § 402; Sept. 30, 1966, 80 Stat. 858, Pub. L. 89-610, title X, § 1001; Jan. 5, 1971, Pub. L. 91-650, title I, § 103(c), 84 Stat. 1930; authorized loans for the District highway construction program. For new borrowing authority, see § 47-241 et seq.

EFFECTIVE DATE OF REPEAL

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that the repeal of this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

LOAN PAYMENT OBLIGATION

See note under § 9-220.

§ 7-134. Use of land in squares 354 and 355 for Southwest Freeway and for redevelopment of Southwest area of District.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-135. Federal-aid highway projects—Commissioner's authority to provide certain payments and services.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Attorney fees, recovery from District

Common benefit theory is not applicable to shift to District of Columbia government burden of paying attorney fees of plaintiffs who brought action to enjoin construction of bridge across Potomac River, where action did not result in determination that bridge could not be built but in a determination that government officials had to follow certain procedures before making decision to build bridge with a resulting delay during which time bridge plan was abandoned and where class of beneficiaries included residents of Maryland and Virginia and not just District of Columbia taxpayers. *D.C. Federation of Civic Associations et al. v. J. A. Volpe, et al.* (1976, 71 F.R.D. 206).

§ 7-135a. Federal-aid highway projects—Commissioner's authority to pay public utility relocation expenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-135b. Federal-aid highway projects—Contract authority.

The Mayor of the District of Columbia is authorized to enter into contracts in connection with projects undertaken as Federal-aid highway projects under the provisions of the Federal Aid Highway Act of 1944 in such amounts as shall be approved by the Federal Highway Administration, Department of Transportation. (Oct. 26, 1973, Pub. L. 93-140, § 15, 87 Stat. 507.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

The Federal Aid Highway Act of 1944, referred to in text, was repealed by section 2(28) of Act Aug. 27, 1958, Pub. L. 85-767, 72 Stat. 919 (of which § 1 revised and enacted title 23, U.S. Code, into law), and is now covered by various provisions of title 23, U.S. Code.

APPROPRIATIONS

See note under § 1-226a.

§ 7-135c. Federal-aid highway projects—Elimination of grade-crossings.

The Mayor of the District of Columbia is authorized to construct grade-crossing elimination and other wholly District construction projects or those authorized under section 8 of the Act of June 16, 1936 (49 Stat. 1521), and section 1(b) of the Federal Aid Highway Act of 1938, in accordance with the provisions of such Acts. Pursuant to this authority, the Mayor may make payment to contractors and payment for other expenses in connection with the costs of surveys, design, construction, and inspection pending reimbursement to the District of Columbia by the Federal Highway Administration, Department of Transportation, or

other parties participating in such projects. (Oct. 26, 1973, Pub. L. 93-140, § 16, 87 Stat. 507.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

Section 8 of the Act of June 16, 1936 (49 Stat. 1521), and section 1(b) of the Federal Aid Highway Act of 1938, referred to in text, were repealed by section 2 (19) and (21) of Act Aug. 27, 1958, Pub. L. 85-767, 72 Stat. 919 (of which § 1 revised and enacted title 23, U.S. Code, into law). Section 8 of the 1936 Act is now covered by 23 U.S.C. 109(e), and section 1(b) of the 1938 Act is covered by 23 U.S.C. 101(a) and 103(b).

APPROPRIATIONS

See note under § 1-226a.

§ 7-136. Authority to acquire and transfer to Secretary of the Interior real property in exchange for real property transferred to the District—Payments in lieu of transfer of property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2.—LAND FOR STREETS

§ 7-201. Council may open, extend, or widen streets, avenue, roads, or highways according to permanent system of highways—Damages and costs assessed as benefits—Damages and costs paid from revenues of District—Repaid from assessments.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-202. Condemnation of land for streets.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-210. Confirmation of verdict—Payment of award.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-216. Condemnation for streets through undivided part of plot.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-219. If damages and costs exceed benefits, Commissioner may dismiss cause.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-221. Benefits assessed against land no part of which was taken—Notice of assessment, how given.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 3.—ALLEYS AND MINOR STREETS

§ 7-301. Alleys and minor streets opened, extended, widened, or straightened by Commissioner—Conditions—Petition of landowners—Minor street defined.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-302. Useless alleys—Sale of original alleys—Reversion of title to owner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section substituting "Mayor" for "Board of Commissioners", see sec. 6 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4929).

For temporary provisions requiring Council approval of closings, see sec. 7 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4930).

NOTES TO DECISIONS

Construction

This section authorizing collection of money by Council for closing original alleys and section 7-303 authorizing sale of original alleys are not mutually exclusive and the authority and power to collect money for closing alleys applies to section authorizing the closing of alleys on application of property owners. *Washington Medical Center, Inc. et al. v. United States* (1976, 545 F.2d 116, 211 Ct. Cl. 145; cert. denied 98 S.Ct. 296, — U.S. —).

Due process

Fact that Council in prior years did not require the payment of money for the closing of nonoriginal or original alleys in the District does not give rise to violation of due process rights of property owners each of whom had full knowledge from Council that money was required to be paid for the closing of street and alleys and the amount to be paid. *Washington Medical Center, Inc., et al. v. United States* (1976, 545 F.2d 116, 211 Ct. Cl. 145; cert. denied 98 S.Ct. 296, — U.S. —).

Original alleys

Original alleys in the District were not dedicated at common law and title of owners of abutting lots stems only to the line of the streets and alleys and not to the center thereof. *Washington Medical Center, Inc., et al. v. United States*, (1976, 545 F.2d 116, 211 Ct. Cl. 145; cert. denied 98 S.Ct. 296, — U.S. —).

Where Congress referred to or described an alley in the District as an "original alley" in the various laws dealing with the closing and sale of alleys, it was the intent and purpose of Congress to refer to and describe alleys that were originally laid out in the District in which the fee simple title was vested in the United States. *Id.*

Payment of compensation

Although District of Columbia Council referred only to Code provision which authorized acceptance of dedication of an alley in connection with the closing of an existing alley but which did not mention payment of money in its resolution closing an "original" alley owned by the United States, Council also proceeded under other applicable provisions of the Code and, under those other provisions, was authorized to collect money for the closing on behalf of the United States. *Calvin-Humphrey Corporation v. United States* (1973, 480 F.2d 1323, 202 Ct. Cl. 519).

Decision that government of District of Columbia is not entitled to collect money from abutting property owners for the closing of an alley is confined strictly to alleys dedicated by developers and does not apply to an "original" alley, the title to which is in the United States. *Id.*

Regulations—Compilation

If Council violated section 1-1507 in failing to compile rules and regulations for the closing of street and alleys, such violation is of no help to plaintiff property owners who sought to recover money paid for closing of certain portions of original alleys and original street in absence of allegations and proof that such a violation denied plaintiffs a right to which they were entitled under the law. *Washington Medical Center, Inc., et al. v. United States* (1976, 545 F.2d 116, 211 Ct. Cl. 145; cert. denied 98 S.Ct. 296, — U.S. —).

Sales price

Original street and alleys in the District can be closed and sold on application by owners of abutting lots for whatever price Congress authorized, and Council's collection of sums from property owners based on the assessed value of contiguous lots is not illegal on theory that street and alleys have only a nominal value. *Washington Medical Center, Inc., et al. v. United States* (1976, 545 F.2d 116, 211 Ct. Cl. 145; cert. denied 98 S.Ct. 296, — U.S. —).

Where property owners who applied to have original street and original alleys in the District closed, paid values determined by the Council without protest of any kind, it was too late for property owners to protest those values for the first time in the Court of Claims. *Id.*

The rule as to value in condemnation cases does not apply to the sale of original street and alleys in which the fee simple title is vested in the United States. *Id.*

§ 7-303. Alleys may be closed on dedication of new ones—Application of property owners—Future ownership of closed alleys—Plats recorded.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section substituting "Mayor" for "Board of Commissioners", see sec. 6 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4929).

For temporary provisions requiring Council approval of closings, see sec. 7 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4930).

NOTES TO DECISIONS

Construction

Section 7-302 authorizing collection of money by Council for closing original alleys and this section authorizing sale of original alleys are not mutually exclusive and the authority and power to collect money for closing alleys applies to section authorizing the closing of alleys on application of property owners. *Washington Medical Center, Inc., et al. v. United States* (1976, 545 F.2d 116, 211 Ct. Cl. 145; cert. denied 98 S.Ct. 296, — U.S. —).

District's discretion

Closing of original street and original alleys in the District of Columbia after property owners filed applications to close portions of alleys and street on which their lots abutted is a discretionary act on the part of the Council. *Washington Medical Center, Inc. et al. v. United States* (1976, 545 F.2d 116, 211 Ct. Cl. 145; cert. denied 98 S.Ct. 296, — U.S. —).

Due process

Fact that Council in prior years did not require the payment of money for the closing of nonoriginal or original alleys in the District does not give rise to violation of due process rights of property owners each of whom had full knowledge from Council that money was required to be paid for the closing of street and alleys and the amount to be paid. *Washington Medical Center, Inc., et al. v. United States* (1976, 545 F.2d 116, 211 Ct. Cl. 145; cert. denied 98 S.Ct. 296, — U.S. —).

Original alleys

Original alleys in the District were not dedicated at common law and title of owners of abutting lots stems only to the line of the streets and alleys and not to the center thereof. *Washington Medical Center, Inc., et al. v. United States* (1976, 545 F.2d 116, 211 Ct. Cl. 145; cert. denied 98 S.Ct. 296, — U.S. —).

Where Congress referred to or described an alley in the District as an "original alley" in the various laws dealing with the closing and sale of alleys, it was the intent and purpose of Congress to refer to and describe alleys that were originally laid out in the District in which the fee simple title was vested in the United States. *Id.*

Payment of compensation

Although District of Columbia Council referred only to Code provision which authorized acceptance of dedication of an alley in connection with the closing of an existing alley but which did not mention payment of money in its resolution closing an "original" alley owned by the United States, Council also proceeded under other applicable provisions of the Code and, under those other provisions, was authorized to collect money for the closing on behalf of the United States. *Calvin-Humphrey Corporation v. United States* (1973, 480 F. 2d 1323, 202 Ct. Cl. 519).

Decision that government of District of Columbia is not entitled to collect money from abutting property owners for the closing of an alley is confined strictly to alleys dedicated by developers and does not apply to an "original" alley, the title to which is in the United States. *Id.*

Regulations—Compilation

If Council violated section 1-1507 in failing to compile rules and regulations for the closing of street and alleys, such violation is of no help to plaintiff property owners who sought to recover money paid for closing of certain portions of original alleys and original street in absence of allegations and proof that such a violation denied plaintiffs a right to which they were entitled under the law. *Washington Medical Center, Inc., et al. v. United States* (1976, 545 F.2d 116, 211 Ct. Cl. 145; cert denied 98 S.Ct. 296, — U.S. —).

§ 7-304. Closing narrow alleys—Application of property owners—Disposal of land.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section substituting "Mayor" for "Board of Commissioners", see sec. 6 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4929).

For temporary provisions requiring Council approval of closings, see sec. 7 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4930).

NOTES TO DECISIONS

Payment of compensation

Although District of Columbia Council referred only to Code provision which authorized acceptance of dedication of an alley in connection with the closing of an existing alley but which did not mention payment of money in its resolution closing an "original" alley owned by the United States, Council also proceeded under other applicable provisions of the Code and, under those other provisions, was authorized to collect money for the closing on behalf of the United States. *Calvin-Humphrey Corporation v. United States* (1973, 480 F. 2d 1323, 202 Ct. Cl. 519).

Decision that government of District of Columbia is not entitled to collect money from abutting property owners for the closing of an alley is confined strictly to alleys dedicated by developers and does not apply to an "original" alley, the title to which is in the United States. *Id.*

§ 7-305. Alleys closed for single improvement on two-thirds of square.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section substituting "Mayor" for "Board of Commissioners", see sec. 6 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4929).

For temporary provisions requiring Council approval of closings, see sec. 7 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4930).

§ 7-306. Changing of alleyways—Petition of property owners—New dedication—Plat—Future ownership.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section substituting "Mayor" for "Board of Commissioners", see sec. 6 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4929).

For temporary provisions requiring Council approval of closings, see sec. 7 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4930).

§ 7-307. Copy of order and plat recorded—Ownership of closed alley.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-308. Obliterating subdivisions and alleys—Filing copy of order.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section substituting "Mayor" for "Board of Commissioners", see sec. 6 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4929).

For temporary provisions requiring Council approval of closings, see sec. 7 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4930).

§ 7-309. Closing alleys—Authorized upon acquisition of abutting property by District of Columbia—Property owner's right of access preserved.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section substituting "Mayor" for "Board of Commissioners", see sec. 8 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4930).

For temporary provisions requiring Council approval of closings, see sec. 9 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4930).

§ 7-310. Land owned by District may be set aside for alley purposes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EMERGENCY ACT AMENDMENT

1976—For temporary amendment of section substituting "Mayor" for "Board of Commissioners", see sec. 8 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4930).

§ 7-311. Public notice—Hearings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EMERGENCY ACT AMENDMENT

1976—For temporary amendment of section substituting "Mayor" for "Board of Commissioners", see sec. 8 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4930).

§ 7-312. Maps—Preparation—Recordation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EMERGENCY ACT AMENDMENT

1976—For temporary amendment of section substituting "Mayor" for "Board of Commissioners", see sec. 8 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4930).

§ 7-313. Condemnation to open, widen, or straighten alleys or minor streets—Plats.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-317. Objections to verdict—When filed—Vacation or modification by court—New jury—Costs.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-320. Awards paid by Treasurer of United States—Benefits deducted from damages.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-324. Benefit assessments from condemnation for alleys or minor streets.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-325. Proceeds of sale of lands paid into Treasury.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Construction

Section 7-302 authorizing collection of money by Council for closing original alleys and section 7-303 authorizing sale of original alleys are not mutually exclusive and the authority and power to collect money for closing alleys applies to section authorizing the closing of alleys on application of property owners. *Washington Medical Center, Inc., et al. v. United States* (1976, 545 F.2d 116, 211 Ct. Cl. 145; cert. denied 98 S.Ct. 296, — U.S. —).

§ 7-326. Plats to be made by surveyor—Costs.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-327. Correcting defects in certain prior proceedings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-330. Surplus from sale of land in which United States is interested to be paid into Treasury.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-331. Costs paid from alley appropriations when proceedings fail.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-333. Commissioner to employ assistant corporation counsel for condemnation proceedings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 4.—CLOSING STREETS, ALLEYS, OR HIGHWAYS

§ 7-401. Street Readjustment—Closing of unnecessary public ways authorized—Disposition of property—Reference to Planning Commission.

The Council of the District of Columbia is authorized to close any street, road, highway, or alley, or any part of any street, road, highway, or alley, in the District of Columbia when, in the judgment of said Council, such street, road, highway, or alley, or such part of a street, road, highway, or alley, has been rendered useless or unnecessary, the title to the land embraced within the public space so closed to revert to the owners of the abutting property subject to such compensation therefor in money, land, or structures as the Council of the District of Columbia, in its judgment, may find just and equitable, in view of all the circumstances of the case affecting near-by property of abutters and/or non-abutters: *Provided*, That if the title to such land be in the United States the property shall not revert to the owners of the abutting property but may be disposed of by the Mayor of the District of Columbia to the best advantage of the locality and the properties therein and thereby affected, which properties

thenceforth shall become assessable on the books of the tax assessor of the District of Columbia in all respects as other private property in the District; or also said property be sold as provided in section 7-302 of this title, unless the use of such land is requested by some other department, bureau, or commission of the government of the United States for purposes not otherwise inconsistent with the proper development of the District of Columbia: *Provided further*, That the said closing by said Council is made expedient or advisable by reason of change in the highway plan or by reason of provision for access or better access to the abutting or nearby property and the convenience of the public by other street, road, highway, or alley facilities, or by reason of the acquisition by the District of Columbia or by the United States of America for school, park, playground, or other public purposes, of all the property abutting on the street, road, highway, or alley, or part of a street, road, highway, or alley, proposed to be closed or for other public reasons: *And provided further*, That the proposed closing of any street, road, highway, or alley, or any parts thereof as provided for in this chapter shall be referred to the National Capital Planning Commission for its recommendation. (Dec. 15, 1932, 47 Stat. 747, ch. 4, § 1.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commission of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section is set out in this supplement to correct an editorial error in the main edition.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section substituting "Mayor" for "Board of Commissioners", see sec. 4 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4929).

For temporary provisions requiring Council approval of closings, see sec. 5 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4929).

NOTES TO DECISIONS

Administrative procedure

Decision of District of Columbia Council, pursuant to the Street Readjustment Act, to close portion of street and, once closed, to authorize the surveyor to convey title to the abutting landowners for development purposes did not constitute a "contested case" within meaning of the Administrative Procedure Act; in determining whether it should close the street the Council was exercising legislative discretion based on primarily legislative facts; also, Council's decision regarding compensation, though primarily adjudicatory, did not fall within the "contested case" definition since it was subject to trial de novo in Superior Court. *Chevy Chase Citizens Association et al. v. District of Columbia Council* (D.C. App. 1974, 327 A. 2d 310).

Construction

Section 7-302 authorizing collection of money by Council for closing original alleys and section 7-303 authorizing sale of original alleys are not mutually exclusive and the authority and power to collect money for closing alleys applies to section authorizing the closing of alleys on application of property owners. *Washington Medical Center, Inc., et al. v. United States* (1976, 545 F. 2d 116, 211 Ct. Cl. 145; cert. denied 98 S.Ct. 296, — U.S. —).

The options afforded the District of Columbia by this section in dealing with United States property are not mutually exclusive. *O. T. Carr, Jr., et al. v. District of*

Columbia et al (1974, 371 F. Supp. 293; aff'd and rem'd for modification 521 F. 2d 325, 172 U.S. App. D.C. 224).

The authority of the District of Columbia to sell closed United States alley land does not apply only when the city council is unable to dispose of the alley space in a manner which is advantageous to the locality in surrounding property affected. *Id.*

Discretion

Closing of original street and original alleys in the District of Columbia after property owners filed applications to close portions of alleys and street on which their lots abutted is a discretionary act on the part of the Council. *Washington Medical Center, Inc., et al. v. United States* (1976, 545 F.2d 116, 211 Ct. Cl. 145; cert. denied 98 S.Ct. 296, — U.S. —).

Decision whether an alley is to be closed is a matter of discretion exercised by the District of Columbia Council. *Metropolitan Washington Coalition for Clean Air v. Department of Economic Development et al.* (1973, 373 F. Supp. 1096).

Disposition of proceeds

Any money received by the District of Columbia for the sale of closed alley space owned by the United States must be deposited by the District in the United States Treasury for the benefit of the overall United States revenues, not District of Columbia accounts or revenues. *O. T. Carr, Jr., et al. v. District of Columbia et al.* (1974, 371 F. Supp. 293; aff'd and rem'd for modification 521 F. 2d 325, 172 U.S. App. D.C. 224).

Due process

Fact that Council in prior years did not require the payment of money for the closing of nonoriginal or original alleys in the District does not give rise to violation of due process rights of property owners each of whom had full knowledge from Council that money was required to be paid for the closing of streets and alleys and the amount to be paid. *Washington Medical Center, Inc., et al. v. United States* (1976, 545 F. 2d 116, 211 Ct. Cl. 145; cert. denied 98 S.Ct. 296, — U.S. —).

Environmental impact

Recommendation to close part of public alley made by planning commission to District of Columbia city council which had the authority to close alley constituted local action, not "federal action," within meaning of National Environmental Policy Act requiring filing of an environmental impact statement in every federal action significantly affecting quality of human environment; thus, recommendation did not have to be accompanied by environmental impact statement. *Metropolitan Washington Coalition for Clean Air v. Department of Economic Development et al.* (1973, 373 F. Supp. 1096).

Joinder

Where declaratory judgment action concerning whether the District of Columbia might charge abutting landowners a price based on market value for the original United States alley space closed by the District involved amounts in excess of \$50,000, the United States could not be joined as a party even though the money received by the District must be deposited into the United States Treasury. *O. T. Carr, Jr., et al. v. District of Columbia et al.* (1974, 371 F. Supp. 293; aff'd and rem'd for modification 521 F. 2d 325, 172 U.S. App. D.C. 224).

Judicial review

Decision of District of Columbia Council to close a street is not unreviewable; an action seeking equitable relief may be brought in the Superior Court. *Chevy Chase Citizens Association et al. v. District of Columbia Council* (D.C. App. 1974, 327 A. 2d 310).

Original alleys

Original alleys in the District were not dedicated at common law and title of owners of abutting lots stems only to the line of the streets and alleys and not to the center thereof. *Washington Medical Center, Inc. et al. v. United States* (1976 545 F.2d 116, 211 Ct. Cl. 145; cert. denied 98 S.Ct. 296, — U.S. —).

Where Congress referred to or described an alley in the District as an "original alley" in the various laws dealing with the closing and sale of alleys, it was the intent and purpose of Congress to refer to and describe

alleys that were originally laid out in the District in which the fee simple title was vested in the United States. *Id.*

Parties

Where sole issue in declaratory judgment action was whether the District of Columbia had authority to charge owners fair market value for alley space closed pursuant to The Street Readjustment Act of District of Columbia, Congress had delegated to the District complete authority to close United States alleys, a judgment rendered in the United States' absence would be entirely adequate and would not prejudice United States' interests and, because the funds at stake had been placed in escrow account in a bank, the judgment would run neither against nor be satisfied from United States' funds, the United States was not "indispensable party" within meaning of Federal Rule of Civil Procedure. *O. T. Carr, Jr., et al. v. District of Columbia et al.* (1974, 371 F. Supp. 293; aff'd and rem'd for modification 521 F. 2d 325, 172 U.S. App. D.C. 224).

Payment of compensation

The District of Columbia may not charge abutting property owners the fair market value of the public space owned by the District of Columbia which reverts to the owners when an alley is closed, unless an objection to the closing is made. *O. T. Carr, Jr., et al. v. District of Columbia et al.* (1974, 371 F. Supp. 293; aff'd and rem'd for modification 521 F. 2d 325, 172 U.S. App. D.C. 224).

When closing original United States property under the complete authority to close United States alleys delegated by Congress, the District of Columbia city council may, for the account of the United States, charge abutting property owners fair market value of the space closed. *Id.*

Fact that advantages accrued to the District of Columbia by the closing of an original United States alley did not preclude the District from adding conditions for the benefit and protection of the United States. *Id.*

The right of the District of Columbia city council to charge for United States property does not apply only when the District of Columbia closes a United States alley on its own initiative. *Id.*

Although District of Columbia Council referred only to Code provision which authorized acceptance of dedication of an alley in connection with the closing of an existing alley but which did not mention payment of money in its resolution closing an "original" alley owned by the United States, Council also proceeded under other applicable provisions of the Code and, under those other provisions, was authorized to collect money for the closing on behalf of the United States. *Calvin-Humphrey Corporation v. United States* (1973, 480 F. 2d 1323, 202 Ct. Cl. 519).

Decision that government of District of Columbia is not entitled to collect money from abutting property owners for the closing of an alley is confined strictly to alleys dedicated by developers and does not apply to an "original" alley, the title to which is in the United States. *Id.*

Regulations—Compilation

If Council violated section 1-1507 in failing to compile rules and regulations for the closing of street and alleys, such violation is of no help to plaintiff property owners who sought to recover money paid for closing of certain portions of original alleys and original street in absence of allegations and proof that such a violation denied plaintiffs a right to which they were entitled under the law. *Washington Medical Center, Inc. et al. v. United States* (1976, 545 F.2d 116, 211 Ct. Cl. 145; cert. denied 98 S.Ct. 296, — U.S. —).

§ 7-402. Notice of intention to close public way—Hearing.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EMERGENCY ACT AMENDMENT

1976—For temporary amendment of section substituting "Mayor" for "Board of Commissioners", see sec. 4 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4929).

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 7-403. Plats to be prepared showing public way intended to be closed—Approval conditional upon dedication of other property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EMERGENCY ACT AMENDMENT

1976—For temporary amendment of section substituting "Mayor" for "Board of Commissioners", see sec. 4 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4929).

§ 7-404. Order for closing public ways—Notice—Effective if no objection within 30 days—Recordation of plats.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EMERGENCY ACT AMENDMENT

1976—For temporary amendment of section substituting "Mayor" for "Board of Commissioners", see sec. 4 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4929).

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

NOTES TO DECISIONS

Administrative procedure

Decision of District of Columbia Council, pursuant to the Street Readjustment Act, to close portion of street and, once closed, to authorize the surveyor to convey title to the abutting landowners for development purposes did not constitute a "contested case" within meaning of the Administrative Procedure Act; in determining whether it should close the street the Council was exercising legislative discretion based on primarily legislative facts; also, Council's decision regarding compensation, though primarily adjudicatory, did not fall within the "contested case" definition since it was subject to trial de novo in Superior Court. *Chevy Chase Citizens Association et al. v. District of Columbia Council* (D.C. App. 1974, 327 A. 2d 310).

Interested party

Plaintiffs who contested closing of part of public alley but who were members of general public and not owners of property abutting alley were not "parties interested" within meaning of statutes providing that an order closing an alley becomes effective immediately if no written objection is made by any party interested within 30 days after service of order and requiring institution of an in rem proceeding for closing of an alley when an objection is filed by parties interested; thus, plaintiffs' filing of a formal written objection to alley closing did not require institution of in rem proceeding. *Metropolitan Washington Coalition for Clean Air v. Department of Economic Development et al.* (1973, 373 F. Supp. 1096).

Judicial review

Decision of District of Columbia Council to close a street is not unreviewable; an action seeking equitable

relief may be brought in the Superior Court. *Chevy Chase Citizens Association et al. v. District of Columbia Council* (D.C. App. 1974, 327 A. 2d 310).

§ 7-405. Objections to closing public ways—Proceedings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EMERGENCY ACT AMENDMENT

1976—For temporary amendment of section substituting "Mayor" for "Board of Commissioners", see sec. 4 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4929).

NOTES TO DECISIONS

Judicial review

Decision of District of Columbia Council to close a street is not unreviewable; an action seeking equitable relief may be brought in the Superior Court. *Chevy Chase Citizens Association et al. v. District of Columbia Council* (D.C. App. 1974, 327 A. 2d 310).

§ 7-407. Abandonment of proceedings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-408. Petition by property owners for closing.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EMERGENCY ACT AMENDMENT

1976—For temporary amendment of section substituting "Mayor" for "Board of Commissioners", see sec. 4 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4929).

§ 7-409. Prior laws to remain in force.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EMERGENCY ACT AMENDMENT

1976—For temporary amendment of section substituting "Mayor" for "Board of Commissioners", see sec. 4 of the Emergency Street and Alley Closing Act of 1976 (D.C. Act 1-184, Dec. 29, 1976, 23 DCR 4929).

Chapter 5.—BRIDGES, VIADUCTS, AND SUBWAYS

§ 7-501. Control of bridges vested in Commissioner of the District of Columbia—Except Aqueduct Bridge.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-502. Construction and repair of bridges over railway and canal rights-of-way—Collection of cost.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-507. Highway Bridge—Maintenance cost—Street railways.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-511. Francis Scott Key Bridge—Railways—Approval by Secretary of the Army.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-514. Benning Bridge—Cost—Railways.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-520. Michigan Avenue Viaduct—Construction authorized—Cost.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-523. Subway under Baltimore and Ohio tracks in vicinity of Chestnut Street, Fern Place, and Piney Branch Road, extended—Cost.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-524. Calvert Street Bridge—Street railways.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-526. Washington Channel bridge and facilities—Construction, maintenance, etc.—Acquisition of land—Cooperation with agencies—Leases—Advisory Committee—Appropriations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 6.—REPAIR AND CONSTRUCTION

§ 7-601. Repairs to streets, avenues, alleys, or sewers—Public notice—Lowest responsible bidder to be accepted—Rejection of bids—Subdivision of contracts.

When any repairs of streets, avenues, alleys, or sewers within the District of Columbia are to be made, or when new pavements are to be substituted in place of those worn out, new ones laid, or new streets opened, sewers built, or any works the total cost of which shall exceed the sum of \$1,000, notice shall be given in one newspaper in Washington, but not elsewhere, unless the need for advertising outside the District shall have been specifically approved by the Mayor for proposals, with full specifications as to material for the whole or any portion of the works proposed to be done; and the lowest responsible proposal for the kind and character of pavement or other work which the Mayor of the District of Columbia shall determine upon shall in all cases be accepted: *Provided, however,* That the Mayor shall have the right, in his discretion, to reject all of such proposals: *Provided,* That work capable of being executed under a single contract shall not be subdivided so as to reduce the sum of money to be paid therefor to less than one thousand dollars. (June 11, 1878, 20 Stat. 105, ch. 180, § 5; Oct. 26, 1973, Pub. L. 93-140, § 25(c), 87 Stat. 509.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1973—Act Oct. 26, 1973, amended section by striking "and if the total cost shall exceed \$5,000, then in one newspaper in each of the cities of New York, Philadelphia, and Baltimore also for one week," and inserting in lieu thereof: "but not elsewhere, unless the need for advertising outside the District shall have been specifically approved by the Commissioner".

APPROPRIATIONS

See note under § 1-226a.

CROSS REFERENCES

Advertising for proposals, see § 1-808.

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising, see § 1-809.

Requirements for new or replacement sewer systems to reduce flood hazards, see § 5-1103.

§ 7-602. Contracts—Unanimous consent of Commissioner required—Contracts to be copied into book.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-603. Pavement to be of best known materials—Bond of contractors—Liability for repairs.

No pavement shall be accepted nor any pavement laid except that of the best material of its kind known for that purpose, laid in the most substantial manner; and good and sufficient bonds to the District of Columbia shall be required (except when otherwise provided by section 1-805) from the contractors in a penal sum of not less than twenty-five per centum of the amount of the contract with sureties or a surety company to be approved by the Mayor of the District of Columbia guaranteeing that the terms of the contract shall be strictly and faithfully performed to the satisfaction of said Mayor; that the contractors shall promptly make payments to all persons supplying them labor and materials in the prosecution of the work provided for in such contracts; and that such work shall be kept in repair for a period of one year from the date of completion of said work; but no cash retent to guarantee such repair shall be held or required on such contracts. (June 11, 1878, 20 Stat. 106, ch. 180, § 5; Sept. 1, 1916, 39 Stat. 688, ch. 433.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

This section is part of section 5 of Act June 11, 1878. Remainder of such section is classified to sections 1-212, 7-601, 7-602, 7-604, and 7-605.

This section is a composite of the credits cited in the history line. The parenthetical exception was inserted by the compilers in view of the provisions of § 1-805. The act of 1878 originally required contractors to keep new pavements or other new works in repair for 5 years, 10 per centum of the cost to be retained as additional security, such sum to be invested in United States or District of Columbia bonds, and the interest paid to the contractors.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

REPAIRS

The appropriation acts listed below contained the following proviso: "That in addition to the provision of existing law requiring contractors to keep new pavements in repair for a period of one year from the date of the completion of the work, the Commissioners shall further require that where repairs are necessary during the four years following the said one-year period, due to inferior work or defective materials, such repairs shall be made at the expense of the contractor, and the bond furnished by the contractor shall be liable for such expense."

- 1959—Aug. 6, 1958, Pub. L. 85-594, § 1, 72 Stat. 509.
- 1958—June 27, 1957, Pub. L. 85-61, § 1, 71 Stat. 204.
- 1957—June 29, 1956, ch. 479, § 1, 70 Stat. 451.
- 1956—July 5, 1955, ch. 272, § 1, 69 Stat. 259.
- 1955—July 1, 1954, ch. 449, § 1, 68 Stat. 392.
- 1954—July 31, 1953, ch. 299, § 1, 67 Stat. 290.
- 1953—July 5, 1952, ch. 576, § 1, 66 Stat. 385.
- 1952—Aug. 3, 1951, ch. 292, § 1, 65 Stat. 166.
- 1951—July 18, 1950, ch. 467, § 1, 64 Stat. 347.

- 1950—June 29, 1949, ch. 279, § 1, 63 Stat. 303.
- 1949—June 19, 1948, ch. 555, § 1, 62 Stat. 553.
- 1948—July 25, 1947, ch. 324, § 1, 61 Stat. 442.
- 1947—July 9, 1946, ch. 544, § 1, 60 Stat. 518.
- 1946—June 30, 1945, ch. 209, § 1, 59 Stat. 289.
- 1945—June 28, 1944, ch. 300, § 1, 58 Stat. 526.
- 1944—July 1, 1943, ch. 184, § 1, 57 Stat. 341.
- 1943—June 27, 1942, ch. 452, § 1, 56 Stat. 455.
- 1942—July 1, 1941, ch. 271, § 1, 55 Stat. 534.
- 1941—June 12, 1940, ch. 333, 54 Stat. 307.
- 1940—July 15, 1939, ch. 281, 53 Stat. 1037.
- 1939—Apr. 4, 1938, ch. 62, 52 Stat. 189.
- 1938—June 29, 1937, ch. 403, 50 Stat. 390.
- 1937—June 23, 1936, ch. 726, 49 Stat. 1864.
- 1936—June 14, 1935, ch. 241, 49 Stat. 350.
- 1935—June 4, 1934, ch. 389, 48 Stat. 855.
- 1934—June 16, 1933, ch. 93, 48 Stat. 230.
- 1933—June 29, 1932, ch. 308, 47 Stat. 354.
- 1932—Feb. 23, 1931, ch. 282, 46 Stat. 1387.
- 1931—July 3, 1930, ch. 848, 46 Stat. 962.
- 1930—Feb. 25, 1929, ch. 314, 45 Stat. 1273.
- 1929—May 21, 1928, ch. 659, 45 Stat. 657.
- 1928—Mar. 2, 1927, ch. 271, 44 Stat. 1308.
- 1927—May 10, 1926, ch. 276, 44 Stat. 427.

CROSS REFERENCES

Contractors' bond, see §§ 1-804a to 1-806.
General limitation on power of Commissioner, see § 1-801.
Retention of percentage of cost to guarantee faithful performance, see § 1-807.

§ 7-604. Payments—Railway companies to pay portion of cost—Penalty for refusal.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Duty to remove tracks

Transit company did not have responsibility of removing abandoned trolley tracks which constituted a continuing hazard for bicycle, motorcycle and automobile traffic within District of Columbia, but only had responsibility to pay cost of removal when incurred. *J. Joseph et ano. v. District of Columbia et ano.* (1973, 366 F. Supp. 757; aff'd 495 F. 2d 1075, 162 U.S. App. D.C. 19).

District of Columbia had duty of removing abandoned trolley tracks, which constituted a continuing hazard for bicycle, motorcycle and automobile traffic within District, and would be required to file firm plan for removing tracks within three years of such filing. *Id.*

§ 7-604a. Removal of street railway tracks—Provision for paving.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Duty to remove tracks

Transit company did not have responsibility of removing abandoned trolley tracks which constituted a continuing hazard for bicycle, motorcycle and automobile traffic within District of Columbia, but only had responsibility to pay cost of removal when incurred. *J. Joseph et ano. v. District of Columbia et ano.* (1973 366 F. Supp. 757; aff'd 495 F. 2d 1075, 162 U.S. App. D.C. 19).

District of Columbia had duty of removing abandoned trolley tracks, which constituted a continuing hazard for bicycle, motorcycle and automobile traffic within District, and would be required to file firm plan for removing tracks within three years of such filing. *Id.*

§ 7-605. Water and gas mains, service pipes, and sewer connections to be laid before permanent improvements are made.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Requirements for new or replacement water or sewer systems to reduce flood hazards, see § 5-1103.

§ 7-607. Commissioner to submit schedules of streets to be improved in order of importance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-608. Improvement and repair of alleys and sidewalks, and construction of sewers and sidewalks under permit system—Hearing—Notice—Cost—Assessment, collection, liability for sale, deposit.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

Requirements for new or replacement sewer systems to reduce flood hazards, see § 5-1103.

NOTES TO DECISIONS

Sidewalk—Construction

In claim that District of Columbia had discriminated in provision of municipal services, evidence established that discrimination in construction of sidewalks in the District of Columbia, if any had existed, no longer existed and that purported effects of past discrimination were being rectified by a major commitment of resources. *M. Burner et al. v. W. E. Washington et al.* (1975, 399 F. Supp. 44).

—Repairs

Municipality was under a duty to exercise reasonable care in maintaining its sidewalk, but that duty became secondary to the duty of the abutting landowner where the landowner was making a special use of the sidewalk for a driveway entrance to his gasoline station. *District of Columbia v. Texaco, Inc., et ano.* (D.C. App. 1974, 324 A.2d 690).

There is a "special use" of a sidewalk by an abutter, such that the abutter is liable for injuries resulting from unsafe or dangerous conditions created by the use, where the abutter uses the sidewalk as a driveway entrance to his gasoline station and, as a result, causes an unsafe or dangerous condition. *Id.*

§ 7-610. Service connections for water and sewer when street is about to be paved—Cost—Assessment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Repair or renewal by District and compensation for past repairs of water service pipes and building sewers, see § 6-405.

§ 7-612. Assessments for costs of paving streets.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-613. Width of pavement of streets.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-613a. Minor changes in roadway width.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-615. Cutting trenches in highways—Reservation or public space without permit prohibited—Inapplicable to public buildings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-618. Use of portable asphalt plant.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-620. Limitation on contracts of District Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-630. Collection of assessments—Interest—Advertising of intention to improve and hearing not required.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-631. Protest of aggrieved property owner—Adjustment of assessment by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-632. Cancellation of prior assessments directed—Reassessment—Refund.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 7.—STREET LIGHTING

§ 7-701. Street lighting—Rates for street lighting—Cost and maintenance of lighting facilities—Powers of Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

RATES FOR STREET LIGHTING

Section 107 of title I of the District of Columbia Appropriation Act, 1977 (Oct. 1, 1976, Pub. L. 94-446, 90 Stat. 1494), provided:

"Appropriations in this title shall not be available for the payment of rates for electric current for street lighting in excess of 2 cents per kilowatt-hour for current consumed."

Similar provisions (in addition to those referred to in the main edition) were contained in the following acts:
1976—June 30, 1976, Pub. L. 94-333, § 6, 90 Stat. 791.
1975—Aug. 31, 1974, Pub. L. 93-405, § 6, 88 Stat. 827.
1974—Aug. 14, 1973, Pub. L. 93-91, § 6, 87 Stat. 309.

§ 7-703. Deductions for failure to provide required illumination—Testing facilities.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-704. Contracts for gas and electric lighting not required.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-705. Penalty for failure to furnish, erect, maintain, move, or discontinue street lamps.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-706. Extension of gas-mains for maintenance of street lamps—Cost.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-707. Regulating hours of lighting of street lamps.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-708. Washington Terminal Company to pay for certain street lighting.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-709. Railroads to pay for certain street lighting.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 8.—REMOVAL OF SNOW AND ICE

Sec.

7-807. Appropriations.

§ 7-801. Snow and ice to be removed from sidewalks within fire limits by owner or occupant of abutting property.

NOTES TO DECISIONS

Liability

If snow or ice has been permitted to remain untreated on sidewalk or crosswalk and has formed into humps or ridges or other shapes of such size and location as to constitute a danger, aggravated over its original mere slipperiness, and unusual in comparisons with general conditions naturally prevalent throughout the city, and if condition has remained for period sufficient to give rise to constructive notice to municipal authorities, and opportunity for them to remedy it, municipality is liable for injuries of which dangerous condition is proximate cause. *District of Columbia v. R. Smith* (D.C. App. 1972, 297 A. 2d 787).

§ 7-802. Removal by Commissioner from walks adjacent to public buildings—Making safe with sand or ashes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-805. Removal by Commissioner upon default by owner or occupant—Expense.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-807. Appropriations.

Notwithstanding any other provision of law, appropriations for the Department of Highways and Traffic and the Department of Environmental Services of the government of the District of Columbia shall be available for purposes of snow and ice removal when so ordered by the Commissioner of the District of Columbia. (Oct. 26, 1973, Pub. L. 93-140, § 14, 87 Stat. 507.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

APPROPRIATION AUTHORIZATION

See note under § 1-226a.

Chapter 9.—RENTAL AND UTILIZATION OF PUBLIC SPACE

§ 7-902. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-903. Assessment and collection of rent from the United States, District of Columbia or foreign governments, not authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-904. Minor uses of public space without rental payments, authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-905. Regulations by District Council for rental of public space—Conditions—Provisions to be included in regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-906. Regulations to prescribe rental to be paid—Minimum rental to be paid under this title—Refunds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-907. Use of property subject to the requirements of section 7-117.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-908. Permits for use or construction of vaults—Agreement required of owner—Contents of agreement—Recordation of a copy of agreement in office of Recorder of Deeds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

USE OF PUBLIC SPACE UNDER DUPONT CIRCLE

Act May 22, 1975, D.C. Law 1-4, 21 DCR 3947, provided:

"Section 101. *Short Title.* This Act may be cited as 'An Act To Authorize The Mayor Of The District of Columbia To Permit The Use Of Public Space Under Dupont Circle.'

"Section 102. *Statement of Purpose.* The Act would empower the Mayor to lease or grant revocable permits for the development of the abandoned trolley car tunnels under Dupont Circle and some of their multiple entrances, as unique commercial retail and entertainment mall areas. Development of this area with the passage of this Act will enhance the celebration of our Nation's bi-centennial anniversary by its commercial and cultural impact as proposed by the plan.

"Section 103. That the Mayor of the District of Columbia is authorized and empowered in his discretion and after citizen participation under procedures established by the Mayor, to enter into leases of, or to grant revocable permits for the use of, public space under Dupont Circle, Northwest, in the District of Columbia, consisting of tunnels, stations, access passageways, appurtenances formerly maintained as a part of a street railway system, and to impose such terms and conditions, and to provide for the payment of such rents or fees as the Mayor may, in his discretion, deem to be necessary or desirable.

"Section 104. *Effective Date.* This Act shall become effective upon passage."

§ 7-910. Owners of property in which vaults are located to pay rents as fixed by District Council—Minimum rent—Waiver of rent under certain conditions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-911. Same; Annual payment of rent—Rental year—Interest charges for non-payment—Refunds—Deduction of expenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-912. Commissioner authorized to order removal from vault under certain conditions—Failure to comply with order, a violation of this subchapter—Application to Superior Court for authority to enter upon property of owner—Liability of District and employees for damages—Service of process on owner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-913. Same; Notice to owner when vaults are dangerous—Commissioner's authority to make vaults safe and secure—District's expenses to be charged against private property of owner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-914. Authority to secure the payment of rents, interest and other charges—Delinquent charges to be levied as a tax—Payment of tax—Tax sale for delinquent taxes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-915. Vaults to be made available for utility construction or installation—Applicants to grant District certain rights—Superior Court authorized to permit Commissioner to enter upon premises—Damages—Service of process—Costs and expenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-916. District Council not authorized to impose a rental charge for vaults abutting single or two family homes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-917. District Council authorized to promulgate regulations to carry out the purposes of this subchapter—Effective date of regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-918. Insurance requirements—District and its employees to be included in insurance policies—United States and District Governments exempt from insurance requirements.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-920. Penalties for violations—Additional penalties may be prescribed by District Council.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-921. Deposit of rents collected.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-925. Effective dates.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-941. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-942. Commissioner's authority with respect to airspace—Agreements with Federal Government.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-943. Terms and conditions to be included in air-space leases.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-944. Commissioner authorized to execute airspace leases under certain conditions.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-945. Cost of removal or relocation of public or private facilities—Commissioner's approval required.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-948. Deposit of rents, fees, taxes, assessments, sewer and water charges—Payment of expenditures.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-949. Restoration of airspace to its prior condition upon expiration or termination of lease—Cost of restoration.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-950. Regulations by District Council, authorized—Penalties for violating regulations—Notice of violation—Suit to enjoin continuing violations.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-951. Federal and District Governments authorized to construct airspace structures under certain conditions.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 10.—REAL ESTATE SALE OR RENT SIGNS**§ 7-1001. Signs on sidewalk or parking prohibited—Number of signs—Removal—Penalties.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 11.—BARBED-WIRE FENCES**§ 7-1102. Construction or maintenance outside fire limits.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1105. Notice by publication—Removal by inspector of buildings—Cost, assessment.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

Chapter 12.—MISCELLANEOUS**§ 7-1201. Jurisdiction over MacArthur Boulevard transferred to District Council—Abutting property owners—Assessment—Application of municipal laws.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1205. Denomination of streets as "business streets."**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1210. Sidings may be laid by Baltimore and Potomac Railroad Company—Authority of Council.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1211. Certain railroad sidings authorized.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1212. Baltimore and Ohio Railroad Company authorized to extend tracks and maintain additional stations.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1214. Streets to be under or over railroad tracks—Cost of opening streets—Maintenance.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1215. Subways and viaducts to eliminate grade crossings authorized in discretion of Commissioner—Cost.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1218. Branch tracks, spurs, or sidings authorized—Plats or charts kept on file.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1219. Extensions through public grounds authorized—Exceptions—Approval of Fine Arts Commission.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1220. Authority of Commissioner under § 7-1215 not affected.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1222. Company to pay portion of cost of paving or repairing streets.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1226. Plans to be approved by Commissioner.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1227. Grade crossings subject to approval of Commissioner—Overhead bridge.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1228. Authority of Commissioner not abridged.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1230. Electrification of existing steam-railroad lines—Structures, equipment.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1232. Construction of conduit systems—Government use of three ducts.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1233. Jurisdiction not abridged.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1235. Employment of temporary special and technical employees—Report by Commissioner—Tenure of employment.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1236. Employment of temporary laborers and mechanics—Per diem rate of pay.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1237. Employment of horses, horse-drawn vehicles, and motortrucks—Report by Commissioner—Temporary use under special conditions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1238. Employment of personnel and equipment to execute work payable from miscellaneous trust fund deposits—Delegation of hiring authority by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 13.—WASHINGTON NATIONAL AIRPORT

§ 7-1302. Powers and duties of Administrator—Rules and regulations.

NOTES TO DECISIONS

Criminal offenses

Assimilative Crimes Act did not authorize action of administrator of Federal Aviation Administration in selectively incorporating certain state offenses in regulation covering Washington National Airport and in substituting regulatory penalties for those prescribed by state legislation. *United States v. P. M. Robinson, Jr.* (1974, 495 F.2d 30, 4th Cir.).

Where citation charging defendant with "disorderly conduct—abusive language" under Virginia law while defendant was in Washington National Airport, charged an

offense which could have fallen within any one of three Virginia statutes and magistrate's statement recited that defendant had been found guilty of violating regulation of Administrator of Federal Aviation Administration and cited no Virginia statutory reference, charge, and conviction were so vague and ambiguous as to violate rudimentary concepts of due process and the Sixth Amendment. *Id.*

§ 7-1304. Authority to make arrests—Carrying of firearms—Park Police patrol.

CROSS REFERENCES

Arrest without warrant, generally, see § 23-581.

Park Police authority to arrest on or within Federal reservations in environs of District of Columbia, see § 4-209.

Chapter 14.—PUBLIC AIRPORT

Sec.

7-1413. Disposition of money recovered from pool and fountain.

§ 7-1408. Authority to make arrests—Park Police patrol.

CROSS REFERENCES

Arrest without warrant, generally, see § 23-581.

Park Police authority to arrest on or within Federal reservation in environs of District of Columbia, see § 4-209.

§ 7-1413. Disposition of money recovered from pool and fountain.

Money hereafter recovered from the pool and fountain at Dulles International Airport shall not be subject to the Act of June 30, 1949, as amended (40 U.S.C. 484(m), 485(a)), and may be given to a non-profit organization which, in the determination of the Administrator of the Federal Aviation Agency, promotes and provides for the welfare of travelers in air commerce. (Aug. 30, 1964, Pub. L. 88-507, title I, § 101, 78 Stat. 646.)

CODIFICATION

Section is also classified to 40 U.S.C. 484 note.

Chapter 15.—POTOMAC RIVER BASIN COMPACT

§ 7-1502. Consent of Congress to amended compact—Authority of Commissioner of the District of Columbia—Rights reserved by Congress.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 8.—PARKS AND PLAYGROUNDS

Chapter 1.—PARKS AND PLAYGROUNDS

Sec.

8-132. Repealed.

8-135. Transfers of jurisdiction between Director and Mayor—Change of official maps.

8-164. Theodore Roosevelt Island—Maintenance and development.

§ 8-108. Park system—Control—Inclusions—Exclusions, improvements, parking spaces—"Business streets"—Conditions requisite.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 75.

NOTES TO DECISIONS

Bus tours

Secretary of Interior has exclusive authority to regulate interpretive tour service operated under contract with Department of Interior, and service therefor is immune from enforcement of District of Columbia licensing and registration requirements. *District of Columbia et al. v. Landmark Services, Inc.* (1976, 416 F. Supp. 559).

§ 8-109. Control by director of vehicles and traffic regulations.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 76.

NOTES TO DECISIONS

Bus tours

Secretary of Interior has exclusive authority to regulate interpretive tour service operated under contract with Department of Interior, and service therefor is immune from enforcement of District of Columbia licensing and registration requirements. *District of Columbia et al. v. Landmark Services, Inc.* (1976, 416 F. Supp. 559).

§ 8-110. Street parking.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 60.

§ 8-111. Small parks at certain street intersections.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 93.

§ 8-114. Portion of Water Street made part of park system—Consent of owners.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-115. Transfer of jurisdiction over property between United States and District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Attorney fees, recovery from District

Common benefit theory is not applicable to shift to District of Columbia government burden of paying attorney fees of plaintiffs who brought action to enjoin construction of bridge across Potomac River, where action did not result in determination that bridge could not be built but in a determination that government officials had to follow certain procedures before making decision to build bridge with a resulting delay during which time bridge plan was abandoned and where class of beneficiaries included residents of Maryland and Virginia and not just District of Columbia taxpayers. *D.C. Federation of Civic Associations et al. v. J. A. Volpe, et al.* (1976, 71 F.R.D. 206).

§ 8-117. Whitehaven Parkway—Boundaries of at Huidekoper Place to be adjusted.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-118. Whitehaven Parkway—Federal property in exchange.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-119. Whitehaven Parkway—Exchange authorized with property owners.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-120. Whitehaven Parkway—Plats to be prepared.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-126. Jurisdiction over reservation No. 185.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 97.

§ 8-127. Use of spaces or reservations for widening roadways.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-128. Use of public grounds for playgrounds.**CODIFICATION**

Section was formerly classified to 40 U.S.C. § 98.

§ 8-129. Licenses for temporary structures on reservations used as playgrounds.**CODIFICATION**

Section was formerly classified to 40 U.S.C. § 99.

§ 8-130. Part of Washington Aqueduct for playground purposes.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-131. Authority to make rules and regulations for playgrounds and recreation centers.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-132. Repealed. June 28, 1977, D.C. Law 2-12, § 6(d), 24 DCR 1442.

Section, Act Mar. 3, 1917, 39 Stat. 1019, ch. 160, authorized the supervisor of playgrounds to accept volunteer services in the conduct, management, and upkeep of playgrounds. For general authority to accept volunteer services, see §§ 1-215a et seq.

EFFECTIVE DATE OF REPEAL

See section 9 of act June 28, 1977, D.C. Law 2-12, set out as a note under § 1-215a.

§ 8-133. Buildings on reservations, parks, or public grounds—Authority of Congress.

On and after August 24, 1912, there shall not be erected on any reservation, park, or public grounds, of the United States within the District of Columbia, any building or structure without express authority of Congress. (Aug. 24, 1912, 37 Stat. 444, ch. 355, § 1.)

§ 8-135. Transfers of jurisdiction between Director and Mayor—Change of official maps.

When in accordance with law or mutual legal agreement, spaces or portions of public land are transferred from the jurisdiction of the Director of the National Park Service, as established by sections 5-204, 8-108, 8-110, 8-127, 8-135 and 8-143 to that of the Mayor of the District of Columbia, or vice versa, the letters exchanged between them of transfer and acceptance shall be sufficient authority for the necessary change in the official maps and for record when necessary. (July 1, 1898, 30 Stat. 570, ch. 543, § 5.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section is also classified to 40 U.S.C. § 79.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(181) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the functions of the Board of Commissioners of transferring jurisdiction over properties or parts thereof to Federal authorities, and accepting from Federal authorities jurisdiction over properties or parts thereof, under this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Plan, set out in the appendix to title 1.

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under § 8-108.

§ 8-136. Jurisdiction of reservation No. 32 transferred to Commissioner.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-137. Jurisdiction of reservation No. 290 transferred to Commissioner.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-138. Jurisdiction of reservation No. 8 transferred to Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-139. Public convenience stations—Establishment—Location—Control transferred to Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-140. Public convenience stations—Authority to make rules, regulations, and charges.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-141. Part of reservation 13 transferred to Commissioner for use as burial ground.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-142. Site of former Georgetown Reservoir transferred to jurisdiction of Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-143. Authority to make regulations for care of public grounds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 80.

§ 8-144. Authority to make regulations—Extended to sidewalks.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 81.

NOTES TO DECISIONS

Bus tours

Secretary of Interior has exclusive authority to regulate interpretive tour service operated under contract with Department of Interior, and service therefore is immune

from enforcement of District of Columbia licensing and registration requirements. *District of Columbia et al. v. Landmark Services, Inc.* (1976, 416 F. Supp. 559).

§ 8-146. Rock Creek Park—Establishment.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 83.

§ 8-148. Rock Creek Park—Control and regulations.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 84.

§ 8-151. Rock Creek Park—Injury or diminution of the flow of water in Rock Creek.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-152. Piney Branch Parkway part of park system.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 85.

§ 8-153. Potomac Park—Establishment.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 86.

§ 8-154. Potomac Park—Control.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 87.

§ 8-155. Potomac Park—Restriction on construction of lagoon or speedway.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 88.

§ 8-157. Potomac Park—Licenses for boathouses on banks of tidal reservoir.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 90.

§ 8-158. Parkway connecting Potomac Park with Zoological and Rock Creek Parks—Reimbursement of part of cost to United States.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 92.

§ 8-159. Boundaries of parkway authorized by section 8-158 changed.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 92a.

§ 8-161. Anacostia Park.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 94.

§ 8-162. Glover Parkway and Children's Playground.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 95.

§ 8-163. Glover Parkway and Children's Playground—Part of park system of District.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 96.

§ 8-164. Theodore Roosevelt Island—Maintenance and development.

The island, known as Theodore Roosevelt Island, shall be maintained and administered by the Director of the National Park Service as a natural park for the recreation and enjoyment of the public: *Provided*, That no general plan for the development of the island be adopted without the approval of the Theodore Roosevelt Association; and so long as this association remains in existence, no development, inconsistent with this plan, be executed without the association's consent. (May 21, 1932, 47 Stat. 163, ch. 200, § 1; Feb. 11, 1933, 47 Stat. 799, ch. 48, § 1; May 21, 1953, 67 Stat. 27, ch. 63, § 2.)

CODIFICATION

Provisions relating to acceptance of Theodore Roosevelt Island by the National Park Service from the Theodore Roosevelt Association have been omitted as executed.

§ 8-165. Theodore Roosevelt Island—Means of access to be provided—Appropriation authorized.

CHANGE OF NAME

Act Feb. 11, 1933, changed the name of the island from "Roosevelt Island" to "Theodore Roosevelt Island."

§ 8-166. Theodore Roosevelt Island—Structures authorized.

CHANGE OF NAME

Act Feb. 11, 1933, changed the name of the island from "Roosevelt Island" to "Theodore Roosevelt Island."

§ 8-168. Public bathing beach authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-170. Bathing pools and beaches—Operation—Fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2.—RECREATION BOARD

ARTICLE I.—MEMBERSHIP OF THE RECREATION BOARD

§ 8-201. Recreation Board created.

DEPARTMENT OF RECREATION

Org. Ord. No. 10, dated June 27, 1968, established a Department of Recreation, under the direction and control of the Commissioner, headed by a Director of Recrea-

tion. For complete details see the order set out in the appendix to title 1.

For transfer of functions from the Office of Youth Opportunity Services to the Department of Recreation, see section 6-2003.

§ 8-202. Composition of Board—Qualifications—Tenure.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

ARTICLE II.—FUNCTIONS AND ADMINISTRATIVE RESPONSIBILITIES OF THE BOARD

§ 8-208. Determination of general policy—Supervision of expenditures.

NOTES TO DECISIONS

Discrimination in services provided

In claim that District of Columbia had discriminated in provision of municipal services, evidence failed to establish a prima facie case of discrimination in recreational services furnished by District of Columbia. *M. Burner et al. v. W. E. Washington et al.* (1975, 399 F. Supp. 44).

§ 8-209. Superintendent of Recreation—Appointment and duties—Qualifications—Other employees—Compensation—Volunteer services—Night differential for nonregularly scheduled work.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-212. Annual budget.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-213. Annual report.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

ARTICLE III.—RELATIONSHIP OF THE BOARD TO OTHER AGENCIES

§ 8-214. Transfer of functions of Community Center and Playgrounds Department—Transfer of unexpended funds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-216. Powers of Board of Education, Commissioner of District of Columbia, or National Park Service unabridged.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-217. Agreements for maintenance and improvement of playgrounds, etc., under control of Board of Education, Commissioner of District of Columbia, or National Park Service—Transfer of equipment and personnel.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 9.—PUBLIC BUILDINGS AND GROUNDS

Chapter 1.—REGULATING PROVISIONS

Sec.

9-118b. Omitted.

9-146. National Capital Service Area.

§9-101. Wharf property—Control by Commissioner of District—Authority to make rules and regulations—Jurisdiction of Chief of Engineers.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 107.

§9-102. Authority to make rules and regulations for wharf property—Leases—Rents.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 108.

§9-118. Capitol grounds area.

The United States Capitol Grounds shall comprise all squares, reservations, streets, roadways, walks, and other areas as defined on a map entitled "Map showing areas comprising United States Capitol Grounds", dated June 25, 1946, approved by the Architect of the Capitol and recorded in the Office of the Surveyor of the District of Columbia in book 127, page 8, including all additions added thereto by law subsequent to June 25, 1946, and the jurisdiction and control over the United States Capitol Grounds, heretofore vested by law in the Architect of the Capitol, is hereby extended to the entire area of the United States Capitol Grounds, and the Architect of the Capitol shall be responsible for the maintenance and improvement thereof, including those streets and roadways in said United States Capitol Grounds as shown on said map as being under the jurisdiction and control of the Commissioners of the District of Columbia, except that the Mayor of the District of Columbia shall be responsible for the maintenance and improvement of those portions of the following streets which are situated between the curblines thereof: Constitution Avenue from First Street N.E. to Second Street N.W., First Street from D Street N.E. to D Street S.E., D Street from First Street S.E. to Canal Street S.W., and First Street from the north side of Louisiana Avenue to the intersection of C Street and Canal Street S.W.: *Provided*, That the Mayor of the District of Columbia shall be permitted to enter any part of said United

States Capitol Grounds for the purpose of repairing or maintaining or, subject to the approval of the Architect of the Capitol, for the purpose of constructing or altering, any utility service of the District of Columbia government. (July 31, 1946, 60 Stat. 718, ch. 707, § 1; Oct. 20, 1967, Pub. L. 90-108, § 1(a), 81 Stat. 275; Dec. 24, 1973, Pub. L. 93-198, title VII, § 739(g) (7), 87 Stat. 829.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section is also classified to 40 U.S.C. § 193a.

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended section by deleting "": *Provided*, That those streets and roadways in said United States Capitol Grounds shown on said map as being under the jurisdiction and control of the Commissioners of the District of Columbia shall continue under such jurisdiction and control, and said Commissioners shall be responsible for the maintenance and improvement thereof: *Provided further*," and inserting in lieu thereof a comma and the following: "including those streets and roadways in said United States Capitol Grounds as shown on said map as being under the jurisdiction and control of the Commissioners of the District of Columbia, except that the Commissioner of the District of Columbia shall be responsible for the maintenance and improvement of those portions of the following streets which are situated between the curblines thereof: Constitution Avenue from First Street N.E. to Second Street N.W., First Street from D Street N.E. to D Street S.E., D Street from First Street S.E. to Canal Street S.W., and First Street from the north side of Louisiana Avenue to the intersection of C Street and Canal Street S.W.: *Provided*,".

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that the amendment to this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

EXTENSION OF UNITED STATES CAPITOL GROUNDS

Section 739(g) (3) of Act Dec. 24, 1973, Pub. L. 93-198, title VII, 87 Stat. 828 [effective Jan. 2, 1975, title IV of Pub. L. 93-198 having been accepted by a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum conducted May 8, 1974], provided that section 1 of the Act of July 31, 1946, as amended [D.C. Code, § 9-118] is hereby amended to include within the definition of the United States Capitol Grounds, the following streets: "Independence Avenue from the west curb of First Street S.E. to the east curb of First Street S.W., New Jersey Avenue S.E. from the south curb of Independence Avenue to the north curb of D Street S.E., South Capitol Street from the south curb of Independence Avenue to the north curb of D Street; Delaware Avenue S.W. from the south curb of C Street S.W. to the north curb of D Street S.W.,

C Street from the west curb of First Street S.E. to the intersection of First and Canal Streets, S.W., D Street from the west curb of First Street S.E. to the intersection of Canal Street and Delaware Avenue S.W., that part of First Street lying west of the outer face of the curb of the sidewalk on the east side thereof from D Street, N.E. to D Street S.E., that part of First Street within the east and west curblines thereof extending from the north side of Pennsylvania Avenue N.W. to the intersection of C Street and Canal Street S.W., including the two circles within such area. Nothing in this section shall be construed as repealing, or otherwise altering, modifying, affecting, or superseding those provisions of law in effect on the date immediately preceding the effective date of title IV of this Act [Jan. 2, 1975] vesting authority in the United States Supreme Court police and Library of Congress police to make arrests in adjacent streets, including First Street N.E. and First Street S.E.”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-163, 1-1002, 9-125, 9-126, 9-127, 9-129, 9-130, 9-132, 9-146.

§ 9-118b. Omitted.

Section, Act Oct. 29, 1966, Pub. L. 89-698, title IV, § 401, 80 Stat. 1072, authorized the Architect of the Capitol to permit the Mayor of the District of Columbia to operate for recreational purposes only the land known as Square 732 in the District of Columbia as long as such land was not required for building or other purposes by the Architect. Since Pub. L. 89-260, Oct. 19, 1965, 79 Stat. 987, as amended (2 U.S.C. 141 note) authorized the construction in Square 732 of the Library of Congress James Madison Memorial Building and the building has been constructed, this section has been omitted as obsolete.

§ 9-119. Public travel in and occupancy of Capitol Grounds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-125, 9-126, 9-127 to 9-130, 9-132, 9-146.

§ 9-120. Obstruction of roads in Capitol Grounds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-125, 9-126, 9-127 to 9-130, 9-132, 9-146.

§ 9-121. Sale of goods in Capitol Grounds—Advertising—Begging.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-125, 9-126, 9-127 to 9-130, 9-132, 9-146.

§ 9-122. Removal or injury of property in Capitol Grounds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-125, 9-126, 9-127 to 9-130, 9-132, 9-146.

§ 9-123. Unlawful conduct on Capitol Grounds or in buildings.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-125, 9-126, 9-127 to 9-130, 9-132, 9-146.

NOTES TO DECISIONS

Constitutional rights

Where police roped off area for group to assemble while their petition was presented to Senate, and group was not arrested immediately upon blocking of corridor but only after chief of capitol police had again requested that they move to area cordoned off for them, their First Amendment rights were not unduly burdened, and application of statute making it unlawful to wilfully and knowingly obstruct or impede passage through or within any capitol building was not violative of their rights under such amendment. *A. J. Arshack v. United States* (D.C. App. 1974, 321 A.2d 845).

Construction

Such statutes as federal statute making it unlawful for any person or group of persons wilfully and knowingly to obstruct or impede passage through or within any capitol building may be applied to symbolic conduct, i.e., conduct which, if done at another place, might fall within First Amendment protection. *A. J. Arshack v. United States* (D.C. App. 1974, 321 A.2d 845).

Instructions

In prosecution under statute making it unlawful for any person or group of persons wilfully and knowingly to obstruct or impede passage through or within any capitol building, court did not err in refusing to give requested instruction, essence of which was jury nullification and would have made jurors judges of the law as well as facts. *A. J. Arshack v. United States* (D.C. App. 1974, 321 A.2d 845).

Court did not err in refusing requested instruction which would require specific intent to cause obstruction or impediment, where court instead gave instruction defining terms “wilful” and “knowingly” and where, under evidence, defendants had been amply warned that they were not to impede passage in corridor and that they were in violation of the law when they sat and lay down and would be arrested if they did not move into area cordoned off for their use. *Id.*

Court properly refused instruction which, in effect, would have excused defendants on ground that they had acted in accordance with dictates of their conscience and if their actions were reasonably believed to be justified by obligations imposed by international law. *Id.*

Purpose

Purpose of federal statute making it unlawful for any person or group of persons wilfully and knowingly to obstruct or impede passage through or within any capitol building is to permit Congress to carry out People's business unhindered by serious disruption. *A. J. Arshack v. United States* (D.C. App. 1974, 321 A.2d 845).

§ 9-124. Parades or assemblages and displays forbidden in Capitol Grounds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-125, 9-126, 9-127 to 9-130, 9-132, 9-146.

NOTES TO DECISIONS

Constitutionality

This section which forbids parades, processions, or assemblages on the United States Capitol grounds except with the permission of the President of the Senate and the Speaker of the House of Representatives is unconstitutionally vague as written and administered. *R. V. Dellums et al. v. J. M. Powell, Chief etc.* (1977, 566 F.2d 167, 184 U.S. App. D.C. —)

Construction

Under provision of this section forbidding assemblage on the United States Capitol grounds, it is appropriate to bar or to order from the Capitol grounds any group which is noisy, violent, armed, or disorderly in behavior, any group which has a purpose to interfere with the process of Congress, any member of Congress, congressional employee, visitor, or tourist, any group which has the effect, by its presence, of such interference, and any group which damages any part of the building, shrubbery, or plant life; in each category, conduct would have to be more disruptive or more substantial, in degree or number, than that normally engaged in by tourists and others routinely permitted on the grounds. *R. V. Dellums et al. v. J. M. Powell, Chief etc.* (1977, 566 F.2d 167, 184 U.S. App. D.C. —).

Enforcement

Order to quit Capitol grounds must precede arrest made under this section prohibiting assemblages on the grounds without permission of the President of the Senate and the Speaker of the House of Representatives. *R. V. Dellums et al. v. J. M. Powell, Chief etc.* (1977, 566 F.2d 167, 184 U.S. App. D.C. —).

Where demonstrators who were meeting on Capitol steps had been given permission by Speaker of the House of Representatives on the condition that permission would be terminated if the group became disorderly and

was ordered to leave, and where police had led demonstrators to believe that they could be present on the Capitol steps, the demonstrators could not be constitutionally arrested unless the arresting officers had reason to believe that the demonstrators were disorderly or had a purpose to interfere with lawful visitors to the Capitol, unless orders to disperse had been given and heard, and unless reasonable opportunity had been given to leave. *Id.*

§ 9-125. Prosecution and punishment of offenses—General laws not superseded.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-126, 9-127, 9-129, 9-130, 9-132, 9-146.

§ 9-126. Policing of Capitol Buildings and Grounds—Powers of Capitol Police—Arrests by Metropolitan Police.

The Capitol Police shall police the United States Capitol Buildings and Grounds under the direction of the Capitol Police Board, consisting of the Sergeant at Arms of the United States Senate, the Sergeant at Arms of the House of Representatives, and the Architect of the Capitol, and shall have the power to enforce the provisions of sections 9-118, 9-119 to 9-126, 9-127 to 9-132 and regulations promulgated under section 9-131 and to make arrests within the United States Capitol Buildings and Grounds for any violations of any law of the United States, of the District of Columbia, or of any State, or any regulation promulgated pursuant thereto: *Provided*, That the Metropolitan Police force of the District of Columbia are hereby authorized to make arrests within the United States Capitol Buildings and Grounds for any violations of any such laws or regulations, but such authority shall not be construed as authorizing the Metropolitan Police force, except with the consent or upon the request of the Capitol Police Board, to enter such buildings to make arrests in response to complaints or to serve warrants or to patrol the United States Capitol Buildings and Grounds. For the purpose of this section, the word "grounds" shall include the House Office Building parking area. (July 31, 1946, 60 Stat. 719, ch. 707, § 9; Dec. 24, 1973, Pub. L. 93-198, title VII, § 739(g) (4), (5), 87 Stat. 829.)

CODIFICATION

Section is also classified to 40 U.S.C. § 212a.

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended the first sentence by inserting "of the District of Columbia," immediately after "law of the United States"; and by striking out at the end thereof "with the exception of the streets and roadways shown on the map referred to in section 9-118 as being under the jurisdiction and control of the Commissioners of the District of Columbia".

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that the amendment to this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

EXTENSION OF SUPERVISION OF CAPITOL POLICE

Act Nov. 14, 1977, Pub. L. 95-175, 91 Stat. 1362, provided "That the supervision of the United States Capitol Police shall extend over that part or parts of the premises located at 600 Pennsylvania Avenue, Southeast, Washington, District of Columbia, leased by the Office of

Technology Assessment. In carrying out such supervision, the United States Capitol Police shall have within such part or parts jurisdiction, concurrent with that of the Metropolitan Police of the District of Columbia, to provide security for the personnel and property of the Office of Technology Assessment within such leased premises, and to make arrest therein for the violation of the laws and regulations of the United States and the District of Columbia."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-125, 9-127, 9-129, 9-130, 9-132, 9-146.

NOTES TO DECISIONS

False arrest

Evidence that Chief of Metropolitan Police retained operational control over his police at scene of demonstrations on steps of United States Capitol and could have withdrawn them if he thought that arrest of demonstrators was unjustified was sufficient to impose liability on the Chief of Police for false arrest and violation of First Amendment rights of the demonstrators even though the order to make arrest was given by chief of the Capitol Police. *R. V. Dellums et al. v. J. M. Powell, Chief etc.* (1977, 566 F.2d 216, 184 U.S. App. D.C. —).

Where Chief of Capitol Police understood that the Speaker of the House of Representatives had instructed that demonstrators be allowed to remain on steps of the Capitol while members of Congress were speaking to them unless the crowd became disorderly, in which case the police should ask the persons to leave, law prohibiting assemblages on the grounds without permission of the Speaker of the House of Representatives and the President of the Senate was not being violated, and there were no reasonable grounds for believing that it was, until an order to disperse had been given, and chief could not defend action for false arrest on grounds that he had probable cause to make arrest unless he had given a dispersal order. *R. V. Dellums et al. v. J. M. Powell, Chief etc.* (1977, 566 F.2d 167, 184 U.S. App. D.C. —).

Where arrest records did not differentiate between the some 100 persons who were arrested after the bulk of 1,200 arrests had been made, where defendant Police Chief had not tried to make discovery of any absentee class members, and where no one testified that he could identify those class members who were engaged in activities other than merely being present at scene of demonstration, failure to create subclasses to allow jury to consider points presented with respect to those demonstrators who were arrested after the bulk of other demonstrators who were arrested, those demonstrators who actually heard dispersal orders, and those demonstrators who were engaged in activity other than listening to the speeches did not affect substantial rights of the defendant Police Chief. *Id.*

Evidence that Chief of Police who was defendant in action for false arrest of demonstrators had told one of the persons present at the demonstration that the demonstration had been one of the milder demonstrations to take place on the Capitol grounds, that the Chief of Police was aware that his notice to the crowd to disperse had been inadequate, and that he had not followed his own regulations governing procedures for handling protest groups sustained determination that Chief of Police was not acting in good faith when he made the arrests. *Id.*

Where law relevant to reasonableness of arrest was not highly technical, where controlling case was one with which the Chief of Police was fully acquainted, and where the central probable cause issue was one of fact, advice of counsel could not make Chief of Police's actions in arresting demonstrators per se reasonable. *Id.*

—Damages

Where jury was charged, in setting damages for false arrest and false imprisonment, to consider length of time that arrestees were held and the treatment and conditions of detention to which they were subjected, where no separate instruction was given on measure of damages on claim for violation of Eighth Amendment rights, where jury was told that it could consider whether police had used unnecessary physical force and whether the arrestees had been furnished with adequate nourishment,

toilet facilities, and shelter, award of damages for violation of Eighth Amendment rights was duplicative of award of damages for false arrest and violation of Fourth Amendment rights. *R. V. Dellums et al. v. J. M. Powell, Chief etc.* (1977, 566 F. 2d 216, 184 U.S. App. D.C. —).

Malicious prosecution

Since involvement of Chief of Metropolitan Police in arrest of demonstrators at the United States Capitol was limited to participation in the arrest decision and did not include meeting with United States attorneys at time that decision was made to file informations against the arrestees, Chief could not be held liable for malicious prosecution. *R. V. Dellums et al. v. J. M. Powell, Chief etc.* (1977, 566 F. 2d 216, 184 U.S. App. D.C. —).

Evidence that Chief of Police made knowing misrepresentation of material fact at meeting with assistant United States attorney before informations were filed against arrestees was sufficient to permit imposition of tort liability for malicious prosecution on the Chief of Police despite evidence that the Chief did not, by virtue of his official position, exert any special influence over the judgment of the attorney. *R. V. Dellums et al. v. J. M. Powell, Chief etc.* (1977, 566 F. 2d 167, 184 U.S. App. D.C. —).

§ 9-126a. Detail of personnel from Metropolitan Police to Capitol Police Board—Duties and status of detailed personnel.

The Mayor of the District of Columbia is authorized and directed to make such details [detail of personnel from Metropolitan Police Force to Capitol Police Board] upon the request of the Board. Personnel so detailed shall, during the period of such detail, serve under the direction and instructions of the Board and are authorized to exercise the same authority as members of such Metropolitan Police and members of the Capitol Police and to perform such other duties as may be assigned by the Board. Reimbursement for salaries and other expenses of such detail personnel shall be made to the Government of the District of Columbia, and any sums so reimbursed shall be credited to the appropriation or appropriations from which such salaries and expenses are payable and shall be available for all the purposes thereof: *Provided*, That any person detailed under the authority of this section or under similar authority in the Legislative Branch Appropriation Act, 1942, and the Second Deficiency Appropriation Act, 1940, from the Metropolitan Police of the District of Columbia shall be deemed a member of such Metropolitan Police during the period or periods of any such detail for all purposes of rank, pay, allowances, privileges, and benefits to the same extent as though such detail had not been made, and at the termination thereof any such person shall have a status with respect to rank, pay, allowances, privileges, and benefits which is not less than the status of such person in such police at the end of such detail. (Aug. 5, 1977, Pub. L. 95-94, title I, 91 Stat. 670.)

REFERENCES IN TEXT

The Second Deficiency Appropriation Act, 1940 and the Legislative Branch Appropriation Act, 1942 are set out in 54 Stat. 629 and 55 Stat. 456, respectively.

CODIFICATION

The provisions of this section were taken from the Legislative Appropriation Act for 1978 and are contained in Pub. L. 95-94, 91 Stat. 670, under the heading "Capitol Police Board". The portions in brackets were inserted by the codifiers for the sake of clarity.

SIMILAR PROVISIONS

Provisions similar to those in this section are contained in the following legislative appropriation acts and in a number of earlier appropriation acts:

1977—Oct. 1, 1976, Pub. L. 94-440, title III, § 301, 90 Stat. 1450.

1976—July 25, 1975, Pub. L. 94-59, § 101, 89 Stat. 284.

1975—Aug. 13, 1974, Pub. L. 93-371, § 101, 88 Stat. 434.

1974—Nov. 1, 1973, Pub. L. 93-145, § 101, 87 Stat. 538.

1973—July 10, 1972, Pub. L. 92-342, § 101, 86 Stat. 440.

1972—July 9, 1971, Pub. L. 92-51, § 101, 85 Stat. 135.

1971—Aug. 18, 1970, Pub. L. 91-382, § 101, 84 Stat. 816.

1970—Dec. 12, 1969, Pub. L. 91-145, § 101, 83 Stat. 349.

1969—July 23, 1968, Pub. L. 90-417, § 101, 82 Stat. 406.

1968—July 28, 1967, Pub. L. 90-57, § 101, 81 Stat. 134.

NOTES TO DECISIONS

Metropolitan police

Evidence that metropolitan police department is under general duty to enforce laws of the United States within the District, that there is a Capitol police force with special obligation to patrol Capitol grounds, that the Capitol police force is staffed by members of the metropolitan police department, that Chief of the metropolitan police had furnished members of the metropolitan police force for purpose of keeping order during demonstrations, and that the Capitol police force was under the direction of United States officials demonstrates that District of Columbia could be held liable for unlawful arrests of demonstrators despite contention that the Chief had become, at the time of the arrests, a borrowed servant of the United States. *R. V. Dellums et al. v. J. M. Powell, Chief etc.* (1977, 566 F. 2d 216, 184 U.S. App. D.C. —).

§ 9-127. Employees in Capitol or Capitol Grounds to assist authorities.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-125, 9-126, 9-129, 9-130, 9-132, 9-146.

§ 9-128. Suspension of prohibition against use of Capitol Grounds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-124 to 9-126, 9-127, 9-129, 9-130, 9-132, 9-146.

§ 9-129. Capitol Police Board power to suspend prohibitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-124 to 9-126, 9-127, 9-130, 9-132, 9-146.

§ 9-130. Concerts on Capitol Grounds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-125, 9-126, 9-127, 9-129, 9-132, 9-146.

§ 9-131. Traffic regulations by Capitol Police Board—Penalties—Prosecutions.

(a) The Capitol Police Board, consisting of the Sergeant at Arms of the United States Senate, the Sergeant at Arms of the House of Representatives, and the Architect of the Capitol, shall have exclusive charge and control of the regulation and movement of all vehicular and other traffic, including the parking and impounding of vehicles and limiting the speed thereof, within the United States Capitol

Grounds; and said Board is hereby authorized and empowered to make and enforce all necessary regulations therefor and to prescribe penalties for violation of such regulations, such penalties not to exceed a fine of \$300 or imprisonment for not more than ninety days. Notwithstanding the foregoing provisions of this section those provisions of chapters 3 and 6 of title 40, for the violation of which specific penalties are provided in said chapters, shall be applicable to the United States Capitol Grounds. Prosecutions for violation of such regulations shall be in the Superior Court of the District of Columbia, upon information by the Corporation Counsel of the District of Columbia or any of his assistants.

(As amended Dec. 24, 1973, Pub. L. 93-198, title VII, § 739(g) (6), 87 Stat. 829.)

CODIFICATION

Section is also classified to 40 U.S.C. § 212b.

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended the first sentence of subsec. (a) by striking out “, except on those streets and roadways shown on the map referred to in section 9-118 as being under the jurisdiction and control of the Commissioners of the District of Columbia” immediately following “United States Capitol Grounds”.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that the amendment to this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-125, 9-126, 9-127, 9-129, 9-130, 9-132, 9-146.

§ 9-132. Definitions.

REFERENCES IN TEXT

Section 901(3) of title 15, United States Code, referred to in par. (2), was repealed by Act June 19, 1968, Pub. L. 90-351, § 906, 82 Stat. 234. The regulation of firearms is now covered by chapter 44 (§ 921 et seq.) of title 18, United States Code.

Section 121 of title 50, United States Code, referred to par. (4), was repealed by Act Oct. 15, 1970, Pub. L. 91-452, § 1106(a), 84 Stat. 960. The regulation of explosives is now covered by chapter 40 (§ 841 et seq.) of title 18, United States Code.

CODIFICATION

Section is comprised of subsection (a) of section 16 of act of July 31, 1946. Subsection (b) of section 16 is set out as a note under section 9-118. Section is also classified to 40 U.S.C. § 193m.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-163, 1-1002, 9-125, 9-126, 9-127, 9-129, 9-130, 9-146.

§ 9-133. District of Columbia buildings—Control of Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-134. Designation of employees to protect life and property outside the District—Powers of arrest—Weapons and uniforms.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-135. Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-137. Acceptance of collateral for appearance before United States Commissioner—Deposit of collateral.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-138. Agreements with States—Charges for services.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-139. Tunnel, location of under Capitol and Botanic Garden grounds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-140. Approval of Architect of Capitol required—Prescription of conditions by him—Commissioner authorized to use certain areas for tunnel.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-141. Right, title and interest to grounds used for tunnel to remain in the United States—Jurisdiction and responsibility for tunnel.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-144. Architect authorized to convey to Commissioner of the District of Columbia certain grounds for construction of Innerloop Freeway System—Jurisdiction over grounds conveyed.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-145. Commissioner authorized to use certain area bounded by Fourth Street, Pennsylvania Avenue, Third Street, and North Mall Drive Northwest, for tunnel—Conditions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-146. National Capital Service Area.

(a) There is established within the District of Columbia the National Capital Service Area which shall include, subject to the following provisions of this section, the principal Federal monuments, the White House, the Capitol Building, the United States Supreme Court Building, and the Federal executive, legislative, and judicial office buildings located adjacent to the Mall and the Capitol Building, and is more particularly described in subsection (f).

(b) There is established in the Executive Office of the President the National Capital Service Director who shall be appointed by the President. The President, through the National Capital Service Director, shall assure that there is provided, utilizing District of Columbia governmental services to the extent practicable, within the area specified in subsection (a) and particularly described in subsection (f), adequate fire protection and sanitation services. Except with respect to that portion of the National Capital Service Area comprising the United States Capitol Buildings and Grounds as defined in sections 9-118 and 9-132, the United States Supreme Court Building and Grounds as defined in section 11 of the Act of August 18, 1949, as amended (40 U.S.C. 13p), and the Library of Congress Buildings and Grounds as defined in section 11 of the Act of August 4, 1950, as amended (2 U.S.C. 167j), the National Capital Service Director shall assure that there is provided within the remainder of such area specified in subsection (a) and subsection (f), adequate police protection and maintenance of streets and highways.

(c) The National Capital Service Director shall be entitled to receive compensation at the maximum rate as may be established from time to time for level IV of the Executive Schedule of section 5314 of title 5 of the United States Code. The Director may appoint, subject to the provisions of title 5 of the United States Code governing appointments in the competitive service, and fix the pay of, in accordance

with the provisions of chapter 51 and subchapter 3¹ of chapter 53 of such title relating to classification and General Schedule pay rates, such personnel as may be necessary.

(d) [This subsection contained an amendment of section 39-603, and is reflected therein.]

(e) (1) Within one year after January 2, 1975, the President is authorized and directed to submit to the Congress a report on the feasibility and advisability of combining the Executive Protective Service and the United States Park Police within the National Capital Service Area, and placing them under the National Capital Service Director.

(2) Such report shall include such recommendations, including recommendations for legislative and executive action, as the President deems necessary in carrying out the provisions of paragraph (1) of this subsection.

(f) (1) (A) The National Capital Service Area referred to in subsection (a) is more particularly described as follows:

Beginning at that point on the present Virginia-District of Columbia boundary due west of the northernmost point of Theodore Roosevelt Island and running due east to the eastern shore of the Potomac River;

thence generally south along the shore at the mean high water mark to the northwest corner of the Kennedy Center;

thence east along the north side of the Kennedy Center to a point where it reaches the E Street Expressway;

thence east on the expressway to E Street Northwest and thence east on E Street Northwest to Eighteenth Street Northwest;

thence south on Eighteenth Street Northwest to Constitution Avenue Northwest;

thence east on Constitution Avenue to Seventeenth Street Northwest;

thence north on Seventeenth Street Northwest to Pennsylvania Avenue Northwest;

thence east on Pennsylvania Avenue to Jackson Place Northwest;

thence north on Jackson Place to H Street Northwest;

thence east on H Street Northwest to Madison Place Northwest;

thence south on Madison Place Northwest to Pennsylvania Avenue Northwest;

thence east on Pennsylvania Avenue Northwest to Fifteenth Street Northwest;

thence south on Fifteenth Street Northwest to Pennsylvania Avenue Northwest;

thence southeast on Pennsylvania Avenue Northwest to John Marshall Place Northwest;

thence north on John Marshall Place Northwest to C Street Northwest;

thence east on C Street Northwest to Third Street Northwest;

thence north on Third Street Northwest to D Street Northwest;

thence east on D Street Northwest to Second Street Northwest;

¹ So in original. Probably should be "subchapter III".

thence south on Second Street Northwest to the intersection of Constitution Avenue Northwest and Louisiana Avenue Northwest;

thence northeast on Louisiana Avenue Northwest to North Capitol Street;

thence north on North Capitol Street to Massachusetts Avenue Northwest;

thence southeast on Massachusetts Avenue Northwest so as to encompass Union Square;

thence following Union Square to F Street Northeast;

thence east on F Street Northeast to Second Street Northeast;

thence south on Second Street Northeast to D Street Northeast;

thence west on D Street Northeast to First Street Northeast;

thence south on First Street Northeast to Maryland Avenue Northeast;

thence generally north and east on Maryland Avenue to Second Street Northeast;

thence south on Second Street Northeast to C Street Southeast;

thence west on C Street Southeast to New Jersey Avenue Southeast;

thence south on New Jersey Avenue Southeast to D Street Southeast;

thence west on D Street Southeast to Canal Street Parkway;

thence southeast on Canal Street Parkway to E Street Southeast;

thence west on E Street Southeast to the intersection of Canal Street Southwest and South Capitol Street;

thence northwest on Canal Street Southwest to Second Street Southwest;

thence south on Second Street Southwest to Virginia Avenue Southwest;

thence generally west on Virginia Avenue to Third Street Southwest;

thence north on Third Street Southwest to C Street Southwest;

thence west on C Street Southwest to Sixth Street Southwest;

thence north on Sixth Street Southwest to Independence Avenue;

thence west on Independence Avenue to Twelfth Street Southwest;

thence south on Twelfth Street Southwest to D Street Southwest;

thence west on D Street Southwest to Fourteenth Street Southwest;

thence south on Fourteenth Street Southwest to the middle of the Washington Channel;

thence generally south and east along the mid-channel of the Washington Channel to a point due west of the northern boundary line of Fort Lesley McNair;

thence due east to the side of the Washington Channel;

thence following generally south and east along the side of the Washington Channel at the mean high water mark, to the point of confluence with the Anacostia River, and along the northern shore at the mean high water mark to the northern most point of the Eleventh Street Bridge;

thence generally south and east along the northern side of the Eleventh Street Bridge to the eastern shore of the Anacostia River;

thence generally south and west along such shore at the mean high water mark to the point of confluence of the Anacostia and Potomac Rivers;

thence generally south along the eastern shore at the mean high water mark of the Potomac River to the point where it meets the present southeastern boundary line of the District of Columbia;

thence south and west along such southeastern boundary line to the point where it meets the present Virginia-District of Columbia boundary;

thence generally north and west up the Potomac River along the Virginia-District of Columbia boundary to the point of beginning.

(B) Where the area in paragraph (1) is bounded by any street, such street, and any sidewalk thereof, shall be included within such area.

(2) Any Federal real property affronting or abutting, as of December 24, 1973, the area described in paragraph (1) shall be deemed to be within such area.

(3) For the purposes of paragraph (2), Federal real property affronting or abutting such area described in paragraph (1) shall—

(A) be deemed to include, but not limited to, Fort Lesley McNair, the Washington Navy Yard, the Anacostia Naval Annex, the United States Naval Station, Bolling Air Force Base, and the Naval Research Laboratory; and

(B) not be construed to include any area situated outside of the District of Columbia boundary as it existed immediately prior to December 24, 1973, nor be construed to include any portion of the Anacostia Park situated east of the northern side of the Eleventh Street Bridge, or any portion of the Rock Creek Park.

(g) (1) Subject to the provisions of paragraph (2) of this subsection, the President is authorized and directed to conduct a survey of the area described in this section in order to establish the proper metes and bounds of such area, and to file, in such manner and at such place as he may designate, a map and a legal description of such area, and such description and map shall have the same force and effect as if included in this Act, except that corrections of clerical, typographical and other errors in any such legal descriptions and map may be made. In conducting such survey, the President shall make such adjustments as may be necessary in order to exclude from the National Capital Service Area any privately owned properties, and buildings and adjacent parking facilities owned by the District of Columbia government.

(2) In carrying out the provisions of paragraph (1) of this subsection, the President shall, to the extent that such survey, legal description, and map involves areas comprising the United States Capitol Buildings and Grounds as defined in sections 9-118 and 9-132, and other buildings and grounds under the care of the Architect of the Capitol, consult with the Architect of the Capitol.

(3) [This paragraph contained an amendment of section 1 of Act July 31, 1946, as amended (D.C.

Code, § 9-118), and is set out as a note under § 9-118.]

(4) [This paragraph contained an amendment of section 9-126, and is reflected therein.]

(5) [This paragraph contained an amendment of section 9-126, and is reflected therein.]

(6) [This paragraph contained an amendment of section 9-131, and is reflected therein.]

(7) [This paragraph contained an amendment of section 9-118, and is reflected therein.]

(8) [This paragraph contained an amendment of 40 U.S.C. 13n, and is reflected therein.]

(9) [This paragraph contained an amendment of 2 U.S.C. 167h, and is reflected therein.]

(h)(1) Except to the extent specifically provided by the provisions of this section, and amendments made by this section, nothing in this section shall be applicable to the United States Capitol Buildings and Grounds as defined in sections 9-118 and 9-132, or to any other buildings and grounds under the care of the Architect of the Capitol, the United States Supreme Court Building and Grounds as defined in section 11 of the Act of August 18, 1949, as amended (40 U.S.C. 13p), and the Library of Congress Buildings and Grounds as defined in section 11 of the Act of August 4, 1950, as amended (2 U.S.C. 167j), and except to the extent herein specifically provided, including amendments made by this section, nothing in this section shall be construed to repeal, amend, alter, modify, or supersede any provision of sections 9-118, 9-119 to 9-126, 9-127 to 9-132, or any other of the general laws of the United States or any of the laws enacted by the Congress and applicable exclusively to the District of Columbia, or any rule or regulation promulgated pursuant thereto, in effect on the date immediately preceding January 2, 1975, pertaining to said buildings and grounds, or any existing authority, with respect to such buildings and grounds, vested by law, or otherwise, on such date immediately preceding January 2, 1975, in the Senate, the House of Representatives, the Congress, or any committee or commission or board thereof, the Architect of the Capitol, or any other officer of the legislative branch, the Chief Justice of the United States, the Marshal of the Supreme Court of the United States, or the Librarian of Congress.

(2) Notwithstanding the foregoing provision of this section, any of the services and facilities authorized by this Act to be rendered or furnished (including maintenance of streets and highways, and services under section 1-826) shall, as far as practicable, be made available to the Senate, the House of Representatives, the Congress, or any committee or commission or board thereof, the Architect of the Capitol, or any other officer of the legislative branch vested by law or otherwise on such date immediately preceding January 2, 1975, with authority over such buildings and grounds, the Chief Justice of the United States, the Marshal of the Supreme Court of the United States, and the Librarian of Congress, upon their request, and, if payment would be required for the rendition or furnishing of a similar service or facility to any other Federal

agency, payment therefor shall be made by the recipient thereof, upon presentation of proper vouchers, in advance or by reimbursement (as may be agreed upon by the parties rendering and receiving such services).

(i) Except to the extent otherwise specifically provided in the provisions of this section, and amendments made by this section, all general laws of the United States and all laws enacted by the Congress and applicable exclusively to the District of Columbia, including regulations and rules promulgated pursuant thereto, in effect on the date immediately preceding January 2, 1975, and which, on such date immediately preceding January 2, 1975, are applicable to and within the areas included within the National Capital Service Area pursuant to this section shall, on and after January 2, 1975, continue to be applicable to and within such National Capital Service Area in the same manner and to the same extent as if this section had not been enacted, and shall remain so applicable until such time as they are repealed, amended, altered, modified, or superseded, and such laws, regulations and rules shall thereafter be applicable to and within such area in the manner and to the extent so provided by any such amendment, alteration, or modification.

(j) In no case shall any person be denied the right to vote or otherwise participate in any manner in any election in the District of Columbia solely because such person resides within the National Capital Service Area. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 739, 87 Stat. 825.)

REFERENCE IN TEXT

"This Act", referred to in subsecs. (g)(1) and (h)(2), is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

CODIFICATION

In subsec. (e)(1), "January 2, 1975" has been substituted for "the effective date of this section" on authority of sec. 771(d) of Act Dec. 24, 1973, as amended, set out as a note under § 1-121.

In subsec. (f)(2) and (3)(B), "December 24, 1973" has been substituted for "the date of the enactment of this Act".

In subsec. (h)(1) and (2), "January 2, 1975" has been substituted for references to "the effective date of title IV of this Act" and "such effective date" on authority of section 771(c) of Act Dec. 24, 1973, as amended, set out as a note under § 1-121.

In subsec. (i), "January 2, 1975" has been substituted for references to "the effective date of title IV of this Act", "the effective date of such title", and "such effective date" on the authority cited in the preceding paragraph.

Section is also classified to 40 U.S.C. § 136.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

PRESIDENTIAL EXECUTIVE ORDER 11815

DELEGATING TO THE NATIONAL CAPITAL PLANNING COMMISSION THE FUNCTION OF ESTABLISHING THE METES AND BOUNDS OF THE NATIONAL CAPITAL SERVICE AREA

Ex. Ord. No. 11815, Oct. 23, 1974, 39 F.R. 37963, provided: By virtue of the authority vested in me by section 739 (g) of the District of Columbia Self-Government and Governmental Reorganization Act (87 Stat. 828; Public Law 93-198), and as President of the United States, the Chairman of the National Capital Planning Commission is authorized and directed to exercise all authority and to carry out all duties vested in the President by section 739 (g) of the above cited law with respect to establishing the metes and bounds of the National Capital Service Area. Prior to establishing said metes and bounds, the Chairman shall consult with the appropriate representative of the District of Columbia Government.

Chapter 2.—CONSTRUCTION OF PUBLIC BUILDINGS

Sec.

9-220. Construction program for public needs in education, health, welfare, public safety, recreation and other fields authorized.

9-221. Construction services working fund.

§ 9-201. Municipal center—Establishment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-202. Municipal center—Rental.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-203. Repealed. Sept. 9, 1959, Pub. L. 86-249, § 17(4), 73 Stat. 484.

Section, based on § 9 of Act Mar. 4, 1907, ch. 2918, 34 Stat. 1371, restricted expenditures for construction of electric light and power plants in municipal buildings. Section was formerly classified to 40 U.S.C. § 33.

§ 9-204. Public buildings—Loans for construction authorized—Projects enumerated—Location determined.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-205. Public buildings—Funds available for acquiring lands for public use—Condemnation proceedings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-206. Public buildings—Reimbursement, proportion of tax receipts to be credited to reimbursement fund—Anticipating payments.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-207. Public buildings—Reports to be submitted to Congress.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-208. May borrow money from United States for public works—Approval of President—Certain projects authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-209. Purposes for which funds may be used.

The sum authorized by section 9-208, or any part thereof shall, when advanced, be available to the Mayor of the District of Columbia for the acquisition by dedication, purchase, or condemnation of the fee-simple title to land, or rights or easements in land, for the public uses authorized by sections 9-208 to 9-212, and for the preparation of plans, designs, estimates, models, and specifications; and for architectural and other necessary professional services without reference to section 1-808, for the construction of buildings, including materials and labor, heating, lighting, elevators, plumbing, landscaping, and all other appurtenances, and the purchase and installation of machinery, furniture, equipment, apparatus, and any and all other expenditures necessary for or incident to the complete construction and equipment for use of the aforesaid buildings and plants. All contracts, agreements, and proceedings in court for condemnation or otherwise, pursuant to sections 9-208 to 9-212 shall be had and made in accordance with existing provisions of law except as otherwise herein provided. (June 25, 1938, 52 Stat. 1204, ch. 704, § 2.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

The exception from "the Classification Act of 1923, as amended" has been omitted as obsolete. Sections 1202 and 1204 of the Classification Act of 1949 (63 Stat. 972, 973) repealed the 1923 Act and all laws or parts of laws

inconsistent with the 1949 Act. While § 1106(a) of the 1949 Act provided that references in other laws to the 1923 Act should be held and considered to mean the 1949 Act, it did not have the effect of continuing the exception contained in this section because of § 1106(b) that provided that the application of the 1949 Act to any position, officer, or employee shall not be affected by § 1106(a). The Classification Act of 1949 was repealed by Act Sept. 6, 1966, Pub. L. 89-554, § 8(a), 80 Stat. 632 (of which § 1 revised and enacted title 5, U.S.C., into law). Section 5102 of title 5, U.S.C., now contains the applicability provisions of the 1949 Act.

§ 9-210. Repayment of funds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-211. Estimates and report to Congress.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-212. Limitations on borrowing power.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-213. Interest on funds borrowed from Public Works Administration.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-214. Interest to be determined by Secretary of Treasury.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-215. Authorized to borrow additional funds for public works—Approval of President—Certain project specified.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-216. Purposes for which funds may be used.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-217. Repayment — Interest — Included in annual budget.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-218. Estimates and report to Congress.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-219. Supervision and approval of plans and specifications.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-220. Construction program for public needs in education, health, welfare, public safety, recreation and other fields authorized.

• • • • •
(b)–(e). Repealed. Dec. 24, 1973, Pub. L. 93-198, title VII, § 743(a), 87 Stat. 832.

• • • • •
(As amended Dec. 24, 1973, Pub. L. 93-198, title VII, § 743(a), 87 Stat. 832.)

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended section by striking out subsecs. (b), (c), (d), and (e). For provisions prior to amendment, see the 1973 edition of the Code. For new borrowing authority, see § 47-241 et seq.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that the amendment repealing subsecs. (b)–(e) of this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

LOAN PAYMENT OBLIGATION

Section 743(f) of Act Dec. 24, 1973, Pub. L. 93-198, as amended Oct. 13, 1977, Pub. L. 95-131, § 4(2), 91 Stat. 1156, provided: "Nothing contained in this section [repealing sections 7-133, 9-220(b)–(e), 43-1540, 43-1612, 43-1613, 43-1615 to 43-1617] shall be deemed to relieve the District of its obligation to repay any loan made to it under the authority of the Acts specified in the preceding subsections, nor to preclude the District from using the unexpended balance of any such loan appropriated to the District prior to the effective date of this provision, nor to prevent the District from fulfilling the provisions of section 722 [§ 47-2501 note]."

INTERIM LOAN AUTHORITY

Section 723 of title VII of Act Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 821, as amended Oct. 13, 1977, Pub. L. 95-131, § 1, 91 Stat. 1155, provided:

"(a) The Mayor is authorized to accept loans for the District from the Treasury of the United States, and the Secretary is authorized to lend to the Mayor, such sums as the Mayor may determine are required to complete capital projects for which construction and construction services funds have been authorized or appropriated, as the case may be, by Congress prior to October 1, 1979. In addition, such loans may include funds to pay the District's share of the cost of the adopted regional system specified in the National Capital Transportation Act of 1969 [§ 1-1441 et seq.].

"(b) Loans advanced pursuant to this section during any six-month period shall be at a rate of interest determined by the Secretary as of the beginning of such period, which, in his judgment, would reflect the cost of money to the Treasury for borrowing at a maturity approximately equal to the period of time the loan is outstanding.

"(c) Subject to the limitations contained in section 603(b) [§ 47-228(b)], there are authorized to be appropriated such sums as may be necessary to make loans under this section.

"(d) The authority contained in this section to make loans shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts."

CROSS REFERENCE

Multiyear capital improvements plan, see § 47-223.

§ 9-221. Construction services working fund.

(a) There is established in the Treasury of the United States a permanent working fund, without fiscal year limitation, to be known as the Construction Services Fund, Department of General Services, District of Columbia. The Mayor is authorized to transfer to such fund from capital outlay appropriations for public building construction such amounts as he may deem necessary to carry out the purposes of this section, and, subject to subsequent adjustment, advances and reimbursements may be made to such fund from appropriations for services to other departments and agencies of the District government, without reference to fiscal year limitations on such appropriations. The fund shall be available for expenses incurred in the initial planning for construction projects, for work performed under contract or otherwise, including, but not limited to, preliminary planning and related expenses, surveys, preparation of plans and specifications, soil investigation, administration, overhead, planning design, engineering, inspection, and contract management.

(b) The Council of the District of Columbia shall annually review the budget of the Construction Services Fund within ninety days after the annual District of Columbia Appropriations Act is enacted into law.

(c) The Council of the District of Columbia, the Board of Higher Education, the Board of Vocational Education, the Board of Education, the Public Library Board, and the Executive Director of the District of Columbia Court System shall be kept fully advised, at least semiannually, of the status of projects and activities within their respective areas of concern which are financed from the Construction Services Fund. (Oct. 26, 1973, Pub. L. 93-140, § 13, 87 Stat. 506.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

APPROPRIATIONS

See note under § 1-226a.

Chapter 3.—SALE OF PUBLIC LANDS

§ 9-301. Commissioner authorized to sell real estate.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-302. Expenses of sales of real estate.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-303. Commissioner to execute deeds to sell real estate.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 4.—EXCHANGE OF DISTRICT-OWNED LAND

§ 9-401. Council empowered to effect exchange.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-402. Publication of intended exchange.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-403. Authorization for execution or acceptance of proper deed of conveyance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-404. Authority to pay or receive amounts as part of consideration for exchange.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 5.—REPAIRS AND IMPROVEMENTS

Sec.

9-502. Inspection of public buildings for lead paint—Repairs.

9-503. Same—Authorization.

§ 9-501. Repairs and improvements—Working fund.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-502. Inspection of public buildings for lead paint—Repairs.

(a) The Mayor of the District of Columbia is hereby authorized and directed to inspect for the presence of lead paint in all public buildings and publicly-operated residences belonging to or in the possession of the District of Columbia and regularly frequented by children under six (6) years of age. Where there are reasonable grounds to believe that a hazard exists to the health of such children because of the presence of lead or lead compounds in the paint, plaster, or structural materials of any such interior surface, the Mayor shall cause an analysis to be made of the paint, plaster or structural materials of the interior structure to determine the quantity of lead or lead compounds contained in the material. If the analysis reveals the presence of lead or lead compounds in a quantity in excess of one (1) milligram per square centimeter of surface or in a quantity otherwise sufficient to constitute a hazard to the health of any user of the building, the Mayor shall cause the lead condition to be repaired: *Provided*, That the repairs shall be of a sufficient quality to equal or exceed that required of private housing located in the District of Columbia pursuant to regulations promulgated with respect to housing in the District of Columbia.

(b) When an inspection mandated by subsection (a) of this section indicates the necessity for a repair, the repair shall begin not later than ten (10) days after the inspection.

(c) All inspections mandated by subsection (a) of this section shall be commenced within one hundred and eighty (180) days after October 26, 1977. (Oct. 26, 1977, D.C. Law 2-28, § 2, 24 DCR 3721.)

CODIFICATION

In subsec. (c), "October 26, 1977" was substituted for "the effective date of this act".

EFFECTIVE DATE

Section 4 of act Oct. 26, 1977, D.C. Law 2-28, provided: "This act [enacting §§ 9-502 and 9-503] shall become law as provided for acts of the Council of the District of Columbia in section 602(c) (1) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c) (1)]: *Provided, however*, That section 2 of this act [§ 9-502] shall not take effect until the provisions of section 3 of this act [§ 9-503] are implemented."

SHORT TITLE

The first section of act Oct. 26, 1977, D.C. Law 2-28, provided "That this act [enacting §§ 9-502 and 9-503] may be cited as the 'Public Property Lead Elimination Act of 1977'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9-503.

§ 9-503. Same—Authorization.

(a) There is hereby authorized to be appropriated from the funds available to the Government of the District of Columbia in the budget an amount not to exceed one million, one hundred and twenty thousand dollars (\$1,120,000) for the fiscal year commencing on October 1, 1978 to carry out the purposes of this section and section 9-502: *Provided, however*, That grant funds available to the Government of the District of Columbia may be expended to carry out the purposes of this section and section 9-502 without regard to any limitation in this section.

(b) In each fiscal year commencing on or after October 1, 1979, fifty thousand dollars (\$50,000) are authorized to be appropriated to carry out this section and section 9-502: *Provided*, That authorization is hereby granted to expend funds in any fiscal year commencing on or after October 1, 1979 up to the amount authorized in subsection (a) of this section but not appropriated in the fiscal year commencing on October 1, 1978. (Oct. 26, 1977, D.C. Law 2-28, § 3, 24 DCR 3721.)

EFFECTIVE DATE

See section 4 of act Oct. 26, 1977, D.C. Law 2-28, set out as a note under § 9-502.

TITLE 10.—WEIGHTS, MEASURES, AND MARKETS

Chap.	Sec.
2. Retail Service Stations.....	10-201

Chapter 1.—WEIGHTS, MEASURES, AND MARKETS

§ 10-101. Department of Weights, Measures, and Markets created—Director—Assistants and employees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 10-102. Director to give bond and take oath.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 10-103. Director to have exclusive powers—Weighing and measuring devices to be examined—Condemnation of devices not conforming to standards—Unapproved weighing and measuring devices not to be possessed or used—Director not required to approve devices belonging to United States.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 10-117. Packages of food to be marked with weight, measure, or count—Council may authorize variation, tolerances, and exemptions as to small packages.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 10-118. Cord of wood—Standard—Council to fix standard load of certain split wood.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 10-127. Council may establish tolerances and specifications.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 10-128. Weighmasters—Public scales—Fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 10-130. Enactment and enforcement of rules and regulations—Supervision of produce and other markets—Investigations and reports.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 10-131. "Commissioner" to mean Commissioner of the District of Columbia—"Director" to mean Director of Weights, Measures, and Markets.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 10-135. Jurisdiction over fish wharf and market—Leases, rentals, fees—Regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 10-136. Markets—Disposition of receipts—Charges.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2.—RETAIL SERVICE STATIONS

Sec.

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§ 10-201. Definitions.

For the purpose of this chapter, the following words, terms, phrases, and their derivations shall have the meanings respectively ascribed to them in this section unless the context clearly indicates otherwise:

(a) "Automotive Product" means any product or item of merchandise, including any tire, battery, or similar motor vehicle accessory or part, other than motor fuels or petroleum products, which is intended to be or is capable of being used with, in, or on a motor vehicle, whether or not such product is essential for the proper operation and maintenance of a motor vehicle and whether or not such product is also suitable or is actually sold or used for non-motor vehicle purposes;

(b) "Distributor" means any person who is engaged in the business of selling, supplying, or distributing on consignment or otherwise, motor fuels or petroleum products to or through retail service stations which it owns, leases, or otherwise controls and who also maintains a marketing agreement with a retail dealer for the sale or distribution of motor fuels or petroleum products to a retail service station, whether or not such distributor owns, leases, or otherwise controls such retail service station;

(c) "Engaging in the Retail Sale of Motor Fuel" means that at least thirty (30) per centum of the retail dealer's gross revenue, excluding such revenue as is derived from the retail sale of petroleum products and automotive products and from the repair, maintenance, and servicing of motor vehicles, is derived from the retail sale of motor fuel;

(d) "Equipment" means any movable tangible personal property which is used in the business of operating a retail service station, other than prop-

erty which is either consumed in the business, except through depreciation or amortization, or held for immediate or ultimate sale to customers. The term "equipment" also includes any motor fuel dispensing pump, lift, storage tank, machine, appliance or other similar property which was movable tangible personal property at the time such property was purchased, leased, or otherwise acquired by the operator of a retail service station, whether or not such property was subsequently attached or affixed to any real property;

(e) "Failure to Renew" means any exercise of a right or power created by the marketing agreement or by law to terminate, cancel, or otherwise put an end to a marketing agreement at the expiration of its term, including the exercise of a right or power to put an end to a marketing agreement which would otherwise be extended or renewed automatically for a definite or indefinite term and any failure to extend or renew a marketing agreement which does not provide for automatic extension or renewal. The term "failure to renew" shall also include any termination or cancellation of a marketing agreement which does not specify an expiration date or term;

(f) "Goodwill" means the tendency or habit of customers to return for trade to the retail service station with which they have been previously dealing and includes, with respect to the value of a retail dealer's goodwill, whatever value, advantage, or benefit is added to the value of a retail service station business as a result of the efforts of the retail dealer and his employees during the term or terms of a marketing agreement with the distributor, and of any preceding marketing agreements between the same parties, including, but not limited to, whatever value, advantage, or benefit is added by the reputation of the retail dealer and his employees for competence, skill, quality, ability, reliability, punctuality, personal attention, honesty, integrity, fair dealing, reasonable prices, and other attributes in providing motor fuels, petroleum products, and automotive products and in providing motor vehicle repair, maintenance, and other services, over and above the value of any inventory, equipment, real estate, and other tangible property, of a trademark owned, leased, or otherwise controlled by the distributor, or of advertising or other promotions furnished or financed, in whole or part, by the distributor, which value, advantage, or benefit can reasonably be expected to remain at the retail service station location after the departure of the retail dealer. In determining the value of a retail dealer's goodwill, any increase in the volume of motor fuel, petroleum product, and automotive product sales, any increase in the volume of repair, maintenance, and other services provided, any increase in the number of customers, any financial or other contributions to advertising or promotions by the retail dealer, the number of years the retail dealer has operated the retail service station, and other similar factors should be taken into account in light of all other factors and circumstances;

(g) "Marketing Agreement" means any written agreement, or combination of agreements, including any contract, lease, franchise, or other agreement,

which is entered into between a distributor and a retail dealer and pursuant to which:

(1) the distributor agrees to sell, supply, or distribute motor fuel to the retail dealer for the purpose of engaging in the retail sale of such motor fuel at a retail service station; and

(2) the retail dealer is granted the right, privilege, or authority, in addition to whatever else may be provided, to:

(i) use any trademark owned, leased, or otherwise controlled by the distributor for the purpose of engaging in the retail sale of motor fuel at a retail service station; or

(ii) occupy a retail service station owned, leased, or otherwise controlled by the distributor for the purpose of engaging in the retail sale of motor fuel;

(h) "Merchantable Product" means any product which is in such a condition that it is reasonably resalable in the normal course of the operation of a retail service station business at a price normally charged for a new or unused product;

(i) "Motor Fuel" means any gasoline, diesel fuel, special fuel, petroleum distillate, refined petroleum product, natural petroleum liquid product, natural gas liquified product, crude oil product, or other substance or combination of substances which is intended to be or is capable of being used for the purpose of propelling or running any internal combustion engine of a motor vehicle and which is sold or used, alone or blended or compounded with other substances, by any person for such purpose;

(j) "Person" means any natural person, firm, association, business trust, trust, estate, partnership, corporation, two or more persons having a common or joint interest, or other legal or commercial entity. In the case of an entity, the term "person" shall also include any other entity which is a parent company of the entity; has, directly or indirectly, thirty (30) per centum or more voting control over the entity; manages or effectively controls the entity, other than through a contractual relationship; or is under common control with the entity. In addition, in the case of an entity, the term "person" shall also include any other entity which is a subsidiary or affiliate of the entity; over which the entity has, directly or indirectly, thirty (30) per centum or more voting control; or which is managed or effectively controlled by the entity, other than through a contractual relationship;

(k) "Petroleum Product" means any oil, crude oil, residual fuel oil, grease, lubricant, petroleum distillate, refined petroleum product, natural petroleum product, natural gas product, crude oil product, or similar product, other than motor fuels, which is intended to be or is capable of being used with, in, or on a motor vehicle, whether or not such product is essential for the proper operation and maintenance of a motor vehicle and whether or not such product is also suitable or is actually sold or used for non-motor vehicle purposes;

(l) "Refiner, Producer, or Manufacturer" means any person who is engaged in the business of manufacturing, producing, refining, distilling, blending, or compounding motor fuels, petroleum products, or precursors of motor fuels or petroleum products,

which are ultimately sold, supplied, or distributed to retail service stations in the District of Columbia by such person or any other person, whether or not such manufacturing, producing, refining, distilling, blending, or compounding is performed by such person within the District of Columbia, or who is engaged in the business of importing motor fuels or petroleum products;

(m) "Retail Dealer" means any person, other than an employee of a distributor, who owns, leases, operates, or otherwise controls a retail service station for the purpose of engaging in the retail sale of motor fuel and who also maintains a marketing agreement with a distributor;

(n) "Retail Sale" means the sale of any tangible personal property to the public for any purpose other than for the resale of the property in the form in which it is sold or for the use or incorporation of the property sold as a material or part of other tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining;

(o) "Retail Service Station" means any fixed geographic location, including the real estate and permanent improvements thereon, which is operated for the purpose of storing and selling motor fuel at retail and which has a dispensing system for delivery of motor fuel into the service tanks of motor vehicles, whether or not such location is also operated for the purposes of selling petroleum products, automotive products, or other products at retail or of repairing, maintaining, or servicing motor vehicles;

(p) "Selling, Sell, or Sale" means selling, offering for sale, keeping for sale, exposing for sale, advertising for sale, trafficking in, bartering, pedaling,¹ or any other transfer, exchange, or delivery in any manner or by any means other than purely gratuitously;

(q) "Trademark" means any trademark, trade-name, service mark, brandname, or other identifying mark, symbol, or name, including any identifying mark, symbol, or name associated with any motor fuel; and

(r) "Wholesaler" means any person, including any distributor, who is engaged in the business of selling, supplying, or distributing motor fuels or petroleum products to retail service stations in the District of Columbia. (Apr. 19, 1977, D.C. Law 1-123, § 2, 24 DCR 2371.)

EFFECTIVE DATE

Section 6-403 of act Apr. 19, 1977, D.C. Law 1-123, provided: "This act [enacting this chapter] shall take effect at the end of the period provided for congressional review of acts of the Council of the District of Columbia in subsection (c) of section 602 of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act Apr. 19, 1977, D.C. Law 1-123, provided "That this act [enacting this chapter] may be cited as the 'Retail Service Station Act of 1976'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10-212.

¹ So in original. Probably should be "peddling".

SUBCHAPTER I.—OPERATION OF RETAIL SERVICE STATIONS

§ 10-211. Registration of intent to sell.

(a) Notwithstanding anything contained in section 47-2314, all refiners, producers, manufacturers, marketers, wholesalers, distributors, suppliers, jobbers, resellers, retailers, retail dealers, or sellers of motor fuels, including any operator of a retail service station, shall, before selling, supplying, or distributing any motor fuels which may ultimately be used for the purpose of propelling or running any motor vehicle and annually thereafter, file with the Mayor a written declaration that they desire or intend to sell, supply, or distribute motor fuels in the District of Columbia. The declaration shall be filed on such form or forms and in such manner as may be prescribed by the Mayor and shall include, in addition to such other information as the Mayor shall require, a listing of the types and grades of the motor fuels and petroleum products that such person wishes or intends to sell, supply, or distribute; any trademark or trademarks associated therewith; a listing of the names and addresses of the suppliers thereof; a listing of the names and addresses of the persons to whom such motor fuels or petroleum products are or will be sold, supplied, or distributed; and a description, including the location, of any proposed or existing facilities and equipment such person will utilize in his business. It shall be a violation of this subchapter for any person to sell, supply, or distribute any motor fuel to any person in the District of Columbia, by himself or by his employee, servant, or agent, or as the employee, servant, or agent of any other person, or to have any motor fuel in his custody or possession with intent to sell, supply, or distribute such motor fuel, without having first filed a current valid declaration with the Mayor, *Provided That* any person who is engaged in the business of selling, supplying, or distributing motor fuel in the District of Columbia on April 19, 1977, may continue such business for not more than thirty (30) days after April 19, 1977, without filing a declaration.

(b) Whenever a person intends to discontinue the business of selling, supplying, or distributing motor fuel in the District of Columbia, whether through a sale or transfer of the business or otherwise, such person shall notify the Mayor in writing of such discontinuance at least ten (10) days prior to the date that such discontinuance will take effect. Such notice shall give the date of the discontinuance, the reason for such discontinuance, and, in the event of a sale or transfer of the business, the effective date thereof and the name and address of the purchaser or transferee thereof. (Apr. 19, 1977, D.C. Law 1-123, § 3-101, 24 DCR 2371.)

CODIFICATION

In subsec. (a), "April 19, 1977," has been substituted for "the effective date of this act".

EFFECTIVE DATE

See note under § 10-201.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10-214.

§ 10-212. Restrictions on operation.

(a) After April 19, 1977, no producer, refiner, or manufacturer of motor fuels as the terms are defined in sections 10-201(j) and (l) shall open a retail service station in the District of Columbia, irrespective of whether or not such retail service station will be operated under a trademark owned, leased, or otherwise controlled by such producer, refiner, or manufacturer, unless such retail service station is to be operated by a person or entity other than either an employee, servant, commissioned agent or subsidiary of such producer, refiner, or manufacturer or a person or entity who operates or manages such retail service station under a contract with such producer, refiner, or manufacturer which provides for a fee arrangement.

(b) After January 1, 1981, no producer, refiner, or manufacturer of motor fuels as the terms are defined in sections 10-201(j) and (l) shall operate a retail service station in the District of Columbia, irrespective of whether or not such retail service station will be operated under a trademark owned, leased, or otherwise controlled by such producer, refiner, or manufacturer, with employees, servants, commissioned agents, or subsidiaries of such producer, refiner, or manufacturer or with a person or entity who operates or manages such retail service station under a contract with such producer, refiner, or manufacturer which provides for a fee arrangement. (Apr. 19, 1977, D.C. Law 1-123, § 3-102, 24 DCR 2371.)

CODIFICATION

In subsec. (a), "April 19, 1977" has been substituted for "the effective date of this act".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10-214.

§ 10-213. Nondiscrimination.

(a) Every wholesaler shall extend all voluntary allowances, including, but not limited to, any temporary or permanent price reduction, price allowance, price adjustment, special sale, deal, discount, inducement, incentive, rent rebate, rent abatement, rent relief, premium or other allowance, uniformly, on an equitable basis, to every retail service stations¹ served. In the event that an exceptional or undue hardship has been imposed on a specific retail service station by the occurrence or existence of special or unusual circumstances, including, but not limited to, loss by fire or a temporary road closing, a non-uniformly extended voluntary allowance may be extended to such retail service station.

(b) Every wholesaler shall apply all equipment rental charges for equipment of a comparable age, condition, grade, or quality uniformly, on an equitable basis, to every retail service station served.

(c) Every wholesaler shall, during periods of shortage affecting such wholesaler, apportion uniformly all motor fuels, including all grades of motor fuel, and all petroleum products affected by such shortage, on an equitable basis, to every retail service station served. No wholesaler shall unreasonably discriminate between retail service stations in their allotments. For the purpose of this subsection, a shortage shall exist when any wholesaler is unable

¹ So in original. Probably should be "station".

or unwilling for any reason, on either a permanent or temporary basis, to sell, distribute, or supply any specific motor fuels or petroleum products to all retail service stations previously served in a quantity equivalent to that previously sold, distributed, or supplied to such retail service stations. (Apr. 19, 1977, D.C. Law 1-123, § 3-103, 24 DCR 2371.)

§ 10-214. Rules and regulations—Exemptions.

(a) Upon finding that enforcement of section 10-212 would imposed on¹ exceptional or undue hardship upon any refiner, producer, or manufacturer as a result of the existence of special or unusual circumstances, the Mayor may grant permission to such producer, refiner, or manufacturer to temporarily operate a retail service station for a period of not longer than ninety (90) days. Within sixty (60) days following April 19, 1977, the Mayor shall promulgate rules and regulations specifying the special or unusual circumstances during which a producer, refiner, or manufacturer may temporarily operate a retail service station, including, but not limited to, the abandonment of a retail service station by a retail dealer, the termination of, cancellation of, or failure to renew a marketing agreement other than a wrongful or illegal termination, cancellation, or failure to renew, and other emergencies. Any producer, refiner, or manufacturer who desires the permission provided for in this subsection shall submit a written request for such permission to the Mayor, on such form or forms and in such manner as may be prescribed by the Mayor, prior to operating any retail service station. Such request shall include a statement of the special or unusual circumstances that exist and of the exceptional or undue hardship which would result from the enforcement of section 10-212. Nothing contained in this subsection shall be construed as authorizing any producer, refiner, or manufacturer to operate any retail service station in violation of this subchapter during the pendency of a request for permission to temporarily operate such retail service station.

(b) The Mayor may grant an exemption of not longer than one (1) year to the divorcement date specified in section 10-212(b) to any producer, refiner, or manufacturer who is unable, after reasonable effort, to either sell, transfer, or otherwise dispose of any retail service station which he owns, leases, or otherwise controls or enter into a satisfactory marketing agreement or lease with a qualified retail dealer or other person who is authorized to operate such retail service station under section 10-212.

(c) The Mayor is authorized to promulgate all other rules and regulations necessary for the proper implementation and enforcement of subchapters I and III of this chapter.

(d) The Mayor may require any person subject to the provisions of section 10-211 to maintain such written records and to file with the Mayor written reports containing such information as the Mayor shall deem necessary for the proper implementation and enforcement of subchapters I and III of this

chapter. (Apr. 19, 1977, D.C. Law 1-123, § 3-104, 24 DCR 2371.)

CODIFICATION

In subsec. (a), "April 19, 1977" has been substituted for "the effective date of this act".

§ 10-215. Violations—Notice, order, injunction, and penalties.

(a) Whenever the Mayor has reason to believe that any person has violated or is violating any provision of subchapter I or III of this chapter or the rules and regulations promulgated pursuant thereto, he shall cause written notice to be served upon such person in the manner provided by law. Such notice shall specify the provision or provisions that the Mayor has reason to believe that the person has violated or is violating and the ultimate facts or actions upon which the Mayor bases his belief. The Mayor shall also cause a written order to be served upon such person directing such person to immediately cease and desist from continuing such violation. If the person so ordered refuses or fails to comply with such order, the Mayor shall be authorized to apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or permanent injunction restraining such person from continuing such violation. The court shall have jurisdiction to grant such temporary restraining order, preliminary injunction, permanent injunction, or other relief as may be appropriate under the circumstances.

(b) Any violation of any provision of subchapters I or III of this chapter or the rules and regulations promulgated pursuant thereto, shall constitute a misdemeanor and shall, upon conviction thereof, be punishable by a fine of not more than \$300 or by imprisonment for not more than ninety (90) days or both. In the event of any violation of any provision of subchapters I or III of this chapter or the rules and regulations promulgated pursuant thereto, each and every day of such violation shall constitute a separate offense and the penalties provided for herein shall be applicable to each such separate offense. (Apr. 19, 1977, D.C. Law 1-123, § 3-105, 24 DCR 2371.)

SUBCHAPTER II.—MARKETING AGREEMENTS

§ 10-221. Conditions affecting marketing agreements.

All marketing agreements shall be in writing and shall be subject to the non-waiverable conditions set forth in this section, whether or not such conditions are expressly set forth in such marketing agreements. For the purposes of this section, the term "marketing agreement" shall also include any oral or written collateral or ancillary agreement. No marketing agreement shall:

(a) require a retail dealer to keep his retail service station open for business for any specified number of hours per day, or days per week, or for any specified hours of the day, or days of the week, except as otherwise provided in section 10-223(c) (5);

(b) require a retail dealer to purchase or accept delivery of, on consignment or otherwise, any products from the distributor other than such motor fuels and petroleum products as are specified in the marketing agreement;

¹ So in original. Probably should be "impose an".

(c) fix, maintain, or establish, or grant to the distributor the right, privilege, or authority to fix, maintain, or establish, the prices at which the retail dealer shall sell any motor fuels, petroleum products, or automotive products;

(d) require the retail dealer to meet any sales quotas for any motor fuels, petroleum products, or automotive products;

(e) prohibit a retail dealer from selling, assigning, or otherwise transferring his marketing agreement or any interest therein to another person;

(f) prohibit a retail dealer from purchasing or accepting delivery of, on consignment or otherwise, any motor fuels, petroleum products, automotive products, or other products from any person who is not a party to the marketing agreement or prohibit a retail dealer from selling such motor fuels or products, *Provided* That if the marketing agreement permits the retail dealer to use the distributor's trademark, the marketing agreement may require such motor fuels, petroleum products, and automotive products to be of a reasonably similar quality to those of the distributor, and *Provided further* That the retail dealer shall neither represent such motor fuels or products as having been procured from the distributor nor sell such motor fuels or products under the distributor's trademark;

(g) require a retail dealer to take part in any promotional or advertising campaign which will require the retail dealer to use, utilize, or accept any premiums, coupons, posters, stamps, tickets, gifts, bonuses, rebates, or other promotional items;

(h) contain any provision which in any way limits the right of any party to such marketing agreement to a trial by jury or to the interposition of counter-claims or cross-claims;

(i) contain any provision which requires the retail dealer to assent to any release, assignment, novation, waiver, or estoppel which would relieve any person from any liability imposed by this subchapter or would negate any rights granted to a retail dealer by this subchapter;

(j) be for a term of less than one (1) year; or

(k) contain any term or condition which, directly or indirectly, violates this subchapter.

Nothing contained within this subsection¹ shall be construed as prohibiting a distributor from suggesting or advising the retail dealer of appropriate or reasonable hours of operation, days of operation, or prices, provided that the distributor shall in no way or manner attempt to threaten or coerce the retail dealer into following his suggestions or advice. Nothing contained within this subsection¹ shall be construed as prohibiting a retail dealer from agreeing to purchase or accept delivery of other products or equipment from the distributor or from participating financially or otherwise in any promotional or advertising campaign sponsored by the distributor, provided that the distributor shall in no way or manner attempt to threaten or coerce such actions on the part of the retail dealer. (Apr. 19, 1977, D.C. Law 1-123, § 4-201, 24 DCR 2371.)

EFFECTIVE DATE

See note under § 10-201.

§ 10-222. Disclosures to prospective retail dealers.

Prior to entering into any marketing agreement with any prospective retail dealer, a distributor shall disclose the information set forth in this subsection¹ to such prospective retail dealer in writing. Prior to transferring any marketing agreement or interest therein to any prospective transferee, a retail dealer shall disclose the information set forth in this subsection¹ to such prospective transferee in writing.

(a) The name and last known address of the previous retail dealer or dealers for the immediately prior three year period or for the entire period during which the distributor has either sold or distributed motor fuels or petroleum products to or through such retail service station location or owned, leased, or otherwise controlled such location, whichever period is shorter, and the grounds or reasons for the termination of, cancellation of, or failure to renew each marketing agreement with such previous retail dealer or dealers.

(b) The existence of any present commitments, negotiations, or plans for the future sale, demolition, or other disposition of such location. (Apr. 19, 1977, D.C. Law 1-123, § 4-202, 24 DCR 2371.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10-226.

§ 10-223. Termination, cancellation, and failure to renew.

(a) A retail dealer shall have the right to terminate or repudiate any marketing agreement to which he is a party for any reason, without the imposition of any damages or penalties and without any recourse by the distributor for such termination or repudiation, within seven days, not including Saturdays, Sundays, or holidays, after the day on which performance of such marketing agreement commences. For purposes of this subsection, the term "marketing agreement" shall not include any renewal, extension, modification, amendment, or novation of an existing marketing agreement. For purposes of this subsection, the term "performance" shall mean the granting of a present right, privilege, or authority to use a trademark, the granting of a present right, privilege, or authority to occupy a retail service station, or the actual delivery of any motor fuels, petroleum products, or automotive products to the retail dealer. In order to exercise his right to terminate or repudiate a marketing agreement pursuant to his subsection, the retail dealer shall:

(1) mail written notice, by registered or certified mail, to the distributor of his intention to exercise his right under this subsection within the period specified in this subsection;

(2) discontinue use of any trademark presently being used by such retail dealer pursuant to the marketing agreement;

(3) deliver or tender, so far as is practical, to the distributor all money, equipment, and merchantable products, including all motor fuels, petroleum products, and automotive products which the retail dealer has not presently sold,

¹ So in original. Probably should be "section".

¹ So in original. Probably should be "section".

which have been loaned, sold, or delivered to the retail dealer pursuant to the marketing agreement within ten (10) days after mailing the notice specified in this subsection; and

(4) deliver or tender to the distributor full possession of any retail service station provided by the distributor pursuant to the marketing agreement within ten (10) days after mailing the notice specified in this subsection.

The retail dealer shall receive full credit, or the cash equivalent, for all money, equipment, and merchantable products delivered to the distributor pursuant to paragraph (3) of this subsection. Nothing contained within this subsection shall be construed as granting a similar right to terminate or repudiate to the distributor under a marketing agreement or as prohibiting the retail dealer from cancelling a marketing agreement during the period specified in this subsection.

(b) No retail dealer or distributor, except as otherwise provided in subsection (a) of this section, shall terminate, cancel, or fail to renew a marketing agreement unless he furnishes prior written notice to the other party. Such notice shall be sent to the other party by registered or certified mail not less than ninety (90) days prior to the date on which the marketing agreement is to be terminated, cancelled, or not renewed, unless a shorter period is provided for in this subsection. Such notice shall contain a statement of the party's intention to terminate, cancel, or fail to renew the marketing agreement, the date on which such action shall become effective, and a statement of the specific grounds for such action. No distributor shall terminate, cancel, or fail to renew a marketing agreement, or notify a retail dealer of his intention to take such action, unless he reasonably and in good faith believes that the facts and circumstances existing do, in fact, justify his reliance on the grounds specified in his notice of intention to take such action. Notice furnished pursuant to this subsection shall be effective on the date of the mailing.

In the event that a termination or cancellation is based upon one or more of the grounds specified in paragraphs (1) through (4) and (10) through (17) of subsection (c), the ninety (90) days advance notice shall not be required. However, in such an event, the distributor shall furnish written notice to the retail dealer as far in advance of the effective date of such termination or cancellation as is reasonably practical under the circumstances.

The distributor's failure to furnish prior written notice, as required by this subsection, of his intention not to renew a marketing agreement, whether or not such marketing agreement provides for automatic¹ extension or renewal, shall constitute a renewal of the marketing agreement for a term of one year from its stated expiration date.

(c) No distributor shall terminate or cancel any marketing agreement with a retail dealer, either directly or indirectly, unless such termination or cancellation is based upon one or more of the grounds specified in this subsection. No distributor shall terminate or cancel any marketing agreement

with a retail dealer unless the grounds for such termination or cancellation are expressly set forth in the marketing agreement.

(1) The retail dealer has failed to pay financial obligations due to the distributor under the marketing agreement, including, but not limited to, rents for any equipment or retail service station provided by the distributor and payments for any motor fuels, petroleum products, or automotive products delivered, on consignment or otherwise, to the retail dealer by the distributor pursuant to the marketing agreement, within the time and in the manner prescribed by the marketing agreement.

(2) The retail dealer has filed for or has been declared bankrupt, has petitioned for or has been declared insolvent, or has petitioned for a reorganization or credit arrangement under the applicable laws.

(3) A termination or dissolution of the partnership, corporation, or other entity operating the retail service station or the death of the retail dealer, *Provided That* a termination or dissolution of a partnership or other entity shall not constitute a ground for the termination or cancellation of a marketing agreement where the remaining partners or individual members of the other entity have notified the distributor of their intention to operate the retail service station and to acquire the interests of the departing partners or members pursuant to section 10-225(a) to (d).

(4) The retail dealer has voluntarily abandoned, or has given notice of his intention to voluntarily abandon, his retail service station, other than pursuant to subsection (a) of this section or section 10-225.

(5) The retail dealer has unjustifiably left his retail service station vacant or unattended for an unreasonable period of time or has unjustifiably failed to open his retail service station for business for an unreasonable number of days during any calendar year. The period of time and number of days which shall be deemed unreasonable shall be expressly set forth in the marketing agreement, but in no event may such period of time be less than nine (9) consecutive days or such number of days be less than eighteen (18) days during any calendar year.

(6) The retail dealer, or some other person over whom the retail dealer has control and was grossly negligent in not exercising such control, has wilfully or maliciously destroyed or damaged the real or personal property, including any equipment that is used in the operation of the retail service station, of the distributor furnished pursuant to the marketing agreement and the retail dealer has refused to replace or repair such real or personal property.

(7) The retail dealer, or some other person over whom the retail dealer has control and was grossly negligent in not exercising such control, has deliberately adulterated, comingled,¹ misbranded, mislabeled, or misrepresented to his cus-

¹ So in original. Probably should be "automatic".

¹ So in original. Probably should be "adulterated, comingled".

tomers any motor fuels, petroleum products, or automotive products delivered to the retail dealer by the distributor pursuant to the marketing agreement in a manner prohibited by the marketing agreement or by Federal or District of Columbia law or contrary to customary practices in the retail service station industry.

(8) The retail dealer has made materially false, deceptive, or misleading representations to the distributor which are related to the operation of his retail service station business.

(9) The retail dealer has failed to comply with any federal or District of Columbia laws, rules, or regulations relating to the operation of a retail service station, including, but not limited to, laws, rules, or regulations relating to the payment of taxes and the maintenance of any necessary licenses, permits, or registrations, which the marketing agreement made the retail dealer responsible for complying with, and such failure to comply with such laws, rules, or regulations has or will adversely affect the business relationship between the retail dealer and the distributor or the business of the distributor.

(10) The retail dealer has been convicted of the commission or attempt to commit a felony, criminal misconduct or violations of law involving moral turpitude, fraud, or commercial dishonesty, which is related to the operation of his retail service station business and which would affect the ability of the retail dealer to operate his retail service station business or would tend to defame or seriously damage the reputation of the distributor or his trademark, *Provided That* this subsection shall not apply to convictions that have been disclosed to the distributor by the retail dealer prior to entering into the marketing agreement.

(11) The condemnation, appropriation, or other public taking of the retail service station location covered by the marketing¹ agreement, in whole or part, pursuant to the power of eminent domain or the loss of or damage to the retail service station facility by an act of God, to the extent that such taking or damage makes the continued operation of the retail service station completely unfeasible.

(12) The marketing agreement grants the retail dealer the right, privilege, or authority to occupy a retail service station leased by the distributor from another person and such lease is terminated, cancelled, or not renewed by such other person for a cause beyond the reasonable control of the distributor.

(13) The distributor has lost his legal right, for a cause beyond his reasonable control, to grant the retail dealer the right, privilege, or authority to use any trademark provided for in the marketing agreement.

(14) The retail dealer has been afflicted with so severe a physical or mental disability that he is rendered incapable of operating his retail service station for an unreasonable period of time and has been unable to provide for the continued op-

eration of his retail service station by another person.

(15) The retail dealer has failed to substantially comply with any other essential and reasonable requirement, condition, or provision expressly set forth in the marketing agreement.

(16) The existence or occurrence of any cause or circumstance which would make termination or cancellation of the marketing agreement reasonable, just, and equitable in light of the facts and circumstances then existing.

(17) The retail dealer and the distributor have executed a mutual agreement to terminate the marketing agreement in writing.

(d) No distributor shall fail to renew a marketing agreement with a retail dealer, either directly or indirectly, unless such failure to renew is based upon one or more of the grounds specified in this subsection. No distributor shall fail to renew a marketing agreement unless the grounds for such failure to renew are expressly set forth in the marketing agreement.

(1) The existence of any of the grounds which would justify the termination or cancellation of a marketing agreement pursuant to subsection (c) of this section.

(2) The distributor intends to and does in fact withdraw entirely, within one (1) year of the effective date of the notice furnished pursuant to subsection (b) of this section, from the sale in the District of Columbia of motor fuels, petroleum products, and automotive products.

(3) The marketing agreement grants the retail dealer the right, privilege, or authority to occupy a retail service station owned, leased, or otherwise controlled by the distributor and the distributor intends to and does in fact withdraw entirely, within one (1) year of the effective date of the notice furnished pursuant to subsection (b) of this section, from the business of owning, leasing, controlling, and operating retail service stations in the District of Columbia.

(4) The marketing agreement grants the retail dealer the right, privilege, or authority to occupy a retail service station owned, leased, or otherwise controlled by the distributor and the distributor intends to sell or lease the retail service station location to a person other than a subsidiary, parent, affiliate, or other entity controlled or managed by the distributor or controlling or managing the distributor, for a purpose other than the retail sale of motor fuels or intends to relinquish a leasehold interest in the retail service station location, without any intention or¹ purchasing, executing a new lease for, or otherwise regaining control of the location.

(5) A failure on the part of the distributor and the retail dealer, both parties having acted in good faith in trying to effect a renewal, to agree to any reasonable and essential changes in or additions to the marketing agreement considering the then existing facts and circumstances.

(6) The retail dealer has failed to make reasonable repairs and maintenance to the real or

¹ So in original. Probably should be "marketing".

¹ So in original. Probably should be "of".

personal property of the distributor furnished pursuant to the marketing agreement provided that the marketing agreement requires the retail dealer to assume such responsibility for repair and maintenance.

(7) The retail dealer has failed to substantially comply with any reasonable minimum standards for the operation of a retail service station which are expressly set forth in the marketing agreement, including, but not limited to, standards concerning the cleanliness and appearance of the retail service station and the safeness of facilities and services, within a reasonable time after receiving written notice of non-compliance and such failure to comply will damage the integrity of the distributor's trademark or the reputation of either the distributor or other retail service stations operating under the distributor's trademark.

(8) The distributor has received substantiated repeated customer complaints concerning the conduct or practices of the retail dealer, including, but not limited to, repair or maintenance work of a substandard quality, obnoxious or disrespectful behavior towards customers, or dishonest, unethical, or fraudulent practices, and the continuance of such conduct or practices will damage the integrity of the distributor's trademark or the reputation of either the distributor or other retail service stations operating under the distributor's trademark.

(e) No distributor shall terminate, cancel, or fail to renew any marketing agreement, either directly or indirectly, for any of the following reasons:

(1) refusal of the retail dealer to accept a renewal of a marketing agreement for a term of less than one year;

(2) refusal of the retail dealer to take part in any promotional or advertising campaign, to meet sales quotas suggested by the distributor, to purchase or accept delivery of any motor fuels or petroleum products not specified in the marketing agreement, or any other products or equipment, to sell motor fuels, petroleum products, or automotive products at a price suggested by the distributor, or to comply with any standard of performance imposed upon such retail dealer by the distributor which exceeds the standards of performance imposed by the marketing agreement;

(3) refusal of the retail dealer to keep his retail service station open and operating during those hours or days which, in the reasonable opinion of the retail dealer, are unprofitable or to follow the suggestions or advice of the distributor concerning days or hours of operation;

(4) the retail dealer's attempt to exercise his right to sell, assign, or otherwise transfer his marketing agreement or any interest therein to another person; or

(5) the distributor's desire to obtain possession of a retail service station currently leased to the retail dealer in order to engage in the retail sale of motor fuel on its own behalf. No marketing agreement shall specify any of the reasons contained in this subsection as grounds for the termination of, cancellation of, or failure to renew such

marketing agreement by the distributor.

(Apr. 19, 1977, D.C. Law 1-123, § 4-203, 24 DCR 2371.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10-221, 10-224, 10-226.

§ 10-224. Retail dealer's remedies subsequent to termination, cancellation, or failure to renew.

(a) The remedies provided for in this section are in addition to any and all other remedies available to the retail dealer under this subchapter, the marketing agreement, any other statute or act, or law or equity.

(b) In the event of any termination of, cancellation of, or failure to renew a marketing agreement, whether by the unilateral action of either the retail dealer or the distributor, by mutual agreement, by the death of the retail dealer, or otherwise, the distributor shall make or cause to be made an offer in good faith to repurchase from the retail dealer or his legal representative within thirty (30) days after the effective date of such termination, cancellation, or non-renewal, any and all merchantable products, including, but not limited to, any motor fuels, petroleum products, and automotive products, at the full price originally paid or at the then current wholesale price, whichever price shall be lower, and any and all equipment, including any equipment which has been affixed or appended, after April 19, 1977, with the permission of the distributor, to a retail service station leased from the distributor, at the current fair market value, which have been purchased by the retail dealer from the distributor and which have been tendered, to the extent that such tender may be practical, by the retail dealer or his legal representative to the distributor. If the distributor does not make or cause to be made a good faith offer to repurchase the retail dealer's products and equipment within the thirty (30) day period provided for in this subsection, the retail dealer or his legal representative may sell the products and equipment for as reasonable a price as may be obtained, may apply the balance owed by the distributor against any existing indebtedness owed by the retail dealer to the distributor, and shall have a cause of action against the distributor for the difference. In the event that the distributor repurchases the retail dealer's products and equipment the distributor shall have the right to first apply the value of the products and equipment being repurchased against any existing indebtedness owed directly to the distributor by the retail dealer. The distributor's obligation to repurchase shall be enforceable only to the extent that there are no other valid claims or liens against such products or equipment by or on behalf of other creditors of the retail dealer.

(c) Equipment purchased or otherwise acquired by the retail dealer and affixed or appended, after April 19, 1977, with the permission of the lessor, to a retail service station leased by the retail dealer shall remain the property of the retail dealer, notwithstanding the fact that it is permanently affixed or the existence of any contrary provisions in a marketing agreement, other agreement, or law. Upon the termination of, cancellation of, or failure to renew a lease or other agreement or the termination of, cancella-

tion of, or failure to renew a marketing agreement, the retail dealer or his legal representative shall have a reasonable time in which to remove such equipment. In removing such equipment, the retail dealer or his legal representative shall leave the retail service station premises in substantially the same condition as they were at the time the equipment was affixed or appended.

(d) If the distributor terminates, cancels, or fails to renew a marketing agreement for any of the grounds specified in sections 10-223(c)(2), (3), (11), or (14) and 10-223(d)(2), (3), or (4) or for any cause or circumstance allowed under section 10-223(c)(16) which involves the retail dealer's failure to comply with the marketing agreement or which was not beyond the reasonable control of the distributor to prevent, the distributor shall pay to the retail dealer, within thirty (30) days of the effective date of the termination, cancellation, or failure to renew, the full value of any business goodwill enjoyed by the dealer on the effective date of the notice furnished pursuant to section 10-223(b). (Apr. 19, 1977, D.C. Law 1-123, § 4-204, 24 DCR 2371.)

CODIFICATION

In subssecs. (b) and (c), "April 19, 1977," has been substituted for "the effective date of this act".

In subsec. (d), "section 10-223(c)(16)" read in the original "section 4-303(c)(16)". Since the act Apr. 19, 1977, D.C. Law 1-123, did not contain a section 4-303(c)(16), this reference has been translated to reflect the probable intent of the Council.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10-226.

§ 10-225. Sale, assignment, or other transfer of a marketing agreement.

(a) No distributor shall unreasonably withhold his approval of any sale, assignment, or other transfer, including any transfer of the retail dealer's right, privilege, or authority to occupy a retail service station pursuant to a marketing agreement, of a marketing agreement or any interest therein to another person by a retail dealer.

(b) No retail dealer shall sell, assign, or otherwise transfer a marketing agreement or any interest therein unless he furnishes prior written notice to the distributor of his intention to make such sale, assignment, or other transfer. Such notice shall be sent to the distributor by registered or certified mail and shall include the prospective transferee's name and address, a statement of the prospective transferee's financial qualifications, a statement of the prospective transferee's business experience during the previous five (5) years, and a statement of the prospective transferee's ability, character, and credit history.

(c) The distributor shall either approve or disapprove such sale, assignment, or other transfer in writing within sixty (60) days after receipt of the notice specified in subsection (b) of this section. A distributor's failure to notify the retail dealer of his approval or disapproval shall be construed as an approval of the proposed sale, assignment, or other transfer.

(d) In order for a sale, assignment, or other transfer of a marketing agreement to be valid, the prospective transferee shall agree in writing to com-

ply with all valid requirements, conditions, and provisions of the existing marketing agreement which may be applicable.

(e) A prospective transferee shall have the right to terminate or repudiate any sale, assignment, or other transfer of a marketing agreement or any interest therein for any reason, without the imposition of any damages or penalties for such action and without any recourse by the transferor or distributor for such action, within seven days, not including Saturdays, Sundays, or holidays, after the day on which the sale, assignment, or other transfer is consummated. In order to exercise his right under this subsection, the transferee shall:

(1) mail written notice, by registered or certified mail, to the transferor and the distributor of his intention to exercise his right under this subsection within the period specified in this subsection;

(2) discontinue use of any trademark presently being used by such transferee pursuant to the marketing agreement;

(3) deliver or tender, so far as is practical, to the transferor or distributor, as appropriate, all money, equipment, and merchantable products which have been loaned, sold or delivered to the transferee by either the transferor or the distributor and which the transferee has not already sold, within ten (10) days after mailing the notice specified in this subsection; and

(4) deliver or tender to the transferor full possession of any retail service station transferred to the transferee within ten (10) days after mailing the notice specified in this subsection.

The transferee shall receive full credit, or the cash equivalent, for all money, equipment, and merchantable products delivered or tendered to the transferor or distributor, as appropriate, pursuant to paragraph (3) of this subsection. Nothing contained within this subsection shall be construed as granting a similar right to terminate or repudiate to either the transferor or the distributor. (Apr. 19, 1977, D.C. Law 1-123, § 4-205, 24 DCR 2371.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10-223.

§ 10-226. Retail dealer's cause of action against distributor.

(a) In addition to any and all other remedies available to the retail dealer under this subchapter, the marketing agreement, any other statute or act, or law or equity, a retail dealer may maintain a civil action against a distributor for:

(1) failure to make such disclosures as are required by section 10-222;

(2) failure to repurchase as required by section 10-224(b);

(3) failure to pay the full value of any business good will as required by section 10-224(d);

(4) wrongful or illegal cancellation of, termination of, or failure to renew a marketing agreement with the retail dealer under section 10-223;

(5) unreasonably withholding approval of a proposed sale, assignment, or other transfer of the marketing agreement.

The court may award actual damages, including ascertainable loss of goodwill as provided for in sec-

tion 10-224(d), sustained by the retail dealer as a result of the distributor's violation of this subchapter and may also grant such other legal or equitable relief as may be appropriate, including, but not limited to, declaratory judgment, specific performance, and injunctive relief.

The court may,¹ unless the action was frivolous, direct that costs of the action, including reasonable attorney and expert witness fees, be paid by the distributor. If the court finds that the distributor's wrongful or illegal termination of, cancellation of, or failure to renew the marketing agreement was wilful or intentional, the court may also award the retail dealer ascertainable loss of goodwill and punitive damages.

(b) No prospective transferee shall have a cause of action against a distributor as a result of the distributor's disapproval of a proposed sale, assignment, or other transfer of a marketing agreement.

(c) A civil action brought by a retail dealer against a distributor pursuant to this section shall be commenced within two (2) years after such cause of action arose. (Apr. 19, 1977, D.C. Law 1-123, § 4-206, 24 DCR 2371.)

§ 10-227. Application of subchapter to preexisting marketing agreements.

(a) This subchapter shall only apply to that portion of a marketing agreement which concerns the operation of a retail service station which is located within the District of Columbia and only to the extent of the business conducted by a retail dealer within the District of Columbia.

(b) This subchapter shall apply to any and all marketing agreements entered into after April 19, 1977. The term "entered into" shall include any renewal, extension, modification, amendment, or novation of a preexisting marketing agreement.

(c) This subchapter shall also apply to any failure to renew a preexisting marketing agreement. (Apr. 19, 1977, D.C. Law 1-123, § 4-207, 24 DCR 2371.)

CODIFICATION

In subsec. (b), "April 19, 1977" has been substituted for "the effective date of this act".

SUBCHAPTER III.—MORATORIUM ON CONVERSIONS TO LIMITED SERVICE RETAIL SERVICE STATIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 10-214, 10-215.

§ 10-231. Prohibition on conversions.

(a) For the purposes of this section, the term "full service retail service station" means any retail service station location which provides a garage, service bay, work area, or similar enclosed area for repairing, maintaining, servicing, or otherwise working on motor vehicles. Such repair, maintenance, and service work may include, but is not limited to, the installation or replacement of batteries, tires, fan belts, lights, brakes, water pumps, mufflers and other parts and accessories and the performance of motor oil changes, lubrications, wheel alignments, tune-ups, tire repairs, brake adjustments, and general repair and maintenance work and services.

(b) No retail service station which is operated as a "full service retail service station" on or after April 19, 1977, may be structurally altered, modified, or otherwise converted, irrespective of the type or magnitude of the alteration, modification, or conversion, including, but not limited to, any alteration, modification, or conversion which has the effect of merely obstructing access to an existing garage, service bay, work area, or similar enclosed area by any motor vehicle which was previously accommodated, into a non-full service facility until January 1, 1979.

(c) No person who is an operator of any "full service retail service station" on or after April 19, 1977, including any person who is a subsequent operator of any such retail service station, or who, in any manner, controls the operation of any such retail service station, shall substantially reduce the number, types, quantity, or quality of the repair, maintenance, and other services, including the retail sale of motor fuels, petroleum products, and automotive products, previously offered until January 1, 1979. Such operators shall maintain the retail service station's existing garages, service bays, work areas, and similar areas in a fully operational condition and reasonably equipped to perform repair, maintenance, and service work on motor vehicles, including the provision of a qualified individual or individuals who is or are capable of performing repair, maintenance, and service work on motor vehicles during a reasonable number of hours per day and of days per week. This subsection shall not be construed as prohibiting any person who operates or controls a "full service retail service station" from discontinuing the retail sale of motor fuels at such retail service station, provided that less than twenty (20) per centum of such retail service station's gross revenue derived from the retail sale of motor fuels, petroleum products, and automotive products and from the repair, maintenance, and servicing of motor vehicles is derived from the retail sale of motor fuels, and provided further that such discontinuance of the retail sale of motor fuels shall not authorize any other substantial reduction in repair, maintenance, or other services previously offered. This subsection shall not be construed as prohibiting a "full service retail service station" from selling motor fuels on a self-service basis, provided that such retail service station continue¹ to sell motor fuels on a non-self-service basis.

(d) The Mayor is authorized and directed to study the motor vehicle repair, maintenance, and other services being offered by existing "full service retail service stations" and "non-full service retail service stations" to residents, commercial establishments, commuters, and other affected persons in the District of Columbia, both in terms of adequacy and in terms of convenience. This study shall include an analysis of the impact of converting existing "full service retail service stations" to "non-full service retail service stations" in various areas of the District of Columbia. The Mayor is also authorized and directed to study the adequacy of existing retail service stations to serve the needs and convenience of residents, commercial establishments, commuters,

¹ So in original. Probably should be "may".

¹ So in original. Probably should be "continues".

and other affected persons with respect to the retail sale of motor fuels, petroleum products, and automotive products in various areas of the District of Columbia. Such study shall include an examination of the petroleum products and automotive products being offered by commercial establishments other than retail service stations. The Mayor shall, if necessary, present to the Council a preliminary report within thirty (30) days after April 19, 1977, detailing the need for any additional funds above and beyond presently budgeted funds which the Mayor deems necessary for performance of such study. This chapter does not authorize the expenditure of any such additional funds. A final report detailing the findings of such study, including the Mayor's recommendations or proposals with respect to any necessary or desirable legislation or other actions, shall be submitted to the Council no later than June 1, 1978. (Apr. 19, 1977, D.C. Law 1-123, § 5-301, 24 DCR 2371.)

CODIFICATION

In subsecs. (b), (c), and (d), "April 19, 1977" has been substituted for "the effective date of this act".

EFFECTIVE DATE

See note under § 10-201.

SUBCHAPTER IV.—GENERAL PROVISIONS

§ 10-241. Statement of public policy.

This chapter shall constitute a statement of the public policy of the District of Columbia. The provisions of this chapter shall be liberally construed in order to effectively carry out the purposes of this chapter in the interests of the public health, safety, and welfare. (Apr. 19, 1977, D.C. Law 1-123, § 6-401, 24 DCR 2371.)

EFFECTIVE DATE

See note under § 10-201.

§ 10-242. Severability.

If any provision or part thereof of this chapter or the application thereof to any person or circumstance is declared unconstitutional or invalid, such invalidity, unconstitutionality, or inapplicability shall not affect any other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, all provisions of this chapter are hereby declared to be severable. (Apr. 19, 1977, D.C. Law 1-123, § 6-402, 24 DCR 2371.)

PART II

JUDICIARY AND JUDICIAL PROCEDURE

Part II, consisting of Titles 11 to 17 inclusive, was enacted by Pub. L. 88-241, § 1, Dec. 23, 1963, 77 Stat. 478, effective Jan. 1, 1964. The Act of July 29, 1970, Pub. L. 91-358, 84 Stat. 473, known as the "District of Columbia Court Reform and Criminal Procedure Act of 1970", completely revised Title 11 and made other revisions and amendments to the Code which are set out in the main edition.

<p>TITLE 11. ORGANIZATION AND JURISDICTION OF THE COURTS.</p> <p>TITLE 12. RIGHT TO REMEDY.</p> <p>TITLE 13. PROCEDURE GENERALLY.</p> <p>TITLE 14. PROOF.</p>	<p>TITLE 15. JUDGMENTS AND EXECUTIONS—FEES AND COSTS.</p> <p>TITLE 16. PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS.</p> <p>TITLE 17. REVIEW.</p>
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TITLE 11.—ORGANIZATION AND JURISDICTION OF THE COURTS

<p>Chap.</p> <p>26.¹ Representation of Indigents in Criminal Cases -----</p>	<p>Sec.</p> <p>11-2601</p>
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Chapter 1.—GENERAL PROVISIONS

§ 11-101. Judicial power

CROSS REFERENCES

District Charter provisions relating to judicial power of the District of Columbia, see § 431 of title 11 Appendix.

Limitation on Council to enact any act, resolution, or rule with respect to any provision of title 11, see § 1-147.

NOTES TO DECISIONS

Constitutionality

Congress did not violate article of Constitution pertaining to the judicial power of the United States by vesting jurisdiction over local felonies in the District of Columbia Superior Court, *R. F. Palmore v. United States* (D.C. App. 1972, 290 A. 2d 573; aff'd 93 S. Ct. 1670, 411 U.S. 389).

Under its constitutional power to legislate for the District of Columbia, Congress may provide for trying local criminal cases before judges who, in accordance with District of Columbia Code, are not accorded life tenure and protection against reduction in salary. *Id.*

Corporation counsel, appointment to represent

To accept or create additional obligation to obey court order for corporation counsel to undertake representation of private citizens in mental health cases is antithetical to section 1-301 setting forth duties of corporation counsel and is also contrary to separation of powers doctrine, and thus not only is corporation counsel not required by statute to represent private petitioners, seeking involuntary civil commitment of adult son or daughter, but Superior Court judge has no power to make such an appointment. *District of Columbia et al. v. W. C. Pryor, Associate Judge et al.* (D.C. App. 1976, 366 A. 2d 141).

§ 11-102. Status of District of Columbia Court of Appeals

NOTES TO DECISIONS

D.C. Court of Appeals decisions

Policy underlying District of Columbia Court Reorganization Act of 1970 requires greatest deference to decisions of the District of Columbia Court of Appeals. *M.A.S.*,—

¹Supplied by codifier, chapter added without adding item 26 to analysis.

Inc. v. Van Curler Broadcasting Corp. et al. (1973, 357 F. Supp. 686).

A federal district court sitting as a local court in the District of Columbia should defer to the District of Columbia Court of Appeals' interpretation of local statutes, at least where federal statutory or constitutional issues are not involved. *Id.*

United States District Court for District of Columbia would not follow decision of the District of Columbia Court of Appeals where, in view of factors not considered in opinion of District of Columbia Court of Appeals, it appeared that the District of Columbia Court of Appeals itself would not follow that decision. *Id.*

U.S. Court of Appeals decisions

Opinion which interpreted D.C. Minimum Wage Act and which was published by United States Court of Appeals for the District of Columbia after effective date of Judicial Reorganization Act and at time when District of Columbia Court of Appeals had final authority to interpret a District of Columbia enactment did not constitute controlling precedent for the District of Columbia Court of Appeals, even though leave to appeal in the case had been granted prior to effective date of the Judicial Reorganization Act. *District of Columbia et al. v. Schwerman Trucking Company* (D.C. App. 1974, 327 A. 2d 818).

District of Columbia Court of Appeals is generally not bound by decisions of the United States Court of Appeals for the circuit rendered subsequent to the District of Columbia Court Reorganization Act of 1970; however, deference will be had to federal decision constituting a reasonable interpretation of federal legislation of nationwide applicability, such as the Federal Youth Corrections Act. *C. D. Small v. United States* (D.C. App. 1973, 304 A. 2d 641).

Decision of United States Court of Appeals for the District of Columbia Circuit subsequent to 1971 court reorganization was not binding on District of Columbia Court of Appeals, even where constitutional issue was presented; however, previously decided decisions of former court continued to be binding on latter. *United States v. K. C. Simmons* (D.C. App. 1973, 302 A. 2d 728).

Court of Appeals for the District of Columbia Circuit would not defer to decisions of the District of Columbia Court of Appeals upholding criminal statute, where Court of Appeals for District of Columbia Circuit had jurisdiction to resolve appeals involving statute on their merits, position of the lower court on the constitutional question was clear, two appellants had been convicted under the statute and a third faced trial under it, and Court of Appeals of District of Columbia Circuit had previously

made known its view that the constitutional claim had merit. *J. Holly v. United States* (1972, 464 F. 2d 796, 150 U.S. App. D.C. 287).

Law established by United States Court of Appeals for District of Columbia, when it was functioning as highest court for District of Columbia, in comparable state status, is controlling and conflicting decision by United States Court of Appeals for District of Columbia, coming after 1970 Reorganization Act establishing the District of Columbia Court of Appeals as the highest District of Columbia court, is not controlling. *A. L. Luck v. Baltimore and Ohio Railroad Company* (1972, 352 F. Supp. 331).

Decision of United States Court of Appeals with respect to statute pertaining to notice of a claim against District of Columbia, constituted law of the case since it had jurisdiction to review decision of District of Columbia Court of Appeals when decision of District of Columbia Court of Appeals was rendered and when petition for allowance of appeal was filed, but where decision was rendered after effective date of statute providing that decisions of District of Columbia Court of Appeals would not longer be subject to review by United States Court of Appeals, decision would constitute no binding precedent on future cases in District of Columbia Court of Appeals. *District of Columbia v. R. Smith* (D.C. App. 1972, 297 A. 2d 787).

Local law

Following adoption of District of Columbia Court Reform and Criminal Procedure Act of 1970, the United States Court of Appeals for the District of Columbia is no longer the final expositor of the local law of the District. *United States v. B. L. Peterson* (1973, 483 F. 2d 1222, 157 U.S. App. D.C. 219; cert. denied 94 S.Ct. 367, 414 U.S. 1007).

Chapter 3.—UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

§ 11-301. Jurisdiction of appeals from the District of Columbia Court of Appeals

SALE OF REPORTS OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Section 402 of the Judiciary Appropriation Act, 1976, approved Oct. 21, 1975, Pub. L. 94-121, 89 Stat. 633, provided that reports of the United States Court of Appeals for the District of Columbia should not be sold for a price exceeding that approved by the court and not more than \$9.00 per volume.

This provision was not repeated in subsequent appropriation acts.

SIMILAR PROVISIONS

1975—Oct. 5, 1974, Pub. L. 93-433, § 402, 88 Stat. 1203.
1974—Nov. 27, 1973, Pub. L. 93-162, § 402, 87 Stat. 653.
1973—Oct. 25, 1972, Pub. L. 92-544, § 402, 86 Stat. 1127.

NOTES TO DECISIONS

Construction

The possibility of review under paragraph (1) of this section is nearing extinction, since that paragraph, like paragraph (2), is a transitional provision which permits Court of Appeals to review decisions of District of Columbia Court of Appeals only in cases involving federal offense tried in Superior Court and the Superior Court has not had jurisdiction of prosecutions of that type since the effective date of the Court Reform Act. *I. C. Thompson v. United States* (1976, 548 F. 2d 1031, 179 U.S. App. D.C. 76).

Jurisdiction

Where petitioners were charged in unrelated proceedings in Superior Court with assaulting District of Columbia police officer and were not charged with federal misdemeanor, their cases were not within jurisdiction of federal Court of Appeals, and their petitions for leave to appeal from determination by District of Columbia Court of Appeals that Superior Court had power to act in their cases were accordingly dismissed. *I. C. Thompson v. United States* (1976, 548 F. 2d 1031, 179 U.S. App. D.C. 76).

Ruling that Superior Court does or does not have jurisdiction of particular matter stands as precedent also with respect to coordinated jurisdiction of district court, but

when jurisdictional problems incidentally involving federal judiciary arise in state courts, exclusive federal forum for review is Supreme Court, not federal Court of Appeals, and such forum is available in the District of Columbia. *Id.*

Maryland court decisions

The United States Court of Appeals for the District of Columbia is not bound to follow decisions of courts of Maryland, particularly if they were handed down subsequent to the organization of the District of Columbia. *L. Blair v. The Prudential Insurance Co. of America* (1972 472 F. 2d 1356, 153 U.S. App. D.C. 281).

Status of decisions

Superior Court is not bound by decision of United States Court of Appeals, released subsequent to effective date of Court Reorganization Act, which abandoned an earlier decision and adopted a new standard for an insanity defense and the insanity standard formulated in such earlier decision remains the controlling rule for the District of Columbia court system prior to consideration of question by District of Columbia Court of Appeals. *E. Bethea, Jr. v. United States* (D.C. App. 1976, 365 A. 2d. 64; cert. denied 97 S.Ct. 2979, 433 U.S. 911).

Law established by United States Court of Appeals for District of Columbia, when it was functioning as highest court for District of Columbia, in comparable state status, is controlling and conflicting decision by United States Court of Appeals for District of Columbia, coming after 1970 Reorganization Act establishing the District of Columbia Court of Appeals as the highest District of Columbia court, is not controlling. *A. L. Luck v. Baltimore and Ohio Railroad Company* (1972, 352 F. Supp. 331).

Chapter 5.—UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SUBCHAPTER I.—JURISDICTION

§ 11-501. Civil jurisdiction

NOTES TO DECISIONS UNDER PRESENT LAW

Amount in controversy

In action in United States District Court for District of Columbia as superior local court, where one plaintiff's claim was in excess of \$10,000 jurisdictional minimum, requirements of court's local jurisdiction were satisfied even if claim of other plaintiff, which arose out of same operative facts, was well below court's jurisdictional minimum. *J. Honey et al. v. George Hyman Construction Co. et al.* (1974, 63 F.R.D. 443).

Insurer which claimed as subrogee and insured which claimed loss uncompensated by insurance possessed single title or right in which they had common and undivided interest, and claims could be aggregated to determine amount in controversy. *Id.*

Even in absence of federal question, allegation by arrestees of \$50,000 in controversy would have given District of Columbia federal courts "local" equity jurisdiction of arrestees' action against District of Columbia official for injunctive relief with respect to prosecution of charges, bond collateral forfeitures and expungement of arrest records. *N. Sullivan et al. v. C. F. Murphy, Corporation Counsel, et al.* (1973, 478 F. 2d 938, 156 U.S. App. D.C. 28; cert. denied 94 S.Ct. 162, 414 U.S. 880).

Collateral estoppel

Where it was decided in first case that contest was between children of decedent and his conservators and that possible liability of widow for conversion of funds paid by conservators to her for decedent's use was not in issue, executors were not barred by collateral estoppel from subsequently suing widow for conversion. *National Savings & Trust Company et ano., Executors etc. v. M. Rosendorf* (1977, 559 F. 2d 837, 182 U.S. App. D.C. 216).

Counterclaims

Counterclaim of defendant, in civil action for review of adjudication of priority of invention in interference proceeding, asserting that plaintiffs misappropriated certain inventions of defendant and asking court to impress a trust in favor of defendant and appoint receiver pendente lite was within the subject matter jurisdiction of court

since it fell within the general jurisdiction of the district court in its capacity as a local court for the District of Columbia. *Montecatini Edison, S.P.A. v. K. Ziegler et ano.* (1973, 486 F. 2d 1279, 159 U.S. App. D.C. 19).

Ejectment proceedings

Under District of Columbia ejectment statute (§ 45-910) as amended by 1970 Court Reform Act, District Court does not have original jurisdiction over ejectment proceedings brought by the United States; intent of Court Reform Act was to vest exclusive jurisdiction of all ejectment proceedings in Superior Court, even those brought by the United States. *H. and J. Herian et al. v. United States* (1973, 363 F. Supp. 287).

Exclusive jurisdiction

Sections of 1945 Act establishing new boundary between the District of Columbia and Virginia for law enforcement purposes and ceding to Virginia sovereignty and concurrent jurisdiction with the United States over area between 1791 high watermark and the newly established pierhead line did not establish a jurisdictional boundary between the District of Columbia and Virginia for all purposes, and by virtue of section providing that nothing in the Act is to be construed as limiting jurisdiction of courts of United States for the District of Columbia to hear and determine suits to establish title of United States, United States District Court for the District of Columbia has jurisdiction to adjudicate title to lands along the Alexandria waterfront. *United States v. Herbert Bryant Incorporated, et al.* (1976, 543 F. 2d 299, 177 U.S. App. D.C. 152; cert. denied 97 S. Ct. 1100, 429 U.S. 1091).

Federal jurisdiction

Where, in diversity action brought by father of murdered girl against District of Columbia parole officer and District itself to recover damages under District's death and survival statutes, joinder of District did not destroy complete diversity, claims against District derived from nucleus of operative fact common with claim against parole officer, and exercise of pendent jurisdiction over suit against District would avoid duplicative re litigation and result in no unfairness to District, trial court acted properly in exercising pendent jurisdiction over District and did not abuse its discretion in retaining such jurisdiction after dismissal of claim against parole officer. *R. C. Rieser, Administrator et al. v. District of Columbia et ano.* (1977, 563 F. 2d 462, 183 U.S. App. D.C. 375).

Complaint charging that individual defendant wilfully and maliciously discharged firearm at plaintiffs in violation of their Fifth Amendment rights and alleging that "During all times * * * [defendant] * * * was a duly appointed and qualified police officer of the Metropolitan Police Department, agent of the Municipal Corporation of the * * * District of Columbia, and acting in the course of his employment and engaged in the performance of his duties as a police officer" clearly charged governmental actions in constitutional sense, for purposes of invoking general federal question jurisdiction. *S. Payne et al. v. Government of the District of Columbia et al.* (1977, 559 F. 2d 809, 182 U.S. App. D.C. 188).

Where counsel for plaintiff represented that plaintiff sustained no out-of-pocket expenses as result of his being held, following his arrest, for 32 hours before being presented to Superior Court judge for setting bail and contended that nature of alleged injury was such that punitive damages were recoverable in amount greater than \$10,000, plaintiff failed to put in issue good faith claim meeting jurisdictional amount requirement for federal question jurisdiction in civil rights class action seeking inter alia, monetary relief of \$750,000,000 against District of Columbia. *V. W. Jones v. District of Columbia, et al.* (1977, 424 F. Supp. 110).

District court had subject matter jurisdiction to hear claim by inmates of District of Columbia corrections system that furloughs could not be curtailed by United States Attorney General without compliance with District of Columbia Administrative Procedure Act where such claim involved nucleus of operative facts which was common with that presented in substantive claim against both federal and nonfederal parties that United States Attorney General lacked authority to promulgate guidelines governing furlough programs and Lorton Reformatory. *L. D. Milhouse et al. v. E. H. Levi, United States*

Attorney General, et al. (1976, 548 F. 2d 357, 179 U.S. App. D.C. 1).

Where actions against District of Columbia police officers and chief of police for redress of deprivation of constitutional rights arose directly under the Fourth and Fifth Amendments and were within the "federal question" jurisdiction of the United States District Court, the court also had pendent jurisdiction over common-law claims stated against the District of Columbia defendants. *W. H. Apton et al. v. J. V. Wilson (Chief of Police) et al.* (1974, 506 F. 2d 83, 165 U.S. App. D.C. 22).

Where arrestees' claim of violation of federal constitutional rights by arrest procedures utilized during civil disorders were neither insubstantial nor frivolous and more than ten thousand dollars was in controversy, there was federal jurisdiction to decide the claim. *N. Sullivan et al. v. C. F. Murphy, Corporation Counsel, et al.* (1973, 478 F.2d 938, 156 U.S. App. D.C. 28; cert. denied 94 S.Ct. 162, 414 U.S. 880).

The federal courts have jurisdiction to entertain actions to enforce federal constitutional rights and fact that such actions are also maintainable in state courts, or in the local courts of the District of Columbia, does not foreclose access to the federal courts, or require prior exhaustion of such state or local remedies. *Id.*

Arrestees were entitled to maintain in federal court their action against District of Columbia officials to set aside forfeiture of bail collateral security where there was serious doubt of the availability of relief in the District of Columbia courts and there was assertion that, because of misinformation circulated to the arrestees at the time they posted bond, large numbers of them were frustrated in their efforts to secure procedural due process with respect to the forfeitures of collateral. *Id.*

Where large numbers of persons were arrested during May, 1971, civil disorders, many of arrests were made without probable cause, arrestees were not given judicial hearing on probable cause, and possibility existed that many of the persons who obtained their release by posting bond were misled by erroneous information as to nature and consequences of posting bail and circumstances under which the bond could be recovered, federal court had jurisdiction to invalidate the forfeitures of the bonds. *Id.*

Habeas corpus

District Court has habeas corpus jurisdiction with respect to petitions by inmate confined in District of Columbia jail under sentence imposed by the District Court. *J. E. Lewis v. D. C. Department of Corrections* (1976, 533 F.2d 710, 174 U.S. App. D.C. 483).

Injunction, stay pending appeal

Destruction of business in current form as a provider of bus tours, together with absence of harm to other parties or public interest from issuance of stay, militated in favor of grant of a stay, pending appeal, of permanent injunction restraining operator of tour service from operating a motor coach sight-seeing service without a certificate of public convenience and necessity. *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., et al.* (1977, 559 F. 2d 841, 182 U.S. App. D.C. 220).

Intervention

In case involving claims for damages for alleged police misconduct during the "May Day" demonstrations of 1971, the District Court improperly denied as untimely a motion to intervene filed by 266 plaintiffs immediately after class certification was refused on grounds of untimeliness and nonpredominance of common questions; rather, under the Supreme Court's "American Pipe" decision, plaintiffs had a right to intervene with respect to some, and perhaps all, of their claims, since a finding of typicality is not required for invocation of the tolling doctrine of "American Pipe," and since defendants were notified through the class action of the number and generic identity of the potential intervenors and their substantive claims. *M. McCarthy et al. v. R. G. Klein-dienst, Acting Attorney General et al.* (1977, 562 F. 2d 1269, 183 U.S. App. D.C. 32).

Jurisdiction under prior law

Where proceeding by person previously committed to mental hospital is part of two commitment proceedings begun in District Court sometime previously, Court has jurisdiction over later petition to have commitments

declared illegal and vacated despite fact that District of Columbia Court Reorganization Act of 1970 vested exclusive jurisdiction over mental health matters in Superior Court. *In the Matter of R. A. Brown* (1975, 68 F.R.D. 172).

Modification of orders

Although it would have been better practice for two plaintiffs in class action to have informed counsel of address changes, where they did leave trail of forwarding addresses at the post office, where defendant waited until the last minute to serve interrogatories, and where absence of information from the plaintiffs did not prejudice defendants in class suit as their testimony would have been only cumulative, District Court did not abuse its discretion, after initially dismissing claims of the two plaintiffs for failure to respond to interrogatories, in reinstating their claims following entry of judgment in favor of the class *R. V. Dellums et al. v. J. M. Powell, Chief etc.* (1977, 566 F.2d 231, 184 U.S. App. D.C. —).

Pendent jurisdiction

Where, in diversity action brought by father of murdered girl against District of Columbia parole officer and District itself to recover damages under District's death and survival statutes, joinder of District did not destroy complete diversity, claims against District derived from nucleus of operative fact common with claim against parole officer, and exercise of pendent jurisdiction over suit against District would avoid duplicative relitigation and result in no unfairness to District, trial court acted properly in exercising pendent jurisdiction over District and did not abuse its discretion in retaining such jurisdiction after dismissal of claim against parole officer. *R. C. Rieser, Administrator etc. v. District of Columbia et al.* (1977, 563 F.2d 462, 183 U.S. App. D.C. 375).

Where District Court had general federal question jurisdiction over District of Columbia and individual officer of District of Columbia police department in action for damages asserting infringement of plaintiffs' Fifth Amendment rights when defendant officer allegedly willfully and maliciously aimed and discharged firearm at them while they occupied automobile, Court would also have pendent jurisdiction for purposes of any application of doctrine of respondeat superior in connection with possible allowance of claimed punitive damages. *S. Payne etc. v. Government of the District of Columbia et al.* (1977, 559 F.2d 809, 182 U.S. App. D.C. 188).

District Court would decline to exercise pendent jurisdiction over local law claims charging accountants with violation of state securities statutes and reckless or negligent misrepresentation where federal claim against accountants had been dismissed at early stage, before extended discovery and resultant framing of issues. *D. P. Houlihan et al. v. Anderson-Stokes, Inc., et al.* (1977, 434 F. Supp. 1324).

Venue

In attorney malpractice diversity case, alleged contacts with District, consisting of fact that law firm's sole office was in the District and that work on litigation that gave rise to plaintiff's claim was performed in the District, are sufficient for purposes of venue, notwithstanding Florida contacts consisting of fact that plaintiff resided in Florida and that litigation that gave rise to plaintiff's claim was before a federal court in Florida. *Manatee Cablevision Corporation v. W. T. Pierson et al.* (1977, 433 F.Supp. 571).

NOTES TO DECISIONS UNDER PRIOR LAW

Equitable actions

District Court for District of Columbia had jurisdiction to entertain federal prisoners' complaint for declaratory and injunctive relief in the nature of mandamus with respect to federal prisoners' rights to due process in denials of applications for parole since such court has general equity jurisdiction, and venue where either party is resident or found within the District of Columbia which permits actions for declaratory judgment as well as injunction to be maintained against those whose office in the federal government establishes their official residence in the District. *W. R. Childs, Jr., et al. v. United States*

Board of Parole (1974, 511 F.2d 1270, 167 U.S. App. D.C. 268).

Where goal of plaintiff's suit for relief from action of District of Columbia police in enforcing vagrancy laws was equitable and of a type which could not be granted by Court of General Sessions which possessed exclusive jurisdiction of civil actions in which the claimed value did not exceed \$10,000, Court of General Sessions lacked authority to entertain suit and United States District Court for the District of Columbia had jurisdiction. *M. J. Gomez v. J. V. Wilson, Chief of Police, et al.* (1973, 477 F.2d 411, 155 U.S. App. D.C. 243; remanding 323 F. Supp. 87).

Found Within the District

Under statute relating to the local jurisdiction of the United States District for the District of Columbia as including civil actions between parties where either or both are residents or found within the District, plaintiff by having brought suit under statute to review adjudication of priority of invention and interference proceeding was "found" within the District. *Montecatini Edison, S.P.A. v. K. Ziegler et al.* (1973, 486 F.2d 1279, 159 U.S. App. D.C. 19).

One invoking the jurisdiction of the United States Court for the District of Columbia against an adversary cannot expect at the same time to be shielded from the claims of his opponents, and hence one commencing and prosecuting civil action in the district court is found within the District for purposes of any counterclaim by adversary whether or not it involves the same subject matter as the main claim. *Id.*

Jurisdiction—Withholding of

District Court for the District of Columbia was not required, under doctrine of *Younger v. Harris*, to abstain from exercising its jurisdiction over class action brought by persons arrested for local criminal offenses for injunctive and declaratory relief to enjoin police officials from transmitting arrest records to Federal Bureau of Investigation and to request return of those records already transmitted. *J. E. Utz et al. v. M. Cullinane* (1975, 520 F.2d 467, 172 U.S. App. D.C. 67).

Residents

Record in action for individual and class relief with respect to actions of District of Columbia police in enforcing vagrancy laws amply showed the required residency of plaintiff within the District so that federal district court had jurisdiction under statute giving district court original jurisdiction of civil action between parties who are residents of District. *M. J. Gomez v. J. V. Wilson, Chief of Police, et al.* (1973, 477 F.2d 411, 155 U.S. App. D.C. 243; remanding 323 F. Supp. 87).

§ 11-502. Criminal jurisdiction

NOTES TO DECISIONS UNDER PRESENT LAW

Construction

District of Columbia Court Reform Act's requirement that evidence of certain types of prior crimes be admitted for impeachment purposes applies to trials of Code offenses conducted in United States district court during transition period established by Code. *United States v. R. E. Yates* (1975, 524 F.2d 1282, 173 U.S. App. D.C. 308).

Dismissal of Federal offense

Where federal and local offenses have been properly joined in one indictment and jeopardy has attached, the district court may proceed to a determination of the local offenses regardless of any intervening disposition of the federal counts. *United States v. R. Shepard* (1975, 515 F.2d 1324, 169 U.S. App. D.C. 353).

Federal jurisdiction

Even if joinder of D.C. Code offense of robbery with charges of possession of unregistered firearm, possession of firearm not identified by serial number, assault with intent to commit rape while armed and assault with a dangerous weapon was proper under rule pertaining to joinder of defendants, District Court divested itself of jurisdiction over the robbery count when it granted defendants' pretrial motion to sever the robbery charge in order to avoid the possibly prejudicial atmosphere of a

single trial. *United States v. M. E. Jackson* (1977, 562 F.2d 789, 183 U.S. App. D.C. 270).

Armed kidnapping charges brought against prisoner in District of Columbia jail as result of riot and attempted escape were properly tried by federal court in the District of Columbia, as were charges of conspiracy and attempted escape from federal custody arising out of the same incident, so that § 22-3202 providing minimum sentence for certain second offenders was properly applied. *United States v. J. Bridgeman* (1975, 523 F.2d 1099, 173 U.S. App. D.C. 150; cert. denied 96 S. Ct. 1743, 1744, 425 U.S. 961).

Habeas corpus

District Court has habeas corpus jurisdiction to review petitioner's claim that his retrial in local court is prohibited by double jeopardy clause of Fifth Amendment where petitioner was on bond and therefore in custody for purposes of habeas; habeas based on court-made suppression rule is sharply distinguished from habeas based on violation of basic right such as protection against double jeopardy. *A. Sedgwick v. Superior Court of the District of Columbia* (1976, 417 F. Supp. 386).

Section 23-110 providing that application for writ of habeas corpus in behalf of prisoner who is authorized to apply for relief by motion pursuant to the section shall not be entertained by the Superior Court or by any federal court if it appears the applicant has failed to make motion for relief under the section or that Superior Court has denied him relief is not intended to and does not affect the jurisdiction of District Court to entertain post-conviction habeas petitions from local prisons but rather is an exhaustion of remedies statute, requiring initial submission of claims to the local courts and marking the terminal point for proceedings in the local court system. *R. F. Palmore v. Superior Court of the District of Columbia et al.* (1975, 515 F.2d 1294, 169 U.S. App. D.C. 323; rem'd 97 S. Ct. 305, 429 U.S. 915).

Joinder

Where assault with intent to rape committed against two women and purse snatching committed against third woman occurred within short time of each other and in approximately the same location but were not otherwise related, the mere temporal and special proximity cannot justify characterization of the assault and robbery as different parts of the same series of acts or transactions and joinder of the robbery count with the other charges was improper and conferred upon the District Court no jurisdiction over the alleged D.C. Code offense of robbery. *United States v. M. E. Jackson* (1977, 562 F.2d 789, 183 U.S. App. D.C. 270).

In absence of specific federal statute superseding prosecution in District of Columbia on local offenses, defendant whose acts constitute violations of both federal and District of Columbia law can properly be subject of single trial in federal district court under joint indictment; only constraint on such prosecution is that where federal and local offenses are identical or where one would be lesser included offense of other, defendant may ultimately be sentenced under only one statutory scheme. *United States v. G. E. Jones* (1975, 527 F.2d 817, 174 U.S. App. D.C. 34).

Defendants were not deprived of due process or equal protection of law when they were subjected, in single proceeding in federal district court, to simultaneous prosecution for possession of heroin with intent to distribute in violation of Comprehensive Drug Abuse Prevention and Control Act of 1970 and for simple possession of heroin in violation of § 33-402. *Id.*

NOTES TO DECISIONS UNDER PRIOR LAW

Jurisdiction—Withholding of

District Court for the District of Columbia was not required, under doctrine of *Younger v. Harris*, to abstain from exercising its jurisdiction over class action brought by persons arrested for local criminal offenses for injunctive and declaratory relief to enjoin police officials from transmitting arrest records to Federal Bureau of Investigation and to request return of those records already transmitted. *J. E. Utz et al. v. M. Cullinane* (1975, 520 F.2d 467, 172 U.S. App. D.C. 67).

§ 11-503. Removal of cases from the Superior Court of the District of Columbia

NOTES TO DECISIONS

Collective bargaining agreement

Claim that collective bargaining agreement between defendant hotel-employer and union representing employees had been breached stated claim of right arising under federal law and thus removal of such action from Superior Court to District Court is proper with counts alleging breach of District of Columbia statutes coming within District Court's pendent jurisdiction. *N. S. Papadopoulos et al. v. Sheraton Park Hotel* (1976, 410 F. Supp. 217).

Construction

In view of express terms of 1970 Court Reform Act, District of Columbia ejectment statute (§ 45-910) as amended by 1970 Court Reform Act was not "Act of Congress" within statute (28 U.S.C. 1345, 1363) giving original jurisdiction in district court of suits brought by the United States except as otherwise provided by Act of Congress. *H. and J. Herian et al. v. United States* (1973, 363 F. Supp. 287).

Ejectment proceedings

Under District of Columbia ejectment statute (§ 45-910) as amended by 1970 Court Reform Act, District Court does not have original jurisdiction over ejectment proceedings brought by the United States; intent of Court Reform Act was to vest exclusive jurisdiction of all ejectment proceedings in Superior Court, even those brought by the United States. *H. and J. Herian et al. v. United States* (1973, 363 F. Supp. 287).

Any claims which defendants sought to make concerning federal housing policy could be raised in District of Columbia Superior Court as defenses to ejectment proceeding brought by United States. *Id.*

Remand to Superior Court

Claims of plaintiff, who did not seek compensation for any specific injury to his person or to his property, but rather sought compensation only for certain highly intangible items which fell within realm of "emotional injuries," for damages in amount of \$800,000 on theories of assault, false imprisonment, false arrest and malicious prosecution based on altercation between parties concerning plaintiff's smoking in office building elevator, would at most support only nominal recovery far less than requisite jurisdictional amount of \$10,000, any larger verdict being excessive, and consequently, action, which had been removed to District Court on basis of diversity of citizenship, would be remanded to the Superior Court. *J. H. Davis v. R. Licari et al.* (1977, 434 F. Supp. 23).

Removal not required

Criminal proceedings against defendant who requested civil commitment in lieu of prosecution pursuant to the Narcotic Addict Rehabilitation Act are not required to be transferred from the Superior Court to the District Court. *M. L. Banks v. United States* (D.C. App. 1976, 359 A.2d 8).

Residence of defendant

Although action involving no federal question cannot be removed to federal court if any defendant is a resident of the forum state, where partnership which conducted business in the District but no partners resided in the District is not suable as entity in District, where there is complete diversity of citizenship between plaintiff on one hand and defendant partners on the other and where amount in controversy, exclusive of interest and costs, exceeded \$10,000 and the action is one which originally could have been brought in district court, it is properly removable thereto. *J. E. Day v. W. H. Avery et al.* (1976, 548 F. 2d 1018, 179 U.S. App. D.C. 63; aff'g 394 F. Supp. 986; cert. denied 97 S. Ct. 1706, 431 U.S. 908).

Rights of defendant

Defendants in District of Columbia have right to removal concomitant with defendants sued in state courts. *District of Columbia v. Ranger Construction Company et al.* (1974, 394 F.Supp. 801).

Chapter 7.—DISTRICT OF COLUMBIA COURT OF APPEALS

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

Sec.

11-744. Judicial conference.

AMENDMENT

1975—Item 11-744 added by Act Dec. 31, 1975, Pub. L. 94-193, § 1(b).

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

§ 11-701. Continuation of court; court of record; seal

CROSS REFERENCE

Continuation of court, see § 718 of title 11 Appendix.

§ 11-703. Judges; service; compensation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 718 of title 11 Appendix.

§ 11-708. Clerks and secretaries for judges

Each judge may appoint and remove a personal secretary. The chief judge may appoint and remove three personal law clerks, and each associate judge may appoint and remove two personal law clerks. In addition, the chief judge may appoint and remove not more than three law clerks for the court. The law clerks appointed for the court shall serve as directed by the chief judge. (July 29, 1970, Pub. L. 91-358, § 111, title I, 84 Stat. 480; Dec. 31, 1975, Pub. L. 94-191, § 1, 89 Stat. 1098).

AMENDMENT

1975—Act Dec. 31, 1975, Pub. L. 94-191, increased from two to three the number of personal law clerks for the chief judge, and increased from one to two the number of personal law clerks for each associate judge.

SUBCHAPTER II.—JURISDICTION

§ 11-721. Orders and judgments of the Superior Court

CROSS REFERENCE

District Charter provisions relating to jurisdiction of Court of Appeals, see § 431 of title 11 Appendix.

NOTES TO DECISIONS

Appealable orders

Where no final order of trial court had been entered fixing total amount of fine to be paid for civil contempt, and no assets of contemnor had been sequestered, the contempt adjudication was not for such reasons nonappealable, but it would have been premature for Court of Appeals to consider extent of contemnor's ultimate pecuniary liability for civil contempt. *K. G. Bolden v. E. L. Bolden* (D.C. App. 1977, 376 A. 2d 430).

A ruling by the trial court denying a motion for a new trial or a motion for a new fact-finding hearing constitutes an appealable order where the motion is based on newly discovered evidence. *In the Matter of E. G. C.* (D.C. App. 1977, 373 A. 2d 903).

Pretrial evidentiary ruling that evidence concerning one alleged rape would not be admissible in separate trial involving another to show a "common scheme or plan" is not appealable, inasmuch as it would not have law-of-the-case effect at subsequent trial and trial court in so ruling did nothing more than express an advisory opinion on admissibility of evidence if offered at trial. *United States v. M. J. Shields* (D.C. App. 1976, 366 A. 2d 454).

The assistant United States attorney's appeal from citation of criminal contempt for his refusal to comply with court order directing him to produce written memorandum relating to so-called first offender treatment program for purposes of discovery in criminal action wherein defendant charged with unlawful entry claimed he had been excluded from said program in derogation of his rights to

due process and equal protection of laws cannot be considered in posture of direct appeal from discovery order defied by government since neither of real parties in interest to that order, the government or the defendant, are party to appeal and since there has been no ruling on defendant's motion to dismiss. *In the matter of R. L. Cys* (D.C. App. 1976, 362 A.2d 726).

In that motion was solely for return of weapons taken in search pursuant to warrant and in that a nolle prosequi was entered on charges arising from seizure of weapons, denial of motion for return of seized weapons would be treated as an appealable final order. *D. D. Epstein v. United States* (D.C. App. 1976, 359 A.2d 274).

Divorce court order finding father in arrears on child support payments, increasing support payments, and holding father in contempt, which order as far as it related to father's imprisonment was stayed on condition that he comply with payment schedule ordered, is neither preliminary or interlocutory in nature and is in all respects a conclusive determination on merits of mother's motion for contempt. *W. C. Wells v. D. A. Wells* (D.C. App. 1976, 358 A.2d 648).

Appellate review of issue whether trial court erred in allowing in-court identifications of accused is precluded where accused did not file a pretrial motion to suppress identification evidence and no reason, which would excuse such failure, was advanced. *A. N. White v. United States* (D.C. App. 1976, 358 A.2d 645).

An order requiring a party to appear and show cause why he should not be held in contempt for his noncompliance with prior order is not a final order and is therefore not appealable. *M. W. Eisenberg v. S. S. Eisenberg* (D.C. App. 1976, 357 A.2d 396).

Order disqualifying counsel is appealable. *American Archives' Counsel v. V. L. Bittenbender, Administratrix, etc.* (D.C. App. 1975, 345 A.2d 487).

Whether trial court had jurisdiction over defendant after releasing him from its jurisdiction does not determine jurisdiction of Court of Appeals on appeal, and government can appeal the trial court's order where it was entered without authority. *United States v. M. K. Shorter* (D.C. App. 1975, 343 A.2d 569).

Denial of leave to intervene as of right under Superior Court rule is final order appealable immediately to Court of Appeals. *Calvin-Humphrey et al. v. District of Columbia et al.* (D.C. App. 1975, 340 A.2d 795).

Order authorizing negotiations for private sale of property under conservatorship was not final, and thus not appealable. *In re E. A. Parsons* (D.C. App. 1974, 328 A. 2d 383; cert. denied 96 S. Ct. 11, 423 U.S. 803).

A denial of a motion to dismiss based upon a claim of forum non conveniens is a final and an appealable order. *District-Realty Title Insurance Corporation v. D. M. Goodrich et al.* (D.C. App. 1974, 328 A. 2d 92).

An order of dismissal on grounds of forum non conveniens is clearly a final order and is properly appealable. *D. D. Frost et al. v. Peoples Drug Store, Incorporated, et al.* (D.C. App. 1974, 327 A. 2d 810).

Trial court's denial of pretrial motion for dismissal on grounds of forum non conveniens is a final order and appealable. *Id.*

Even though juvenile did not file notice of appeal from order denying application to reconsider order detaining him pending trial within two-day period provided for interlocutory appeals, appellate court had jurisdiction to review order by viewing it as final order, as to which such two-day limitation did not apply. *In the Matter of M. L. DeJ.* (D.C. App. 1973, 310 A.2d 834).

Dismissal of an information without prejudice is an appealable order. *United States v. T. L. Cummings* (D.C. App. 1973, 301 A. 2d 229).

That dismissal of indictment without prejudice created no bar to seeking a new indictment did not render dismissal order nonreviewable. *United States v. M. M. Hector* (D.C. App. 1972, 298 A. 2d 504).

Comity

In interest of comity, Court of Appeals will refrain from considering issues of fact and law identical to those resolved against party in federal court action. *M. A. Marshall v. District Unemployment Compensation Board* (D.C. App. 1977, 377 A. 2d 429).

Construction

Provision of this section that Court of Appeals, on hearing of appeal in any case, shall give judgment after examination of record without regard to errors or defects which do not affect substantial rights of parties is merely qualification of harmless error rule under which insubstantial, unprejudicial errors and defects are ignored in determination of merits of appeal, and such provision does not cure jurisdictional defects. *P. C. Brown v. United States* (D.C. App. 1977, 379 A.2d 708).

Error affecting substantial rights

Allowing officer to testify about events occurring after alleged assault on him, while preventing defendant from testifying about a beating he assertedly received from other guards in officer's presence immediately thereafter, if error, did not constitute an error affecting substantial rights of parties, for purposes of this section directing the Court of Appeals to render judgment on appeal without regard to errors not affecting the substantial rights of parties. *H. B. Johnson v. United States* (D.C. App. 1972, 298 A.2d 516).

Estoppel

Wife, who failed to timely serve husband with motion for consideration of her petition to appeal in forma pauperis from divorce decree and failed to timely serve husband's counsel with copy of letter expressing wife's desire to proceed on appeal in paid status, is not estopped from challenging custody order but is estopped from challenging validity of divorce decree or property settlement, in view of fact that husband, who received order stating that application for appeal at public expense was deemed withdrawn, had reasonably believed that wife's appeal was at an end and had remarried in reliance on such belief. *E. M. Neuman v. R. H. Neuman* (D.C. App. 1977, 377 A.2d 393).

Final orders

Where there is no final order or judgment respecting blood grouping tests because trial judge declared issue moot and discharged his order to show cause, party has never been "punished for not submitting to the tests and, absent the imposition of a sanction, the contempt citation alone is not a final order and raises no justiciable issue for appeal in divorce action. *A. H. Beckwith v. R. T. L. Beckwith* (D.C. App. 1977, 379 A.2d 955).

Sentence subject to modification by trial court is a final judgment and appealable. *M. L. Butler v. United States* (D.C. App. 1977, 379 A.2d 948).

Court of Appeals has jurisdiction to review trial court orders denying motions by indigent divorce complainants to effectuate constructive service upon their husbands even though such orders did not terminate pending litigation in any of the cases, since orders in question were separable from merits of divorce actions themselves and, if unreviewed, could cause irreparable harm to parties. *G. Bearstop v. W. Bearstop* (D.C. App. 1977, 377 A.2d 405).

Under provisions of this section making reviewable all final orders of the Superior Court, hospital superintendent from whose custody allegedly mentally ill patient had been released by order of trial court in civil commitment proceedings was "aggrieved" by trial court's judgment and, therefore, would be a proper party to appeal. *In the Matter of E. R. Lomax* (D.C. App. 1976, 367 A.2d 1272).

Although government cannot appeal sentencing order pursuant to this section giving Court of Appeals jurisdiction of appeals from final orders and judgments of Superior Court, government's brief on appeal from order imposing a sentence under Federal Youth Corrections Act would be treated as a petition for a writ of mandamus. *United States v. L. J. Stokes, Jr.* (D.C. App. 1976, 365 A.2d 615).

Absent imposition of sanction, whether it be fine, probation, or term in jail, citation imposed on assistant United States attorney for criminal contempt in and of itself is not final order and raises no justiciable issue for appeal. *In the Matter of R. L. Cys* (D.C. App. 1976, 362 A.2d 726).

Appeal from imposition of consecutive sentence under the Federal Youth Corrections Act is not premature when

made immediately after imposition of second sentence and while infant is still serving first sentence. *G. X. Royster v. United States* (D.C. App. 1976, 361, A.2d 165).

Divorce decree insofar as it concerns disposition of property and divorce itself is "final order" subject to review within time limitations; fact that trial court left determination of child support open to await further hearing and findings does not impair finality of judgment on other issues or extend time for appeal; resolution of such issues became final when, after 30 days, time for appeal expired and that judgment became law of the case. *C. E. Quarles, Jr. v. S. B. Quarles* (D.C. App. 1976, 353 A.2d 285; cert. denied 97 S. Ct. 321, 429 U.S. 922).

Appeal from an adjudication of contempt but before announcement of sentence is premature. Decision in criminal case is final for appellate purposes only when litigation between parties is terminated and nothing remains but enforcement by execution of what has been determined; to create finality in criminal case it is necessary that there be a judgment of conviction followed by a sentence. *J. N. West v. United States* (D.C. App. 1975, 346 A.2d 504).

The term "final orders" for purposes of statute governing appellate jurisdiction is not limited to final judgments which terminate an action. *D. D. Frost et al. v. Peoples Drug Store, Incorporated, et al.* (D.C. App. 1974, 327 A.2d 810).

Harmless error

In light of adoption of preponderance standard for determining voluntariness of a confession, any error in admitting defendant's statement while entertaining a reasonable doubt about voluntariness was at best harmless error which the Court of Appeals was required to ignore. *N. Hawkins v. United States* (D.C. App. 1973, 304 A.2d 279).

Interlocutory appeals

Where, by terms of stipulation, retrial of original claim would be waived and case would be dismissed with prejudice if, after granting application for interlocutory appeal, Court of Appeals ruled in favor of respondent, but if the court were to rule for applicants, the litigation would be protracted by necessity of trial on counterclaim and possibly a retrial of original claim as well, the stipulation does not meet requirement for interlocutory appeal that alternative to it would mean greater delay and expense than interlocutory review itself and application for permission to appeal must be denied. *M. E. Hewsen et al. v. J. R. Lynch et al.* (D.C. App. 1975, 343 A.2d 45).

Moot question

Tenant's appeal from summary judgment for possession by landlord is not rendered moot due to fact that premises were no longer being occupied by tenant where it did not unequivocally concede landlord's right to possession, but, rather, immediately moved for summary reversal and there was a substantial controversy persisting between landlord and tenant. *M. Zanakis v. Brawner Building, Inc.* (D.C. App. 1977, 377 A.2d 67).

Appeals taken by tenants from rulings entered in possessory actions by landlord for nonpayment of rent are not rendered moot by the fact that the tenants had vacated their apartments, since the issue on appeal is whether the failure to have the required license and certificate precludes the landlord's action for possession in the first instance, and since the tenants' continuing interest in the appeal lay in the fact that, prior to voluntary surrendering possession of their respective apartments, they paid the rent arrearages to the landlord in order to avoid immediate eviction. *G. Curry et al. v. Dunbar House, Inc.* (D.C. App. 1976, 362 A.2d 686).

Parties—Substitution of

Where appeal was briefed and argued on behalf of appellee prior to her death and, although suggestion of death of appellee was filed with Court of Appeals, Court received no notification designating personal representative of appellee and no party moved for substitution, interests of appellee's estate were satisfactorily represented and appeal would be decided without seeking substitution of parties. *A. Carter v. G. E. Sazon* (D.C. App. 1976, 358 A.2d 639).

Prospective application of decisions

Decision of Court of Appeals adopting a new standard for an insanity defense is restricted to prospective adoption and its application is thus directed to trials beginning after date of such decision. *E. Bethea, Jr. v. United States* (D.C. App. 1976, 365 A.2d 64; cert. denied 97 S.Ct. 2979, 433 U.S. 911).

Court of Appeals' holding that Superior Court's adoption of rule permitting termination of parental rights based on neglect was in excess of its statutory authority would be given prospective application only. *In the matter of C. A. P.* (D.C. App. 1976, 359 A.2d 11).

Questions not raised below

Action seeking recovery on notes is not required to be remanded for trial on issue of what was paid and was not paid in order to determine what was due at time of the last payment where affirmative defense of payment was never raised, makers did not raise such issue on appeal from first grant of summary judgment nor in proceeding had on remand and previously stated that no principal payments had been made after specified date. *R. T. Toomey et ano. v. D. S. Cammack* (D.C. App. 1977, 379 A.2d 700).

Record

Where record on appeal from order detaining juvenile pending trial on charges of carnal knowledge and assault was insufficient to indicate factors relied upon by the court in answering order, case would be remanded to Superior Court with directions that judge file statements of reasons for order or reconsider same. *In the Matter of M. L. DeJ.* (D.C. App. 1973, 310 A.2d 834).

Review by U.S. Court of Appeals

Where petitioners were charged in unrelated proceedings in Superior Court with assaulting District of Columbia police officer and were not charged with federal misdemeanor, their cases were not within jurisdiction of federal Court of Appeals, and their petitions for leave to appeal from determination by District of Columbia Court of Appeals that Superior Court had power to act in their cases were accordingly dismissed. *I. C. Thompson v. United States* (1976, 548 F.2d 1031, 179 U.S. App. D.C. 76).

Ruling that Superior Court does or does not have jurisdiction of particular matter stands as precedent also with respect to coordinated jurisdiction of district court, but when jurisdictional problems incidentally involving federal judiciary arise in state courts, exclusive federal forum for review is Supreme Court, not federal Court of Appeals, and such forum is available in the District of Columbia. *Id.*

Standing

The assistant United States attorney's appeal from citation of criminal contempt for his refusal to comply with court order directing him to produce written memorandum relating to so-called first offender treatment program for purposes of discovery in criminal action wherein defendant charged with unlawful entry claimed he had been excluded from said program in derogation of his rights to due process and equal protection of laws cannot be considered in posture of direct appeal from discovery order defied by government since neither of real parties in interest to that order, the government or the defendant, are party to appeal and since there has been no ruling on defendant's motion to dismiss. *In the Matter of R. L. Cys* (D.C. App. 1976, 362 A.2d 726).

Where order of probate division determining that heir finder which had taken assignments of one-third of whatever interest each individual plaintiff had in estate was not a proper party was not appealed from, and primary objective of counsel for heir finder in appealing from order striking their appearances as counsel for individual plaintiffs was to represent heir finder, counsel does not have standing to appeal. *American Archives' Counsel v. V. L. Bittenbender, Administratrix, etc.* (D.C. App. 1975, 345 A.2d 487).

Supreme Court, appeals

Decision by District of Columbia Court of Appeals holding section 18-302 unconstitutional is not reviewable by direct appeal to Supreme Court, but only by writ of certiorari, because law applicable only in District of Columbia is not "statute of the United States" for purposes of 28 U.S.C. 1257 providing for Supreme Court appellate review of final judgments rendered by state's highest

court invalidating statute of United States. *J. W. Key et al. v. M. M. Doyle et al.* (1977, 98 S.Ct. 280, — U.S. —).

Time for appeal

Where time for filing notice of appeal expired on October 12, 1976 without any notice of appeal having been received, Court of Appeals has no jurisdiction to review, despite affidavit of counsel that he had mailed notice on morning of October 6, 1976, from main post office in Winston-Salem, North Carolina. *P. C. Brown v. United States* (D.C. App. 1977, 379 A.2d 708).

Where claim of ineffective assistance of counsel was not raised in juvenile branch until motion for new fact-finding hearing based on such claim was filed and where juvenile failed to file notice of appeal within ten days from denial of such motion, Court of Appeals is precluded from reaching ineffective assistance issue on appeal of finding of guilt, despite fact that parties had entered into stipulation that record of hearing on motion would be included as a "supplemental record" on appeal. *In the Matter of E.G.C.* (D.C. App. 1977, 373 A.2d 903).

Appeal from order terminating natural father's parental rights has to be taken within 30 days and appeal filed within 30 days of subsequent order continuing commitment of children to Department of Human Resources with instructions to seek prompt adoptive placements is not timely. *In the Matter of C.I.T. and C.M.T.* (D.C. App. 1977, 369 A.2d 171).

Rule requiring appeal within ten days was complied with and Court of Appeals had jurisdiction of appeal from suppression order in a juvenile case where notice of appeal was given 14 days after suppression order but within ten days of order responding to the government's motion for clarification, based on colorable claim of ambiguity in the first order. *In the Matter of T. T. T.* (D.C. App. 1976, 365 A.2d 366).

Motion to alter, amend, or modify judgment of February 28, which was filed within ten days after judgment was entered, tolled running of time for appeal so that notice of appeal on December 21, with order denying the motion having been entered on October 23, was timely. *E. F. Utley v. R. L. Utley* (D.C. App. 1976, 364 A.2d 1167).

Although father's appeal was timely as to trial court's order of July 2, 1975, which order vacated stay of execution imposed upon father's previously ordered imprisonment for contempt of court in divorce action it was untimely and ineffective to challenge merits of original December order finding father in arrears on child support payments, increasing support payments, and holding father in contempt, which order as far as it related to father's imprisonment was stayed. *W. C. Wells v. D. A. Wells* (D.C. App. 1976, 358 A.2d 648).

Where trial court orally granted motion to dismiss information on August 16, 1974, and on August 26, 1974, order was entered on the criminal docket so as to have of record an appealable order, notice of appeal filed on September 5, 1974, is timely within rule prescribing a ten-day period for filing notice of appeal. *United States v. F. H. Miqueli* (D.C. App. 1975, 349 A.2d 472).

Even if Court were to consider appeal taken from adjudication of contempt but before announcement of sentence to be an appeal from a final judgment, Court of Appeals would still be compelled to dismiss since the notice of appeal was prematurely filed more than a month before sentencing. *J. N. West v. United States* (D.C. App. 1975, 346 A.2d 504).

— Extension

Where divorce decree was signed out of presence of parties and counsel, and where death in judge's family had caused counsel for wife not to press for conference on her motion for counsel fees and for personal property, counsel could have kept abreast of the case through contact with law clerk or with clerk's office, and fact that counsel expected hearing to be held before judgment is not "excusable neglect" within meaning of rule providing that upon a showing of "excusable neglect" Superior Court may extend time for filing notice of appeal by any party for period not to exceed 30 days from expiration of time otherwise provided, so that denial of motion for extension of time to note appeal did not constitute an abuse of discretion. *E. E. Pryor v. A. J. Pryor* (D.C. App. 1975, 343 A.2d 321).

§ 11-722. Administrative orders and decisions

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

District Charter provisions relating to jurisdiction of Court of Appeals, see § 431 of title 11 Appendix.

NOTES TO DECISIONS

Construction

Provisions of this section that Court of Appeals has jurisdiction to review orders and decisions of any agency of the District in accordance with Administrative Procedure Act (§§ 1-1501 et seq.), and may review orders or decision of the Public Service Commission in accordance with Commission's organic act (chapters 1-10 of title 43), carves out only a limited area in which Administrative Procedure Act is inapplicable to the Commission, that being in the area of standard and scope of review, rather than a wholesale exemption from Administrative Procedure Act coverage. *Chesapeake and Potomac Telephone Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1975, 339 A.2d 710).

Discretionary review

Neither subsequently enacted Administrative Procedure Act nor District of Columbia Court Reform and Criminal Procedure Act of 1970 change method of seeking review under section 40-420 which makes review in safety responsibility cases discretionary on application for allowance of appeal, and thus, the Court of Appeals is not required to accept safety responsibility case on petition for review as matter of right from contested case determination under section 1-1510 but rather, review is discretionary on application for allowance of appeal. *H. Thomas et al. v. District of Columbia Board of Appeals and Review* (D.C. App. 1976, 355 A.2d 789).

Discriminatory employment proceeding

A discriminatory employment practices proceeding brought by a District of Columbia employee is not a "contested case" within meaning of the Administrative Procedure Act and, hence, is not subject to direct review by Court of Appeals; following enactment of Equal Employment Opportunity Act of 1972 to include government employees a District employee has the right to bring a civil action in federal court following pursuit of his administrative remedies through the appropriate local and federal commissions. *H. O'Neill et al. v. District of Columbia Office of Human Rights* (D.C. App. 1976, 355 A.2d 805).

Exhaustion of administrative remedy

Where Board of Elections and Ethics would have been unable to grant exemption to employee performing duties of petitioner, so that application for exemption would have been futile, and where to require him to seek exemption presupposed that he was required to file in the first place, doctrine of exhaustion of administrative remedies is inapplicable. *C. W. Hanke v. District of Columbia Board of Elections and Ethics* (D.C. App. 1976, 353 A.2d 301).

Housing Rent Commission orders

District of Columbia Court of Appeals is without jurisdiction to review Housing Rent Commission's voiding of hearing examiner's order allowing increased cost of operating property to be passed through to tenants due to landlord's failure to serve order on parties and Commission within 45 days after decision; review thereof would be in the Superior Court. *Columbia Realty Venture v. District of Columbia Housing Rent Commission* (D.C. App. 1975, 350 A.2d 120).

Joint Committee on Landmarks

Joint Committee on Landmarks of the National Capital as an intergovernmental agency is not an agency of the District of Columbia, and the Court of Appeals lacks jurisdiction to entertain petition for review of its action under the Administrative Procedure Act. *J. W. Latimer,*

Jr., et al. v. The Joint Committee on Landmarks of the National Capital (D.C. App. 1975, 345 A.2d 484).

Moot question

Validity of action of District of Columbia Alcoholic Beverage Control Board in issuing liquor license was not mooted as issue by virtue of fact that, after license was initially issued and before court review of Board's action was completed, license was renewed and renewal was not contested. *G. Kopff et al. v. District of Columbia Alcoholic Beverage Control Board et al.* (D.C. App. 1977, 381 A.2d 1372).

Claim of petitioner, who filed application for emergency assistance to cover her past-due rent the day after she received eviction notice but who was evicted some four days later before any definitive action could be taken on her application by Department of Human Resources, for past-due rent is moot. *M. Barber v. District of Columbia Department of Human Resources* (D.C. App. 1976, 361 A.2d 194).

Standing

Advisory neighborhood commission has no capacity to seek court review of action of District of Columbia Alcoholic Beverage Control Board in issuing liquor license; area residents who were commission members, however, have standing to initiate such review and to assert rights of commission itself. *G. Kopff et al. v. District of Columbia Alcoholic Beverage Control Board et al.* (D.C. App. 1977, 381 A.2d 1372).

Zoning Commission orders

Absent "contested case" status under Administrative Procedure Act (§§ 1-1501 et seq.), Court of Appeals does not have jurisdiction to directly review Zoning Commission's order amending zoning regulations under section 1-1510 relating to review by Court of administrative orders including power to hold unlawful and set aside findings and conclusions in enumerated instances, as that section does not denote a grant of jurisdiction but is a plain statement of scope of judicial review applicable only to contested cases. *Dupont Circle Citizen's Association et al. v. District of Columbia Zoning Commission* (D.C. App. 1975, 343 A.2d 296).

When Zoning Commission exercised its authority to determine needs of area by denying without public hearing a proposed amendment to zoning maps to change zoning classification of property, the Commission was acting legislatively and was not subject to the "contested case" provisions of Administrative Procedure Act (§§ 1-1501 et seq.), with the result that such decision is not subject to direct review by the Court of Appeals, despite contention of property owner that mere submission of proposed amendment, and the subsequent rejection of same, constituted a "hearing" required by law, and thus is subject to review. *W. C. & A. N. Miller Development Company v. District of Columbia Zoning Commission* (D.C. App. 1975, 340 A.2d 420).

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

§ 11-743. Rules of Court

CROSS REFERENCES

Attorneys, rules respecting, see § 11-2501.
Superior Court rules, see § 11-946.

NOTES TO DECISIONS

Court costs

Length of delay in implementing retroactive payment order of Commissioner of Department of Human Resources justifies an assessment of costs in form of a \$25 filing fee against administrative officers in their official capacity once petition in nature of mandamus to compel agency action was dismissed as moot after officers tardily performed requested action. *B. Dillard et al. v. J. P. Yeldell et al.* (D.C. App. 1975, 334 A.2d 578).

Interpretation of rules

Court of Appeals in interpreting its own procedural rules is not bound by an interpretation given to similar federal procedural rules by the District of Columbia Circuit Court. *J. N. West v. United States* (D.C. App. 1975, 346 A.2d 504).

§ 11-744. Judicial conference

The chief judge of the District of Columbia Court of Appeals shall summon annually the active associate judges of the District of Columbia Court of Appeals and the active judges of the Superior Court of the District of Columbia to a conference at a time and place that he designates, for the purpose of advising as to means of improving the administration of justice within the District of Columbia. He shall preside at such conference which shall be known as the Judicial Conference of the District of Columbia. Every judge summoned shall attend, and, unless excused by the chief judge of the District of Columbia Courts of Appeals, shall remain throughout the conference. The District of Columbia Court of Appeals shall provide by its rules for representation of and active participation by members of the District of Columbia Bar and other persons active in the legal profession at such conference. (Added Dec. 31, 1975, Pub. L. 94-193, § 1(a), 89 Stat. 1102.)

Chapter 9.—SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

SUBCHAPTER II.—JURISDICTION

Sec.

11-924. Jurisdiction with Respect to Violations of the Rules and Regulations of the Washington Metropolitan Area Transit Authority.

AMENDMENT

1976—Item 11-924 added by Act June 4, 1976, Pub. L. 94-306, § 3(b).

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

§ 11-901. Continuation of courts; court of record; seal

CROSS REFERENCE

Continuation of court, see § 718 of title 11 Appendix

§ 11-904. Judges; service; compensation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 718 of title 11 Appendix.

SUBCHAPTER II.—JURISDICTION

§ 11-921. Civil Jurisdiction

CROSS REFERENCE

District Charter provisions relating to jurisdiction of Superior Court, see § 431 of title 11 Appendix.

NOTES TO DECISIONS UNDER PRESENT LAW

Amendment of pleadings

Oral request to amend pleadings so as to include in counterclaim for breach of contract an allegation that buyers notified seller of alleged breach should have been granted, even though buyers argued originally that since seller knew that delivery of purchased air conditioners without authorization was in breach of contract, it would be useless formality to require notification, which argument was denied. *Bennings Associates et al. v. The Joseph M. Zamoiski Co.* (D.C. App. 1977, 379 A. 2d 1171).

Amount claimed

Where complaint for personal injuries in amount of \$10,000 was filed by plaintiff and jurisdictional limit in civil actions was thereafter raised in the District of Columbia Court of General Sessions, granting of motion to amend the ad damnum of the complaint from \$10,000 to \$50,000 was error since Congress deliberately intended to limit recovery in cases originally docketed to the maximum amount then in effect. *D.C. Transit System, Inc. v. V. McLeod* (D.C. App. 1973, 300 A. 2d 440).

Collateral estoppel

Where it was decided in first case that contest was between children of decedent and his conservators and that possible liability of widow for conversion of funds paid by conservators to her for decedent's use was not in issue, executors were not barred by collateral estoppel from subsequently suing widow for conversion. *National Savings & Trust Company et al. v. M. Rosen-dorf* (1977, 559 F. 2d 837, 182 U.S. App. D.C. 216).

Dismissal

Trial court did not abuse discretion in dismissing suit for assault, battery and false imprisonment against corporate defendant on ground that failure to effect service on defendant for almost eight months after the original attempted service was ruled invalid constitutes a failure to prosecute warranting dismissal, and in dismissing suit against the defendant employee on ground that the failure of plaintiff for more than ten months to move for a default judgment against such employee after service was allegedly effected warrants dismissal for lack of diligence. *H. E. Malloy v. Safeway Stores, Inc. et al.* (D.C. App. 1976, 360 A.2d 48).

Court does not have authority to reinstate wrongful death action dismissed with prejudice for lack of prosecution on basis of motion which alleged that plaintiff's failure to prosecute was due to financial hardship, which did not set forth any newly acquired information or allegations justifying release from dismissal order and which did not allege that plaintiff could present prima facie case. *Colbert Refrigeration Co., Inc. v. D. Edwards, Administratrix et al.* (D.C. App. 1976, 356 A.2d 331).

Equitable powers

By specifically vesting the Superior Court with jurisdiction to review Rent Commission's decisions, Congress gave statutory recognition to authority of trial court to use its equity power in rent control field. *Columbia Realty Venture v. District of Columbia Housing Rent Commission* (D.C. App. 1975, 350 A.2d 120).

Superior Court rather than District of Columbia Court of Appeals had jurisdiction to review Housing Rent Commission's decision affirming order allowing landlord to increase rents charged at apartment building so as to insure return on investment. *Id.*

Superior Court did not abuse its discretion in taking equitable jurisdiction in case, in which landlords sought to have rent control regulation declared invalid and in which Housing Rent Commission was shown to have had an administrative inability to decide landlords' petitions for hardship adjustments, notwithstanding contention that landlords' proper remedy would have been to wait 60 days and then commence an action in superior court pursuant to provision of District of Columbia Rent Control Act. *Apartment and Office Building Association of Metropolitan Washington et al. v. W. E. Washington, Commissioner, et al.* (D.C. App. 1975, 343 A.2d 323).

Excessive verdict—Reduction

Trial court did not abuse discretion in curing excessiveness of verdict by reducing amount recovered to court's jurisdictional maximum rather than ordering new trial. *Freedmen's Hospital v. L. Heath* (D.C. App. 1974, 318 A.2d 593).

Where trial court found that its jurisdictional limit required that verdict be set at \$50,000, though verdict in amount of \$150,000 had been returned, and court stated that judgment ranging up to \$100,000 would have been supportable, defendant was not prejudiced because court proceeded to apply statutory jurisdictional limit to reduce judgment rather than to offer choice of reduced verdict or new trial. *Id.*

Exhaustion of administrative remedy

Where Department of General Services Employee's appeal from decision to dismiss him was pending in administrative channels, employee could not bring action to restrain director, assistant director, and personnel officer of Department from transferring him to another position pending administrative disposition of his proposed dismissal until such employee's administrative remedies were exhausted. *H. O'Neill v. S. D. Starobin et al.* (D.C. App. 1976, 364 A. 2d 149).

Injunctions

Even in the absence of statutory enactments, a person engaged in the unlawful practice of law may be enjoined from conducting such activity. *J. H. Marshall & Associates, Inc. v. W. A. Burleson* (D.C. App. 1973, 313 A. 2d 587).

Jurisdiction

There is no private right of action and Superior Court is without jurisdiction over action brought under Federal Trade Commission Act to enjoin alleged unfair methods of competition and deceptive acts and practices. *J. Karpoff v. The Holladay Corporation* (D.C. App. 1977, 377 A. 2d 52).

Mandamus

Mandamus is not the proper remedy for seeking to compel District of Columbia officials to collect taxes from suburban banks on bank credit card business conducted in the District and from large multistate corporations that had not filed or paid taxes on business done within the District, and to adopt procedures to discover, audit, assess, and collect gross sales taxes, where there was no allegation of specific instances in which defendants had failed to assess and collect taxes and where statutes referred to did not set forth any specific procedures for discovery, audit, assessment or collection of the taxes in question. *N. M. Debevoise v. K. Back et al.* (D.C. App. 1976, 359 A.2d 279).

Standing

District of Columbia taxpayer lacks standing to maintain suit seeking to compel Director of Department of Finance and Revenue and the Mayor to collect taxes from suburban banks on bank credit card business conducted in the District and from large multistate corporations that had not filed or paid taxes on business done in the District, where taxpayer suggests only that her tax bills might be reduced or her municipal services improved if defendants are required to proceed in the manner requested by her. *N. M. Debevoise v. K. Back et al.* (D.C. App. 1976, 359 A.2d 279).

Writ of ne exeat

Writ of ne exeat, which may be issued by courts of the District of Columbia in support of their jurisdiction over various marital actions, is in the nature of civil bail, the purpose of which is to prevent the frustration of a plaintiff's equitable claims by insuring the continued physical presence of the defendant within the court's jurisdiction. *E. D. Gredone v. R. L. Gredone* (D.C. App. 1976, 361 A.2d 176).

Ordering return of bond posted by husband's brother as against a writ of ne exeat issued to secure husband's appearance in divorce litigation, which was routinely completed in wife's favor, is not abuse of discretion, contrary to contention that writ should have been directed toward the further objective of securing proper satisfaction of wife's equitable claims as embodied in money judgments. *Id.*

NOTES TO DECISIONS UNDER PRIOR LAW**Equitable powers**

Where goal of plaintiff's suit for relief from action of District of Columbia police in enforcing vagrancy laws was equitable and of a type which could not be granted by Court of General Sessions which possessed exclusive jurisdiction of civil actions in which the claimed value did not exceed \$10,000, Court of General Sessions lacked authority to entertain suit and United States District Court for the District of Columbia had jurisdiction. *M. J. Gomez v. J. V. Wilson, Chief of Police, et al.* (1973, 477 F. 2d 411, 155 U.S. App. D.C. 243; remanding 323 F. Supp. 87).

§ 11-922. Transfer of civil actions to Superior Court
CROSS REFERENCE

District Charter provisions relating to jurisdiction of Superior Court, see § 431 of title 11 Appendix.

NOTES TO DECISIONS**Abuse of discretion**

On record indicating that plaintiff in civil rights action had shouted obscenity and expletives at police officer at downtown intersection, that plaintiff failed to appear to contest charge of disorderly conduct or seek equitable

relief in Superior Court upon showing of lack of culpability and that plaintiff was apparently not distressed by handcuffs or interrogation, District Court did not abuse discretion in certifying record to Superior Court of the District of Columbia, even without permitting further opportunity to reformulate complaint, for insufficiency of amount in controversy. *M. James v. G. Lusby et al.* (1974, 499 F. 2d 488, 162 U.S. App. D.C. 352).

Action for equitable relief

Action which was brought by borrowers against corporate lender and which alleged, inter alia, that lender had made loans requiring payment of interest in excess of statutory eight per cent limit, was not certifiable to the Superior Court under provision of this section that "In a civil action begun in the United States District Court for the District of Columbia before the effective date of the District of Columbia Reorganization Act of 1970 (other than an action for equitable relief) * * * the court may certify the action to the Superior Court for trial," since the complaint sought substantial declaratory and equitable relief, including injunctions and cancellation of notes and deeds of trust. *B. T. Hines et al. v. City Finance Company of Eastover, Inc., et al.* (1972, 474 F. 2d 430, 154 U.S. App. D.C. 182).

Amount in controversy

Where there was issue before district court whether or not record before it showed that amount in controversy exceeded \$10,000, determination of such issue was preliminary to assumption of jurisdiction, and it was affirmative duty of trial court to inquire into such issue, whether or not it was raised by parties. *M. James v. G. Lusby et al.* (1974, 499 F. 2d 488, 162 U.S. App. D.C. 352).

Standard to be applied by trial court in certifying case to court of local jurisdiction is that sum claimed by plaintiff controls if claim is apparently made in good faith. *Id.*

Both compensatory and punitive damages were to be considered in determining amount in controversy for jurisdictional purposes. *Id.*

Certification

The United States District Court for the District of Columbia may certify cause to the Superior Court of the District of Columbia only if the District Court finds that the amount in controversy is not satisfied and that federal jurisdiction is not otherwise invoked. *W. H. Apton et al. v. J. V. Wilson (Chief of Police) et al.* (1974, 506 F. 2d 83, 165 U.S. App. D.C. 22).

Where individuals, who were allegedly arrested during the "Mayday Demonstrations" of May, 1971, asserted claims against District of Columbia police officers and chief of police which arose directly under Fourth and Fifth Amendments, the United States District Court had "federal question" jurisdiction and it was improper to certify the cases against the District of Columbia defendants to the Superior Court for the District of Columbia. *Id.*

Abuse of discretion

Federal District Court's certification to Superior Court of action by owners of apartment building to recover unincorporated franchise taxes paid under protest, for no reason other than the conclusion that the action would not justify a judgment in excess of \$50,000 exclusive of interest and costs, was an abuse of discretion where it did not appear that the amount paid in satisfaction of the deficiency was less than \$50,000 and District did not maintain that the amount in controversy was less than \$50,000. *E. P. Block et al. v. District of Columbia* (1974, 492 F.2d 646, 160 U.S. App. D.C. 380).

Standard for review

Standard for review of order of certification from District Court to Superior Court is whether or not the trial court abused its discretion. *E. P. Block et al. v. District of Columbia* (1974, 492 F.2d 646, 160 U.S. App. D.C. 380).

Construction

Under provision of this section that "In a civil action begun in the United States District Court for the District of Columbia before the effective date of the District of Columbia Reorganization Act of 1970 (other than an action for equitable relief) * * * the court may certify the action to the Superior Court for trial," the parenthetical phrase is not intended to cover what is essen-

tially a legal action which seeks equitable relief only of a character incidental to the main legal thrust of the action; on the other hand, if substantial equitable relief is sought as such, the District Court should retain jurisdiction even though legal relief is also sought. *B. T. Hines et al. v. City Finance Company of Eastover, Inc., et al.* (1972, 474 F. 2d 430, 154 U.S. App. D.C. 182).

Discretion of court

Exercise of general authority to certify cases to courts of local jurisdiction rests in sound discretion of district court. *M. James v. G. Lusby et al.* (1974, 499 F. 2d 488, 162 U.S. App. D.C. 352).

§ 11-923. Criminal jurisdiction; commitment

NOTES TO DECISIONS

Authority of court

Trial court had no power to grant new trial on ground of prejudicial joinder of defendants, where nothing in defendant's new trial motion raised question of severance or otherwise suggested that he was improperly joined with named codefendants and no motion for severance was pending, and ruling was thus action by court on its own motion beyond its jurisdiction and ineffective. *United States v. Honorable Leonard Braman* (D.C. App. 1974, 327 A. 2d 530; cert. denied 96 S. Ct. 562, 423 U.S. 1032).

— On remand

Where appellate court remanded criminal prosecution to trial court for sole purpose of determining whether defendant was represented by counsel when sentence was imposed, trial court erred, after finding that sentence had been imposed in absence of counsel, in proceeding to vacate original sentences on ground that, in absence of counsel, they were invalid; such action exceeded court's jurisdiction on remand. *G. A. Hockaday v. United States* (D.C. App. 1976, 359 A.2d 146).

— Probation

When Congress gave the Superior Court plenary jurisdiction over local criminal offenses, it did not provide that existing limitations on the power of the District Court for the District of Columbia to grant probation would restrict the Superior Court in the exercise of its new authority. *A. Sanker v. United States* (D.C. App. 1977, 374 A. 2d 304).

Constitutionality

Congress did not violate article of Constitution pertaining to the judicial power of the United States by vesting jurisdiction over local felonies in the District of Columbia Superior Court. *R. F. Palmore v. United States* (D.C. App. 1972, 290 A. 2d 573; aff'd 93 S. Ct. 1670, 411 U.S. 389).

Under its constitutional power to legislate for the District of Columbia, Congress may provide for trying local criminal cases before judges who, in accordance with District of Columbia Code, are not accorded life tenure and protection against reduction in salary. *Id.*

Construction

Provision of this section providing that Superior Court has jurisdiction of any criminal case under any law applicable exclusively to District of Columbia, "any law" does not mean "any statute" but means any distinct, self-contained directive or prohibition; thus it is not required that a statutory section in its entirety apply exclusively to District in order for Superior Court to have jurisdiction of any prohibition in unseverable statute. *United States v. I. C. Thompson et ano.* (D.C. App. 1975, 347 A.2d 581).

Decisions of U.S. Court of Appeals

Superior Court is not bound by decision of United States Court of Appeals, released subsequent to effective date of Court Reorganization Act, which abandoned an earlier decision and adopted a new standard for an insanity defense and the insanity standard formulated in such earlier decision remains the controlling rule for the District of Columbia court system prior to consideration of question by District of Columbia Court of Appeals. *E. Bethea, Jr. v. United States* (D.C. App. 1976, 365 A. 2d 64; cert. denied 97 S.Ct. 2979, 433 U.S. 911).

Discovery of witnesses

Court had power to order Government in first-degree murder prosecution to produce names of alleged eyewitnesses to crime for use by the defense, where eyewitnesses were passersby on street, defense counsel satisfied requirement of materiality by establishing that he was unable to locate eyewitnesses, such witnesses were necessary for preparation of defense, discovery of eyewitnesses was not so burdensome as to be unreasonable, Government was given opportunity to oppose discovery motion, and safeguards for witnesses were provided in conditions imposed in court's order. *United States v. W. J. Holmes* (D.C. App. 1975, 343 A.2d 272; rehearing denied 346 A.2d 517).

Jurisdiction

Where petitioners were charged in unrelated proceedings in Superior Court with assaulting District of Columbia police officer and were not charged with federal misdemeanor, their cases were not within jurisdiction of federal Court of Appeals, and their petitions for leave to appeal from determination by District of Columbia Court of Appeals that Superior Court had power to act in their cases were accordingly dismissed. *I. C. Thompson v. United States* (1976, 548 F. 2d 1031, 179 U.S. App. D.C. 76).

Ruling that Superior Court does or does not have jurisdiction of particular matter stands as precedent also with respect to coordinated jurisdiction of district court, but when jurisdictional problems incidentally involving federal judiciary arise in state courts, exclusive federal forum for review is Supreme Court, not federal Court of Appeals, and such forum is available in the District of Columbia. *Id.*

This section providing that, subject to exception, Superior Court has jurisdiction of any criminal case under any law applicable exclusively to the District, whether or not such statute divests Superior Court of jurisdiction of District of Columbia Code offenses that have extraterritorial effect, was most certainly intended to divest that Court of jurisdiction to hear criminal cases involving United States Code offenses. *Id.*

Statute providing that United States district court may permit a defendant to elect civil commitment in lieu of prosecution pursuant to the Narcotic Addict Rehabilitation Act does not apply to the Superior Court. *M. L. Banks v. United States* (D.C. App. 1976, 359 A.2d 8).

Claim of defendant that it was not he but one of his coescapers who held knife used to rob victim falls short of complete defense to charge of armed robbery, since even assuming defendant used no weapon, the acts of his accomplice in crime can be imputed to him thus making him chargeable as a principal. *J. F. Jordan v. United States* (D.C. App. 1976, 350 A.2d 735).

Section 22-505, proscribing interfering with member of police force operating in District of Columbia, proscribing assaulting district employee charged with supervision of juveniles confined in district facility located within District or elsewhere and proscribing assaulting member of fire department operating in District, contains three different "laws," within meaning of this section, providing that Superior Court has jurisdiction of any criminal case under any law applicable exclusively to District; thus Superior Court has jurisdiction of prosecution for assault on police officer in District, even if that Court has no jurisdiction over prosecution for assault on supervisor of confined juvenile on ground that it is an extra-territorial offense. *United States v. I. C. Thompson et ano.* (D.C. App. 1975, 347 A.2d 581).

Plea of guilty

Court did not abuse its discretion in denying defendant's motion to withdraw guilty plea prior to sentencing, where neither ground for motion stated by defendant constituted a legal defense to charge of armed robbery, motion rested on those two claimed defenses alone and there was no charge of unfairness or deception. *J. F. Jordan v. United States* (D.C. App. 1976, 350 A.2d 735).

§ 11-924. Jurisdiction with respect to violations of the Rules and Regulations of the Washington Metropolitan Area Transit Authority

The Superior Court has jurisdiction with respect to any violation, committed in the District of Co-

lumbia, of the rules and regulations adopted by the Washington Metropolitan Area Transit Authority under section 76(e) of title III of the Washington Metropolitan Area Transit Regulation Compact. (Added June 4, 1976, Pub. L. 94-306, § 3(a), 90 Stat. 674.)

REFERENCE IN TEXT

The Washington Metropolitan Area Transit Regulation Compact, referred to in text, is set out under § 1-1431.

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

§ 11-942. Subpenas

NOTES TO DECISIONS

Compliance, continuing obligation

Where subpoena served on prospective witness in criminal case specified a February 11 appearance date, but prosecutor informed witness that she would be informed by telephone of the exact date and time her testimony would be required and in early March witness was notified to appear to testify on March 12 but witness failed to appear, the telephone standby procedure did not vitiate the continuing efficacy of the subpoena and witness's failure to appear was a criminal contempt of court and not merely a violation of prosecutor's direction to witness. *In the Matter of Ragland* (D.C. App. 1975, 343 A.2d 558).

§ 11-944. Contempt power

NOTES TO DECISIONS

Abuse of discretion

Trial court did not err in denying motion of ex-wife that ex-husband be held in contempt for disregarding court order to render accounting of his income pursuant to property settlement agreement as to which there was dispute as to meaning of phrase "adjusted gross income." *G. I. Luchsinger v. P. C. Luchsinger* (D.C. App. 1977, 377 A.2d 1146).

Trial judge did not abuse discretion in finding criminal defendant guilty of contempt, where, following exchange in which trial judge ordered codefendant to be quiet, defendant spoke out three times stating that he wanted to represent himself, trial judge then told him not to address court unless he was given permission, but defendant continued to answer court directly, even after a further warning, and, when trial judge told him to stand up and asked him if he had heard warning, he finally admitted that he had heard the warning. *L. Irby v. United States* (D.C. App. 1975, 342 A.2d 33).

Appeal

Where there is no final order or judgment respecting blood grouping tests because trial judge declared issue moot and discharged his order to show cause, party has never been "punished" for not submitting to the tests and, absent the imposition of a sanction, the contempt citation alone is not a final order and raises no justiciable issue for appeal in divorce action. *A. H. Beckwith v. R. T. L. Beckwith* (D.C. App. 1977, 379 A.2d 955).

Where no final order of trial court had been entered fixing total amount of fine to be paid for civil contempt, and no assets of contemnor had been sequestered, the contempt adjudication was not for such reasons nonappealable, but it would have been premature for Court of Appeals to consider extent of contemnor's ultimate pecuniary liability for civil contempt. *K. G. Bolden v. E. L. Bolden* (D.C. App. 1977, 376 A.2d 430).

Absent imposition of sanction, whether it be fine, probation or term in jail, citation imposed on assistant United States attorney for criminal contempt in and of itself is not final order and raises no justiciable issue for appeal. *In the Matter of R. L. Cys* (D.C. App. 1976, 362 A.2d 726).

The assistant United States attorney's appeal from citation of criminal contempt for his refusal to comply with court order directing him to produce written memorandum relating to so-called first offender treatment program for purposes of discovery in criminal action wherein defendant charged with unlawful entry claimed he had

been excluded from said program in derogation of his rights to due process and equal protection of laws cannot be considered in posture of direct appeal from discovery order defied by government since neither of real parties in interest to that order, the government or the defendant, are party to appeal and since there has been no ruling on defendant's motion to dismiss. *Id.*

Burden of proof

Where civil contempt order imposed fine rather than imprisonment and was not for failure to pay debts but for failure to do specific acts to facilitate sale of real estate, case is governed by general rule, not exception, and, once noncompliance with decree is established, burden of establishing justification for noncompliance shifts to alleged contemnor. *K. G. Bolden v. E. L. Bolden* (D.C. App. 1977, 376 A.2d 430).

Contempt

"Civil" as distinguished from "criminal contempt" is sanction to enforce compliance with order of court or to compensate for losses or damages sustained by reason of noncompliance, and may be imposed for prohibited acts irrespective of intent. *K. G. Bolden v. E. L. Bolden* (D.C. App. 1977, 376 A.2d 430).

In order to convict an individual for criminal contempt, it is necessary to find beyond a reasonable doubt that the individual committed a volitional act that constitutes contempt; accordingly, in the instant case, a conviction of contempt cannot be predicated solely on defendant's being arrested on probable cause, since the volitional act would be commission of a crime, not the matter of being arrested. *L. Parker v. United States* (D.C. App. 1977, 373 A.2d 906).

Although counsel should make all legitimate objections in support of client's interest, conduct of defense counsel, against whom a summary conviction of contempt was issued during criminal trial, exceeded permissible bounds where his persistent defiance of trial court's authority resulted in his forceful removal from courtroom and the grant of a mistrial. *In the Matter of L. Nesbitt* (D.C. App. 1975, 345 A.2d 154).

Evidence—Sufficiency

Evidence fully supports trial court's finding that wife's conduct in failing to make good-faith attempt to comply with court order to sell realty merited sanction of civil contempt adjudication. *K. G. Bolden v. E. L. Bolden* (D.C. App. 1977, 376 A.2d 430).

Defendant's guilt of criminal contempt for violating a lineup order was established beyond a reasonable doubt, where the lineup order had specified that defendant was not to change his facial or bodily appearance prior to the lineup, but where defendant later appeared at the lineup with a shaven head. *In the Matter of H. P. Carter* (D.C. App. 1977, 373 A.2d 907).

In contempt proceeding, trial court properly inferred from attorney's refusal to return to courtroom after receiving specific court order to do so that attorney's conduct was willful and contemptuous. *In the Matter of C. A. Schaeffer* (D.C. App. 1977, 370 A.2d 1362).

Where trial court judge found member of bar's losing of commitment order from case file while file remained in his custody and while he presented file to the assistant corporation counsel in order to obtain reduction of charge against his client in return for guilty plea and while presenting to judge message recommending acceptance of plea to lesser offense was failure "to exercise proper care and control," but did not find missing order was intentionally removed so as to prevent corporation counsel from learning about it, or to conceal its existence from any traffic section judge who might later pass upon bargained plea, conduct of member of bar was, at most, negligent, and did not amount to criminal contempt. *In the Matter of S. G. Foshee* (D.C. App. 1976, 358 A.2d 332).

Evidence supports findings that defense counsel, who was summarily convicted for contempt during criminal trial, repeatedly and willfully refused to obey directions of court to be seated, persistently and contumaciously refused to respond to direct and simple question put to him by court and, in a voice clearly audible to jury, flagrantly defied authority of court by refusing to leave the bench and take his seat. *In the Matter of L. Nesbitt* (D.C. App. 1975, 345 A.2d 154).

Where defendant, who had been given lineup order directing that he not alter his facial appearance prior to lineup and who had had at time of the order a full head of hair and a moustache and goatee, had his head and face shaved before preliminary hearing on the basis of alleged ringworm condition which had existed for several months, the defendant made no showing of exigent circumstances warranting failure to obtain court's permission and determination that he possessed the intent required to support contempt conviction was justified. *In re R. A. Jackson* (D.C. App. 1974, 328 A. 2d 377).

Where attorney, who had previously informed judge of conflict between two scheduled court appearances, was confronted by two United States marshals who intended to escort him to second judge's courtroom, where attorney directed clerk to get in touch with first judge, and where clerk told attorney that judge had told him that attorney was excused to go to the other courtroom, attorney could reasonably construe the excusal as authorizing him to commence trial in the second case and attorney's actions in so doing did not support finding that attorney had the requisite intent to commit a criminal contempt by failing to appear for trial before the first judge. *In the Matter of L. Nesbitt* (D.C. App. 1973, 313 A. 2d 576).

Fine

Two hundred dollar fine for contempt upon failure of counsel to return directly to trial court as ordered after being allowed to attend hearing in another court is not excessive. *In the Matter of S. Rosen* (D.C. App. 1974, 315 A. 2d 151; cert. denied 95 S. Ct. 224, 419 U.S. 964).

In presence of court

Deliberate and knowing violation of order that trial counsel return directly from another court for trial which has been postponed to enable counsel to attend hearing at the other court is a contempt committed "in the presence of the court" and is properly disposed of summarily, without hearing before another judge. *In the Matter of S. Rosen* (D.C. App. 1974, 315 A. 2d 151; cert. denied 95 S. Ct. 224, 419 U.S. 964).

Jury trial

A petty contempt, that is, one for which the penalty imposed either does not exceed six months, or a longer penalty has not been expressly authorized by statute, may be tried without a jury. *In the Matter of H. P. Carter* (D.C. App. 1977, 373 A.2d 907).

Recuse

Since defendant's affidavit of trial judge's bias was timely filed eight days before scheduled contempt hearing, since a certificate of good faith accompanied the affidavit, and since the affidavit, which referred to a particular incident stemming from an extrajudicial source and which revealed a sufficient exposure by the judge to the ultimate conclusion of a colleague respecting defendant's guilt, was legally sufficient, the judge should have recused himself. *In the Matter of L. D. Bell* (D.C. App. 1977, 373 A.2d 232).

Subpena, failure to appear

Where subpoena served on prospective witness in criminal case specified a February 11 appearance date, but prosecutor informed witness that she would be informed by telephone of the exact date and time her testimony would be required and in early March witness was notified to appear to testify on March 12 but witness failed to appear, the telephone standby procedure did not vitiate the continuing efficacy of the subpoena and witness's failure to appear was a criminal contempt of court and not merely a violation of prosecutor's direction to witness. *In the Matter of Ragland* (D.C. App. 1975, 343 A.2d 558).

Summary disposition

In contempt proceeding arising out of attorney's failure to obey court order to appear for trial, attorney's mere assertion that he was not free to leave arraignment court when he received judge's order to report to courtroom is not enough to raise question about matters outside presence of court so as to require referral of contempt proceeding to another judge. *In the Matter of C. A. Schaeffer* (D.C. App. 1977, 370 A.2d 1362).

Where appellant was committed for contempt until he obeyed presumptively valid court order to supply hand-

writing exemplar, and his contemptuous conduct was committed in presence of court, refusal to supply exemplar amounted to civil contempt for which procedures for formal notice and hearing in criminal contempt cases are not required. *R. Jennings v. United States* (D.C. App. 1976, 354 A.2d 855).

Where attorney did not consciously and intentionally absent himself from court in criminal case, trial court erred in exercising its summary power to punish attorney for contempt. *In the Matter of J. E. Brown* (D.C. App. 1974, 320 A.2d 92).

Tardiness

Record fails to sustain arraignment judge's finding of willfulness on occasion when he held attorney in criminal contempt because of attorney's failure to make timely appearance at arraignment for which he had been appointed counsel for accused; rather, record shows that attorney had become caught in scheduling conflict between two judges, and had properly chosen to complete appearance before other judge before appearing for client's arraignment. *In the Matter of G. Denney* (D.C. App. 1977, 377 A. 2d 1360).

Where counsel failed to appear at trial at designated time because of conflict brought about by scheduling of preliminary hearing at same time as trial, but counsel failed to contact trial court and advise it of the conflict, it was within trial court's discretion to treat counsel's tardiness as an act of contempt. *In the Matter of G. T. Hunt* (D.C. App. 1976, 367 A. 2d 155; cert. denied 98 S.Ct. 54, — U.S. —).

Tardiness or non-appearance may be punished as contempt committed in presence of court. *In the Matter of J. E. Brown* (D.C. App. 1974, 320 A.2d 92).

Unauthorized practice of law

The unauthorized practice of law constitutes contempt of court and the court has inherent power to punish such conduct and prevent its recurrence. *J. H. Marshall & Associates, Inc. v. W. A. Burleson* (D.C. App. 1973, 313 A. 2d 587).

§ 11-946. Rules of court

CROSS REFERENCES

Attorneys, rules respecting, see § 11-2501.

District of Columbia Court of Appeals rules, see § 11-743.

NOTES TO DECISIONS

Construction

Congress did not intend to grant to Superior Court the power to adopt rules abridging, enlarging or modifying any substantive right, a power which it withheld from the United States Supreme Court with respect to its rule-making power. *In the Matter of C. A. P.* (D.C. App. 1976, 356 A.2d 335).

Declaratory judgment

Declaratory judgment authority does not supersede rules of justiciability. *E. R. Smith v. D. L. Smith* (D.C. App. 1973, 310 A. 2d 229).

Intervention

Where class of taxpayers sought to be represented by purported intervenors in suit brought on behalf of city commercial property owners seeking declaratory judgment that practice of assessing commercial property at higher percentage of market value than residential property violated section 47-713 and the Fifth Amendment had economic interest in outcome of suit, and District of Columbia, which had agreed to set up single level of assessment and had not denied that its dual assessments violated that section and Fifth Amendment principles of equal protection, did not adequately represent such taxpayers, proposed intervenors should be allowed to intervene under Superior Court rule on behalf of all taxpayers other than commercial ones. *Calvin-Humphrey et al. v. District of Columbia et al.* (D.C. App. 1975, 340 A.2d 795).

Parental rights—Termination

The Superior Court exceeded its statutory grant of rule-making power by enacting procedural rule which abridged substantive right of a parent, i.e., rule permitting permanent severance of parent-child relationship in a non-

adoption proceeding. *In the Matter of C. A. P.* (D.C. App. 1976, 356 A.2d 335).

Court of Appeals' holding that Superior Court's adoption of rule permitting termination of parental rights based on neglect was in excess of its statutory authority would be given prospective application only. *In the Matter of C. A. P.* (D.C. App. 1976, 359 A.2d 11).

Practice of law

A court has an inherent right to make rules governing the practice of law before it and to promulgate rules concerning who may practice law before it. *J. H. Marshall & Associates, Inc. v. W. A. Burleson* (D.C. App. 1973, 313 A. 2d 587).

A court has inherent power, by virtue of its existence as part of judicial system, to regulate and control the practice of law and to protect the public and the administration of justice by forbidding the unwarranted intrusion of unauthorized and unskilled persons into the practice of law. *Id.*

Chapter 11.—FAMILY DIVISION OF THE SUPERIOR COURT

§ 11-1101. Exclusive jurisdiction

CROSS REFERENCE

Age of majority, see § 21-101 note.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16-2305, 16-2331, 16-2332, 16-2341 to 16-2344, 16-2348.

NOTES TO DECISIONS

Adjudication of property rights

Family Division of the Superior Court has exclusive jurisdiction over wife's suit against her former husband to enforce property settlement agreement by subjecting real property situated within the District of Columbia and held by parties as tenants in entirety to claims by wife against nonresident husband arising out of property settlement agreement. *J. A. Travis v. E. M. Benson* (D.C. App. 1976, 360 A.2d 506).

Where husband and wife, although separated, remained married, court, in action by wife against husband for maintenance and custody of parties' child, has no authority to award husband one half of proceeds of sale of marital abode and damages for personal property of husband allegedly appropriated by wife. *J. Maynard v. L. Maynard* (D.C. App. 1976, 360 A.2d 45).

Although divorce decree is ineffective to accomplish transfer of title by its own force, as to properties located outside District of Columbia, it is effective as determination of property rights as between the parties. *C. E. Quarles, Jr. v. S. B. Quarles* (D.C. App. 1976, 353 A.2d 285; cert. denied 97 S. Ct. 321, 429 U.S. 922).

Construction

Even if United States attorney's election to charge juvenile as an adult is made after he has been subject to jurisdiction of Family Division by reason of a delinquency petition filed against him, attorney's statutory authority to determine whether juvenile, who is 16 years of age and who is charged with certain enumerated offenses, should be charged as adult is unfettered by section 16-2307, which provides that, on corporation counsel's motion for transfer of child for trial as adult, transfer can be ordered only after a hearing to determine prospects for child's rehabilitation in Family Division. *L. B. Brown v. United States* (D.C. App. 1975, 343 A.2d 48).

Jurisdiction

Where nonresident defendant to divorce proceeding, served by substitute service, counterclaims for divorce, her voluntary action gives rise to personal jurisdiction of court. *A. H. Beckwith v. R. T. L. Beckwith* (D.C. App. 1976, 355 A.2d 537).

Superior Court had jurisdiction in action for absolute divorce on grounds of adultery to order mother, who was before court, to submit her child to blood-grouping tests for sole purpose of deciding issue of adultery even though child was not party, not resident, not represented by guardian ad litem, and there was no request to court for support, maintenance, or custody. *Id.*

Fact that verdict of not guilty of armed robbery was returned, in proceeding in which 16-year-old accused was charged as an adult, does not require that verdicts of guilty of robbery and assault with a dangerous weapon be certified to Family Division for disposition. *L. B. Brown v. United States* (D.C. App. 1975, 343 A.2d 48).

Writ of ne exeat

Writ of ne exeat, which may be issued by courts of the District of Columbia in support of their jurisdiction over various marital actions, is in the nature of civil bail, the purpose of which is to prevent the frustration of a plaintiff's equitable claims by insuring the continued physical presence of the defendant within the court's jurisdiction. *E. D. Gredone v. R. L. Gredone* (D.C. App. 1976, 361 A.2d 176).

Ordering return of bond posted by husband's brother as against a writ of ne exeat issued to secure husband's appearance in divorce litigation, which was routinely completed in wife's favor, is not abuse of discretion, contrary to contention that writ should have been directed toward the further objective of securing proper satisfaction of wife's equitable claims as embodied in money judgments. *Id.*

Chapter 12.—TAX DIVISION OF THE SUPERIOR COURT

§ 11-1201. Exclusive jurisdiction

NOTES TO DECISIONS

Exclusive remedy

Exclusive remedy of petitioner, which was denied exemption as an institution and assessed taxes due by the District of Columbia Department of Finance and Revenue, Property Assessment Division and which then sought review in the District of Columbia Court of Appeals under the District of Columbia Administrative Procedure Act, lay in the Tax Division of the Superior Court. *The Washington Theater Club, Inc. v. District of Columbia Department of Finance and Revenue, Property Assessment Division* (D.C. App. 1973, 302 A. 2d 231; cert. denied 94 S. Ct. 63, 414 U.S. 831).

§ 11-1202. Abolition of other remedies

NOTES TO DECISIONS

Construction

Where statutory period for challenging excessive tax payment had expired before sections of Court Reorganization Act of 1970 putatively eliminating common-law remedies became effective, the Act could not be construed to curtail or destroy the preexisting common-law rights of property owners to maintain an action at common law for recovery from the District of Columbia. *E. P. Block et al. v. District of Columbia* (1974, 492 F.2d 646, 160 U.S. App. D.C. 380).

Exclusive remedy

Exclusive remedy of petitioner, which was denied exemption as an institution and assessed taxes due by the District of Columbia Department of Finance and Revenue, Property Assessment Division and which then sought review in the District of Columbia Court of Appeals under the District of Columbia Administrative Procedure Act, lay in the Tax Division of the Superior Court. *The Washington Theater Club, Inc. v. District of Columbia Department of Finance and Revenue, Property Assessment Division* (D.C. App. 1973, 302 A. 2d 231; cert. denied 94 S.Ct. 63, 414 U.S. 831).

Chapter 13.—SMALL CLAIMS AND CONCILIATION BRANCH OF THE SUPERIOR COURT

SUBCHAPTER II.—JURISDICTION AND PROCEDURES

§ 11-1321. Exclusive jurisdiction of small claims

CROSS REFERENCE

Small claims and conciliation procedure, see § 16-3901 et seq.

Chapter 15.—JUDGES OF THE DISTRICT OF COLUMBIA COURTS

SUBCHAPTER I.—APPOINTMENT; QUALIFICATIONS; SERVICE OF JUDGES

§ 11-1501. Appointment and qualifications of judges

CROSS REFERENCES

District Charter provisions,
Judicial Nomination Commission, see § 434 of title 11 Appendix.
Nomination and appointment of judges, see § 433 of title 11 Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 433 of title 11, Appendix.

§ 11-1502. Tenure

CROSS REFERENCE

District Charter provisions relating to tenure of judges, see § 431 of title 11 Appendix.

§ 11-1503. Designation of Chief Judge

CROSS REFERENCE

District Charter provisions relating to designation of chief judge of a District of Columbia court, see § 431 of title 11 Appendix.

SUBCHAPTER II.—THE DISTRICT OF COLUMBIA COMMISSION ON JUDICIAL DISABILITIES AND TENURE

§ 11-1521. Establishment of Commission

CROSS REFERENCES

Continuation of Commission, see § 718 of title 11 Appendix.

District Charter provisions relating to establishment of Commission, and power to suspend, retire, or remove judges, see §§ 431, 432 of title 11 Appendix.

NOTES TO DECISIONS

Constitutionality

This section creating the Commission on Judicial Disabilities and Tenure and the provisions of section 433 of the appendix to this title giving the Commission duties and powers with respect to reappointment of judges whose terms are about to expire do not encroach on judicial independence in violation of the doctrine of separation of powers, even assuming that doctrine applies with the same force to the governmental structure of the District of Columbia as it does to the federal government. *C. W. Halleck v. H. A. Berliner, Jr., et al.* (1977, 427 F. Supp. 1225).

§ 11-1522. Membership

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

District Charter provisions relating to Commission membership, see § 431 of title 11 Appendix.

§ 11-1523. Terms of office; vacancy; continuation of service by a member

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

District Charter provisions relating to terms of office and vacancies on the Commission, see § 431 of title 11 Appendix.

§ 11-1524. Compensation

CROSS REFERENCE

District Charter provisions relating to compensation, see § 431 of title 11 Appendix.

§ 11-1525. Operations; personnel; administrative services

CROSS REFERENCE

District Charter provisions relating to rules and regulations of the Commission, see § 431 of title 11 Appendix.

§ 11-1526. Removal; involuntary retirement; proceedings

CROSS REFERENCE

District Charter provisions relating to removal, suspension, and involuntary retirement of judges, see § 432 of title 11 Appendix.

NOTES TO DECISIONS

Constitutionality

Provision of this section specifying as a ground for removal of judge "any other conduct which is prejudicial to the administration of justice or which brings the judicial office into disrepute" is supplemented by the Code of Judicial Conduct, and as so supplemented is not unconstitutionally vague or overbroad in violation of due process. *C. W. Halleck v. H. A. Berliner, Jr., et al.* (1977, 427 F. Supp. 1225).

Even assuming doctrine of separation of powers is fully applicable to the governmental structure of the District of Columbia, doctrine is not violated in judicial disciplinary proceedings either on ground that disciplinary functions of the Commission on Judicial Disabilities and Tenure represent an unconstitutional encroachment upon the independence of the judiciary of the District, or by reason of actions of members of the office of the United States Attorney in instigating or furnishing information in connection with the Commission's investigation. *Id.*

Procedures

In disciplinary proceeding concerning a judge, judge's First Amendment right to freedom of speech is not violated by consideration of statements he has made from the bench or otherwise in connection with his judicial duties. *C. W. Halleck v. H. A. Berliner, Jr., et al.* (1977, 427 F. Supp. 1225).

In disciplinary proceedings before the Commission on Judicial Disabilities and Tenure, consideration of alleged representations, if any, made by judge in prior proceedings before the Commission in evaluating his candidacy for reappointment would not violate judge's constitutional rights. *Id.*

Even though members of the Commission on Judicial Disabilities and Tenure may themselves be involved in some parts of the investigation and prosecution, as well as being solely responsible for the adjudication in judicial disciplinary proceedings, such combination of functions does not violate due process. *Id.*

Review

Neither doctrine of abstention nor doctrine of federal equitable restraint required federal district court to refrain from deciding constitutional questions which had been raised in regard to disciplinary proceedings concerning a judge of the Superior Court and pending before the Commission on Judicial Disabilities and Tenure. *C. W. Halleck v. H. A. Berliner, Jr., et al.* (1977, 427 F. Supp. 1225).

It is for the Commission on Judicial Disabilities and Tenure in the first instance, and for special court under section 11-1529 which reviews orders of the Commission, to determine the due process safeguards to which judge is entitled during a disciplinary proceeding. *Id.*

Sanctions

Before the Commission on Judicial Disabilities and Tenure may impose any sanction on a judge, it must determine that the judge has engaged in conduct which falls

within one of the grounds for removal under this section, and under provisions of this section, it should not institute any disciplinary investigation or proceeding unless it believes that the alleged conduct, if approved, may warrant removal from office on those grounds. *C. W. Halleck v. H. A. Berliner, Jr., et al.* (1977, 427 F. Supp. 1225).

Where the Commission on Judicial Disabilities and Tenure concludes that judge should not be removed from office, it may call judge before it and warn him in camera that a similar offense in the future may warrant removal and, subject to limitations in the instant case, the Commission may in its discretion make public the fact that it has determined that although grounds for removal exist, removal will not be ordered, and the reasons for that determination. *Id.*

§ 11-1528. Privilege; confidentiality

NOTES TO DECISIONS

Oath of confidentiality

Rule of the Commission on Judicial Disabilities and Tenure requiring that every witness in every investigation or other proceeding under the rules shall swear or affirm not to disclose the existence of the proceeding or the identity of the judge involved, being framed in terms of "witnesses," does not require special counsel to require everyone with whom he has contact in looking into a complaint to make a formal oath or affirmation. *C. W. Halleck v. H. A. Berliner, Jr., et al.* (1977, 427 F. Supp. 1225).

§ 11-1529. Judicial review

NOTES TO DECISIONS

Constitutionality

Under provision of this section that decisions of special court reviewing order of removal or retirement filed by the Commission on Judicial Disabilities and Tenure are "final and conclusive," words "final and conclusive" do not mean that the Supreme Court cannot issue an appropriate writ to bring before that Court a decision of the special court, and the All Writs Act is sufficient authorization for entertaining appropriate writ. *C. W. Halleck v. H. A. Berliner, Jr., et al.* (1977, 427 F. Supp. 1225).

Under provision of this section that the Chief Justice of the United States shall convene the special court which is to review orders of removal or retirement filed by the Commission on Judicial Disabilities and Tenure is not unconstitutional on theory that it imposes "purely local, or article I, responsibilities upon the Supreme Court"; the Chief Justice is an appropriate person to designate the members of the special court. *Id.*

Review

It is for the Commission on Judicial Disabilities and Tenure in the first instance, and for special court under this section which reviews orders of the Commission, to determine the due process safeguards to which judge is entitled during a disciplinary proceeding. *C. W. Halleck v. H. A. Berliner, Jr., et al.* (1977, 427 F. Supp. 1225).

SUBCHAPTER III.—RETIREMENT

§ 11-1561. Definitions

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11-1568, 11-1569, and section 718 of title 11 Appendix.

§ 11-1562. Eligibility for retirement

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 11-1563. Withholding of retirement payments; lump-sum credit

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 11-1564. Computation of retirement salary; election to credit other service

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 11-1566. Survivor annuity; election; relinquishment

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 11-1567. Survivor annuity; payments to fund

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 11-1568. Survivor annuity; entitlement; computation

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 11-1569. Survivor annuity; payment; order of precedence

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 11-1570. Retirement and annuity fund

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 11-1571. Periodic increases; existing rights

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 718 of title 11 Appendix.

Chapter 17.—ADMINISTRATION OF DISTRICT OF COLUMBIA COURTS

SUBCHAPTER I.—COURT ADMINISTRATION

§ 11-1701. Administration of District of Columbia court system

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Labor disputes

Allegations by District of Columbia court reporters that supervisors and executive officer harassed, intimidated and threatened reporters and otherwise blocked their efforts to unionize and seek redress of their complaints and grievances are sufficient to warrant opportunity for submission of proof. *Association of Court Reporters of Superior Court et al. v. Superior Court for the District of Columbia et al.* (1976, 424 F. Supp. 90).

Complaint by court reporters of Superior Court presents problems capable of resolution through administrative processes of that Court or available grievance procedures and it is appropriate to apply abstention doctrine so as to avoid needless conflict and intrusion into management of daily and routine affairs of Superior Court. *Id.*

SUBCHAPTER II.—COURT PERSONNEL

§ 11-1722. Director of Social Services

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16-2337.

§ 11-1726. Compensation

NOTES TO DECISIONS

Compensation—Overtime

Overtime pay provisions of Fair Labor Standards Act are not applicable to court reporters of Superior Court. *Association of Court Reporters of Superior Court et al. v. Superior Court for the District of Columbia et al.* (1976, 424 F. Supp. 90).

§ 11-1727. Court reporters

NOTES TO DECISIONS

Compensation—Overtime

Overtime pay provisions of Fair Labor Standards Act are not applicable to court reporters of Superior Court. *Association of Court Reporters of Superior Court et al. v. Superior Court for the District of Columbia et al.* (1976, 424 F. Supp. 90).

Labor disputes

Allegation by District of Columbia court reporters that furnishing transcripts to judges without compensation is "taking" of property without just compensation and allegations of abuse of contempt power and threat of imprisonment against the reporters by Superior Court judges in violation of Fifth and Fourteenth Amendment rights, which allegations were vague, uncertain and overdrawn, appear to be susceptible to speedy and fair resolution within framework of available administrative processes of Superior Court system and fail to present claim upon which relief can be granted. *Association of Court Reporters of Superior Court et al. v. Superior Court for the District of Columbia et al.* (1976, 424 F. Supp. 90).

Allegations by District of Columbia court reporters that supervisors and executive officer harassed, intimidated and threatened reporters and otherwise blocked their efforts to unionize and seek redress of their complaints and grievances are sufficient to warrant opportunity for submission of proof. *Id.*

Complaint by court reporters of Superior Court presents problems capable of resolution through administrative processes of that Court or available grievance procedures and it is appropriate to apply abstention doctrine

so as to avoid needless conflict and intrusion into management of daily and routine affairs of Superior Court. *Id.*

Transcripts

Allegation by District of Columbia court reporters that furnishing transcripts to judges without compensation is "taking" of property without just compensation and allegations of abuse of contempt power and threat of imprisonment against the reporters by Superior Court Judges in violation of Fifth and Fourteenth Amendment rights, which allegations were vague, uncertain and overdrawn, appear to be susceptible to speedy and fair resolution within framework of available administrative processes of Superior Court system and fail to present claim upon which relief can be granted. *Association of Court Reporters of Superior Court et al. v. Superior Court for the District of Columbia et al.* (1976, 424 F. Supp. 90).

§ 11-1731. Reports of other personnel

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER III.—DUTIES AND RESPONSIBILITIES

§ 11-1743. Annual budget

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

District Charter provisions relating to budget of the District of Columbia Courts, see § 445 of title 11 Appendix.

Joint Committee to prepare and submit budget for furnishing representation to indigents in criminal cases, see § 11-2607.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-2607.

§ 11-1745. Reports and records

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 19.—JURIES AND JURORS

§ 11-1902. Single jury selection system

NOTES TO DECISIONS

Composition

Record established that there was no purposeful exclusion of any cognizable group, whether of youth or of any other coherent, identifiable class, in the selection of jurors. *United States v. T. B. Diggs* (1975, 522 F.2d 1310, 173 U.S. App. D.C. 95; cert. denied 97 S. Ct. 144, 429 U.S. 852).

In absence of allegation of systematic and intentional exclusion of some recognizable class from jury, and in absence of factual hearing into manner of selection of petit jury panels for scheduled trials, defendant's challenge which merely went to composition of particular panel assigned for final selection was insufficient. *M. H. Green, Jr. v. United States* (D.C. App. 1973, 304 A. 2d 286).

In jury selection, burden is on defendant to show that some recognizable class has been improperly excluded

from jury, and improper exclusion must show a systematic and intentional exclusion of the class. *Id.*

Chapter 23.—MEDICAL EXAMINER

§ 11-2301. Medical Examiner; Deputies; appointment, qualifications, and compensation

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

ORDER ESTABLISHING THE OFFICE OF CHIEF MEDICAL EXAMINER OF THE DISTRICT OF COLUMBIA

(Commissioner's Order No. 71-16, Jan. 26, 1971, as amended by M.O. No. 76-233, Nov. 10, 1976.)

By virtue of the authority vested in me by Reorganization Plan 3 of 1967, and the specific authority vested in me by Section 111 of Public Law 91-358, it is hereby ordered that:

2. The Chief Medical Examiner and his deputies are authorized to teach medical and law school classes, to conduct special classes for law enforcement personnel, and to engage in other activities related to their work, including the responsibility for supervision of training and certification of Metropolitan Police personnel performing chemical tests of breath for the purpose of determining the alcohol content in the body of drivers suspected of driving a motor vehicle while under the influence of alcoholic beverages and for the approval and certification of the equipment used by the Metropolitan Police Department in conducting such tests.

§ 11-2302. Supporting services and facilities

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 11-2303. Former duties of coroner; oaths; teaching

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 11-2307. Autopsy by pathologist other than medical examiner

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 11-2309. Records; reports; fees for other services

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 25.—ATTORNEYS

§ 11-2501. Admission to bar; regulations; prior admission

NOTES TO DECISIONS

Examinations

All unsuccessful applicants, who took bar examinations given in July 1973 and in February and July of 1974, would be permitted by Court of Appeals to utilize Committee on Admissions' post-examination review procedure, which was effective as of May 1975, if such applicants apply to Committee in writing within 60 days of issuance of Court's opinion. *T. C. Harper et al. v. District of Columbia Committee on Admissions et al.* (D.C. App. 1977, 375 A. 2d 25).

Committee on Admissions' essay-type examination had a rational relationship to practice of law and, thus, passing of such examination is a valid prerequisite to admission to the bar. *Id.*

Committee on Admission's essay-type questions in bar examination were shown not to have been constructed, administered or graded in discriminatory manner; petitioners failed to raise a colorable constitutional claim entitling them to a hearing in regard to their allegation that the examination, as constructed, contains a cultural bias against blacks as a group. *Id.*

Jurisdiction

Court of Appeals has jurisdiction to entertain petition, filed by committee on unauthorized practice, for order enjoining individual and corporation from practicing law in District of Columbia by giving advice relative to patents, notwithstanding Commissioner of Patents' concurrent jurisdiction. *In re Amalgamated Development Co., Inc.* (D.C. App. 1977, 375 A. 2d 494; cert. denied 98 S. Ct. 403, — U.S. —).

Rules for admission

Although term "good moral character" is term of broad dimensions and can be defined in many ways, no better test for purpose of admission to bar is known and a candidate for admission to bar must meet such standard. *In the Matter of R. J. Heller for Admission to the bar of this court* (D.C. App. 1975, 333 A.2d 401; cert. denied 96 S. Ct. 70, 423 U.S. 840).

A candidate for admission to bar who knowingly pleads guilty to crime of receiving stolen goods and does not honor commitments and obligations fails to carry his required burden of demonstrating he is qualified for admission to bar. *Id.*

Unauthorized practice of law

Individual was engaged in unauthorized practice of law when, not being an attorney and not being registered in Patent Office, he advised investors as to patentability, prepared patent application, advised clients of what action to take after rejection, and prepared and filed amendments. *In re Amalgamated Development Co., Inc.* (D.C. App. 1977, 375 A. 2d 494; cert. denied 98 S.Ct. 403, — U.S. —).

Where collection agency practices terminated by Court of Appeals as being an unauthorized practice of law had been long carried on without judicial disapproval and where judgments had been valid under law existing when they were rendered, decision terminating such practices would not be applied retroactively. *Kelly Adjustment Co. v. R. Boyd et ano.* (D.C. App. 1975, 342 A.2d 361).

Where one is engaged in the unauthorized practice of law before the court, the court not only has authority to consider the question of unauthorized practice and to dismiss plaintiff's suit, but it also has the power and responsibility to enjoin further activities which constitute the unauthorized practice of law. *J. H. Marshall & Associates, Inc. v. W. A. Burleson* (D.C. App. 1973, 313 A. 2d 587).

Member of the bar and officer of the court had duty to bring to the attention of the court activities of collection agency which constituted the unauthorized practice of law. *Id.*

The operation of a collection agency, does not in and of itself, necessarily constitute the unauthorized practice of law. *Id.*

Collection agency cannot properly interpose itself between a creditor and an attorney seeking to collect the creditor's claim; to do so either directly or indirectly, by assignment or otherwise, constitutes the unauthorized practice of law. *Id.*

Collection agency may not solicit claim for legal action on a contingent fee basis, may not advise the creditor when to start suit, and may not employ an attorney to institute and carry on the litigation under the control and direction of the agency in order to enforce the legal rights of the creditor. *Id.*

Collection agency did not by employing an attorney to actually present himself in court, remove itself from the sphere of unauthorized practice. *Id.*

Collection agency did not become entitled to utilize practices which constituted the unauthorized practice of law merely because it received the grant by corporate charter from the District of Columbia to conduct its collection business and to do what is necessary to carry out its purposes. *Id.*

Collection agency was entitled to sue and to attempt to collect claims, to charge a fee therefor, and to purchase claims outright for a valid and legally enforceable consideration without engaging in the unauthorized practice of law. *Id.*

Collection agency was not entitled to advise creditors when to bring suit, to solicit or receive assignments of claims or debt collection under which payment, to the assignor or creditor, is dependent on collection from the debtor and which contemplates or authorizes enforcement by suit, brought in the name of either party, by an attorney at law. *Id.*

Collection agency was not entitled to employ a lawyer on behalf of the creditor or an assignor without specific written authority to do so, to interpose itself between the creditor and the lawyer handling legal collection on the claim, to institute or maintain legal action for others or to appropriate to its own use as attorney fees sum adjudged against debtors on assigned claim except where such judgment is its bona fide property. *Id.*

§ 11-2502. Censure, suspension, or disbarment for cause

NOTES TO DECISIONS

Constitutionality

Where law at least as far back as 1964 had proscribed same conduct as disciplinary rule which more recently came into effect, so that it could not be argued that conduct was innocent when done, its punishment by District of Columbia Court of Appeals under authority transferred by Congress from the United States District Court did not offend constitutional prohibition against ex post facto laws. *In the Matter of J. I. Keiler etc.* (D.C. App. 1977, 380 A. 2d 119).

Rule providing that lawyer shall not engage in conduct prejudicial to administration of justice is not new standard but restatement of previously existing one and is not unconstitutionally vague. *Id.*

Language of rule setting guidelines for members of bar need not meet precise standard of clarity that might be required of rules of conduct for laymen. *Id.*

Construction

Statute by which Congress conferred on Court of Appeals same authority over attorneys as had been accorded United States District Court theretofore by statute regarding conduct prejudicial to administration of justice was essentially codification of inherent power of Court of Appeals acquired upon its designation by Congress as highest court of District of Columbia. *In the Matter of J. I. Keiler etc.* (D.C. App. 1977, 380 A. 2d 119).

Jurisdiction

Date of filing of disciplinary case, not date of acts under review, is determinative factor as to whether Disciplinary Board established in 1972 has jurisdiction to decide case. *In the Matter of J. I. Keiler etc.* (D.C. App. 1977, 380 A. 2d 119).

Misconduct

Suspension from practice of law for one month is appropriate discipline for inviting labor law partner to act as arbitrator without advising union representative of

fact that member of firm representing employer is acting as the arbitrator. *In the Matter of J. I. Keiler etc.* (D.C. App. 1977, 380 A. 2d 119).

Charge, against an attorney, that he had failed to make known his relationship with arbitrator to representative of union not only before or during arbitration but also after arbitration is continuing offense. *Id.*

Prohibition against "conduct prejudicial to the administration of justice" bars not only those activities of attorney which may cause tribunal to reach incorrect decision but also conduct which taints decisionmaking process, and thus improper conduct may prejudice administration of justice even though it fosters correct decision. *Id.*

Conduct pertaining to the making of illegal campaign contributions and involving deceit and misrepresentation justifies a one-year suspension from practice of law. *In the Matter of C. C. Wild, Jr.* (D.C. App. 1976, 361 A.2d 182).

Violation of rule prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation warrants 30-day suspension. *District of Columbia Bar v. R. G. Kleindienst* (D.C. App. 1975, 345 A.2d 146).

Power of court

Court of Appeals may, in a disciplinary proceeding, consider more severe disciplinary action than that recommended by disciplinary board. *District of Columbia Bar v. R. G. Kleindienst* (D.C. App. 1975, 345 A.2d 146).

§ 11-2503. Disbarment upon conviction of crime; procedure for censure, suspension, or disbarment

NOTES TO DECISIONS

Conviction of crime

Conduct pertaining to the making of illegal campaign contributions and involving deceit and misrepresentation justifies a one-year suspension from practice of law. *In the Matter of C. C. Wild, Jr.* (D.C. App. 1976, 361 A.2d 182).

Judgment of conviction in federal court for a felony is binding upon the district court and the Circuit Court of Appeals and is not subject to collateral attack in a disbarment proceeding. *J. J. Laughlin v. United States* (1972, 474 F. 2d 444, 154 U.S. App. D.C. 196; cert. denied 93 S.Ct. 2784, 412 U.S. 941).

Chapter 26.—REPRESENTATION OF INDIGENTS IN CRIMINAL CASES

Sec.

11-2601. Plan for furnishing representation to indigents in criminal cases.

11-2602. Appointment of counsel.

11-2603. Duration and substitution of appointments.

11-2604. Payment for representation.

11-2605. Services other than counsel.

11-2606. Receipt of other payments.

11-2607. Preparation of budget.¹

11-2608. Authorization of appropriations.

11-2609. Authority of counsel.¹

AMENDMENT

1974—This chapter was added by Act Sept. 3, 1974, Pub. L. 93-412, § 2.

§ 11-2601. Plan for furnishing representation of indigents in criminal cases

The Joint Committee on Judicial Administration shall place in operation, within ninety days after the effective date of this chapter, in the District of Columbia a plan for furnishing representation to any person in the District of Columbia who is financially unable to obtain adequate representation—

(1) who is charged with a felony, or misdemeanor, or other offense for which the sixth amendment to the Constitution requires the appointment of counsel or for whom, in a case which

¹ So in original. Does not conform to section catchline.

he faces loss of liberty, any law of the District of Columbia requires the appointment of counsel;

(2) who is under arrest, when such representation is required by law;

(3) who is charged with violating a condition of probation or parole¹ in custody as a material witness, or seeking collateral relief, as provided in—

(A) Section 23-110 of the District of Columbia Code (remedies on motion attacking sentence),

(B) Chapter 7 of title 23 of the District of Columbia Code (extradition and fugitives from justice),

(C) Chapter 19 of title 16 of the District of Columbia Code (habeas corpus),

(D) Section 928 of the Act of March 8, 1901 (D.C. Code, sec. 24-302) (commitment of mentally ill person while serving sentence);

(4) who is subject to proceedings pursuant to chapter 5 of title 21 of the District of Columbia Code (hospitalization of the mentally ill);

(5) who is a juvenile and alleged to be delinquent or in need of supervision.

Representation under the plan shall include counsel and investigative, expert, and other services necessary for an adequate defense. The plan shall include a provision for private attorneys, attorneys furnished by the Public Defender Service, and attorneys and qualified students participating in clinical programs. (Added Sept. 3, 1974, Pub. L. 93-412, § 2, 88 Stat. 1090.)

EFFECTIVE DATE

Section 4 of Act Sept. 3, 1974, Pub. L. 93-412, provided: "This Act [enacting this chapter and provisions set out under this section, and amending 18 U.S.C. 3006A] shall take effect upon the date of its enactment. Any person appointed on or after July 1, 1974, but prior to the commencing date of the plan referred to in section 11-2601 of the District of Columbia Code (as added by section 2 of this Act), by a judge of the Superior Court or the District of Columbia Court of Appeals to furnish to any person in the District of Columbia, who is financially unable to obtain adequate representation, that representation and those services referred to in such section 11-2601, may be compensated and reimbursed for such representation and services rendered, including expenses incurred therewith, upon filing a claim for payment. Payment shall not be allowed in excess of the amount authorized in accordance with those sections added to the District of Columbia Code by such section 2."

SHORT TITLE

The first section of Act Sept. 3, 1974, Pub. L. 93-412, provided: "That this Act [enacting this chapter and provisions set out under this section, and amending 18 U.S.C. 3006A] may be cited as the 'District of Columbia Criminal Justice Act'."

CROSS REFERENCES

Representation of indigents in Federal courts, see 18 U.S.C. 3006A.

Representation of indigents by Public Defender Service, see § 2-2222.

Right to counsel of child alleged to be delinquent or in need of supervision, see § 16-2304.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-2607.

§ 11-2602. Appointment of counsel

Counsel furnishing representation under the plan shall in every case be selected from panels of attorneys designated and approved by the courts. In all

cases where a person faces a loss of liberty and the Constitution or any other law requires the appointment of counsel, the court shall advise the defendant or respondent that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to obtain counsel. Unless the defendant or respondent waives representation by counsel, the court, if satisfied after appropriate inquiry that the defendant or respondent is financially unable to obtain counsel, shall appoint counsel to represent him. Such appointment may be made retroactive to include any representation furnished pursuant to the plan prior to appointment. The court shall appoint separate counsel for defendants or respondents having interests that cannot properly be represented by the same counsel, or when other good cause is shown. In all cases covered by this Act where the appointment of counsel is discretionary, the defendant or respondent shall be advised that counsel may be appointed to represent him if he is financially unable to obtain counsel, and the court shall in all such cases advise the defendant or respondent of the manner and procedures by which he may request the appointment of counsel. (Added Sept. 3, 1974, Pub. L. 93-412, § 2, 88 Stat. 1090.)

REFERENCE IN TEXT

"This Act", referred to in text, appears in the original but probably should be "this chapter".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-2603.

§ 11-2603. Duration and substitution of appointments

A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the court through appeals, including ancillary matters appropriate to the proceedings. If at any time after the appointment of counsel the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in section 2606 of this chapter, as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the court finds that the person is financially unable to pay counsel whom he had retained, it may appoint counsel as provided in section 2602, and authorize payment as provided in section 2604, as the interests of justice may dictate. The court may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings. (Added Sept. 3, 1974, Pub. L. 93-412, § 2, 88 Stat. 1091.)

REFERENCES IN TEXT

"Section 2606 of this chapter", "section 2602", and "section 2604", referred to in text, refer to sections 11-2606, 11-2602, and 11-2604, respectively.

NOTES TO DECISIONS

Effective assistance of counsel

Where defendant's appointed appellate counsel was adamantly opposed to participating at all in hearing on defendant's claim of ineffective assistance by his trial counsel, and proceeded only because court ordered him to do so and threatened to hold him in contempt if he refused, prejudice which may have resulted to defendant is incapable of measurement, and fact that defendant did not suggest in retrospect anything that appellate counsel intended to undertake at hearing which he did not feel free to do does not establish that defendant was not preju-

¹ A comma probably should appear after "parole".

diced by district court's error in proceeding with hearing without appointing another lawyer. *United States v. G. Hurt* (1976, 543 F.2d 162, 177 U.S. App. D.C. 15).

Reduction of sentence proceeding

Where prisoner's motion for reduction of sentence was patently deficient and did not present sort of issue requiring appointment of counsel in order to satisfy due process standards of fundamental fairness, trial court did not err in denying prisoner's request for appointment of counsel to assist in preparation of motion. *B. J. Burrell v. United States* (D.C. App. 1975, 332 A.2d 344; cert. denied 96 S. Ct. 42, 423 U.S. 826).

§ 11-2604. Payment for representation

(a) Any attorney appointed pursuant to this chapter shall, at the conclusion of the representation or any segment thereof, be compensated at a rate fixed by the Joint Committee on Judicial Administration, not to exceed the hourly scale established by the provisions of section 3006A(d)(1) of title 18, United States Code. Such attorney shall be reimbursed for expenses reasonably incurred.

(b) For representation of a defendant before the Superior Court or before the District of Columbia Court of Appeals, as the case may be, the compensation to be paid to an attorney shall not exceed the maximum amounts established by section 3006A(d)(2) of title 18, United States Code, in the corresponding kind of case or proceeding.

(c) Claims for compensation and reimbursement in excess of any maximum amount provided in subsection (b) of this section may be approved for extended or complex representation whenever such payment is necessary to provide fair compensation. Any such request for payment shall be submitted by the attorney for approval by the chief judge of the Superior Court upon recommendation of the presiding judge in the case or, in cases before the District of Columbia Court of Appeals, approval by the chief judge of the Court of Appeals upon recommendation of the presiding judge in the case. A decision shall be made by the appropriate chief judge in the case of every claim filed under this subsection.

(d) A separate claim for compensation and reimbursement shall be made to the Superior Court for representation before that court, and to the District of Columbia Court of Appeals for representation before that court. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall fix the compensation and reimbursement to be paid to the attorney. In cases where representation is furnished other than before the Superior Court or the District of Columbia Court of Appeals, claims shall be submitted to the Superior Court which shall fix the compensation and reimbursement to be paid.

(e) For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

(f) If a person for whom counsel is appointed under this section appeals to the District of Columbia Court of Appeals, he may do so without prepayment of fees and costs or security therefor and without

filing the affidavit required by section 1915(a) of title 28, United States Code. (Added Sept. 3, 1974, Pub. L. 93-412, § 2, 88 Stat. 1091.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-2603.

§ 11-2605. Services other than counsel

(a) Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the person is financially unable to obtain them, the court shall authorize counsel to obtain the services.

(b) Counsel appointed under this section may obtain, subject to later review, investigative, expert, or other services, excluding the preparation of reporter's transcript, without prior authorization if necessary for an adequate defense. The total cost of services obtained without prior authorization may not exceed \$150 or the rate provided by section 3006A(e)(2) of title 18, United States Code, whichever is higher, and expenses reasonably incurred.

(c) Compensation to be paid to a person for services rendered by him to a person under this subsection shall not exceed \$300, or the rate provided by section 3006A(e)(3) of title 18, United States Code, whichever is higher, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the presiding judge in the case. (Added Sept. 3, 1974, Pub. L. 93-412, § 2, 88 Stat. 1092.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-2606.

§ 11-2606. Receipt of other payments

(a) Whenever the court finds that funds are available for payment from or on behalf of a person furnished representation, it may authorize or direct that such funds be paid to the appointed attorney, or to any person or organization authorized pursuant to section 2605 of this title to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant.

(b) Any person compensated, or entitled to be compensated, for any services rendered under this chapter who shall seek, ask, demand, receive, or offer to receive, any money, goods, or services in return therefor from or on behalf of a defendant or respondent shall be fined not more than \$1,000 or imprisoned not more than one year, or both. (Added Sept. 3, 1974, Pub. L. 93-412, § 2, 88 Stat. 1092.)

REFERENCE IN TEXT

"Section 2605 of this title", referred to in subsec. (a), refers to section 11-2605.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-2603.

§ 11-2607. Preparation of Budget

The joint committee shall prepare and annually submit to the Commissioner of the District of Columbia, in conformity with section 1743 of this title, or to his successor in accordance with section 445 of the District of Columbia Self-Government and Governmental Reorganization Act, for inclusion in the annual budget, annual estimates of the expenditures and appropriations necessary for furnishing representation by private attorneys to persons entitled to representation in accordance with section 2601 of this title. (Added Sept. 3, 1974, Pub. L. 93-412, § 2, 88 Stat. 1093.)

REFERENCES IN TEXT

"Section 1743 of this title" and "section 2601 of this title", referred to in text, refer to sections 11-1743 and 11-2601, respectively.

Section 445 of the District of Columbia Self-Government and Governmental Reorganization Act, referred to in text, is classified to section 445 of title 11 Appendix.

§ 11-2608. Authorization of appropriations

There are hereby authorized to be appropriated, out of any moneys in the Treasury credited to the District of Columbia, such funds as may be necessary for the administration of this chapter. When so specified in appropriation Acts, such appropriations shall remain available until expended. (Added Sept.

3, 1974, Pub. L. 93-412, § 2, 88 Stat. 1093; June 15, 1976, D.C. Law 1-69, § 2, 23 DCR 531.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-69, amended section by striking out "for fiscal years 1975 and 1976" immediately following "this chapter".

EFFECTIVE DATE

Section 3 of act June 15, 1976, D.C. Law 1-69, provided: "This act [amending this section] shall take effect at the end of the thirty day period provided for Congressional review of acts of the Council in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act June 15, 1976, D.C. Law 1-69, provided "That this act [amending this section] may be cited as the 'Criminal Justice Act Authorization Extension act'."

§ 11-2609. Authority of Council

Section 602(a) (4) of the District of Columbia Self-Government and Governmental Reorganization Act shall not apply to this chapter. (Added Sept. 3, 1974, Pub. L. 93-412, § 2, 88 Stat. 1093.)

REFERENCE IN TEXT

Section 602(a) (4) of the District of Columbia Self-Government and Governmental Reorganization Act, referred to in text, is classified to § 1-147(a) (4).

TITLE 11.—APPENDIX

DISTRICT OF COLUMBIA SELF-GOVERNMENT AND GOVERNMENTAL REORGANIZATION ACT

TITLE IV—THE DISTRICT CHARTER

PART C—THE JUDICIARY

Act Dec. 24, 1973, Pub. L. 93-198, title IV, Part C, §§ 431-434, 87 Stat. 792.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1-125.

§ 431. Judicial powers.

(a) The judicial power of the District is vested in the District of Columbia Court of Appeals and the Superior Court of the District of Columbia. The Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District and of any criminal case under any law applicable exclusively to the District. The Superior Court has no jurisdiction over any civil or criminal matter over which a United States court has exclusive jurisdiction pursuant to an Act of Congress. The Court of Appeals has jurisdiction of appeals from the Superior Court and, to the extent provided by law, to review orders and decisions of the Mayor, the Council, or any agency of the District. The District of Columbia courts shall also have jurisdiction over any other matters granted to the District of Columbia courts by other provisions of law.

(b) The chief judge of a District of Columbia court shall be designated by the District of Columbia Judicial Nominating Commission established by section 434 from among the judges of the court in regular active service, and shall serve as chief judge for a term of four years or until his successor is designated, except that his term as chief judge shall not extend beyond the chief judge's term as a judge of a District of Columbia court. He shall be eligible for redesignation as chief judge.

(c) A judge of a District of Columbia court appointed on or after the date of enactment of the District of Columbia Court Reorganization Act of 1970 [July 29, 1970] shall be appointed for a term of fifteen years subject to mandatory retirement at age seventy or removal, suspension, or involuntary retirement pursuant to section 432 and upon completion of such term, such judge shall continue to serve until reappointed or his successor is appointed and qualifies. A judge may be reappointed as provided in subsection (c) of section 433.

(d) (1) There is established a District of Columbia Commission on Judicial Disabilities and Tenure (hereinafter referred to as the "Tenure Commission"). The Tenure Commission shall consist of seven members selected in accordance with the provisions of subsection (e). Such members shall serve for terms of six years, except that the member selected in accordance with subsection (e) (3) (A) shall serve for five years; of the members first selected in accordance with subsection (e) (3) (B), one member shall serve for three years and one member shall serve

for six years; of the members first selected in accordance with subsection (e) (3) (C), one member shall serve for a term of three years and one member shall serve for five years; the member first selected in accordance with subsection (e) (3) (D) shall serve for six years; and the member first appointed in accordance with subsection (e) (3) (E) shall serve for six years. In making the respective first appointments according to subsections (e) (3) (B) and (e) (3) (C), the Mayor and the Board of Governors of the unified District of Columbia Bar shall designate, at the time of such appointments, which member shall serve for the shorter term and which member shall serve for the longer term.

(2) The Tenure Commission shall act only at meetings called by the Chairman or a majority of the Tenure Commission held after notice has been given of such meeting to all Tenure Commission members.

(3) The Tenure Commission shall choose annually, from among its members, a Chairman and such other officers as it may deem necessary. The Tenure Commission may adopt such rules of procedures not inconsistent with this Act as may be necessary to govern the business of the Tenure Commission.

(4) The District government shall furnish to the Tenure Commission, upon the request of the Tenure Commission, such records, information, services, and such other assistance and facilities as may be necessary to enable the Tenure Commission properly to perform its functions. Information so furnished shall be treated by the Tenure Commission as privileged and confidential.

(e) (1) No person may be appointed to the Tenure Commission unless he—

(A) is a citizen of the United States;

(B) is a bona fide resident of the District and has maintained an actual place of abode in the District for at least ninety days immediately prior to his appointment; and

(C) is not an officer or employee of the legislative branch or of an executive or military department or agency of the United States (listed in sections 101 and 102 of title 5 of the United States Code.); and (except with respect to the person appointed or designated according to paragraph (3) (E) is not an officer or employee of the judicial branch of the United States, or an officer or employee of the District government (including its judicial branch).

(2) Any vacancy on the Tenure Commission shall be filled in the same manner is¹ which the original appointment was made. Any person so appointed to fill a vacancy occurring other than upon the expira-

¹ So in original. Probably should be "in".

tion of a prior term shall serve only for the remainder of the unexpired term of his predecessor.¹

(3) In addition to all other qualifications listed in this section, lawyer members of the Tenure Commission shall have the qualifications prescribed for persons appointed as judges of the District of Columbia courts. Members of the Tenure Commission shall be appointed as follows:

(A) One member shall be appointed by the President of the United States.

(B) Two members shall be appointed by the Board of Governors of the unified District of Columbia Bar, both or² whom shall have been engaged in the practice of law in the District for at least five successive years preceding their appointment.

(C) Two members shall be appointed by the Mayor, one of whom shall not be a lawyer.

(D) One member shall be appointed by the Council, and shall not be a lawyer.

(E) One member shall be appointed by the chief judge of the United States District Court for the District of Columbia, and such member shall be an active or retired Federal judge serving in the District.

No person may serve at the same time on both the District of Columbia Judicial Nomination Commission and on the District of Columbia Commission on Judicial Disabilities and Tenure.

(f) Any member of the Tenure Commission who is an active or retired Federal judge shall serve without additional compensation. Other members shall receive the daily equivalent at the rate provided by grade 18 of the General Schedule, established under section 5332 of title 5 of the United States Code, while actually engaged in service for the Commission.

(g) The Tenure Commission shall have the power to suspend, retire, or remove a judge of a District of Columbia court as provided in section 432. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 431, 87 Stat. 792; Oct. 13, 1977, Pub. L. 95-131, § 3(a), 91 Stat. 1155.)

REFERENCE IN TEXT

"This Act", referred to in subsec. (d) (3), is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

AMENDMENT

1977—Act Oct. 13, 1977, Pub. L. 95-131, amended subsec. (e) (1) (C) by substituting "102" and "paragraph (3) (E)" for "202" and "subsection (b) (4) (D)", respectively.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

CROSS REFERENCES

Prior law.

Commission on Judicial Disabilities and Tenure, see § 11-1521 et seq.

Designation of chief judge, see § 11-1503.

Judicial power, generally, see § 11-101.

Jurisdiction of Court of Appeals, see §§ 11-721, 11-722.

Jurisdiction of Superior Court, see §§ 11-921, 11-922.

Tenure of judges, see § 11-1502.

NOTES TO DECISIONS

Constitutionality

Section 11-1521 creating the Commission on Judicial Disabilities and Tenure and the provisions of section 433 of this appendix giving the Commission duties and powers with respect to reappointment of judges whose terms are about to expire do not encroach on judicial independence in violation of the doctrine of separation of powers, even assuming that doctrine applies with the same force to the governmental structure of the District of Columbia as it does to the federal government. *C. W. Halleck v. H. A. Berliner, Jr., et al.* (1977, 427 F.Supp. 1225).

Supreme Court, appeals

Decision by District of Columbia Court of Appeals holding section 18-302 unconstitutional is not reviewable by direct appeal to Supreme Court, but only by writ of certiorari, because law applicable only in District of Columbia is not "statute of the United States" for purposes of 28 U.S.C. 1257 providing for Supreme Court appellate review of final judgments rendered by state's highest court invalidating statute of United States. *J. W. Key et al. v. M. M. Doyle et al.* (1977, 98 S.Ct. 280, — U.S. —).

§ 432. Removal, suspension, and involuntary retirement of Judges.

(a) (1) A judge of a District of Columbia court shall be removed from office upon the filing in the District of Columbia Court of Appeals by the Tenure Commission of an order of removal certifying the entry, in any court within the United States, of a final judgment of conviction of a crime which is punishable as a felony under Federal law or which would be a felony in the District.

(2) A judge of a District of Columbia court shall also be removed from office upon affirmation of an appeal from an order of removal filed in the District of Columbia Court of Appeals by the Tenure Commission (or upon expiration of the time within which such an appeal may be taken) after a determination by the Tenure Commission of—

(A) willful misconduct in office,

(B) willful and persistent failure to perform judicial duties, or

(C) any other conduct which is prejudicial to the administration of justice or which brings the judicial office into disrepute.

(b) A judge of a District of Columbia court shall be involuntarily retired from office when (1) the Tenure Commission determines that the judge suffers from a mental or physical disability (including habitual intemperance) which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of his judicial duties, and (2) the Tenure Commission files in the District of Columbia Court of Appeals an order of involuntary retirement and the order is affirmed on appeal or the time within which an appeal may be taken from the order has expired.

(c) (1) A judge of a District of Columbia court shall be suspended, without salary—

(A) upon—

(i) proof of his conviction of a crime referred to in subsection (a) (1) which has not become final, or

¹ So in original. Probably should be "predecessor".

² So in original. Probably should be "or".

(ii) the filing of an order of removal under subsection (a) (2) which has not become final; and

(B) upon the filing by the Tenure Commission of an order of suspension in the District of Columbia Court of Appeals.

Suspension under this paragraph shall continue until termination of all appeals. If the conviction is reversed or the order of removal is set aside, the judge shall be reinstated and shall recover his salary and all rights and privileges of his office.

(2) A judge of a District of Columbia court shall be suspended from all judicial duties, with such retirement salary as he may be entitled, upon the filing by the Tenure Commission of an order of involuntary retirement under subsection (b) in the District of Columbia Court of Appeals. Suspension shall continue until termination of all appeals. If the order of involuntary retirement is set aside, the judge shall be reinstated and shall recover his judicial salary less any retirement salary received and shall be entitled to all the rights and privileges of his office.

(3) A judge of a District of Columbia court shall be suspended from all or part of his judicial duties, with salary, if the Tenure Commission, upon concurrence of five members, (A) orders a hearing for the removal or retirement of the judge pursuant to this subchapter and determines that his suspension is in the interest of the administration of justice, and (B) files an order of suspension in the District of Columbia Court of Appeals. The suspension shall terminate as specified in the order (which may be modified, as appropriate, by the Tenure Commission) but in no event later than the termination of all appeals. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 432, 87 Stat. 794.)

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

EFFECTIVE DATE

See note under § 431 of this Appendix.

CROSS REFERENCE

Prior law relating to removal and involuntary retirement of judges, see § 11-1526.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 431 of this Appendix.

NOTES TO DECISIONS

Constitutionality

Provision of this section specifying as a ground for removal of judge "any other conduct which is prejudicial to the administration of justice or which brings the judicial office into disrepute" is supplemented by the Code of Judicial Conduct, and as so supplemented is not unconstitutionally vague or overbroad in violation of due process. *C. W. Halleck v. H. A. Berliner, Jr., et al.* (1977, 427 F.Supp. 1225).

Even assuming doctrine of separation of powers is fully applicable to the governmental structure of the District of Columbia, doctrine is not violated in judicial disciplinary proceedings either on ground that disciplinary functions of the Commission on Judicial Disabilities and Tenure represent an unconstitutional encroachment upon the independence of the judiciary of the District, or by reason of actions of members of the office of the United States Attorney in instigating or furnishing information in connection with the Commission's investigation. *Id.*

Procedures

In disciplinary proceeding concerning a judge, judge's First Amendment right to freedom of speech is not vio-

lated by consideration of statements he has made from the bench or otherwise in connection with his judicial duties. *C. W. Halleck v. H. A. Berliner, Jr., et al.* (1977, 427 F.Supp. 1225).

Even though members of the Commission on Judicial Disabilities and Tenure may themselves be involved in some parts of the investigation and prosecution, as well as being solely responsible for the adjudication in judicial disciplinary proceedings, such combination of functions does not violate due process. *Id.*

In disciplinary proceedings before the Commission on Judicial Disabilities and Tenure, consideration of alleged representations, if any, made by judge in prior proceedings before the Commission in evaluating his candidacy for reappointment would not violate the judge's constitutional rights. *Id.*

Review

Neither doctrine of abstention nor doctrine of federal equitable restraint required federal district court to refrain from deciding constitutional questions which had been raised in regard to disciplinary proceedings concerning a judge of the Superior Court and pending before the Commission on Judicial Disabilities and Tenure. *C. W. Halleck v. H. A. Berliner, Jr., et al.* (1977, 427 F.Supp. 1225).

It is for the Commission on Judicial Disabilities and Tenure in the first instance, and for special court under section 11-1529 which reviews orders of the Commission, to determine the due process safeguards to which judge is entitled during a disciplinary proceeding. *Id.*

Sanctions

Before the Commission on Judicial Disabilities and Tenure may impose any sanction on a judge, it must determine that the judge has engaged in conduct which falls within one of the grounds for removal under this section, and under provisions of this section, it should not institute any disciplinary investigation or proceeding unless it believes that the alleged conduct, if proved, may warrant removal from office on those grounds. *C. W. Halleck v. H. A. Berliner, Jr., et al.* (1977, 427 F.Supp. 1225).

Where the Commission on Judicial Disabilities and Tenure concludes that judge should not be removed from office, it may call judge before it and warn him in camera that a similar offense in the future may warrant removal and, subject to limitations in the instant case, the Commission may in its discretion make public the fact that it has determined that although grounds for removal exist, removal will not be ordered, and the reasons for that determination. *Id.*

§ 433. Nomination and appointment of judges.

(a) Except as provided in section 434(d) (1), the President shall nominate, from the list of persons recommended to him by the District of Columbia Judicial Nomination Commission established under section 434, and, by and with the advice and consent of the Senate, appoint all judges of the District of Columbia courts.

(b) No person may be nominated or appointed a judge of a District of Columbia court unless he—

(1) is a citizen of the United States;

(2) is an active member of the unified District of Columbia Bar and has been engaged in the active practice of law in the District for the five years immediately preceding his nomination or for such five years has been on the faculty of a law school in the District, or has been employed as a lawyer by the United States or the District of Columbia government;

(3) is a bona fide resident of the District of Columbia and has maintained an actual place of abode in the District for at least ninety days immediately prior to his nomination, and shall retain such residency as long as he serves as such judge, except judges appointed prior to the effective date

of this part who retain residency as required by section 1501(a) of title 11 of the District of Columbia Code shall not be required to be residents of the District to be eligible for reappointment or to serve any term to which reappointed;

(4) is recommended to the President, for such nomination and appointment, by the District of Columbia Judicial Nomination Commission; and

(5) has not served, within a period of two years prior to his nomination, as a member of the Tenure Commission or of the District of Columbia Judicial Nomination Commission.

(c) Not less than three months prior to the expiration of his term of office, any judge of the District of Columbia courts may file with the Tenure Commission a declaration of candidacy for reappointment. If a declaration is not so filed by any judge, a vacancy shall result from the expiration of his term of office and shall be filled by appointment as provided in subsections (a) and (b). If a declaration is so filed, the Tenure Commission shall, not less than thirty days prior to the expiration of the declaring candidate's term of office, prepare and submit to the President a written evaluation of the declaring candidate's performance during his present term of office and his fitness for reappointment to another term. If the Tenure Commission determines the declaring candidate to be exceptionally well qualified or well qualified for reappointment to another term, then the term of such declaring candidate shall be automatically extended for another full term, subject to mandatory retirement, suspension, or removal. If the Tenure Commission determines the declaring candidate to be qualified for reappointment to another term, then the President may nominate such candidate, in which case the President shall submit to the Senate for advice and consent the renomination of the declaring candidate as judge. If the President determines not to so nominate such declaring candidate, he shall nominate another candidate for such position only in accordance with the provisions of subsections (a) and (b). If the Tenure Commission determines the declaring candidate to be unqualified for reappointment to another term, then the President shall not submit to the Senate for advice and consent the renomination of the declaring candidate as judge and such judge shall not be eligible for reappointment or appointment as a judge of a District of Columbia court. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 433, 87 Stat. 795.)

REFERENCE IN TEXT

"The effective date of this part", referred to in subsec. (b) (3), refers to the effective date of Part C of title. IV of Act Dec. 24, 1973. The effective date of such Part C is Jan. 2, 1975, see section 771(c) of such Act which is set out as a note under § 1-121.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

EFFECTIVE DATE

See note under § 431 of this Appendix.

CROSS REFERENCE

Prior law relating to appointment and qualification of judges, see § 11-1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 431, 434 of this Appendix.

NOTES TO DECISIONS

Constitutionality

Section 11-1521 creating the Commission on Judicial Disabilities and Tenure and the provisions of this section, giving the Commission duties and powers with respect to reappointment of judges whose terms are about to expire do not encroach on judicial independence in violation of the doctrine of separation of powers, even assuming that doctrine applies with the same force to the governmental structure of the District of Columbia as it does to the federal government. *C. W. Halleck v. H. A. Berliner, Jr., et al.* (1977, 427 F.Supp. 1225).

Procedures

In evaluation by the Commission on Judicial Disabilities and Tenure of judge's candidacy for reappointment, receipt and consideration of information submitted by present and former assistant United States attorneys with respect to judge's service as a judge is in keeping with the Commission's statutory duties and is not in violation of the doctrine of separation of powers. *C. W. Halleck v. H. A. Berliner, Jr., et al.* (1977, 427 F. Supp. 1225).

Prior to the Home Rule Act, Judge of the District of Columbia had no expectation of reappointment as amounted to a property interest, and thereafter judge does not have a property interest which entitles him to the full panoply of due process, but does have an interest in possible reappointment which entitles him to a thorough and fair evaluation of his candidacy by an impartial Commission, and is entitled to such process as would insure that Commission's evaluation of his candidacy for reappointment is thorough and fair. *Id.*

Process which must be afforded by Commission in connection with evaluation of a candidate for reappointment as a judge is less than the full panoply of protections accorded in a criminal trial, and does not include right to examine or cross-examine every person who has given information or require published regulations, formal hearing, or published standards for evaluation. *Id.*

Consideration by Commission on Judicial Disabilities and Tenure, in evaluating candidacy of judge for reappointment, of statements judge had made from the bench or otherwise in connection with his judicial duties does not violate judge's First Amendment right to freedom of speech. *Id.*

§ 434. District of Columbia Judicial Nomination Commission.

(a) There is established for the District of Columbia the District of Columbia Judicial Nomination Commission (hereafter in this section referred to as the "Commission"). The Commission shall consist of seven members selected in accordance with the provisions of subsection (b). Such members shall serve for terms of six years, except that the member selected in accordance with subsection (b) (4) (A) shall serve for five years; of the members first selected in accordance with subsection (b) (4) (B), one member shall serve for three years and one member shall serve for six years; of the members first selected in accordance with subsection (b) (4) (C), one member shall serve for a term of three years and one member shall serve for five years; the member first selected in accordance with subsection (b) (4) (D) shall serve for six years; and the member first appointed in accordance with subsection (b) (4) (E) shall serve for six years. In making the respective first appointments according to subsections (b) (4) (B) and (b) (4) (C), the Mayor and the Board of Governors of the unified District of Columbia Bar shall designate, at the time of such appointments, which member shall serve for the shorter term and which member shall serve for the longer term.

(b) (1) No person may be appointed to the Commission unless he—

(A) is a citizen of the United States;

(B) is a bona fide resident of the District and has maintained an actual place of abode in the District for at least 90 days immediately prior to his appointment; and

(C) is not a member, officer, or employee of the legislative branch or of an executive or military department or agency of the United States (listed in sections 101 and 102 of title 5 of the United States Code); and (except with respect to the person appointed or designated according to paragraph (4) (E)) is not an officer or employee of the judicial branch of the United States, or an officer or employee of the District government (including its judicial branch).

(2) Any vacancy on the Commission shall be filled in the same manner in which the original appointment was made. Any person so appointed to fill a vacancy occurring other than upon the expiration of a prior term shall serve only for the remainder of the unexpired term of his predecessor.

(3) It shall be the function of the Commission to submit nominees for appointment to positions as judges of the District of Columbia courts in accordance with section 433 of this Act.

(4) In addition to all other qualifications listed in this section, lawyer members of the Commission shall have the qualifications prescribed for persons appointed as judges for the District of Columbia courts. Members of the Commission shall be appointed as follows:

(A) One member shall be appointed by the President of the United States.

(B) Two members shall be appointed by the Board of Governors of the unified District of Columbia Bar, both of whom shall have been engaged in the practice of law in the District for at least five successive years preceding their appointment.

(C) Two members shall be appointed by the Mayor, one of whom shall not be a lawyer.

(D) One member shall be appointed by the Council, and shall not be a lawyer.

(E) One member shall be appointed by the chief judge of the United States District Court for the District of Columbia, and such member shall be an active or retired Federal judge serving in the District.

(5) Any member of the Commission who is an active or retired Federal judge shall serve without additional compensation. Other members shall receive the daily equivalent at the rate provided by grade 18 of the General Schedule, established under section 5332 of title 5 of the United States Code, while actually engaged in service for the Commission.

(c) (1) The Commission shall act only at meetings called by the Chairman or a majority of the Commission held after notice has been given of such meeting to all Commission members.

(2) The Commission shall choose annually, from among its members, a Chairman, and such other

officers as it may deem necessary. The Commission may adopt such rules of procedures not inconsistent with this Act as may be necessary to govern the business of the Commission.

(3) The District government shall furnish to the Commission, upon the request of the Commission, such records, information, services, and such other assistance and facilities as may be necessary to enable the Commission properly to perform its function. Information so furnished shall be treated by the Commission as privileged and confidential.

(d) (1) In the event of a vacancy in any position of the judge of a District of Columbia court, the Commission shall, within thirty days following the occurrence of such vacancy, submit to the President, for possible nomination and appointment, a list of three persons for each vacancy. If more than one vacancy exists at one given time, the Commission must submit lists in which no person is named more than once and the President may select more than one nominee from one list. Whenever a vacancy will occur by reason of the expiration of such a judge's term of office, the Commission's list of nominees shall be submitted to the President not less than thirty days prior to the occurrence of such vacancy. In the event the President fails to nominate, for Senate confirmation, one of the persons on the list submitted to him under this section within sixty days after receiving such list, the Commission shall nominate, and with the advice and consent of the Senate, appoint one of those persons to fill the vacancy for which such list was originally submitted to the President.

(2) In the event any person recommended by the Commission to the President requests that his recommendation be withdrawn, dies, or in any other way becomes disqualified to serve as a judge of the District of Columbia courts, the Commission shall promptly recommend to the President one person to replace the person originally recommended.

(3) In no instance shall the Commission recommend any person, who in the event of timely nomination following a recommendation by the Commission, does not meet, upon such nomination, the qualifications specified in section 433. (Dec. 24, 1973, (Pub. L. 93-198, title IV, § 434, 87 Stat. 796; Oct. 13, 1977, Pub. L. 95-131, § 3(b), 91 Stat. 1155.)

REFERENCE IN TEXT

"This Act", referred to in subsec. (c) (2), is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

AMENDMENT

1977—Act Oct. 13, 1977, Pub. L. 95-131, amended subsec. (b) (1) (C) by substituting "102" and "paragraph (4) (E)" for "202" and "subsection (b) (4) (D)", respectively.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

EFFECTIVE DATE

See note under § 431 of this Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 431, 433 of this Appendix.

NOTES TO DECISIONS

Constitutionality

Section 11-1521 creating the Commission on Judicial Disabilities and Tenure and the provisions of section 433 of this appendix giving the Commission duties and powers with respect to reappointment of judges whose terms are about to expire do not encroach on judicial independence in violation of the doctrine of separation of powers, even assuming that doctrine applies with the same force to the governmental structure of the District of Columbia as it does to the federal government. *C. W. Halleck v. H. A. Berliner, Jr., et al.* (1977, 427 F.Supp. 1225).

* * * *

**PART D—DISTRICT BUDGET AND
FINANCIAL MANAGEMENT**

Act Dec. 24, 1973, Pub. L. 93-198, title IV, Part D,
§ 445, 87 Stat. 800.

§ 445. District of Columbia courts' budget.

The District of Columbia courts shall prepare and annually submit to the Mayor, for inclusion in the annual budget, annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the District of Columbia court system. All such estimates shall be forwarded by the Mayor to the Council, for its action pursuant to sections 47-224 and 47-228(c), without revision but subject to his recommendations. Notwithstanding any other provision of this Act, the Council may comment or make recommendations concerning such annual estimates involving the expenditures and appropriations necessary for the maintenance and operation of the District of Columbia court system submitted by such courts but shall have no authority under this Act to revise such estimates. The courts shall submit as part of their budgets both a multi-year plan and a multiyear capital improvements plan and shall submit a statement presenting qualitative and quantitative descriptions of court activities and the status of efforts to comply with reports of the District of Columbia Auditor and the Comptroller General of the United States. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 445, 87 Stat. 800.)

REFERENCE IN TEXT

"This Act", referred to in text, is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

EFFECTIVE DATE

See note under § 431 of this Appendix.

CROSS REFERENCE

Prior law relating to annual budget for the District of Columbia court system, see § 11-1743.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-2607.

* * * *

**TITLE VII—REFERENDUM; SUCCESSION IN
GOVERNMENT; TEMPORARY PROVISIONS;
MISCELLANEOUS; AMENDMENTS TO DISTRICT
OF COLUMBIA ELECTION ACT; RULES OF CON-
STRUCTION; AND EFFECTIVE DATES**
PART B—SUCCESSION IN GOVERNMENT

Act Dec. 24, 1973, Pub. L. 93-198, title VII, Part B,
§ 718, 87 Stat. 820.

§ 718. Continuation of District of Columbia court system.

(a) The District of Columbia Court of Appeals, the Superior Court of the District of Columbia, and the District of Columbia Commission on Judicial Disabilities and Tenure shall continue as provided under the District of Columbia Court Reorganization Act of 1970 subject to the provisions of part C of title IV of this Act and section 1-147(a) (4).

(b) The term and qualifications of any judge of any District of Columbia court, and the term and qualifications of any member of the District of Columbia Commission on Judicial Disabilities and Tenure appointed prior to the effective date of title IV of this Act shall not be affected by the provisions of part C of title IV of this Act. No provision of this Act shall be construed to extend the term of any such judge or member of such Commission. Judges of the District of Columbia courts and members of the District of Columbia Commission on Judicial Disabilities and Tenure appointed after the effective date of title IV of this Act shall be appointed according to part C of such title IV.

(c) Nothing in this Act shall be construed to amend, repeal, or diminish the duties, rights, privileges, or benefits accruing under sections 1561 through 1571 of title 11 of the District of Columbia Code, and sections 703 and 904 of such title, dealing with the retirement and compensation of the judges of the District of Columbia courts. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 718, 87 Stat. 820.)

REFERENCES IN TEXT

Provisions of the District of Columbia Court Reorganization Act of 1970 providing for the courts and commission, referred to in subsec. (a), appear in §§ 11-701 et seq., 11-901 et seq., and 11-1521 et seq.

"Part C of title IV of this Act", referred to in subsecs. (a) and (b), is set out at the beginning of this Appendix.

"The effective date of title IV of this Act", referred to in subsec. (b), refers to the effective date of title IV of Act Dec. 24, 1973. The effective date of such title IV is Jan. 2, 1975, see section 771(c) of such Act which is set out as a note under § 1-121.

"This Act", referred to in subsecs. (b) and (c), is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

EFFECTIVE DATE

See note under § 431 of this Appendix.

TITLE 12.—RIGHT TO REMEDY

Title 12 was enacted by Pub. L. 88-241, Dec. 23, 1963, 77 Stat. 509

Chapter 1.—ABATEMENT AND REVIVOR

§ 12-101. Survival of rights of action

NOTES TO DECISIONS

Complaint—Adequacy

Deceased's son who filed complaint, individually and on behalf of deceased's estate, which asserted, among other things, that it was being brought under this section does, when read as a whole, state a claim under this section. *O. W. Strother, Administrator etc. v. District of Columbia* (D.C. App. 1977, 372 A.2d 1291).

Legal representative

As heir-at-law, deceased's son was a proper party to sue on a claim under this section at the time of the filing of the original complaint, although he had not then been qualified as administrator of his father's estate. *O. W. Strother, Administrator etc. v. District of Columbia* (D.C. App. 1977, 372 A.2d 1291).

Statute of limitations

Where claim under this section alleging that patient died as a result of injuries allegedly caused by negligent acts and omissions of members of hospital staff was filed within three years after the decedent would have had a claim if he had lived, claim was timely. *O. W. Strother, Administrator etc. v. District of Columbia* (D.C. App. 1977, 372 A.2d 1291).

Where hospital was put on notice that it would have to defend a claim arising out of death of plaintiff's father by original complaint wherein deceased's son, individually and on behalf of deceased's estate, sought recovery under this section and chapter 27 of title 16, subsequent amendment wherein son brought suit in his capacity as administrator of estate would be allowed to relate back to time of filing of original complaint, and, thus suit is not barred by statute of limitations. *Id.*

Chapter 3.—LIMITATION OF ACTIONS

§ 12-301. Limitation of time for bringing actions

CROSS REFERENCE

Contract for sale, commencement of action within 4 years after breach, see § 28:2-725.

NOTES TO DECISIONS

Accrual of cause of action—Contracts

Where note given by guarantor to creditor in amount of balance of original claim against the principal debtor was not taken as payment of the debt, giving of the note did not mature guarantor's cause of action against the debtor for reimbursement; hence cause of action accrued on each installment payment under the note, and since guarantor's suit for reimbursement was filed in February of 1975, statute of limitations ran as to all installment payments except those made after February, 1972. *R. S. Knight v. R. B. Cheek, III* (D.C. App. 1977, 369 A.2d 601).

In action claiming royalties under contract, three-year statute of limitations does not bar claim with respect to royalties which accrued within three-year period prior to commencement of action, and statute only bars those quarterly royalty payments that were due and not paid more than three years before plaintiffs brought suit. *T. J. Doolin et al. v. Environmental Power Ltd. et al.* (D.C. App. 1976, 360 A.2d 493).

Where lender's transferee purchased note and deed of trust in 1961, all installments due were paid until 1966 when borrower's grantee filed petition for reorganization,

transferee filed a proof of claim later that year, trustee in bankruptcy objected to the claim in 1968 on ground that the loan was made in violation of Loan Shark Law [§ 26-601 et seq.], and loan and accompanying deed were declared void in 1971, action instituted by transferee in December, 1972 to recover its loss from lender was not barred by this section which provides three-year limitation period for actions based on contract, despite argument that transferee's claim accrued when it purchased the note and deed. *Hartford Life Insurance Co. v. Title Guarantee Co. et al.* (1975, 520 F.2d 1170, 172 U.S. App. D.C. 156).

In light of 1971 Court of Appeals decision invalidating loan as being in violation of Loan Shark Law, lender's transferee, which had purchased note and deed of trust, would have been better advised to proceed immediately against lender in 1968 when trustee in bankruptcy for borrower's grantee objected to transferee's proof of claim on ground that loan violated Loan Shark Law, rather than engaging in a protracted and ultimately futile legal battle with the trustee, but it would be grossly inequitable to determine that transferee's cause of action against lender accrued in 1968 prior to the Court of Appeals' decision. *Id.*

— Fraud

Even though plaintiff acted properly in bringing action within four weeks after discovering alleged fraud arising out of overissue of stock to plaintiff, plaintiff had already relinquished any right of action for fraud by not having exercised "ordinary care" in attempting to discover fraud during the 14-year period between the date he received the stock in 1961 and the death of secretary/treasurer of corporation in late 1975. *W. G. Carmichael v. T. J. Egan et al.* (1977, 433 F. Supp. 465).

In action in which purchasers sought rescission of settlement agreement pursuant to previous action for breach of contract to sell option warranted to include strip-mining rights to certain land and in which purchasers alleged that vendors' statement that option purchased did not include strip-mining rights under Pennsylvania law, which statement induced settlement, constituted fraudulent misrepresentation, in view of fact that alleged misrepresentation, in the exercise of due diligence, should have been ascertained when parties entered into settlement agreement, complaint, brought almost four years after parties executed such agreement, is barred by three-year statute of limitations. *T. J. Doolin et al. v. Environmental Power Ltd. et al.* (D.C. App. 1976, 360 A.2d 493).

Lender's transferee's proposed second amended complaint of June, 1973 alleging that until 1973 lender fraudulently concealed from transferee the fact that lender was concerned, before loan was entered into in 1960, that such a loan might violate Loan Shark Law [§ 26-601 et seq.] was not barred by statute of limitations, where there was no indication that transferee should have learned of lender's alleged conduct any earlier than it did. *Hartford Life Insurance Co. v. Title Guarantee Co. et al.* (1975, 520 F.2d 1170, 172 U.S. App. D.C. 156).

— Installment obligations

Although all payments on three notes, except the last balloon payment, were found barred by statute of limitations, such fact did not alter nature of those installments as specified in notes and, hence, in calculating amount recoverable it was proper to follow terms of note and apply each monthly installment first to interest and then principal to arrive at the final payment. *R. T. Toomey et ano. v. D. S. Cammack* (D.C. App. 1977, 379 A.2d 700).

Where notes provided that they were to be repaid in "constant monthly installments" and holder was granted option of accelerating the entire unpaid principal sum of

the note upon default in payment of any one installment, the notes are "installment obligations" and statute limitations with respect to suit for nonpayment began to run on each installment as that installment fell due, and provision that unpaid balance of principal, if any, with accrued interest would be due and payable seven years after date of note does not cause the note to fall due at the end of seven years. *R. J. Toomey et ano. v. D. S. Cammack* (D.C. App. 1975, 345 A.2d 453).

— Insurance

Evidence that insured knew or should have known of possible cause of action against insurance agency as early as June, 1969, is sufficient to support District Court's finding that insured's action against insurance agency filed in September, 1973, is barred by three-year statute of limitations. *S. E. Johnson, Jr. v. Bernard Insurance Agency, Inc.* (1976, 532 F.2d 1382, 174 U.S. App. D.C. 307).

In action brought by insurer against insured's former employee to recover amount of payment it made to insured under commercial fidelity policy for loss sustained by insured as result of false or dishonest acts of insured's former employee, insurer stood in shoes of insured, took no rights other than those insured had, and was subject to all defenses which employee could have asserted against insured including statute of limitation; therefore, trial court did not err in dismissing insurer's action which was filed more than three years after date when employee was dismissed from employment upon his arrest. *Aetna Casualty & Surety Company v. R. T. Windsor* (D.C. App. 1976, 353 A.2d 684).

Where beneficiary of group life policy who sought to recover double indemnity benefits for accidental death of insured had submitted her claim to insured's employer and subsequently received payment of ordinary life benefits through employer, beneficiary had made employer her agent for claim and for payment or rejection purposes; thus, notification of rejection of claim for double indemnity benefits to insured's former employer was sufficient to commence running of limitations period against beneficiary's claim for double indemnity benefits. *M. G. Dillard v. The Travelers Insurance Company* (D.C. App. 1972, 298 A.2d 222).

— Negligence

Where plaintiff suffered injury, if at all, on date that certificate for allegedly overissued stock was issued to him in payment for services, since approximately fourteen years had elapsed between such alleged injury and commencement of action, plaintiff's claim for negligence was barred by three-year statute of limitations. *W. G. Carmichael v. T. J. Egan et al.* (1977, 433 F. Supp. 465).

— Sealed instruments

Where note upon which suit was brought was under seal, the period of limitation was 12 years, not the three-year statute on simple contracts. *R. L. Ramey v. J. J. Burrascano* (D.C. App. 1974, 324 A.2d 687).

— Torts

Where claim under section 12-101 alleging that patient died as a result of injuries allegedly caused by negligent acts and omissions of members of hospital staff was filed within three years after the decedent would have had a claim if he had lived, claim was timely. *O. W. Strother, Administrator etc. v. District of Columbia* (D.C. App. 1977, 372 A.2d 1291).

Where in two-year period ending in October of 1968 plaintiff took 500 milligrams per week of Aralen, in August 1968 she became dizzy and nauseated and had a feeling that her ears were stuffed with cotton and her hearing was suppressed and distorted and on consulting with a specialist shortly thereafter was advised that cause of hearing loss was chloroquine toxicity, i.e., the drug, suit against manufacturer based on theories of negligence, breach of warranty and products liability is barred by three-year limitations period where complaint was not filed until August 1974; in 1968 plaintiff knew, or through exercise of due diligence, should have known that she had a claim that her hearing problem was caused by the drug. *M. E. Grigsby, M.D. v. Sterling Drug, Inc. et ano.* (1975, 428 F.Supp. 242; aff'd 543 F.2d 417, 177 U.S. App. D.C. 270; cert. denied 97 S.Ct. 2925, 431 U.S. 967).

— Trespass

Concealed encroachment on lessee's land buried at least 23 feet below surface, which encroachment was not likely to remain indefinitely, constitutes a continuing trespass, and thus lessee's cause of action for trespass accrued on date of trespass and continued until three years after encroachment had been removed; therefore, where lessee filed suit within three years of removal of encroachment, lessee's recovery of damages resulting from trespass during three-year statutory period preceding filing of suit is not barred. *L'Enfant Plaza East, Inc. v. John McShain, Inc.* (D.C. App. 1976, 359 A.2d 5).

Amendment of pleadings

Amendment of complaint, which contained count for common-law slander charging that store detectives accused plaintiff's decedent of being either a drunkard or drug addict or both, so as to include statement that plaintiff additionally relied on Virginia statutory relief for slander, did not, for purposes of statute of limitations, commence a new cause of action. *May Department Stores Company, Inc., v. E. V. Devercelli* (D.C. App. 1973, 314 A.2d 767).

Breach of contract

Generally, statute of limitations begins to run from date a contract is breached. *M. G. Dillard v. The Travelers Insurance Company* (D.C. App. 1972, 298 A.2d 222).

Civil rights actions

Court is required as matter of judicial implication to create procedural limitations on actions under civil rights statutes for which Congress has enacted no applicable limitation and procedural limitations thus imposed should be consistent with the humane and remedial policy underlying civil rights statute. *S. Macklin et al. v. Spector Freight Systems, Inc., et al.* (1973, 478 F.2d 979, 156 U.S. App. D.C. 69).

To extent that minority truck driver could show that his misperception of his difficulties was justified and that he had good cause not to suspect racial discrimination, he could recover for period before he realized that he had actually been wronged and statute of limitations had begun to run. *Id.*

Conflict of laws

In attorney malpractice diversity case brought by Florida corporation against defendants who allegedly were partners in District law firm at time in question, court would not perform an "interest analysis" but would automatically apply statute of limitations of the District as the forum. *Manatee Cablevision Corporation v. W. T. Pierson et al.* (1977, 433 F. Supp. 571).

The choice-of-laws rule in the District of Columbia shall apply to conflicting statutes of limitations where it is demonstrated that a jurisdiction outside the forum has a relationship to the controversy that warrants an evaluation of the interest of such jurisdiction in the application of its own rule of law. *N. B. Cornwell et ux. v. C. I. T. Corp. of New York et ano.* (1974, 373 F. Supp. 661).

Questions whether two-year period of limitations of Virginia and Alaska or three-year period of limitations of District of Columbia were applicable to action by Virginia plaintiffs against District of Columbia defendant for injuries sustained in Alaska plane crash or whether Warsaw Convention preempted use of limitations of either jurisdiction in action operated to preclude granting of motion to dismiss action as untimely pending further argument. *Id.*

Where Virginia resident brought suit in the District of Columbia against corporation which engaged in business both in Virginia and the District of Columbia, based on personal injuries allegedly sustained in a fall in defendant's store in Virginia, Virginia two-year statute of limitations, which would bar the action, would be applied, rather than District of Columbia three-year statute, which would not bar the action, both on the basis of the District of Columbia "interest analysis" approach to conflict of laws and to prevent forum shopping. *D. Farrier v. May Department Stores Company, Inc.* (1973, 357 F. Supp. 190).

Contracts

General three-year statute of limitations for bringing action on a contract did not bar hospital's claim for

Washington Hospital Center, Inc. (D.C. App. 1972, 298 A. 2d 44).

— Rescission

Complaint seeking rescission of settlement agreement and release entered into pursuant to previous action for breach of contract and enforcement of such contract which involved sale of option warranted to include strip-mining rights as well as mineral rights to certain coal land is subject to three-year statutory limit, where rescission action is directed at contract which is not under seal, regardless of whether claim is considered most analogous to simple contract action or some other action in tort. *T. J. Doolin et al. v. Environmental Power Ltd. et al.* (D.C. App. 1976, 360 A.2d 493).

Costs on appeal

Where appeal by plaintiff purchaser of automobile, in action for breach of contract against automobile dealer and manufacturer, in which action judgment had been entered for defendants on grounds that action was commenced more than six years after purchase of the automobile and thus was barred by the statute of limitations, was completely lacking in substance, appeal would be dismissed as frivolous and double costs would be assessed against purchaser. *E. E. Tolson, Jr., v. Handley Ford, Inc. et ano.* (D.C. App. 1973, 304 A. 2d 634).

Dismissal

Trial court did not abuse discretion in dismissing suit for assault, battery and false imprisonment against corporate defendant on ground that failure to effect service on defendant for almost eight months after the original attempted service was ruled invalid constitutes a failure to prosecute warranting dismissal, and in dismissing suit against the defendant employee on ground that the failure of plaintiff for more than ten months to move for a default judgment against such employee after service was allegedly effected warrants dismissal for lack of diligence. *H. E. Malloy v. Safeway Stores, Inc. et ano.* (D.C. App. 1976, 360 A.2d 48).

Employment cases

Former government employee could not maintain action against government officials for alleged conspiracy to deprive him of his job more than three years after employee's dismissal on ground that conspiracy which caused dismissal, though admittedly occurring outside three-year period set by statute of limitations, continued within the period where no independently actionable acts causing injury were alleged to have occurred within the limitations period. *A. E. Fitzgerald v. R. C. Seamans, Jr., et al.* (1974, 384 F. Supp. 688; aff'd in part rem'd in part 553 F. 2d 220, 180 U.S. App. D.C. 75).

Mere allegation that conspiracy to deprive former government employee of his job continued as conspiracy of silence after employee's dismissal, which admittedly occurred outside period set by statute of limitations, or that conspiracy was actively concealed within the limitations period would not suffice to make actionable those acts with respect to which statute of limitations had run. *Id.*

District of Columbia school teacher's cause of action arising out of disputed salary placement arose, at the latest, on May 1, 1967, on affirmation by chief examiner of her salary placement, and thus suit on original claim which was not filed until September 11, 1972, was barred by three-year statute of limitations. *C. L. Clark v. H. J. Scott, Superintendent of Schools, et al.* (D.C. App. 1974, 329 A. 2d 442).

Equitable actions

Even if statute of limitations was not a bar, doctrine of laches would have operated to prevent grant of equitable relief to plaintiff, on claim of overissuance of stock to him in payment for services, by a declaratory judgment that stock certificate is valid, since defendants, due to plaintiff's failure to take timely action, had been seriously prejudiced in their defenses. *W. G. Carmichael v. T. J. Egan et al.* (1977, 433 F. Supp. 465).

Estoppel

In action for assault, in view of incredibility of plaintiff's testimony as to assurances made to him and in view

of indefiniteness as to points in time when alleged promises were made, and in view of absence of any evidence that plaintiff relied on assurances to his detriment, plaintiff failed to establish that defendant is estopped to rely upon statute of limitations. *C. H. Alley v. Dodge Hotel et al.* (1977, 551 F.2d 442, 179 U.S. App. D.C. 256; cert. denied 97 S.Ct. 2684, 431 U.S. 958).

Federal regulations

Where Federal Home Loan Bank Board regulation allegedly violated by mortgagee, which required payment of prepayment penalties without express mention thereof in mortgages, was silent on question of limitations, such silence could be interpreted to mean that it was a federal policy to adopt local laws of limitation, and this section is applicable. *G. Schmidt et ux. v. Interstate Federal Savings and Loan Association* (1977, 74 F.R.D. 423).

Group life insurance

Action which was brought by beneficiary of group life policy to recover double indemnity accidental death benefits more than three years after insurer had refused claim for double indemnity benefits was precluded by applicable three-year statute of limitations. *M. G. Dillard v. The Travelers Insurance Company* (D.C. App. 1972, 298 A. 2d 222).

Intervention

In case involving claims for damages for alleged police misconduct during the "May Day" demonstrations of 1971, the District Court improperly denied as untimely a motion to intervene filed by 266 plaintiffs immediately after class certification was refused on grounds of untimeliness and nonpredominance of common questions; rather, under the Supreme Court's "American Pipe" decision, plaintiffs had a right to intervene with respect to some, and perhaps all, of their claims, since a finding of typicality is not required for invocation of the tolling doctrine of "American Pipe," and since defendants were notified through the class action of the number and generic identity of the potential intervenors and their substantive claims. *M. McCarthy et al. v. R. G. Kleindienst, Acting Attorney General et al.* (1977, 562 F.2d 1269, 183 U.S. App. D.C. 321).

Negligence—Public officials

Action seeking damages from corporation counsel on ground that his failure to supervise processing of request for opinion as to validity of police regulation requiring a permit to give a speech in a public place caused the ten-month delay in its issuance and led to plaintiff's arrest under an unconstitutional regulation sounds in negligence, rather than false arrest and imprisonment; hence, applicable statute of limitations is the District's three-year period for negligence actions, rather than the one-year limitation period for false arrest. *A. Shifrin et al. v. J. Wilson et al.* (1976, 412 F. Supp. 1282).

Personal injury

Where any wrongful act committed by defendant or its agents occurred on November 28, 1970, which was date on which plaintiff was arrested and charged with shoplifting while he was shopping at a branch of defendant's store, and all subsequent acts were those of the Commonwealth of Virginia, including the entry of a nol. pros. in case, claims based on malicious prosecution, false arrest, and defamation are barred by one-year period of limitations after November 28, 1971, whether the Virginia or District of Columbia statutes are applicable, and complaint filed on November 10, 1972 was properly dismissed as untimely. *G. W. Brewster v. Woodward & Lothrop, Inc.* (1976, 530 F. 2d 1016, 174 U.S. App. D.C. 164).

Time for bringing action for recovery of injuries sustained by hotel tenant who alleged that, on two occasions, a person entered his room and assaulted him, would be three years from the time the right to maintain the action accrued. *C. H. Alley v. Dodge Hotel* (1974, 501 F. 2d 880, 163 U.S. App. D.C. 320; cert. denied 97 S.Ct. 2684, 431 U.S. 958).

Where shooting victim filed his complaint against District of Columbia and its chief of police two years and three months after incident in which police officer shot victim with his service revolver while allegedly in grossly intoxicated condition, where subject case involved claims

grounded in negligence, and where limitation period for negligence actions in the District of Columbia was three years, plaintiff's complaint was timely, notwithstanding contention that the complaint was essentially for "wounding" and thus barred under one-year limitation period for wounding. *D. S. Marusa v. District of Columbia et al.* (1973, 484 F. 2d 828, 157 U.S. App. D.C. 348).

Purpose

Broad purposes of statutes of limitation are prevention of state claims and unfair surprise. *S. Macklin et al. v. Spector Freight Systems, Inc., et al.* (1973, 478 F.2d 979, 156 U.S. App. D.C. 69).

Securities violations, federal

Two-year statute of limitations contained in section 2-2413 which creates civil cause of action in favor of buyer of securities sold by means of materially false or misleading statement or by means of statements containing material omissions, not the three-year statute of limitations of this section governing common-law fraud actions, applied to action charging violation of federal statute prohibiting fraudulent interstate transactions in securities and statute prohibiting manipulative and deceptive devices in connection with purchase or sale of registered securities. *Forrestal Village, Inc. v. K. Graham et al.* (1977, 551 F. 2d 411, 179 U.S. App. D.C. 225).

Summary judgment

In beneficiary's action against insurer to recover double indemnity accidental death benefits under group life policy, beneficiary's allegations that suit was timely brought, that claim was in continuing dispute, and that insurer's rejection of claim was a nullity failed to establish existence of genuine issues of material fact with respect to insurer's defenses under statute of limitations and did not preclude grant of summary judgment, absent supporting factual assertions. *M. G. Dillard v. The Travelers Insurance Company* (D.C. App. 1972, 298 A. 2d 222).

Tolling of statute

In case involving claims for damages for alleged police misconduct during the "May Day" demonstrations of 1971, the District Court improperly denied as untimely a motion to intervene filed by 266 plaintiffs immediately after class certification was refused on grounds of untimeliness and nonpredominance of common questions; rather, under the Supreme Court's "American Pipe" decision, plaintiffs had a right to intervene with respect to some, and perhaps all, of their claims, since a finding of typicality is not required for invocation of the tolling doctrine of "American Pipe," and since defendants were notified through the class action of the number and generic identity of the potential intervenors and their substantive claims. *M. McCarthy et al. v. R. G. Kleindienst, Acting Attorney General et al.* (1977, 562 F.2d 1269, 183 U.S. App. D.C. 321).

In attorney malpractice diversity case, the filing of complaint is sufficient to toll District three-year limitations statute and thus action is not time-barred since complaint was filed less than three years after cause of action arose, even if plaintiff had not mailed copies of complaint to defendants until four days after limitations statute had run. *Manatee Cablevision Corporation v. W. T. Pierson et al.* (1977, 433 F. Supp. 571).

In action in which purchasers sought rescission of settlement agreement entered into pursuant to previous action for breach of contract, in view of fact that rescission action was based upon allegedly fraudulent misrepresentation consisting of vendors' statement that option purchased did not include strip-mining rights under Pennsylvania law and in view of fact that such question was matter equally amenable to research and resolution by either party, statute of limitations on rescission action cannot be tolled on theory that vendors fraudulently concealed facts from purchasers. *T. J. Doolin et al. v. Environmental Power Ltd. et al.* (D.C. App. 1976, 360 A.2d 493).

Information supplied by manufacturer of drug Aralen as to possible hearing loss does not amount to fraudulent concealment sufficient to toll statute of limitations on a claim to recover for hearing loss allegedly caused by weekly use of the drug for two-year period since for the years in question a standard medical manual emphasized

the various toxicity reactions which plaintiff experienced and contained specific statement that a few cases of a nerve-type deafness have been reported after prolonged therapy, usually in high doses and all that was added three years later was report of a particular case strikingly similar to plaintiff's. *M. E. Grigsby, M.D. v. Sterling Drug, Inc. et al.* (1975, 428 F. Supp. 242; aff'd 543 F.2d 417, 177 U.S. App. D.C. 270; cert. denied 97 S.Ct. 2925, 431 U.S. 967).

Statute of limitations was not tolled with respect to former government employee's claim of alleged conspiracy to deprive him of his job on theory that fraudulent concealment of material facts by conspirators precluded him from bringing lawsuit within statutory period where employee not only knew the essential facts relating to his cause of action well before statute of limitations had run on his claim but publicly alleged many of the same evidentiary details which he asserted in suit prior to running of the statute of limitations. *A. E. Fitzgerald v. R. C. Seamans, Jr., et al.* (1974, 384 F. Supp. 688; aff'd in part rem'd in part 553 F. 2d 220, 180 U.S. App. D.C. 75).

Statute of limitations was not tolled on theory that members of conspiracy had fraudulently concealed certain crucial facts from him and that he was not able to discern concerted pattern of harassment by government officials acting outside the scope of their authority until Civil Service Commission hearings where, in letter to Civil Service Commission appealing his dismissal, former employee clearly maintained that acts of harassment he had suffered had been unauthorized and completely outside ambit of any legitimate official function. *Id.*

Former employee's filing of appeal to Civil Service Commission from his dismissal did not toll statute of limitations with respect to action for alleged conspiracy to deprive him of his job. *Id.*

To come within "continuing tort" exception to statute of limitations, another wrongful injurious act which occurs within statutory period and which is repetitious of prelimitation period acts is required; passive refusal to remedy wrongful prelimitation period acts is not sufficient to toll statute of limitations. *Id.*

The docketing of a duly authenticated claim against a decedent's estate in office of Register of Wills tolls the general three-year statute of limitations and brings the claim within special statute of limitations protecting claimant until three months after claim is rejected or disputed by the executor or administrator. *American Security and Trust Company v. J. E. Bindeman, Executor et al., et al.* (D.C. App. 1973, 303 A. 2d 188).

United States, suit by

Inasmuch as any recovery in suit by AID to recover payments to exporters of medicinal drugs for breach of sales contract with Vietnamese importers would inure to the benefit of AID or the United States Treasury, the United States is the real party in interest and the federal six-year period of limitations is applicable rather than three-year period of limitations provided for contract actions by this section. *United States v. Emons Industries, Inc., et al.* (1976, 406 F. Supp. 355).

§ 12-308. Actions by the United States

NOTES TO DECISIONS

Generally

Though contract on which United States brought suit provided that it should be governed by the laws of the District of Columbia, where such a contract is not a contract for sale of goods within Article 2 of subtitle I of title 28, it is not governed by the four-year statute of limitations section 28:2-725, and since District three-year limitations period for simple contracts does not apply to an action in which the United States is the real plaintiff, the only applicable statute of limitations is the six-year limitation period for government suits on contracts prescribed by federal statute. *United States v. Framen Steel Supply Company* (D.C.N.Y. 1977, 435 F. Supp. 681).

Real party in interest

Inasmuch as any recovery in suit by AID to recover payments to exporters of medicinal drugs for breach of sales contract with Vietnamese importers would inure to the benefit of AID or the United States Treasury, the United States is the real party in interest and the federal six-year period of limitations is applicable rather than three-

year period of limitations provided for contract actions by section 12-301. *United States v. Emons Industries, Inc., et ano.* (1976, 406 F.Supp. 355).

§ 12-309. Actions against District of Columbia for unliquidated damages; time for notice

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Accrual of claim

Where plaintiff, because of nature of his claim against District, is obliged under exhaustion doctrine to present his grievance to appropriate authorities before bringing matter to court, plaintiff is under duty to provide appropriate government administrators with first opportunity to review and pass on his claim and, not until administrative processing is finally conducted, is matter ripe for judicial intervention; thus not until then does matter accrue so as to trigger duty to furnish timely notice of prospective litigation to the District of Columbia. *H. Pinkney v. District of Columbia et al.* (1977, 439 F. Supp. 519).

Dismissed Federal City College employee was not precluded from maintaining action challenging dismissal on theory that he had failed to timely pursue his administrative remedies by waiting until after criminal charges against him had been dismissed before appealing his removal to the College and Board of Higher Education, where from very outset District authorities were alerted to circumstances behind employee's dispute with city, and employee, after indictment was dismissed, promptly pursued his administrative remedies and then furnished formal notice of his intention to take case to court. *Id.*

Class action

Class attorney could act as agent for all class members and notice given to District of Columbia of claims on behalf of approximately 1,200 claimants by the class attorney was sufficient to comply with the provisions of this section. *R. V. Dellums et al. v. J. M. Powell, Chief etc.* (1977, 566 F.2d 216, 184 U.S. App. D.C. —).

Constitutionality

Differences existing between governmental and private tort-feasors justifies disparate treatment accorded private tort-feasors and those injured by governmental tort-feasors by this section which requires six months' notice of question as condition to maintenance of suit against District of Columbia for unliquidated damages to personal property. *R. A. Wilson et al. v. District of Columbia et al.* (D.C. App. 1975, 338 A.2d 437).

Counterclaims

Notwithstanding fact that prior malpractice action was not decided on merits, municipal corporation had opportunity to litigate its claim for cost of care and treatment of infant hospital patient as counterclaim in that malpractice action brought against it by parent for alleged negligence in treatment of infant, wherein municipal corporation filed responsive pleading after its motion for summary judgment on ground that parent had not complied with notice requirements was denied without prejudice for lack of sufficient actual predicate, but since it failed to include that claim in its responsive pleading, subsequent action to recover those costs is barred by rule requiring that compulsory counterclaim be stated in responsive pleading. *District of Columbia v. E. Morris et al.* (D.C. App. 1976, 367 A.2d 571).

Estoppel

District of Columbia was not estopped from asserting that motorist's claim against it for personal injury sustained in automobile collision involving automobile owned by the District and operated by one of its employees was barred due to motorist's failure to give timely notice of claim absent waiver by the District of the notice requirement. *D. B. Miller v. I. Spencer et ano.* (D.C. App. 1974, 330 A. 2d 250).

Police report as notice

For purposes of suit against District by father of woman who had been raped and murdered by parolee under supervision of Department of Corrections, provisions of this section requiring notice to District of claims against it were satisfied by police reports filed with relation to such murder and rape. *R. C. Rieser, Administrator etc. v. District of Columbia et ano.* (1977, 563 F. 2d 462, 183 U.S. App. D.C. 375).

Police report of plaintiff's arrest, coupled with his trial and acquittal and official United States Attorney "reports" on such case, did not, for purposes of plaintiff's claim against District of Columbia for false arrest and malicious prosecution constitute sufficient compliance with provision of this section which provides that "A report in writing by the Metropolitan Police Department in regular course of duty, is a sufficient notice under this section." *H. Jenkins v. District of Columbia* (D.C. App. 1977, 379 A. 2d 1177).

Police report which pertained to collision involving automobile owned by District of Columbia and operated by one of its employees and which indicated that no personal injuries resulted from the accident failed to satisfy requirements of "notice of claim" statute with respect to motorist's claim against the District for personal injuries allegedly sustained in the accident. *D. B. Miller v. I. Spencer et ano.* (D.C. App. 1974, 330 A. 2d 250).

For police accident report to satisfy statutory notice of claim requirement for maintenance of action against the District of Columbia, report must contain information as to time, place, cause and circumstances of injury or damage with at least the same degree of specificity required of a written notice filed by claimant; report must do more than merely report happening of an event or accident. *Id.*

While police accident report may suffice as notice of claim against District of Columbia in lieu of written notice by claimant, his agent or attorney, the police report must, when facts are apparent, contain at least substance of same information required of written notice filed by claimant and when it does not because no injuries were apparent at time of accident, it is duty of claimant to supply additional information when injuries become apparent. *Id.*

Police report, which set forth the circumstances surrounding plaintiff's arrest for unlawful entry and carrying a dangerous weapon, was not notice of an injury to person or damage to property for purposes of Code provision [§ 12-309] prohibiting maintenance of an action against the District of Columbia for unliquidated damages to person or property unless, within six months after the injury or damage, claimant has given written notice to the District of Columbia Commissioner of the approximate time, place, cause, and circumstances of the injury or damage. *H. E. Brown v. District of Columbia* (D.C. App. 1973, 304 A. 2d 292).

Summary judgment

Trial court properly treated government's motion to dismiss damage action for noncompliance with provision of this section that written notice of claim against District of Columbia be given within six months of claimant's injury as, in effect, a motion for summary judgment, where court considered evidence presented at hearing at which claimant submitted records and testimony in attempt to raise genuine factual issue as to his inability to provide notice within statutory period. *J. H. Hill v. District of Columbia* (D.C. App. 1975, 345 A.2d 867).

U.S. Court of Appeals decisions

Decision of United States Court of Appeals with respect to statute pertaining to notice of a claim against District of Columbia, constituted law of the case since it had jurisdiction to review decision of District of Columbia Court of Appeals when decision of District of Columbia Court of Appeals was rendered and when petition for allowance of appeal was filed, but where decision was rendered after effective date of statute providing that decisions of District of Columbia Court of Appeals would no longer be subject to review by United States Court of Appeals, decision would constitute no binding precedent on future cases in District of Columbia Court of Appeals. *District of Columbia v. R. Smith* (D.C. App. 1972, 297 A. 2d 787).

Written notice

Where property owners failed to plead or prove notice of alleged defect in District's specifications for constructing city streets and water pipes and property owners failed to give written notice to Commissioner of alleged damage within six months after damage was sustained, property owners are precluded from recovering from District on tort theory for damages resulting from allegedly insufficient specifications for city streets and water pipes. *District of Columbia, etc. v. North Washington Neighbors, Inc., et al.* (D.C. App. 1976, 367 A. 2d 143; cert. denied 98 S. Ct. 68, — U.S —).

Where claimant in damage action against District of Columbia was ambulatory when discharged from hospital following five months' treatment for burns he had suffered when fire started in his bed at District of Columbia General Hospital, claimant's allegation that he "was feeling pretty bad" and "didn't know what to do" after dis-

charge does not raise genuine issue as to whether wrongful act of hospital made claimant incapable of providing notice of claim against District of Columbia within month remaining of six-month notice period. *J. H. Hill v. District of Columbia* (D.C. App. 1975, 345 A.2d 867).

Evidence, in action against District of Columbia to recover for damage allegedly sustained as result of the alleged negligent maintenance and design of sewer grating, supported trial court's finding that District did not receive notice from plaintiff giving correct location of accident as required by statute governing actions against District for damage to person or property. *E. F. Toomey v. District of Columbia* (D.C. App. 1974, 315 A.2d 565).

Evidence of nonreceipt of letter by addressee was sufficient to rebut prima facie case of receipt created by proof that letter was mailed and to create true issue of fact to be resolved by trier of facts. *Id.*

TITLE 13.—PROCEDURE GENERALLY

Title 13 was enacted by Pub. L. 88-241, Dec. 23, 1963, 77 Stat. 511

Chapter 3.—PROCESS AND PARTIES

SUBCHAPTER II.—SERVICE OF PROCESS; LEGAL REPRESENTATIVES

§ 13-332. Service on infants; appointment and compensation of guardian and attorney

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 13-334. Service on foreign corporations

NOTES TO DECISIONS

Doing business

In order for foreign corporation to be "doing business" in District of Columbia so as to be amenable to service there in enforcement actions brought by FTC, it is not necessary that corporation maintain permanent office in District of Columbia. *In re FTC Corporate Patterns Report Litigation* (1977, 432 F. Supp. 274).

Foreign corporation was "doing business" within District of Columbia for purposes of its amenability to service of process there where corporation had business office in District, had sold stock there, and had conducted some of its negotiations for appointment to its boards of directors and gave patent licensing agreement in District. *D. Price et al. v. B. H. Griffin* (D.C. App. 1976, 359 A.2d 582).

Service on agent

Individual was proper party to receive service of process on foreign corporation where, as agent for such corporation, individual was empowered to bind corporation in sale of stock, held himself out as managing director of corporation, and accepted funds from investor to purchase stock in corporation. *D. Price et al. v. B. H. Griffin* (D.C. App. 1976, 359 A.2d 582).

§ 13-336. Service by publication on nonresidents, absent defendants, and unknown heirs or devisees

NOTES TO DECISIONS

Publication requirements

Generally, before order authorizing constructive notice in divorce action is entered, it is incumbent upon plaintiff to detail for court particular efforts which have been made in effort to ascertain defendant's present address and to furnish court following information: time and place at which parties last resided together as spouses; last time parties were in contact with each other; name and address of last employer of defendant either during time parties resided together or at later time if known to plaintiff; names and addresses of relatives known to be close to defendant; and any other information which could furnish fruitful basis for further inquiry by one truly bent on learning present whereabouts of defendant. *G. Bearstop v. W. Bearstop* (D.C. App. 1977, 377 A. 2d 405).

Trial court, in divorce action, did not abuse discretion in denying indigent wife's motion to effectuate constructive service upon missing husband without regard to publication requirements of applicable rule where, although complaint gave District address for husband, no attempt was made to serve process upon him there, and where no information pertaining to husband's employment or efforts, if any, to locate him through his last or previous employers was furnished. *Id.*

Where indigent wife made satisfactory showing of diligence in her efforts to ascertain whereabouts of husband, trial court erred in denying wife's motion or reconsideration of denial of her motion for order of service by pub-

lication in one newspaper only on ground that publication in two newspapers was indispensable requirement. *Id.*

Trial court's selecting for publication of process in divorce proceedings a newspaper other than newspaper preferred by wife's counsel does not work a denial of access to the courts, where wife, who asserted that publication in newspaper selected by court was more costly than publication in newspaper preferred by counsel, had been permitted to proceed in forma pauperis. *D. E. Gomez v. M. F. Gomez* (D.C. App. 1975, 341 A.2d 423).

Relative publication costs are not items of which court can take judicial notice for purpose of determining whether trial court abused its discretion in ordering service by publication in a newspaper other than newspaper chosen by plaintiff's counsel; even if they were, judicial notice can not be used as device to correct on appeal the almost complete failure to present adequate evidence of publication costs to the trial court. *Id.*

Record on appeal from trial court's ruling in selecting for publication of process in divorce proceeding a newspaper other than newspaper preferred by plaintiff wife is inadequate and remand is required where no facts as to publication costs were presented to the trial court and motion for publication contained merely naked assertions that plaintiff could not afford to publish in two newspapers and that newspaper preferred by her counsel was the least expensive newspaper. *Id.*

§ 13-339. Form of order of publication

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13-340.

§ 13-340. Manner of publication; mailing of copy; default; appointment and compensation of guardian and attorney

(a) An order of publication shall be published at least once a week for three successive weeks, or oftener, or for such further time as the court orders. In actions for divorce in which service by publication is authorized under this chapter, and satisfactory evidence is presented to the court that the plaintiff is unable to pay the cost of publishing an advertisement pursuant to D.C. Code sec. 13-340, without substantial hardship to himself or herself, or to his or her family, the court may direct that such publication may be made by posting the order of publication defined in D.C. Code sec. 13-339, for a period of twenty-one calendar days, in the Clerk's Office of the Family Division of the Superior Court of the District of Columbia.

(b) An order, judgment or decree may not be entered against an absent or nonresident defendant upon proof of notice by publication, unless the plaintiff, his agent, or attorney files in the action an affidavit showing that at least twenty days before applying for the order, judgment or decree he mailed, postpaid, a copy of the advertisement or the order of the publication posted pursuant to subsection (a) of this section, directed to the party therein ordered to appear, at his last known place of residence, or

that after diligent effort he has been unable to ascertain the last place of residence of the party.

* * * * *

(As amended Apr. 7, 1977, D.C. Law 1-107, title II, § 201, 23 DCR 8737.)

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-107, amended subsec. (a) by adding the last sentence and subsec. (b) by inserting "or the order of the publication posted pursuant to subsection (a) of this section" immediately after "a copy of the advertisement".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 301 of act Apr. 7, 1977, D.C. Law 1-107, set out as a note under § 16-902.

CROSS REFERENCE

Age of majority, see § 21-101 note.

NOTES TO DECISIONS

Publication requirements

Generally, before order authorizing constructive notice in divorce action is entered, it is incumbent upon plaintiff to detail for court particular efforts which have been made in effort to ascertain defendant's present address and to furnish court following information: time and place at which parties last resided together as spouses; last time parties were in contact with each other; name and address of last employer of defendant either during time parties resided together or at later time if known to plaintiff; names and addresses of relatives known to be close to defendant; and any other information which could furnish fruitful basis for further inquiry by one truly bent on learning present whereabouts of defendant. *G. Bearstop v. W. Bearstop* (D.C. App. 1977, 377 A.2d 405).

Trial court, in divorce action, did not abuse discretion in denying indigent wife's motion to effectuate constructive service upon missing husband without regard to publication requirements of applicable rule where, although complaint gave district address for husband, no attempt was made to serve process upon him there, and where no information pertaining to husband's employment or efforts, if any, to locate him through his last or previous employers was furnished. *Id.*

Where indigent wife made satisfactory showing of diligence in her efforts to ascertain whereabouts of husband, trial court erred in denying wife's motion for reconsideration of denial of her motion for order of service by publication in one newspaper only on ground that publication in two newspapers was indispensable requirement. *Id.*

Trial court's selecting for publication of process in divorce proceedings a newspaper other than newspaper preferred by wife's counsel does not work a denial of access to the courts, where wife, who asserted that publication in newspaper selected by court was more costly than publication in newspaper preferred by counsel, had been permitted to proceed in forma pauperis. *D. E. Gomez v. M. F. Gomez* (D.C. App. 1975, 341 A.2d 423).

Record on appeal from trial court's ruling in selecting for publication of process in divorce proceeding a newspaper other than newspaper preferred by plaintiff wife is inadequate and remand is required where no facts as to publication costs were presented to the trial court and motion for publication contained merely naked assertions that plaintiff could not afford to publish in two newspapers and that newspaper preferred by her counsel was the least expensive newspaper. *Id.*

Relative publication costs are not items of which court can take judicial notice for purpose of determining whether trial court abused its discretion in ordering service by publication in a newspaper other than newspaper chosen by plaintiff's counsel; even if they were, judicial notice can not be used as device to correct on appeal the almost complete failure to present adequate evidence of publication costs to the trial court. *Id.*

Denial of motion to allow publication only in least expensive newspaper in divorce action by wife proceeding in forma pauperis, who made bona fide effort to comply with publication requirements, and who alleged that without such relief she would be unable to pursue divorce action, was improper in that indigent litigant's access to

court to obtain divorce may not be barred by financial considerations, including publication costs. *M. B. Johnson v. J. R. Johnson* (D.C. App. 1974, 329 A.2d 451).

Chapter 4.—CIVIL JURISDICTION AND SERVICE OUTSIDE THE DISTRICT OF COLUMBIA

SUBCHAPTER I.—GENERAL PROVISIONS

§ 13-401. Relation to other provisions of law

NOTES TO DECISIONS

Construction

Long-arm statute (this chapter) enacted as part of Court Reorganization Act of 1970 exists independently of Motor Vehicle Safety Responsibility Act (§ 40-423) as an alternative, independent method for acquiring in personam jurisdiction over a nonresident motorist. *Liberty Mutual Insurance Company et ano. v. W. Burgess* (D.C. App. 1973, 308 A.2d 775).

SUBCHAPTER II.—BASES OF PERSONAL JURISDICTION OVER PERSONS OUTSIDE THE DISTRICT OF COLUMBIA

§ 13-421. Definition of person

NOTES TO DECISIONS

Construction

The long-arm statute which was intended to codify recent case law with respect to extraterritorial jurisdiction over and service upon persons in civil litigation and to assimilate District law on jurisdiction to that of neighboring states did not alter the District law governing service on partnerships that the partnership entity is never to be served but rather service must be made on all partners. *J. E. Day v. W. H. Avery et al.* (1976, 548 F.2d 1018, 179 U.S. App. D.C. 63; aff'd 394 F. Supp. 986; cert. denied 97 S. Ct. 1706, 431 U.S. 908).

§ 13-422. Personal jurisdiction based upon enduring relationship

NOTES TO DECISIONS

Business domicile

Corporation does not maintain business domicile within District of Columbia merely by maintaining office and staff within District for purposes of maintaining contact with agencies of United States government. *Norair Engineering Associates, Inc., et ano. v. Noland Company et al.* (1973, 365 F. Supp. 740).

Determination of jurisdiction—Discovery

In the absence of discovery, District Court cannot determine that it does not have personal jurisdiction over defendants who were allegedly involved in illegal surveillance and intimidation activities directed against American citizens residing in West Germany even though four of the defendants resided overseas and were served by mail pursuant to this section and section 13-423 and one resided in Virginia and was personally served at his residence. *Berlin Democratic Club et al. v. D. H. Rumsfeld et al.* (1976, 410 F. Supp. 144).

§ 13-423. Personal jurisdiction based upon conduct

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33-842.

NOTES TO DECISIONS

Construction

This section permits exercise of personal jurisdiction over nonresident defendant to extent permitted by due process clause of United States Constitution. *Environmental Research International, Inc. v. Lockwood Greene Engineers, Inc., et ano.* (D.C. App. 1976, 355 A.2d 808).

Long-arm statute does not require that the contacts required for jurisdiction such as regular solicitation of business or specific course of contact have direct relationship to the act or failure to act which caused plaintiff's injury. *M. L. Aiken v. Lustine Chevrolet, Inc., et ano.* (1975, 392 F. Supp. 883).

Long-arm statute (this chapter) enacted as part of Court Reorganization Act of 1970 exists independently of

Motor Vehicle Safety Responsibility Act (§ 40-423) as an alternative, independent method for acquiring in personam jurisdiction over a nonresident motorist. *Liberty Mutual Insurance Company et al. v. W. Burgess* (D.C. App. 1973, 308 A.2d 775).

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Doing business

Where District of Columbia client initially contacted investment advisory organization in New York, District Court for District of Columbia did not have personal jurisdiction over organization in suit based on organization's alleged failure to advise client of faltering fortunes of company in which client maintained substantial securities investment, either under provision of this section establishing jurisdiction over any party "transacting any business in the District of Columbia," or under provision of this section providing jurisdiction as result of "contracting to supply services in the District of Columbia," despite fact that agreement by which organization was substituted for its predecessor as investment advisor was agreed to by client in District of Columbia, correspondence was mailed by organization to client in District of Columbia on approximately 74 occasions and organization had consulted with client's office in District of Columbia on one occasion. *Textile Museum v. F. Eberstadt & Co., Inc.* (1977, 440 F. Supp. 30).

Where Peruvian corporation did not initiate or pursue contract negotiations in District of Columbia but it was done by partnership, no services were to be provided by Peruvian corporation in District of Columbia, and sole contact which Peruvian corporation had within jurisdiction was delivery, by courier, from Peru to District of Columbia at request and expense of partnership of duplicate original contract executed by corporation in Peru, such act of delivery, even when coupled with subsequent conduct of courier in accepting payment and later returning it, is insufficient to subject corporation to in personam jurisdiction in the District of Columbia. *V. Bueno et al. v. La Compania Peruana de Radiodifusion, S.A.* (D.C. App. 1977, 375 A.2d 6).

Evidence supports trial court's conclusion that plaintiff suing nonresident corporate defendants for services performed for defendants in District of Columbia to obtain Environmental Protection Agency grant acted as an independent contractor and not as agent, in case in which plaintiff sought to obtain jurisdiction over defendants under this section. *Environmental Research International, Inc. v. Lockwood Greene Engineers, Inc., et al.* (D.C. App. 1976, 355 A.2d 808).

Complaint which alleged that a phone conversation acted as a ratification of an agent's contract made between two parties physically present in the District of Columbia was sufficient, within meaning of long-arm statute's "transacting business" test, to invoke long-arm jurisdiction of the court. *Dorothy K. Winston & Co. et al. v. Town Heights Development, Inc.* (1974, 376 F. Supp. 1214).

Although corporate defendant, as operator of aircraft which crashed and allegedly caused injury to plaintiffs, listed an address and telephone number in the District of Columbia telephone directory as well as the World Aviation Directory, where both publications showed the address to be in Arlington, Virginia, and, in addition, defendant was a Tennessee corporation which did not employ personnel or operate aircraft into or out of District of Columbia, and had not entered into any contracts, nor had any outstanding obligations to perform within District of Columbia, defendant was not "transacting any business" within District of Columbia so as to be amenable to long-arm jurisdiction. *N. B. Cornwell et ux. v. C. I. T. Corp. of New York et al.* (1974, 373 F. Supp. 661).

Fact that foreign corporation did not qualify to do business within District of Columbia did not entitle creditor

of corporation to maintain suit against individual officers of corporation. *A. Tasker, Inc. v. J. P. Amsellem* (D.C. App. 1974, 315 A.2d 178).

Defendant Oregon corporation had not "transacted any business" in the District of Columbia, within meaning of venue statute, where corporation sold an automobile to Michigan corporation and thereafter exercised no control over nor had any knowledge of the price at which the automobile would finally be sold to plaintiff customer, where corporation was not solicited by plaintiff, was not paid by him, and where corporation had maintained no office nor agent in the District of Columbia. *E. Mosley v. Nationwide Purchasing, Inc. et al.* (1973, 485 F.2d 418).

Defendant Michigan corporation was not "doing business" within the District of Columbia, within meaning of venue statute, so that venue was laid in wrong district and transfer of case in the interests of justice was within trial court's discretion, where, inter alia, corporation had no office in the District, no agent, no telephone listing and no bank accounts, and where purchase order relating to sale of automobile constituted an offer by plaintiff customer to corporation which was not binding upon the parties until corporation accepted the terms and conditions of sale, so that it could not be said that the contract for sale of automobile was made in the District. *Id.*

Mere fact that sale of stainless steel tubing used in construction project in West Virginia may have been consummated in District of Columbia by distributor who was not acting as agent for manufacturers of tubing did not give jurisdiction under "long-arm" statute to federal court in District over action by buyers of tubing against manufacturers for damages for alleged defects in tubing. *Norair Engineering Associates, Inc., et al. v. Noland Company et al.* (1973, 365 F. Supp. 740).

Government contacts

Visits by personnel of nonresident defendants to District of Columbia to consult with officials of Environmental Protection Agency concerning possibility of a grant to defendants do not constitute transaction of business in District so as to subject it to in personam jurisdiction upon service under this section. *Environmental Research International, Inc. v. Lockwood Greene Engineers, Inc., et al.* (D.C. App. 1976, 355 A.2d 808).

Rationale for "government contracts" exception to long-arm statute has its source in unique character of District as seat of national government and in the correlative need for unfettered access to federal departments and agencies for the entire national citizenry. *Id.*

New York corporation, involved in construction and operation of mills in foreign countries, is not within District of Columbia jurisdiction through government contacts which did not involve sales to the Government but merely taking advantage of services offered to prospective foreign investors by federal agencies, for purpose of action by plaintiffs in whose favor corporation negotiated federal loan. *Siam Kraft Paper Co., Ltd. v. Parsons & Whittemore, Inc., et al.* (1975, 400 F. Supp. 810).

Intent

Congress' overall intent with respect to District of Columbia long-arm statute was to provide the District's courts, to the greatest extent possible, with essentially identical long-arm jurisdiction as was then available in Maryland and Virginia. *M. Margoles v. A. Johns et al.* (1973, 483 F.2d 1212, 157 U.S. App. D.C. 209; aff'g 333 F. Supp. 942).

Minimum contacts

Discussions, conferences and meetings conducted within District of Columbia by nonresident corporation with reference to oral contract which was allegedly breached by defendants constitutes such minimal contacts with District that maintenance of action for breach of such contract does not offend traditional notions of fair play and substantial justice. *Unidex Systems Corporation v. Butz Engineering Corporation et al.* (1976, 406 F. Supp. 899).

Activities of plaintiff in District of Columbia in performing services for benefit of nonresident defendants do not constitute a proper basis for exercise of personal jurisdiction over the nonresident defendant corporations which were served under this section. *Environmental Research International, Inc. v. Lockwood Greene Engineers, Inc., et al.* (D.C. App. 1976, 355 A.2d 808).

Personal jurisdiction pursuant to long-arm statute was not proper over automobile salesman, sued in his individual capacity on basis of fraudulent representations in sale of automobile to resident of the District, in absence of showing that defendant had any contacts whatsoever with District. *M. L. Aiken v. Lustine Chevrolet, Inc., et ano.* (1975, 392 F.Supp. 883).

News-gathering activities

Distributor which engaged in the distribution of magazines outside the area of their immediate circulation and which did not engage in news-gathering activities in the District of Columbia cannot assert protection of news-gathering exception to assertion of long-arm jurisdiction over it. *Founding Church of Scientology of Washington, D.C. v. H. B. Verlag et al.* (1976, 536 F.2d 429, 175 U.S. App. D.C. 402).

Substantial income

Distributor which had its principal offices in city of New York, which received German-language magazines from West Germany and forwarded them by common carrier to another distributor in the District of Columbia, which had sales of \$26,000 in the District in the first ten months of the year, with such sales representing approximately one percent of its gross revenues for the ten-month period, has, on the basis of income derived from the District, reasonable connection with the District so that the District Court can assert long-arm jurisdiction over the distributor with respect to allegedly libelous magazine article. *Founding Church of Scientology of Washington, D.C. v. H. B. Verlag et al.* (1976, 536 F.2d 429, 175 U.S. App. D.C. 402).

Tortious injury

Where plaintiff purchased and consumed laxative in Arizona, suffered reaction there and was treated there, she cannot maintain action against manufacturer in District of Columbia on theory that the tortious act caused tortious injury in the District, notwithstanding contention that she suffered extreme physical and mental injury on a continuing basis in the District as well as severe financial injury because physical injury prevented her from carrying on her business, since the "injuries" alleged in the District are actually descriptions of pecuniary losses, which are measures of such injuries. *H. Leaks v. Ex-Lax, Inc., et al.* (1976, 424 F. Supp. 413).

Personal jurisdiction over defendant under long-arm statute was proper where action was based on alleged injuries to resident plaintiff's credit rating and to her mental and emotional well-being notwithstanding non-resident defendant's contention that personal jurisdiction was improper because the tort occurred in Maryland. *M. L. Aiken v. Lustine Chevrolet, Inc., et ano.* (1975, 392 F. Supp. 883).

Where newspaper reporter allegedly made defamatory statements in telephone calls from Wisconsin to the District of Columbia with respect to plaintiff, reporter had not acted within the District within meaning of its long-arm statute on theory that by making the telephone call and by causing actual physical events in the District such as the ringing of bells and flashing of lights the reporter projected her presence into the District, and no personal jurisdiction could be asserted over reporter. *M. Maraoles v. A. Johns et al.* (1973, 483 F. 2d 1212, 157 U.S. App. D.C. 209; aff'g 333 F. Supp. 942).

Mere fact that purchasers of stainless steel tubing used in West Virginia construction project may have been required to borrow funds from lenders in District of Columbia in order to replace allegedly defective tubing did not mean that purchasers had sustained "tortious injury" within District of Columbia so as to give federal court in District jurisdiction over suit by purchasers against manufacturers under "long-arm" statute. *Norair Engineering Associates, Inc., et ano. v. Noland Company et al.* (1973, 365 F. Supp. 740).

Where complaint alleged a conspiracy and overt acts in furtherance of conspiracy, at least one of which overt acts was an alleged tort in District of Columbia, where such overt acts were uncontroverted and where, under plaintiff's theory, coconspirators were agents of all their fellow conspirators when acting in furtherance of conspiracy, jurisdiction could be obtained over alleged conspira-

tors, who had no direct contacts with District, by virtue of service of process under District's "long-arm" statute. *J. Mandelkorn v. T. Patrick et al.* (1973, 359 F. Supp. 692).

Under provision that District of Columbia court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from that person's transacting any business in District or causing tortious injury in District by an act or omission in the District, both the act and the effect, or injury, must take place in District. *Id.*

§ 13-425. Inconvenient forum

NOTES TO DECISIONS

Abuse of discretion

Where both allegedly defamed plaintiff and distributor of magazine were residents of the United States, where plaintiff sought damages for libelous publication in the District of Columbia, and where bringing of action in the District of Columbia was not prompted by an intent to vex or harass, it was error for trial court to decline jurisdiction on basis of forum non conveniens merely because the magazine in question had been written and published in West Germany. *Founding Church of Scientology of Washington, D.C. v. H. B. Verlag et al.* (1976, 536 F.2d 429, 175 U.S. App. D.C. 402).

Dismissal, on ground of forum non conveniens, of wrongful death action arising out of hemodialysis treatment of resident in Maryland is not an abuse of discretion where alleged tortious conduct occurred in Maryland, physicians named as defendants resided in Maryland and were licensed to practice medicine in Maryland, professional corporation composed of such physicians was Maryland corporation and owner of Maryland hemodialysis center where resident was treated was Delaware corporation qualified to do business exclusively in Maryland. *M. L. Carr v. Bio-Medical Applications of Washington, Inc., et al.* (D.C. App. 1976, 366 A.2d 1089).

Trial court did not abuse discretion in denying defendant Florida corporation's claim of forum non conveniens where plaintiff was corporate body of District of Columbia and where cause of action apparently arose in that jurisdiction, as contract upon which plaintiff was suing was negotiated within as well as without District of Columbia, concerned money loaned from and to be repaid in District of Columbia, and was executed in District by plaintiff. *Florida Education Assoc., Inc. v. National Education Assoc. of the United States* (D.C. App. 1976, 354 A.2d 853).

The Superior Court did not abuse its discretion in granting defendant's motion to dismiss on grounds of forum non conveniens where plaintiff's cause of action for alleged false arrest and wrongful detention arose in Maryland and defendant was plainly subject of service of process in Maryland. *E. J. Pitts v. Woodward and Lothrop* (D.C. App. 1974, 327 A. 2d 816; cert. denied 95 S. Ct. 832, 420 U.S. 911).

Construction

Reference to "any District of Columbia court" in this section does not include federal courts in the District of Columbia. *Founding Church of Scientology of Washington, D.C. v. H. B. Verlag et al.* (1976, 536 F.2d 429, 175 U.S. App. D.C. 402).

Discretion of court

A decision to dismiss on a forum non conveniens motion is entrusted to discretion of trial court and such a dismissal will not be reversed on appeal except for a clear abuse of discretion. *District-Reality Title Insurance Corporation v. D. M. Goodrich et al.* (D.C. App. 1974, 328 A. 2d 92).

Jurisdiction over defendant

When an issue of forum non conveniens or change of venue is timely raised in a civil action, it is not sufficient to defeat such a motion to show that the court in which the action has been filed clearly has jurisdiction over defendant. *E. J. Pitts v. Woodward and Lothrop* (D.C. App. 1974, 327 A. 2d 816; cert. denied 95 S. Ct. 832, 420 U.S. 911).

Proper forum

Trial court did not abuse its discretion in dismissing, sua sponte, divorced mother's motion to increase child

support payments on ground of forum non conveniens, in view of fact that both parties were residents of Maryland, children resided in Maryland and attended school in Maryland and Virginia, only significant contact of either party with District of Columbia was that divorced father was employed here, and there was no showing of unusual circumstances that would justify entertaining action in District of Columbia. *E. H. Haynes v. K. A. Carr* (D.C. App. 1977, 379 A. 2d 1178).

That Delaware corporation named as defendant in wrongful death action might be beyond jurisdiction of courts of Maryland which had most contacts with action does not preclude application of doctrine of forum non conveniens and dismissal of action brought by District of Columbia resident, where Maryland statute of limitations has not run and Delaware corporation stated that it would not contest either the service of process or jurisdiction in subsequent Maryland action. *M. L. Carr v. Bio-Medical Applications of Washington, Inc., et al.* (D.C. App. 1976, 366 A.2d 1089).

Where resident plaintiff alleged that automobile dealer's refusal to accept return of vehicle pursuant to representations made by salesman caused injury to plaintiff's credit rating and mental and physical well-being, District of Columbia was not a forum non conveniens to defendant automobile dealer which conducted sales activity within district and was located in nearby suburb. *M. L. Aiken v. Lustine Chevrolet, Inc., et ano.* (1975, 392 F. Supp. 883).

Where Switzerland, alleged appropriate forum, had no contacts with subject of action to enforce support agreement executed between parties in California, other than defendant's domicile there, defendant was not amenable to service of process in California, defendant had substantial contacts with Washington, D.C. and it could reasonably be assumed that suit in Switzerland would face variety of obstacles not found in United States court, inconvenience of defendant does not outweigh plaintiff's interest in having her claim, governed by American law, considered and determined by American court and defendant is not entitled to have action brought in the District dismissed on ground of forum non conveniens. *K. Dorati v. A. Dorati* (D.C. App. 1975, 342 A.2d 18).

Maryland, not the District of Columbia, was proper forum for class action by Maryland homeowners against title insurance company which did business in Maryland seeking damages for overcharges paid to Maryland lawyers on ground that such charges were not filed with nor approved by Maryland Insurance Commissioner, in light of fact that judgment in the Court of District of Columbia where title insurance company had its principal place of business and where some overcharges were made would not be a final resolution of issue raised in action and would not be binding upon Maryland courts or Maryland Insurance Commissioner. *District-Realty Title Insurance Corporation v. D. M. Goodrich et al.* (D.C. App. 1974, 328 A. 2d 92).

SUBCHAPTER III.—SERVICE OUTSIDE THE DISTRICT OF COLUMBIA

§ 13-431. Manner and proof of service

NOTES TO DECISIONS

Service on foreign government

In action brought by a District of Columbia resident against government of Brazil for damage to his home allegedly resulting from construction of Brazilian embassy, service of summons and complaint upon government of Brazil by registered mail delivered to Ministry of External Relations in Brasilia and by registered mail delivered to the Brazilian embassy in the District of Columbia were reasonably calculated to provide adequate notice

of action and both methods of service were valid. *S. S. Renchard et al. v. Humphreys & Harding, Inc., et al.* (1973, 59 F.R.D. 530).

Chapter 5.—COUNTERCLAIMS

§ 13-501. Counterclaim by way of set-off as an action by defendant

NOTES TO DECISIONS

Unauthorized practice of law

Where collection agency practices terminated by Court of Appeals as being an unauthorized practice of law had been long carried on without judicial disapproval and where judgments had been valid under law existing when they were rendered, decision terminating such practices would not be applied retroactively. *Kelly Adjustment Co. v. R. Boyd et ano.* (D.C. App. 1975, 342 A.2d 361).

Attorney was entitled to raise by counterclaim to a complaint on a debt the defense that the plaintiff, a collection agency, was engaged in the unauthorized practice of law. *J. H. Marshall & Associates, Inc. v. W. A. Bursleson* (D.C. App. 1973, 313 A. 2d 587).

§ 13-502. Effect of assignment

NOTES TO DECISIONS

Unauthorized practice of law

Where collection agency practices terminated by Court of Appeals as being an unauthorized practice of law had been long carried on without judicial disapproval and where judgments had been valid under law existing when they were rendered, decision terminating such practices would not be applied retroactively. *Kelly Adjustment Co. v. R. Boyd et ano.* (D.C. App. 1975, 342 A.2d 361).

Attorney was entitled to raise by counterclaim to a complaint on a debt the defense that the plaintiff, a collection agency, was engaged in the unauthorized practice of law. *J. H. Marshall & Associates, Inc. v. W. A. Bursleson* (D.C. App. 1973, 313 A. 2d 587).

Collection agency cannot properly interpose itself between a creditor and an attorney seeking to collect the creditor's claim; to do so either directly or indirectly, by assignment or otherwise, constitutes the unauthorized practice of law. *Id.*

Chapter 7.—TRIAL

§ 13-702. Repealed. July 29, 1970, Pub. L. 91-358, § 142 (5)(A), title I, 84 Stat. 552.

NOTES TO DECISIONS UNDER PRIOR LAW

Construction

In view of restructuring of District of Columbia court system accomplished by District of Columbia Court Reform and Criminal Procedure Act of 1970, same deference is owed courts of District with respect to their interpretation of acts of Congress directed toward local jurisdiction as is owed with regard to positions taken by same courts on common-law questions of evidence and substantive criminal law. *D. Pernell v. Southall Realty* (1974, 94 S. Ct. 1723, 416 U.S. 363; rev'g and rem'g 294 A.2d 490).

Right to jury trial

Since right to recover possession of real property was right ascertained and protected at common law, any party involved in suit under statutes of District of Columbia establishing summary procedure for recovery of possession of real property is entitled under Seventh Amendment to Constitution to trial by jury. *D. Pernell v. Southall Realty* (1974, 94 S. Ct. 1723, 416 U.S. rev'g and rem'g 294 A.2d 490).

TITLE 14.—PROOF

Title 14 was enacted by Pub. L. 88-241, Dec. 23, 1963, 77 Stat. 517

Chapter 1.—EVIDENCE GENERALLY; DEPOSITIONS

§ 14-102. Impeachment of own witness; surprise

NOTES TO DECISIONS

Impeachment

Refusal to allow accused and two other defense witnesses to testify on direct examination as to their respective prior criminal conviction was error in prosecution for possession of amphetamine, but the error was harmless, in light of fact that the defense testimony was inconsistent, that there was substantial evidence supporting conviction and that it was highly doubtful as to whether admission of such direct testimony would have altered jury's evaluation of the credibility of accused and the two witnesses. *J. T. Kitt, Jr. v. United States* (D.C. App. 1977, 379 A. 2d 973).

In prosecution for sodomy, taking indecent liberties with a minor and assault with a deadly weapon, questioning of complainant as to, *inter alia*, "Why is it that the first time you said the man tried to do it and later you said that he did do it" did not constitute "impeachment," for purposes of statute permitting party to impeach its own witness only if party is taken by surprise by witness' testimony, but rather a permissible effort to obtain an explanation for established inconsistent statements. *J. C. Davis v. United States* (D.C. App. 1974, 315 A.2d 157).

Inconsistent statements as evidence

Prior grand jury testimony of prosecution witness was specifically excluded from hearsay category under federal rules inasmuch as witness testified at trial and was subject to cross-examination and since prior statement was inconsistent and given under oath and subject to penalty of perjury. *J. R. Parker, Jr. v. United States* (D.C. App. 1976, 363 A.2d 975).

A prior inconsistent statement used to impeach a witness is admissible solely to affect the credibility of the witness and is not to be considered as support for the truth of its contents, and such rule applies where a party's own witness is impeached because he has been determined to be hostile. *United States v. D. G. Gilliam* (1973, 484 F. 2d 1093, 157 U.S. App. D.C. 375).

Instructions

Under this section authorizing party to impeach his witness by prior statements if the party is taken by surprise by the testimony of the witness, trial court is required to give, *sua sponte*, a cautionary instruction as to the limited purpose for which the evidence of the prior statements can be used, and except in cases of explicit waiver by defense counsel, failure to do so constitutes reversible error. *United States v. D. G. Gilliam* (1973, 484 F. 2d 1093, 157 U.S. App. D.C. 375).

Assuming that prior statement by witness called by prosecutor as a hostile witness, to the effect that witness had been threatened by defendant, was properly admitted despite absence of surprise on the part of the prosecutor, the trial court committed error in failing to give an immediate cautionary instruction regarding the limited, impeachment purpose for which the evidence could be used and such error was not harmless where court also failed to give such an instruction in its charge to the jury and where the prosecutor argued that the matters in the statement revealed a consciousness of guilt on the part of defendant and should be taken as fact. *Id.*

Surprise

It could not be said on basis of record in second-degree murder prosecution that there was no rational basis for

claim of surprise on part of prosecution with respect to testimony of prosecution witness who changed his testimony at trial from that given before grand jury; witness had previously testified under oath and it had to be presumed that he knew significance of oath and furthermore, although he reportedly may have given different version of event when subsequently interviewed prior to trial with accused present and engendering fear in him, that fact alone does not preclude valid claim of surprise. *J. R. Parker, Jr. v. United States* (D.C. App. 1976, 363 A.2d 975).

If the government were positive that one of its witnesses would repudiate a prior statement at trial, it could not be surprised when he did so, and Government was not entitled to claim benefit of statute which allows a party, when surprised by the testimony of his witness, to prove a prior inconsistent statement. *W. A. Baker v. United States* (D.C. App. 1974, 324 A.2d 194).

Chapter 3.—COMPETENCY OF WITNESSES

§ 14-305. Competency of witnesses; impeachment by evidence of conviction of crime

NOTES TO DECISIONS

Abuse of discretion

Trial court did not abuse its discretion in allowing government to impeach defendant's testimony with a prior conviction where case had narrowed to credibility of defendant and his accuser and, in such circumstances, there was greater, not less, compelling reason for exploring all avenues which would shed light on which of two witnesses was to be believed. *United States v. D. T. McDonald* (1973, 481 F. 2d 513, 156 U.S. App. D.C. 338).

Administrative proceedings

In denying application for license as a business-chance broker, it was not error for the Real Estate Commission to rely in part on a conviction for fraudulent conduct occurring prior to the ten-year period specified by statute as limitation on the use of prior convictions of witnesses for impeachment purposes in court trials. *L. M. Bryant v. Real Estate Commission of the District of Columbia* (D.C. App. 1973, 302 A. 2d 721).

Admissibility of prior conviction

Refusal to allow accused and two other defense witnesses to testify on direct examination as to their respective prior criminal conviction was error in prosecution for possession of amphetamine, but the error was harmless, in light of fact that the defense testimony was inconsistent, that there was substantial evidence supporting conviction and that it was highly doubtful as to whether admission of such direct testimony would have altered jury's evaluation of the credibility of accused and the two witnesses. *J. T. Kitt, Jr. v. United States* (D.C. App. 1977, 379 A. 2d 973).

Defendant, who testified on cross-examination that he pleaded guilty to earlier offenses, was not prejudiced by further questions which were limited solely to promises made during plea bargain negotiations and which did not involve facts of prior offenses, since it was unlikely that rebuttal questions enhanced possibility that jury would consider prior convictions as substantive evidence of guilt, particularly in view of cautionary instruction and limiting instructions. *L. J. Jenkins v. United States* (D.C. App. 1977, 374 A. 2d 581; cert. denied 98 S.Ct. 274, — U.S. —).

Section authorizing conviction-impeachment in trials of District of Columbia offenses mandates that court allow such evidence, and trial court has no discretion in

the matter where conviction falls within the purview of the section. *United States v. E. Edmonds, Jr.* (1975, 524 F. 2d 62, 173 U.S. App. D.C. 241).

Under section enabling impeachment of witness by proof that he has been convicted of criminal offenses under stated conditions, conviction suffered by defendant in North Carolina at age of 16 was not inadmissible merely because, had offense occurred in the District of Columbia, defendant would not have been subjected to criminal prosecution as an adult. *Id.*

Where application by trial court of this section providing for mandatory witness impeachment by conviction had been improper because indictment had charged both District of Columbia Code offense and United States Code offense, and witness-impeachment statute was not operable as to latter offense, defendant appellant was entitled to remand of case with directions for district court to review admissibility of prior conviction in light of discretion available to it, and such remand was available despite fact that defendant had been acquitted by jury on federal count. *United States v. M. J. Belt* (1975, 514 F. 2d 837, 169 U.S. App. D.C. 1).

Defendant's own testimony was not necessary to his defenses that he was home sleeping while offenses were committed and that he had purchased murder weapon from a third person at a time subsequent to murder and other crimes charged, thus supporting determination that two prior convictions were admissible because prejudicial impact did not far outweigh their probative value on issue of credibility. *United States v. J. E. Marshall* (1975, 511 F. 2d 1308, 167 U.S. App. D.C. 306).

Defendant's prior conviction of carrying a pistol without a license is within purview of this section which provides that conviction of a crime is admissible for impeachment purposes if crime involved dishonesty or false statement. *C. Williams v. United States* (D.C. App. 1975, 337 A. 2d 772).

In prosecution for assault and threats to do bodily harm, admission of defendant's prior conviction of manslaughter was not error, where at time prior conviction was introduced and during final instructions trial court informed jury that it should consider the conviction only in evaluating defendant's credibility. *W. B. Davis v. United States* (D.C. App. 1974, 313 A. 2d 886).

Fact that time for taking appeal from defense witness' conviction of Harrison Act violation had not expired did not preclude use of such conviction for impeachment on ground of lack of finality since such impeachment was permissible under new impeachment statute; and, in any event, since two of three defense witnesses were not impeached by prior convictions, admission of such conviction did not affect defendant's substantial rights. *United States v. J. D. Henson* (1973, 486 F. 2d 1292, 159 U.S. App. D.C. 32).

Principal consideration under the discretionary standard of admissibility of prior convictions, as such standard existed prior to 1970 amendment of impeachment statute to mandate admission of certain prior convictions, was whether the prejudicial effect of impeachment far outweighed the probative relevance of a prior conviction to issue of credibility. *Id.*

Exclusion of evidence of conviction of complaining witness of making false report to police, which evidence was admissible under statute, was reversible error in prosecution for first-degree burglarly, armed robbery, and assault with a deadly weapon, where honesty and veracity of complaining witness was at issue and exclusion may have affected verdict. *United States v. G. O. Morgan* (1973, 476 F. 2d 928, 155 U.S. App. D.C. 172).

If evidence of prior conviction of defendant was admissible on any other ground than for purpose of attacking his credibility, admission of evidence was properly within the discretion of the trial judge regardless of the constitutionality of amended statute respecting the admission of evidence of prior crimes for purpose of attacking credibility of witness. *United States v. J. L. Tyson* (1972, 470 F. 2d 381, 152 U.S. App. D.C. 233; cert. denied 93 S. Ct. 1512, 410 U.S. 985).

Constitutionality

This section providing for mandatory admission of witness impeachment by conviction is not unconstitu-

tional. *United States v. M. J. Belt* (1975, 514 F.2d 837, 169 U.S. App. D.C. 1).

This section providing that a prior conviction of a felony "shall be admitted" to impeach credibility of the witness is constitutional. *W. B. Davis v. United States* (D.C. App. 1974, 313 A. 2d 886).

To extent that the 1970 amendment of impeachment statute mandating admission into evidence of certain prior convictions if a defendant takes the stand is applied in trials for offenses committed before its effective date such application constitutes a prohibited ex post facto law; the particularized consideration under the prior discretionary standard of whether prejudicial effect of impeachment outweighed probative relevance of prior conviction on issue of credibility was a protection of the magnitude necessary to invoke the ex post facto clause. *United States v. J. D. Henson* (1973, 486 F. 2d 1292, 159 U.S. App. D.C. 32).

Where offenses at issue were committed before effective date of 1970 amendment to impeachment statute mandating admission into evidence of certain prior convictions of a defendant if he takes the stand, as well as admission of such offenses as to witnesses, such retroactive application was unconstitutional as a prohibited ex post facto law. *Id.*

Construction

District of Columbia Court Reform Act's requirement that evidence of certain types of prior crimes be admitted for impeachment purposes applies to trials of Code offenses conducted in United States district court during transition period established by Code. *United States v. R. E. Yates* (1975, 524 F.2d 1282, 173 U.S. App. D.C. 308).

Amendment to this section shifting language from "crime" to "criminal offense" was intended not to restrict but to broaden category of convictions usable under this section. *United States v. E. Edmonds, Jr.* (1975, 524 F.2d 62, 173 U.S. App. D.C. 241).

Where indictment as originally returned contained both federal and District of Columbia offenses, but federal offenses were dismissed prior to trial, District Court properly applied this section providing for mandatory admission of witness impeachment by conviction. *United States v. J. Jones, Jr.* (1975, 517 F.2d 176, 170 U.S. App. D.C. 362).

This section providing for mandatory admission of witness impeachment by conviction applies to trial in United States District Court for District of Columbia of District of Columbia Code indictments returned before August 1, 1972. *United States v. M. J. Belt* (1975, 514 F.2d 837, 169 U.S. App. D.C. 1).

Where indictment is triable in United States District Court for District of Columbia because it includes both United States Code and District of Columbia Code offenses, provision of this section for mandatory admission of witness impeachments by conviction is not operative; rather, witness impeachment will be conducted under federal evidentiary law, including Federal Rules of Evidence, when effective. *Id.*

Provision of this section that evidence of criminal defendant's prior convictions shall be admitted for impeachment purposes was intended to apply only to D.C. Code crimes and not to apply to U.S. Code crimes. *United States v. C. S. Hairston* (1974, 495 F. 2d 1046, 161 U.S. App. D.C. 466).

Where U.S. attorney uses authority given him to combine local and federal crimes in the same indictment, resulting in their trial together in United States District Court in the District of Columbia, federal forum's evidentiary law would govern impeachment by prior conviction. *Id.*

This section, which permits evidence of prior conviction to be admitted for purpose of attacking defendant's credibility when the defendant testified in his own behalf, does not permit use of the evidence as proof of guilt. *United States v. G. H. Carter* (1973, 482 F. 2d 738, 157 U.S. App. D.C. 149).

In permitting evidence of prior conviction to impeach a defendant when he testifies, this section furnishes no foundation for its use for any other purpose and care on part of court is required to confine such evidence to the permissible purpose. *Id.*

Conviction

Mere plea of guilty was insufficient to constitute "conviction" without statute authorizing attack upon credibility of witnesses by admission of prior "convictions." *United States v. H. E. Lee* (1974, 509 F.2d 400, 166 U.S. App. D.C. 67; cert. denied 95 S. Ct. 1451, 420 U.S. 1006).

— Reversal

Although trial court erred in admitting evidence of defendant's prior robbery conviction for purposes of impeachment where such conviction had, at time of trial, already been reversed, error is harmless because evidence of defendant's guilt is overwhelming. *W. G. Hale v. United States* (D.C. App. 1976, 361 A.2d 212).

Cross-examination

It was improper to cross-examine defendant to reveal an arrest for possession of a pistol without a license to contradict defendant's statement that he had never carried a weapon where defendant had not been convicted of the prior offense and where defendant's statement denying prior possession of weapon was made on cross-examination and not as part of his direct testimony. *S. Jackson v. United States* (D.C. App. 1977, 377 A.2d 1151).

While defendant claims that the prosecutor improperly maneuvered him into admitting that the Army had discharged him for failure to disclose his juvenile arrest record, it appears that defendant himself precipitated discussion of his military record by wearing a national guard uniform in court, and that he volunteered the reason for his army discharge before the direct question was asked of him and before the trial judge had an opportunity to rule upon defense counsel's objection. *V. Johnson v. United States* (D.C. App. 1976, 366 A.2d 429).

Discovery

Criminal records of prosecution witnesses were neither evidence favorable to defendant nor material in any way on issue of guilt or punishment except to the extent that their use would be permitted for impeachment purposes and discovery of the criminal records in the possession of the prosecutor is not compelled by due process of law. *United States v. W. C. Engram et al.* (D.C. App. 1975, 337 A.2d 488; cert. denied 96 S. Ct. 793, 423 U.S. 1058).

The government is committed to furnish to the defendant at trial the record of all impeachable convictions of prosecution witnesses. *Id.*

Evidence of prior convictions

Trial court erred when it permitted prosecutor to question defendant concerning prior convictions where effect of such questioning was not limited to impeachment of defendant's credibility but invited jury to consider prior convictions as suggestion of defendant's guilt. *United States v. R. R. Henry* (1976, 528 F.2d 661, 174 U.S. App. D.C. 88).

Under statute authorizing attack upon credibility of witnesses by admission of prior "convictions," it was error to admit evidence of defendant's plea of guilty in different prosecution but where testimony as to guilty plea was largely cumulative to testimony which defendant himself introduced, error was harmless. *United States v. H. E. Lee* (1974, 509 F.2d 400, 166 U.S. App. D.C. 67; cert. denied 95 S. Ct. 1451, 420 U.S. 1006).

Evidence of prior crimes or convictions is admissible for certain limited purposes for which the probative value of the evidence outweighs its prejudicial character. *United States v. C. H. Carter* (1973, 482 F.2d 738, 157 U.S. App. D.C. 149).

Defense counsel has burden to show why court should exercise discretion to render prior conviction unavailable for impeachment and court's failure to hold hearing on availability for prior conviction was not grounds for reversal, although counsel was court appointed. *United States v. D. F. Brown* (1973, 476 F.2d 933, 155 U.S. App. D.C. 177).

— Hearing

In this case the court held that under the circumstances the defendant, who was convicted of housebreaking and grand larceny, was entitled to nonjury hearing to determine whether defendant would be allowed to take stand in front of jury without prosecution introducing evidence of defendant's prior convictions. *United States*

v. J. Coleman (1969, 420 F.2d 1313, 137 U.S. App. D.C. 110).

Harmless error

In proceeding in which accused was convicted of armed robbery; detective's testimony that *modus operandi* was "where we keep pictures of men that have committed different types of crimes like rape, robbery, so on" did not require new trial on ground that it is evidence of another crime committed by accused, in view of the relatively attenuated connection made by detective's testimony between accused's photograph and the *modus operandi* file and in view of instruction that the reference to *modus operandi* was not to be considered as an indication that accused had any record of previous crimes. *J. Dyas v. United States* (D.C. App. 1977, 376 A.2d 827; cert. denied 98 S.Ct. 529, — U.S. —).

In view of overwhelming case made out by prosecution against defendants in robbery prosecution, trial court's error in allowing impeachment of one defendant by evidence of prior conviction for simple assault, such crime not being a felony and not involving dishonesty or false statement, was harmless. *United States v. M. J. Belt* (1975, 514 F.2d 837, 169 U.S. App. D.C. 1).

Refusal to rule on whether defendant's prior conviction of attempted house breaking was an impeachable one is improper, but error is harmless, in that since such conviction was admissible for impeachment purposes, defendant's decision whether to testify would have been same if trial judge had expressly ruled on its admissibility. *M. A. Hampton v. United States* (D.C. App. 1975, 340 A.2d 813).

Impeachment

In proceeding in which accused were charged with assault on three police officers, even if documents, which were within officers' personnel records and which accused sought to discover, reflected prior unlawful assaultive acts on part of such officers, the documents were not discoverable, under rule providing for disclosure of documents material to preparation of the defense, on ground that such documents could be used to impeach officers' credibility, in view of fact that unlawful assaultive conduct does not involve dishonesty or false statement. *United States v. W. Akers, Sr. et al.* (D.C. App. 1977, 374 A.2d 874).

No improper impeachment of defendant in second-degree murder prosecution took place when prosecutor inquired as to previous terms of imprisonment served by defendant only after prisoner had already testified to such confinements in his direct testimony. *C. R. Curry v. United States* (D.C. App. 1974, 322 A.2d 268).

Instructions

In armed robbery prosecution, trial court did not commit prejudicial error by refusing defense counsel's requests for immediate instructions concerning limited use of prior convictions admitted for purposes of impeachment of defense witnesses where only persons impeached by such evidence were witnesses who were not on trial and where, at conclusion of evidence, judge properly informed jury that prior convictions should be considered only in evaluating witnesses' credibility. *S. Watkins v. United States* (D.C. App. 1977, 379 A.2d 703).

Prejudicial effect of prosecutor's wrongful questioning of defendant concerning prior convictions was not cured by court's cautionary instruction given in course of its charge to jury. *United States v. R. R. Henry* (1976, 528 F.2d 661, 174 U.S. App. D.C. 88).

On the record presented, there is no substantial likelihood that the verdict of the jury was significantly affected by the trial court's failure to give, *sua sponte*, any kind of cautionary instruction on the use of defendant's record of prior arrests, considering, *inter alia*, that the prosecutor's cross-examination, which elicited the arrest evidence, was on a subject which had been injected into the case by defendant. *V. Johnson v. United States* (D.C. App. 1976, 366 A.2d 429).

Trial judge's failure to *sua sponte* give an immediate cautionary instruction when defendant's prior conviction was brought out was not prejudicial error and was not cognizable as plain error where immediately following impeachment defense counsel brought out on redirect that

defendant had served his time, defense counsel made no mention of instructions to limit use of prior impeachment when trial court asked for any special instructions and, in contrast to the government, defense counsel again raised prior conviction in his closing argument to note that it was only to be used in considering credibility. *United States v. J. D. Henson* (1973, 486 F. 2d 1292, 159 U.S. App. D.C. 32).

Trial court's instructions concerning limited use of evidence of prior criminal convictions was not sufficient to cure prejudicial effect of the eliciting from defendant of testimony concerning prior convictions. *United States v. C. H. Carter* (1973, 482 F. 2d 738, 157 U.S. App. D.C. 149).

Reversible error

Evidence in narcotics prosecution was not so overwhelmingly in favor of conviction that error in allowing prosecutor to question defendant concerning prior convictions can be said to be harmless. *United States v. R. R. Henry* (1976, 528 F. 2d 661, 174 U.S. App. D.C. 88).

Prosecutor's eliciting of testimony from defendant that defendant had previously been convicted of six counts of robbery and assault with a dangerous weapon, which was designed to persuade jury that defendant would rob a man, and in fact committed the robbery for which he was charged, constituted reversible error. *United States v. C. H. Carter* (1973, 482 F. 2d 738, 157 U.S. App. D.C. 149).

§ 14-306. Husband and wife

CROSS REFERENCE

Neglected children proceedings, see § 2-165.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-165, 16-1005, 16-2359.

NOTES TO DECISIONS

Confidential nature

Assault on wife by a husband is not a "communication" and it is certainly not a "confidential" one so that wife is competent to testify in criminal proceeding as to assault on her made by her husband. *J. Morgan, Jr. v. United States* (D.C. App. 1976, 363 A.2d 999; cert. denied 97 S. Ct. 2187, 431 U.S. 919).

Defendant's threat against his wife's father, made in the presence of another member of the family, is not a "confidential communication" to the wife for purposes of this section rendering husbands and wives incompetent to testify as to confidential communications made by one to the other during the marriage. *Id.*

Privilege not to reveal confidential marital communications survives the death of one spouse, but it does not extend to noncommunicative acts and a communication otherwise privileged loses its privileged character on coming into the hands of a third party. *United States v. J. H. Burks* (1972, 470 F. 2d 432, 152 U.S. App. D.C. 284).

Termination of privilege

Common-law privilege of one spouse not to testify for or against the other would not apply where husband's legal

interests were in no way at stake in case and the privilege ended with termination of marital relationship through death of husband. *United States v. J. H. Burks* (1972, 470 F. 2d 432, 152 U.S. App. D.C. 284).

§ 14-307. Physicians

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-162, 2-165, 2-496, 16-2359.

NOTES TO DECISIONS

Discovery

While medical malpractice plaintiff was not entitled to discover medical records of persons on whom dentist had performed surgery of the kind he performed on plaintiff, dentist was ordered to turn over names and addresses of patients on whom he performed treatment in question so that plaintiff could inquire of the individuals to determine whether they were willing to have their medical records disclosed in connection with the litigation. *K. S. Payne v. D. M. Howard et al* (1977, 75 F.R.D. 465).

Malpractice actions

While medical malpractice plaintiff was not entitled to discover medical records of persons on whom dentist had performed surgery of the kind he performed on plaintiff, dentist was ordered to turn over names and addresses of patients on whom he performed treatment in question so that plaintiff could inquire of the individuals to determine whether they were willing to have their medical records disclosed in connection with the litigation. *K. S. Payne v. D. M. Howard et al* (1977, 75 F.R.D. 465).

Chapter 5.—DOCUMENTARY EVIDENCE

§ 14-505. Municipal ordinances and regulations

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 7.—ABSENCE FOR SEVEN YEARS

§ 14-701. Presumption of death

NOTES TO DECISIONS

Evidence

In action wherein insured's mother-in-law, who was beneficiary under life policy, sought declaration that insured was legally dead on basis of statutory presumption, evidence warranted finding that insured departed with intention of changing his domicile. *M. A. Sulkie v. Metropolitan Life Insurance Company* (D.C. App. 1975, 336 A.2d 830).

TITLE 15.—JUDGMENTS AND EXECUTIONS; FEES AND COSTS

Title 15 was enacted by Pub. L. 88-241, Dec. 23, 1963, 77 Stat. 522

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in section 5-1249.

Chapter 1.—JUDGMENTS AND DECREES

§ 15-101. Enforceable period of judgments; expiration

NOTES TO DECISIONS

Judgment—Validity

Where collection agency practices terminated by Court of Appeals as being an unauthorized practice of law had been long carried on without judicial disapproval and where judgments had been valid under law existing when they were rendered, decision terminating such practices would not be applied retroactively. *Kelly Adjustment Co. v. R. Boyd et ano.* (D.C. App. 1975, 342 A.2d 361).

§ 15-102. Lien of judgment, decree, or forfeited recognition

NOTES TO DECISIONS

Option to purchase

Purchase option accompanying lease is not a legal or equitable estate in land within provisions of this section that, as of date it is recorded, a final judgment constitutes a lien on all freehold and leasehold estates, legal and equitable of defendants bound by judgment in any land, tenements or hereditaments. *R. Harris et ano. v. J. S. Wagshal* (D.C. App. 1975, 343 A.2d 283).

§ 15-108. Interest on judgment for liquidated debt

NOTES TO DECISIONS

Due date of debt

Absent overriding equitable considerations, interest was properly assessed on amount due on notes from date the last installment was due rather than from date of demand. *R. T. Toomey et ano. v. D. S. Cammack* (D.C. App. 1977, 379 A.2d 700).

Liquidated debt

Where each member of plaintiff class acquired vested right to receive monthly pension payments at time his application was unlawfully denied, there was liquidated debt in sense that, whenever monthly payment was not made, it was an easily ascertainable sum certain, and question of entitlement of interest was thus controlled by this section providing for inclusion of interest where action is to recover liquidated debt on which interest is payable by contract, by law or by usage; and payment of interest should have been ordered; even if this section were not applicable, denial of interest could not be affirmed as exercise of equitable discretion. *S. Kiser et al. v. H. Huger et al.* (1974, 517 F.2d 1237, 170 U.S. App. D.C. 407).

§ 15-109. Interest on judgment for damages in contract or tort

NOTES TO DECISIONS

Choice of law

In action in District Court by commodity futures brokerage firm against former customer for amount allegedly due and owing on commodity futures brokerage account, District of Columbia law on subject of prejudgment interest would be applied despite choice of law provision in customer's agreement specifying that New York law would be applied, in view of fact that brokerage firm was Delaware corporation, customer was Pennsylvania domiciliary who formerly resided in Virginia and worked in Washington, D.C. area, parties entered into contractual arrange-

ment in Washington, D.C. and futures transactions between parties took place through Washington, D.C. office of brokerage firm. *E. F. Hutton & Co., Inc. v. B. B. Burkholder* (1976, 413 F. Supp. 852).

Equitable allowance

Where each member of plaintiff class acquired vested right to receive monthly pension payments at time his application was unlawfully denied, there was liquidated debt in sense that, whenever monthly payment was not made, it was an easily ascertainable sum certain, and question of entitlement of interest was thus controlled by statute providing for inclusion of interest where action is to recover liquidated debt on which interest is payable by contract, by law or by usage; and payment of interest should have been ordered; even if statute were not applicable, denial of interest could not be affirmed as exercise of equitable discretion. *S. Kiser et al. v. H. Huger et al.* (1974, 517 F.2d 1237, 170 U.S. App. D.C. 407).

Interest before judgment

Commodity futures brokerage firm is entitled to interest on judgment rendered for amount due and owing from former customer on commodity futures brokerage account, but, under this section, interest would run from date of judgment only, in view of uncertainty as to amount due broker and lapse of time between trial and judgment. *E. F. Hutton & Co., Inc. v. B. B. Burkholder* (1976, 413 F. Supp. 852).

Since the issue of prejudgment interest was not argued at trial of insured's claim to recover, under insurance policy, a stipulated business interruption loss for restaurant destroyed by fire, and since no evidence was submitted on that question, no award of interest would be allowed the insured except from the date of judgment. *Emersons, Ltd., et ano. v. Max Wolman Company et ano.* (1975, 388 F.Supp. 729; aff'd 530 F.2d 1093, 174 U.S. App. D.C. 241).

Chapter 3.—ENFORCEMENT OF JUDGMENTS AND DECREES

§ 15-301. Definition and applicability

NOTES TO DECISIONS

Judgment—Validity

Where collection agency practices terminated by Court of Appeals as being an unauthorized practice of law had been long carried on without judicial disapproval and where judgments had been valid under law existing when they were rendered, decision terminating such practices would not be applied retroactively. *Kelly Adjustment Co. v. R. Boyd et ano.* (D.C. App. 1975, 342 A.2d 361).

Chapter 5.—EXEMPTIONS AND TRIAL OF RIGHT TO SEIZED PROPERTY

SUBCHAPTER I.—EXEMPTIONS

§ 15-502. Mortgage or other instrument affecting exempt property

A mortgage, deed of trust, assignment for the benefit of creditors, or bill of sale upon exempted articles is not binding or valid unless it is signed by the spouse of a debtor who is married and living with his or her spouse. (Dec. 23, 1963, 77 Stat. 530, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; Oct. 1, 1976, D.C. Law 1-87, § 11, 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting "spouse" for "wife" and inserting "or her" after "his".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

Chapter 7.—FEES AND COSTS

Sec.

15-712. Proceedings in Forma Pauperis.

AMENDMENT

1977—Section 202(b) of act Apr. 7, 1977, D.C. Law 1-107, amended item 15-712 by substituting "Proceedings in Forma Pauperis" for "Waiver of prepayment of costs in Superior Court".

§ 15-701. Compensation taxed as costs; attorneys' compensation from clients

NOTES TO DECISIONS

Rent actions

Award of \$10,863.17 punitive damages, including \$5,328 for attorneys' fees and \$535.17 for out-of-pocket expenses of lawsuit is not abuse of discretion, where landlord had maliciously locked out tenant whose rent was fully paid in effort to intimidate other tenants and there had been seven years litigation. *Town Center Management Corporation v. R. Chavez* (D.C. App. 1977, 373 A.2d 238).

§ 15-705. Exemption of District of Columbia and United States from fees, costs, and bonds

NOTES TO DECISIONS

Award of court costs to individual

Length of delay in implementing retroactive payment order of Commissioner of Department of Human Resources justifies an assessment of costs in form of a \$25 filing fee against administrative officers in their official capacity once petition in nature of mandamus to compel agency action was dismissed as moot after officers tardily performed requested action. *B. Dillard et ano. v. J. P. Yell-dell et al.* (D.C. App. 1975, 334 A.2d 578).

§ 15-712. Proceedings in Forma Pauperis.

(a) Any District of Columbia court may authorize the commencement, prosecution or defense of any non-criminal suit, action or proceeding, or appeal therein, without prepayment of fees and costs or

security therefor, including the fees for transcripts on appeal, by a person who is unable to pay such costs or give security therefor without substantial hardship to himself or herself or his or her family, as established by affidavit or other proof satisfactory to the court.

(b) Any person who makes an affidavit as provided in subsection (a) and states therein that he or she receives public assistance under the District of Columbia Aid to Families with Dependent Children or General Public Assistance Programs, or receives assistance under Title XVI of the Social Security Act (Supplemental Security Income) (76 Stat. 197) shall be presumed eligible to proceed without prepayment of fees and costs or security therefor. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91-358, title I, § 144(14), 84 Stat. 554; Apr. 7, 1977, D.C. Law 1-107, title II, § 202, 23 DCR 8737.)

REFERENCE IN TEXT

Title XVI of the Social Security Act, referred to in subsec. (b), is title XVI of Act Aug. 14, 1935, ch. 531, as added Oct. 30, 1972, Pub. L. 92-603, title III, § 301, 86 Stat. 1465, which is classified to sections 1381 et seq. of title 42, U.S. Code.

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-107, amended section and section heading generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 301 of act Apr. 7, 1977, D.C. Law 1-107, set out as a note under § 16-902.

NOTES TO DECISIONS

Indigency

Where petitioners were on welfare except for one whose income was only slightly above welfare standard, denial of their petitions to proceed in forma pauperis so as to be relieved from payment of costs with respect to their actions for either divorce or annulment deprived them not only of statutory rights but of right to due process under Constitution. *R. A. Cabillo et al. v. R. Cabillo et al.* (D.C. App. 1974, 317 A.2d 866).

TITLE 16.—PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

Title 16 was enacted by Pub. L. 88-241, Dec. 23, 1963, 77 Stat. 536

Chapter 3.—ADOPTION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3-115.

§ 16-301. Jurisdiction; rules

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Age of majority, see § 21-101 note.

NOTES TO DECISIONS

Removal of child from District

Adoptive parents' residency in District of Columbia is sufficient to give Superior Court jurisdiction to enter adoption decree as to child who was born, raised and present in District of Columbia when adoption petition was filed even though child was removed from District while adoption proceeding was pending. *Petition of J. E. G. and M. K. G.* (D.C. App. 1976, 357 A.2d 855).

§ 16-302. Persons who may adopt

NOTES TO DECISIONS

Natural father

Where consent of mother had been given, director of social services had recommended that petition be granted, and there was no evidence of record indicating that proposed adoption would not be in best interests of child, court erred in denying petition of natural father to adopt illegitimate son. *In the Matter of the Petition for Adoption: J. H.* (D.C. App. 1974, 313 A. 2d 874).

§ 16-304. Consent

(b) Consent to a proposed adoption of a person under eighteen years of age is necessary:

(1) from the prospective adoptee, if he is four-teen years of age or over; and also,

(2) in accordance with the provisions of any one of the following paragraphs:

(A) from both parents, if they are both alive;

or

(B) from the living parent of the prospective adoptee, if one of the parents is dead; or

(C) from the court-appointed guardian of the prospective adoptee; or

(D) from a licensed child-placing agency or the Mayor in case the parental rights of the parent or parents have been terminated by a court of competent jurisdiction or by a release of parental rights to the Mayor or licensed child-placing agency, based upon consents obtained in accordance with paragraphs (A) through (C) of this subdivision, and the prospective adoptee has been lawfully placed under the care and custody of the agency or the Board; or

(E) from the Mayor in any situation not otherwise provided for by this subsection.

(f) A person over eighteen years of age may be adopted, on the petition of the adopting parent or parents and with the consent of the prospective adoptee, if the court is satisfied that the adoption should be granted. (As amended July 22, 1976, D.C. Law 1-75, § 5(e), 23 DCR 1182; Oct. 1, 1976, D.C. Law 1-87, § 12, 23 DCR 2544.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended subsec. (b) (2) as follows:

(1) by striking in par. (A) "or were married and are" following "if they are";

(2) by striking pars. (C) and (D);

(3) by redesignating pars. (E), (F), and (G) as pars. (C), (D), and (E), respectively; and

(4) by substituting in par. (D), as redesignated, "paragraphs (A) through (C)" for "paragraphs (A) through (E)".

Act July 22, 1976, D.C. Law 1-75, amended material preceding subsec. (b) (1) and subsec. (f) by substituting "eighteen" for "twenty-one".

EFFECTIVE DATES OF 1976 AMENDMENTS

For act Oct. 1, 1976, D.C. Law 1-87, see sec. 43 of such act set out as a note under § 1-511.

For act July 22, 1976, D.C. Law 1-75, see sec. 8 of such act set out as a note under § 21-101.

NOTES TO DECISIONS

Constitutionality

This section does not deny a parent due process merely because it fails to require a finding that the parent is unfit; there is nothing offensive to constitutional mandates in a statutory standard which focuses on the best interests of the child rather than solely on the status or abilities of the natural parent. *In the Matter of Petition for Adoption of J. S. R.* (D.C. App. 1977, 374 A. 2d 860).

The "best interests of the child" standard for permitting adoption without parental consent if consent is withheld contrary to the best interests of the child is not unconstitutionally vague; given multitude of fact situations which must be embraced by the standard it must contain certain imprecision, but to say that it lacks precise meaning is not to say that it is without content since such content has been explicated over the years and the standard requires the judge to make an informed and rational judgment, free of bias and favor, as to the least detrimental alternative; no more precision appears possible and none is constitutionally required. *Id.*

Evidence—Sufficiency

Evidence, in adoption proceeding, supports trial court's findings that natural mother who had given up child a few months after his birth, who had not contributed to

child's support and who had visited child only infrequently had abandoned child and that child's best interests required granting of adoption petition, over natural mother's objection. *Petition of J. E. G. and M. K. G.* (D.C. App. 1976, 357 A.2d 855).

Natural father

Where consent of mother had been given, director of social services had recommended that petition be granted, and there was no evidence of record indicating that proposed adoption would not be in best interests of child, court erred in denying petition of natural father to adopt illegitimate son. *In the Matter of the Petition for Adoption: J. H.* (D.C. App. 1974, 313 A. 2d 874).

Parental rights—Termination

Preadoption termination of parental rights to minor should not have been granted, and such termination should, instead, have been obtained through statutory procedure to accomplish termination of parental rights as part of adoption proceeding. *G. H. X. White v. In the Matter of N. E. M.* (D.C. App. 1976, 358 A.2d 328).

The Superior Court exceeded its statutory grant of rule-making power by enacting procedural rule which abridged substantive right of a parent, i.e., rule permitting permanent severance of parent-child relationship in a non-adoption proceeding. *In the Matter of C. A. P.* (D.C. App. 1976, 356 A.2d 335).

Superior Court's parens patriae power is insufficient authority for its enactment of rule permitting termination of parental rights in nonadoption proceedings. *Id.*

Court of Appeals' holding that Superior Court's adoption of rule permitting termination of parental rights based on neglect was in excess of its statutory authority would be given prospective application only. *In the Matter of C. A. P.* (D.C. App. 1976, 359 A.2d 11).

Review

Findings of fact and conclusions of law were necessary in order to review dismissal of petition of maternal grandparents for adoption of minor grandchild, with respect to which the trial judge stated only that grandparents had not established the facts to justify the adoption and that withholding of consent by the natural father had not been contrary to the best interests of the child. *Petition of G.F.C., Jr. and L.M.C.* (D.C. App. 1974, 314 A. 2d 486).

Standard of proof

As applied in determining whether parental consent to adoption was withheld contrary to the child's best interests, the substantial preponderance test, as applied by the trial court was substantially identical to the required "clear and convincing" test. *In the Matter of Petition for Adoption of J. S. R.* (D.C. App. 1977, 374 A. 2d 860).

Withdrawal of consent

Where consent to adoption was signed by natural father on August 30 and where father did not indicate desire to revoke consent until the following March 15, father was properly not permitted to withdraw his consent *In re Adoption of S. E. D.* (D.C. App. 1974, 324 A.2d 200).

§ 16-305. Petition for adoption

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Petition of step-parent, exclusion of race or religion, see § 16-308.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16-308.

NOTES TO DECISIONS

Race and religion

Where Social Services Administration did not oppose petition filed by husband and wife of different racial

background for adoption of child born of parents of a similar mixed racial background and had full knowledge of facts regarding parties' race and religion and trial court also possessed such information and indicated its approval of the adoption subject to filing of amended adoption petition including racial and religious information which was required by this section and which prospective adoptive parents had refused to include, the adoption petition would be considered amended to conform to information already possessed by the trial court. *In the Matter of V. M. DeF. et ano.* (D.C. App. 1973, 307 A. 2d 737).

§ 16-307. Investigation, report, and recommendation

* * * * *

(b) The investigation, report, and recommendation shall include:

(1) an investigation of

(A) the truth of the allegations of the petition;

(B) the environment, antecedents,¹ and assets, if any, of the prospective adoptee, to determine whether he is a proper subject for adoption;

(C) the home of the petitioner, to determine whether the home is a suitable one for the prospective adoptee; and

(D) any other circumstances and conditions that may have a bearing on the proposed adoption and of which the court should have knowledge, including the existence and terms of a tentative adoption subsidy agreement entered into prior to the filing of the adoption petition under section 3 of the Act of July 26, 1892 (D.C. Code, sec. 3-115).

(2) a written report to the court of the findings of the investigation; and

(3) a recommendation to the court whether a final decree declaring the adoption prayed for in the petition should be immediately granted, or whether the court should grant an interlocutory decree granting temporary custody of the prospective adoptee to the petitioner, as hereinafter set forth.

* * * * *

(As amended Jan. 2, 1974, Pub. L. 93-241, § 2(a), 87 Stat. 1061.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1974—Act Jan. 2, 1974, Pub. L. 93-241, amended subsec. (b) (1) (D) by inserting immediately after "should have knowledge" the following: "including the existence and terms of a tentative adoption subsidy agreement entered into prior to the filing of the adoption petition under section 3 of the Act of July 26, 1892 (D.C. Code, sec. 3-315)".

EFFECTIVE DATE OF 1974 AMENDMENT

Section 3 of Act Jan. 2, 1974, Pub. L. 93-241, 87 Stat. 1061, provided: "The amendments made by this Act [amending §§ 3-114, 3-115, 3-117, 16-307, 16-309] shall take effect at the end of the ninety-day period beginning on the date of enactment of this Act."

¹ So in original. Probably should be "antecedents."

§ 16-308. Investigations when prospective adoptee is adult or petitioner is spouse of natural parent

The court may dispense with the investigation, report, and interlocutory decree provided for by this chapter when:

- (1) the prospective adoptee is an adult; or
- (2) the petitioner is a spouse of the natural parent of the prospective adoptee and the natural parent consents to the adoption or joins in the petition for adoption.

In the circumstances specified in (2) above, the petition need not contain the information concerning race and religion specified by subparagraphs (4) and (5) of section 16-305. (Dec. 23, 1963, 77 Stat. 539, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; Oct. 30, 1975, D.C. Law 1-25, § 3, 22 DCR 2465.)

AMENDMENT

1975—Act Oct. 30, 1975, D.C. Law 1-25, added last sentence.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 3 of act Oct. 30, 1975, D.C. Law 1-25, provided: "This act [amending §16-308] shall take effect upon becoming law by operation of the provisions of Section 602 of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147]."

SHORT TITLE

The first section of act Oct. 30, 1975, D.C. Law 1-25, provided "That this act [amending § 16-308] may be cited as the 'Step-Parent Adoption Facilitation act'."

§ 16-309. Adoption proceedings

(b) After considering the petition, the consents, and such evidence as the parties and any other properly interested person may present, the court may enter a final or interlocutory decree of adoption when it is satisfied that:

- (1) the prospective adoptee is physically, mentally, and otherwise suitable for adoption by the petitioner;
- (2) the petitioner is fit and able to give the prospective adoptee a proper home and education; and
- (3) the adoption will be for the best interests of the prospective adoptee.

In determining whether the petitioner will be able to give the prospective adoptee a proper home and education, the court shall give due consideration to any assurance by the Commissioner that he will provide or contribute funds for the necessary maintenance or medical care of the prospective adoptee under an adoption subsidy agreement under section 3 of the Act of July 26, 1892 (D.C. Code, sec. 3-115).

(As amended Jan. 2, 1974, Pub. L. 93-241, § 2(b), 87 Stat. 1061.)

AMENDMENT

1974—Act Jan. 2, 1974, Pub. L. 93-241, amended subsec. (b) by inserting at the end thereof a new sentence, relating to adoption subsidy agreements, to read as above set out.

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 16-307.

NOTES TO DECISIONS

Appeal and error

Where consent of mother had been given, director of social services had recommended that petition be granted,

and there was no evidence of record indicating that proposed adoption would not be in best interests of child, court erred in denying petition of natural father to adopt illegitimate son. *In the Matter of the Petition for Adoption: J. H.* (D.C. App. 1974, 313 A. 2d 874).

§ 16-311. Sealing and inspection of records and papers

NOTES TO DECISIONS

Access to investigative report

It was not an abuse of discretion for trial court to deny natural father's oral request for access to sealed report on proposed adoption prepared by Social Rehabilitation Administration. *In re Adoption of S. E. D.* (D.C. App. 1974, 324 A.2d 200).

§ 16-312. Legal effects of adoption

NOTES TO DECISIONS

Self-help

Granting of adoption petition does not confer upon adoptive parents legal right to go into sister state where natural mother resided with child and remove child from mother's home without consent of proper authorities in that state. *Petition of J. E. G. and M. K. G.* (D.C. App. 1976, 357 A.2d 855).

§ 16-314. Birth certificates

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 5.—ATTACHMENT AND GARNISHMENT

SUBCHAPTER I.—ATTACHMENT AND GARNISHMENT GENERALLY

§ 16-501. Attachment before judgment; affidavit and bond

NOTES TO DECISIONS

Judgment—Validity

Where collection agency practices terminated by Court of Appeals as being an unauthorized practice of law had been long carried on without judicial disapproval and where judgments had been valid under law existing when they were rendered, decision terminating such practices would not be applied retroactively. *Kelly Adjustment Co. v. R. Boyd et ano.* (D.C. App. 1975, 342 A.2d 361).

Restraining order in lieu of attachment

Where wife who was separated from her husband obtained a temporary restraining order on October 2, 1972, barring withdrawal of any of husband's retirement funds in account at first bank, claim of second bank, which had made payments to third party pursuant to checks signed by husband that had been presented to second bank on September 28, September 29, and October 2, 1972, is inferior to wife's where such claim did not become a lien on the funds until delivery of second bank's attachment before judgment to United States marshal on October 11, 1972, and second bank is not entitled to payment until attachment first served was paid. *L. O. Trigo v. The Riggs National Bank of Washington, D.C.* (D.C. App. 1975, 338 A.2d 445).

§ 16-503. Attachment for debts not due

CROSS REFERENCE

Service by publication on nonresidents and absent defendants, see § 13-336.

§ 16-507. Property subject to attachment; liens; priorities

NOTES TO DECISIONS

Effective date of lien

Where wife who was separated from her husband obtained a temporary restraining order on October 2, 1972,

barring withdrawal of any of husband's retirement funds in account at first bank, claim of second bank, which had made payments to third party pursuant to checks signed by husband that had been presented to second bank on September 28, September 29, and October 2, 1972, is inferior to wife's where such claim did not become a lien on the funds until delivery of second bank's attachment before judgment to United States marshal on October 11, 1972, and second bank is not entitled to payment until attachment first served was paid. *L. O. Trigo v. The Riggs National Bank of Washington, D.C.* (D.C. App. 1975, 338 A.2d 445).

SUBCHAPTER II.—ATTACHMENT AND GARNISHMENT AFTER JUDGMENT IN AID OF EXECUTION

§ 16-541. Definition and applicability

NOTES TO DECISIONS

Judgment—Validity

Where collection agency practices terminated by Court of Appeals as being an unauthorized practice of law had been long carried on without judicial disapproval and where judgments had been valid under law existing when they were rendered, decision terminating such practices would not be applied retroactively. *Kelly Adjustment Co. v. R. Boyd et ano.* (D.C. App. 1975, 342 A.2d 361).

SUBCHAPTER III.—ATTACHMENT AND GARNISHMENT OF WAGES, ETC.

§ 16-571. Definitions

CROSS REFERENCE

Attachment and garnishment of remuneration of District employees, see § 1-323.

NOTES TO DECISIONS

Judgment—Validity

Where collection agency practices terminated by Court of Appeals as being an unauthorized practice of law had been long carried on without judicial disapproval and where judgments had been valid under law existing when they were rendered, decision terminating such practices would not be applied retroactively. *Kelly Adjustment Co. v. R. Boyd et ano.* (D.C. App. 1975, 342 A.2d 361).

§ 16-572. Attachment of wages; percentage limitations; priority of attachments

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 16-575. Judgment against employer-garnishee for failure to pay percentages

NOTES TO DECISIONS

Failure to pay

Where judgment creditor served writ of attachment on judgment debtor's employer which answered one of the interrogatories in the writ by stating amount of judgment debtor's biweekly gross wages and biweekly disposable earnings, failure of employer to continue to remit percentages of employee's wages as prescribed on writ of attachment entitled judgment creditor to judgment against employer. *Household Finance Corporation v. Training Research and Development, Inc.* (D.C. App. 1974, 316 A.2d 850).

§ 16-577. Applicability of per centum limitations to judgment for support

The per centum limitations prescribed by section 16-572 do not apply in the case of execution upon a

judgment, order, or decree of any court of the District of Columbia for the payment of any sum for the support or maintenance of a person's spouse, or former spouse, or children, and any such execution, judgment, order, or decree shall, in the discretion of the court, have priority over any other execution which is subject to the provisions of this subchapter. In the case of execution upon such a judgment, order, or decree for the payment of such sum for support or maintenance, the limitation shall be 50 per centum of the gross wages due or to become due to any such person for the pay period or periods ending in any calendar month. (Dec. 23, 1963, 77 Stat. 556, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; Oct. 1, 1976, D.C. Law 1-87, § 13, 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting "spouse" for "wife".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

Chapter 6.—BONDS AND UNDERTAKINGS

§ 16-601. Undertaking in lieu of fiduciary's bond

NOTES TO DECISIONS

Default by principal

Where all of defaults on part of trustee occurred subsequent to period governed by auditor's report, guardian which moved to surcharge trustee and her surety for trustee's alleged misappropriation of trust funds of minor beneficiary was not required to seek to set aside the auditor's report. *B. E. Schilt, Successor Guardian etc. v. M. B. Duvall, Trustee, et ano.* (1973, 479 F. 2d 1228, 156 U.S. App. D.C. 245).

Under statute providing for entry of judgment against trustee and surety upon default by principal in any of conditions of undertaking or bond, judgment may be entered, upon motion, in action in which undertaking is filed, as an alternative to an independent action. *Id.*

Where trustee of minor's estate failed to transfer assets to herself in her capacity as guardian as required by law and express order of court, but instead had trust funds withdrawn from trust account paid to her individually or to her credit in Totten trust, such was a misappropriation of trust funds and constituted prior defaults for which trustee's surety was liable. *Id.*

Chapter 7.—CRIMINAL PROCEEDINGS IN THE SUPERIOR COURT

§ 16-705. Jury trial; trial by court

NOTES TO DECISIONS

Government consent—Withdrawal of consent

The trial court, after defendant at his arraignment on assault charge had waived his right to a jury trial with the consent of both the Government and the court, abused its discretion in allowing the Government to withdraw its consent to a nonjury trial, where the justification proffered by the Government for its later request for a jury trial was, in effect, simply because it had changed its mind, and where, in view of the chronology of the particular case, reliance on the bureaucratic nature of the Government was misplaced and clearly insufficient to allow withdrawal of the Government's prior consent. *R. D. Sparks v. United States* (D.C. App. 1976, 358 A.2d 307).

Waiver of jury trial

Court of Appeals would not consider the Government's contention, raised for the first time on appeal, that defendant failed at arraignment to effectively waive his right to a jury trial. *R. D. Sparks v. United States* (D.C. App. 1976, 358 A.2d 307).

§ 16-706. Enforcement of judgments; commitment upon non-payment of fine

NOTES TO DECISIONS

Imprisonment for nonpayment

Superior Court is authorized to order commitment for term as long as one year to enforce payment of court-ordered fine, provided purpose of such alternative is to compel payment of fine rather than to impose imprisonment for term longer than that specified for offense. *G. A. Batres v. District of Columbia* (D.C. App. 1975, 347 A.2d 585).

— Indigents

In view of rule that where defendant is indigent, jail sentence imposed as alternative to payment of fine should not exceed maximum prescribed for offense, indigent defendant who was convicted of tampering with an automobile would be remanded for resentencing, with alternative sentence in default of payment of \$100 fine not to exceed ten days. *G. A. Batres v. District of Columbia* (D.C. App. 1975, 347 A.2d 585).

§ 16-710. Suspension of imposition or execution of sentence

NOTES TO DECISIONS

Federal Probation Act

Authority of the Superior Court to grant probation in a case where a person has been convicted of a crime that is punishable by life imprisonment is not restricted by the provisions of the Federal Probation Act and is, in fact, governed by the provisions of this section granting the Superior Court discretionary authority to order probation where appropriate. *A. Sanker v. United States* (D.C. App. 1977, 374 A.2d 304).

Chapter 9.—DIVORCE, ANNULMENT, SEPARATION, SUPPORT, ETC.

Sec.

- 16-905. Revocation and enlargement of decree of legal separation.
- 16-907. Parent and child relationship defined.
- 16-908. Relationship not dependent on marriage.
- 16-909. Proof of child's relationship to mother and father.
- 16-913. Alimony when divorce is granted.
- 16-915. Change of name on divorce.
- 16-916. Maintenance of spouse and minor children; maintenance of former spouse; maintenance of minor children; enforcement.
- 16-918. Appointment of counsel; compensation; termination of appointment.
- 16-923. Abolition of action for breach of promise, alienation of affections, and criminal conversation.

AMENDMENTS

1977—Sec. 103(b) of act Apr. 7, 1977, D.C. Law 1-107, amended item 16-905 by substituting "Revocation and enlargement of decree of legal separation" for "Revocation of decree of divorce from bed and board".

Sec. 104(b) of such act amended item 16-907 by substituting "Parent and child relationship defined" for "Legitimacy of issue of annulled marriage contracted while another in force".

Sec. 105(b) of such act amended item 16-908 by substituting "Relationship not dependent on marriage" for "Legitimacy of issue of annulled marriage with lunatic".

Sec. 106(b) of such act amended item 16-909 by substituting "Proof of child's relationship to mother and father" for "Legitimacy of issue of divorced marriage".

Sec. 110(b) of such act amended item 16-918 by adding "termination of appointment." at the end thereof.

Sec. 111(b) of such act added item 16-923.

1976—Sec. 16(b) of act Oct. 1, 1976, D.C. Law 1-87, amended item 16-913 by striking "on husband's application" at the end thereof.

Sec. 18(b) of such act amended item 16-915 to read as set out above.

Sec. 19(d) of such act amended item 16-916 to read as set out above.

§ 16-901. Definition

SHORT TITLE

The first section of act Apr. 7, 1977, D.C. Law 1-107, provided "That this act [for classification of act see Tables] may be cited as the 'District of Columbia Marriage and Divorce act'."

NOTES TO DECISIONS

Writ of ne exeat

Writ of ne exeat, which may be issued by courts of the District of Columbia in support of their jurisdiction over various marital actions, is in the nature of civil bail, the purpose of which is to prevent the frustration of a plaintiff's equitable claims by insuring the continued physical presence of the defendant within the court's jurisdiction. *E. D. Gredone v. R. L. Gredone* (D.C. App. 1976, 361 A.2d 176).

Ordering return on bond posted by husband's brother as against a writ of ne exeat issued to secure husband's appearance in divorce litigation, which was routinely completed in wife's favor, is not abuse of discretion, contrary to contention that writ should have been directed toward the further objective of securing proper satisfaction of wife's equitable claims as embodied in money judgments. *Id.*

§ 16-902. Residence requirements

No action for divorce or legal separation shall be maintainable unless one of the parties to the marriage has been a bona fide resident of the District of Columbia for at least six months next preceding the commencement of the action. No action for annulment of a marriage performed outside the District of Columbia or for affirmance of any marriage shall be maintainable unless one of the parties is a bona fide resident of the District of Columbia at the time of the commencement of the action. The residence of the parties to an action for annulment of a marriage performed in the District of Columbia shall not be considered in determining whether such action shall be maintainable. If a member of the armed forces of the United States resides in the District of Columbia for a continuous period of six months during his or her period of military service, he or she shall be deemed to reside in the District of Columbia for purposes of this section only. (Dec. 23, 1963, 77 Stat. 560, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; Sept. 29, 1965, 79 Stat. 889, Pub. L. 89-217, § 1; Apr. 7, 1977, D.C. Law 1-107, title I, § 101, 23 DCR 8737.)

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-107, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 301 of act Apr. 7, 1977, D.C. Law 1-107, title III, provided: "This act [for classification of act see Tables] shall take effect pursuant to the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

NOTES TO DECISIONS

Evidence—Sufficiency

Evidence supported finding that plaintiff wife had been resident of District of Columbia for requisite period of time when she filed complaint for divorce. *C. Williams v. L. Williams* (D.C. App. 1977, 378 A.2d 668).

§ 16-904. Grounds for divorce, legal separation and annulment

(a) A divorce from the bonds of marriage may be granted if:

(1) both parties to the marriage have mutually and voluntarily lived separate and apart without

cohabitation for a period of six months next preceding the commencement of the action;

(2) both parties to the marriage have lived separate and apart without cohabitation for a period of one year next preceding the commencement of the action.

(b) A legal separation from bed and board may be granted if:

(1) both parties to the marriage have mutually and voluntarily lived separate and apart without cohabitation;

(2) both parties to the marriage have lived separate and apart without cohabitation for a period of one year next preceding the commencement of the action;

(3) either party has committed adultery; or

(4) either party has engaged in conduct which constitutes cruelty toward the other.

For purposes of subsections (1) and (2) of paragraphs (a) and (b) of this section, parties who have pursued separate lives, sharing neither bed nor board, shall be deemed to have lived separate and apart from one another even though:

(1) they reside under the same roof; or

(2) the separation is pursuant to an order of a court.

(d)¹ Marriage contracts may be annulled in the following cases:

(1) where such marriage was contracted while either of the parties thereto had a former wife or husband living, unless the former marriage had been lawfully dissolved;

(2) where such marriage was contracted during the insanity of either party (unless there has been voluntary cohabitation after the discovery of the insanity);

(3) where such marriage was procured by fraud or coercion;

(4) where either party was matrimonially incapacitated at the time of marriage without the knowledge of the other and has continued to be so incapacitated;

(5) where either of the parties had not attained the age of legal consent to the contract of marriage (unless there has been voluntary cohabitation after attaining the age of legal consent), but in such cases only at the suit of the party who had not attained such age.

(Dec. 23, 1963, 77 Stat. 560, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; Sept. 29, 1965, 79 Stat. 889, Pub. L. 89-217, § 2; Apr. 7, 1977, D.C. Law 1-107, title I, § 102, 23 DCR 8737.)

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-107, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 301 of act Apr. 7, 1977, D.C. Law 1-107, set out as a note under § 16-902.

CROSS REFERENCES

Age of majority, see § 21-101 note.

Service by publication on nonresidents and absent defendants, see § 13-336.

¹ So in original. There is no subsec. (c).

NOTES TO DECISIONS

Abuse of discretion

Record fails to establish that denial of a three-month continuance request in divorce action was an abuse of discretion on asserted ground that wife had been denied opportunity to undertake discovery, since husband's responses to wife's interrogatories had been received and it was wife who cancelled deposition sessions with husband. *A. H. Beckwith v. R. T. L. Beckwith* (D.C. App. 1977, 379 A. 2d 955).

Where original trial judge granted continuance to wife in divorce action on basis of her hospitalization, but ordered that no further continuances could be granted, and second trial court judge based denial of wife's second motion, seeking continuance because of continued hospitalization, on original trial judge's order, it was inappropriate for original judge to have attempted to preclude any subsequent consideration of another continuance, and second judge was not bound by his predecessor's order but was free to consider motion on its merits and grant requested continuance in order to prevent miscarriage of justice. *W. M. Feaster v. C. A. Feaster* (D.C. App. 1976, 359 A.2d 272).

Pendency of defendant wife's divorce action in Maryland is not a bar to husband's District of Columbia divorce action, and stay of the District of Columbia action is discretionary as a matter of comity, which discretion was not abused in view of evidence that wife had not diligently prosecuted her action in Maryland. *C. L. Archuleta v. J. E. Archuleta* (D.C. App. 1975, 345 A.2d 157; cert. denied 96 S.Ct. 1677, 425 U.S. 940).

Appeals

Wife, who failed to timely serve husband with motion for consideration of her petition to appeal in forma pauperis from divorce decree and failed to timely serve husband's counsel with copy of letter expressing wife's desire to proceed on appeal in paid status, is not estopped from challenging custody order but is estopped from challenging validity of divorce decree or property settlement, in view of fact that husband, who received order stating that application for appeal at public expense was deemed withdrawn, had reasonably believed that wife's appeal was at an end and had remarried in reliance on such belief. *E. M. Neuman v. R. H. Neuman* (D.C. App. 1977, 377 A. 2d 393).

Constructive desertion

Even though wife brought about a separation for at least one year by voluntarily filing charges against her husband for assault, where wife's action was occasioned by husband's misconduct, wife is entitled to divorce on ground of constructive desertion. *B. Edwards v. J. Edwards* (D.C. App. 1976, 356 A.2d 633).

Departure from "marital abode" is not necessary for finding of desertion for purposes of divorce action. *Id.*

Counsel fees

Remand for reconsideration of attorney fee award is required where it appears that some legal services for which wife's counsel was awarded compensation were rendered prior to her admission to the practice of law. *C. C. Finch v. S. L. Finch* (D.C. App. 1977, 378 A. 2d 1092).

Where attorney for defendant wife in divorce case was awarded a substantial fee for his services in trial court, and where husband appeared to be of limited means, wife's attorney would be awarded a fee of \$200 for his representation on appeal. *C. L. Archuleta v. J. E. Archuleta* (D.C. App. 1975, 345 A.2d 157; cert. denied 96 S.Ct. 1677, 425 U.S. 940).

Counterclaims—Compulsory

Where husband clearly manifested his intention to sever marriage bond by filing action for divorce approximately 14 months after he moved out of the parties' home, wife had claim for desertion at the time she served her responsive pleading in her husband's divorce action and is, therefore, required by the compulsory counterclaim rule to assert her claim in the husband's action, despite wife's contention that, at the time her pleading was served, she was not aware of husband's intention never to resume marital relationship. *F. M. Stolar v. R. Stolar* (D.C. App. 1976, 359 A.2d 597).

— Dismissal

Circumstances concerning dilatoriness required conclusion that dismissal of wife's counterclaim in divorce action was not an abuse of discretion. *A. H. Beckwith v. R. T. L. Beckwith* (D.C. App. 1977, 379 A.2d 955).

Desertion

For purpose of determining whether claim for divorce on ground of "desertion" exists, "desertion" contemplates a voluntary separation of one party from the other without justification, an intention not to return and the absence of consent or connivance of the other party. *F. M. Stolar v. R. Stolar* (D.C. App. 1976, 359 A.2d 597).

Evidence—Sufficiency

In divorce action, evidence that husband was incapable of procreation in 1968 and wife's admission that her son had been fathered by someone other than her husband were more than sufficient to support trial court's finding of adultery, and it was not necessary for husband to disprove every alternative explanation of the child's conception. *A. H. Beckwith v. R. T. L. Beckwith* (D.C. App. 1977, 379 A.2d 955).

Evidence in husband's divorce action brought on ground of voluntary separation for one year is sufficient to warrant a finding of voluntary separation for the required period. *C. L. Archuleta v. J. E. Archuleta* (D.C. App. 1975, 345 A.2d 157; cert. denied 96 S.Ct. 1677, 425 U.S. 940).

Foreign decree

Divorce received in Mexico was void where neither party was domiciled in Mexico or even physically present there except for few hours in year divorce was obtained, and where absent spouse merely executed power of attorney, but entered no appearance in Mexican court. *A. S. Claggett v. J. D. B. King* (D.C. App. 1973, 308 A.2d 245).

Jurisdiction

Where nonresident defendant to divorce proceeding, served by substitute service, counterclaims for divorce, her voluntary action gives rise to personal jurisdiction of court. *A. H. Beckwith v. R. T. L. Beckwith* (D.C. App. 1976, 355 A.2d 537).

Laches and estoppel

Where two couples obtained Mexican divorces which were invalid because none of four parties was domiciled in Mexico, two of them merely spent a few hours in that country in year when divorces were obtained and absent spouses merely executed powers of attorney but entered no appearance in Mexican court, husband, who later married the other's supposed ex-wife, was estopped from challenging Mexican decrees on jurisdictional grounds in suit to annul his second marriage. *A. S. Claggett v. J. D. B. King* (D.C. App. 1973, 308 A.2d 245).

Mental examination

In divorce proceeding, refusal to grant wife's motion for psychiatric examination of children and spouse for purpose of assisting in resolving custody issue was not error, in light of fact that husband's mental condition was not in controversy, that wife's counsel did not proffer any significant reason for the requested examination but merely contended that it would be helpful and desirable and that two of the children had been examined by psychiatrist slightly more than a year earlier. *E. M. Neuman v. R. H. Neuman* (D.C. App. 1977, 377 A.2d 393).

Record on appeal

Duty rests primarily on the appellant to bring up an adequate record for review. *D. Dulles v. P. Dulles* (D.C. App. 1973, 302 A.2d 59; cert. denied 94 S.Ct. 1432, 415 U.S. 926).

An appellee has duty to insure adequate record so judgment in his favor may be upheld and may not abdicate this responsibility. *Id.*

Approval of Statement of Proceedings and Evidence lies with trial court, and it is that court's ultimate responsibility to bring about an adequate record for review. *Id.*

Where no reporter's transcript to trial was before the Court of Appeals and trial court certified to the court a Statement of Proceedings and Evidence which it expressly disapproved, Court of Appeals had no record on

which to conduct its review of case and would remand case for further proceedings. *Id.*

Separation agreement

Where separation agreement recited that the parties had decided to settle all their present and future property rights and matters of custody, support and maintenance and that support payments to wife were to continue until she remarried or died, subsequent divorce had no effect on the continued validity of such agreement though the agreement said nothing about eventual divorce. *R. L. Mohler v. P. A. Mohler* (D.C. App. 1973, 302 A.2d 737).

Where separation agreement was incorporated in decree of separate maintenance and support, wife's alleged unreasonable denial to husband of visitation with children would not be a matter of breach of contract but would be a matter of breach of the decree, and husband's remedy was not to unilaterally disregard the provisions of the decree by withholding support payments and by refusing to execute certain documents required for distribution of property. *Id.*

Where husband and wife entered into separation agreement which was incorporated in decree of separate maintenance and support, wife's alleged unreasonable denial to husband of visitation with his children would not constitute basis for revision by court of support payments provided in the agreement, absent contention that husband was no longer able to make the payments or that there had been substantial change in his financial situation. *Id.*

Matter of husband's liability for wife's attorney fees in connection with husband's motion that decree of separate maintenance and support be set aside and that court enter order determining the respective rights of the parties anew was within the sound discretion of the trial court. *Id.*

Voluntary separation

Where, at time of trial, person seeking divorce on ground of voluntary separation was required to prove such separation for one year prior to filing of complaint and court did not find that separation was voluntary at its inception, it became incumbent upon court to find when separation became voluntary and, in absence of such finding, there is no support for determination that jurisdictional prerequisite had been satisfied and proceeding must be remanded. *C. Williams v. L. Williams* (D.C. App. 1977, 378 A.2d 668).

Where divorce action was dismissed on at least two occasions for failure to prosecute, but causes were reinstated, effect of reinstatement was to restore action to its pre-dismissal status; thus suit would be considered filed on date stamped on complaint by clerk of Superior Court. *Id.*

One of the essential elements that must be established by party moving for a divorce based upon voluntary separation is that separation was voluntary for the statutory period. *A. M. Lee v. B. N. Lee* (D.C. App. 1973, 307 A.2d 757).

Wife who asked husband to return home for benefit of child but did not ask husband to return and resume marriage did not manifest a desire to resume marital relationship and thus did not exhibit the plain or open showing necessary to change characterization of their voluntary separation. *Id.*

Writ of ne exeat

Writ of ne exeat, which may be issued by courts of the District of Columbia in support of their jurisdiction over various marital actions, is in the nature of civil bail, the purpose of which is to prevent the frustration of a plaintiff's equitable claims by insuring the continued physical presence of the defendant within the court's jurisdiction. *E. D. Gredone v. R. L. Gredone* (D.C. App. 1976, 361 A.2d 176).

Ordering return of bond posted by husband's brother as against a writ of ne exeat issued to secure husband's appearance in divorce litigation, which was routinely completed in wife's favor, is not abuse of discretion, contrary to contention that writ should have been directed toward the further objective of securing proper satisfaction of

wife's equitable claims as embodied in money judgments. *Id.*

§ 16-905. Revocation and enlargement of decree of legal separation.

(a) The court may revoke its decree of divorce from bed and board at any time, upon the joint application of the parties to be discharged from the operation of the decree.

(b) The court may enlarge its decree of legal separation to an absolute divorce upon application of the party to whom the decree of legal separation was granted, a copy of which application shall be duly served upon the adverse party, if the court finds on the basis of affidavits that no reconciliation has taken place or is probable and that a separation has continued voluntarily and without interruption for a six-month period or without interruption for a period of one year. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; Apr. 7, 1977, D.C. Law 1-107, title I, § 103, 23 DCR 8737.)

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-107, amended section by designating prior provisions as subsec. (a) and adding subsec. (b) and section heading by substituting "Revocation and enlargement of decree of legal separation." for "Revocation of decree of divorce from bed and board".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 301 of act Apr. 7, 1977, D.C. Law 1-107, set out as a note under § 16-902.

§ 16-907. Parent and child relationship defined.

(a) The term "legitimate" or "legitimated" means that the parent-child relationship exists for all rights, privileges, duties, and obligations under the laws of the District of Columbia.

(b) The term "born out of wedlock" solely describes the circumstances that a child has been born to parents who, at the time of its birth, were not married to each other. The term "born in wedlock" solely describes the circumstances that a child has been born to parents who, at the time of its birth, were married to each other. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; Apr. 7, 1977, D.C. Law 1-107, title I, § 104, 23 DCR 8737.)

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-107, amended section and section heading generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 301 of act Apr. 7, 1977, D.C. Law 1-107, set out as a note under § 16-902.

§ 16-908. Relationship not dependent on marriage.

A child born in wedlock or born out of wedlock is the legitimate child of its father and mother and is the legitimate relative of its father's and mother's relatives by blood or adoption. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; Apr. 7, 1977, D.C. Law 1-107, title I, § 105, 23 DCR 8737.)

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-107, amended section and section heading generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 301 of act Apr. 7, 1977, D.C. Law 1-107, set out as a note under § 16-902.

§ 16-909. Proof of child's relationship to mother and father.

(a) A child's relationship to its mother is established by its birth to her. A child's relationship to its father is established by proving by a preponderance of evidence that he is the father, and there shall be a presumption that he is the father:

(1) if he and the child's mother are or have been married and the child is born during the marriage, or within 300 days after the termination of marital cohabitation by reason of death, annulment, divorce, or separation ordered by a court; or

(2) if, prior to the child's birth, he and the child's mother have attempted to marry, and some form of marriage has been performed in apparent compliance with law, though such attempted marriage is or might be declared void for any reason, and the child is born during such attempted marriage, or within 300 days after the termination of such attempted marital cohabitation by reason of death, annulment, divorce, or separation ordered by a court; or

(3) if, after the child's birth, he and the child's mother marry or attempt to marry, (with the attempt involving some form of marriage ceremony that has been performed in apparent compliance with law), though such attempted marriage is or might be declared void for any reason, and he has acknowledged the child to be his.

(b) If questioned, a presumption created by subsection (a) (1)-(3) may be tried and determined by the Superior Court.

(c) Upon the entry of a final judgment determining the parentage of a child by the Superior Court under the provisions of section 16-2341, *et seq.*, or by any other court of competent jurisdiction, the parent-child relationship is conclusively established.

(d) The parent-child relationship between an adoptive parent and a child may be established conclusively by proof of adoption. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; Apr. 7, 1977, D.C. Law 1-107, title I, § 106, 23 DCR 8737.)

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-107, amended section and section heading generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 301 of act Apr. 7, 1977, D.C. Law 1-107, set out as a note under § 16-902.

NOTES TO DECISIONS

Constitutional rights

Where interests of mother in divorce proceeding brought against her by her husband on grounds of adultery do not conflict with those of her minor child, and where interests of child are fully and ably protected by mother, failure to appoint guardian ad litem for child whose legitimacy is at issue did not deny child due process of law. *A. H. Beckwith v. R. T. L. Beckwith* (D.C. App. 1976, 355 A.2d 537).

Construction

This section which provides that divorce for cause does not affect legitimacy of issue of marriage merely removes adjudication of status of child from divorce proceedings when subject matter of divorce action would call into question legitimacy and does not create mandatory duty for, or grant discretionary authority to, court to determine legitimacy so as to provide basis for subject matter jurisdiction. *A. H. Beckwith v. R. T. L. Beckwith* (D.C. App. 1976, 355 A.2d 537).

Jurisdiction

Superior Court had jurisdiction in action for absolute divorce on grounds of adultery to order mother, who was before Court, to submit her child to blood-grouping tests for sole purpose of deciding issue of adultery even though child was not party, not resident, not represented by guardian ad litem, and there was no request to court for support, maintenance, or custody. *A. H. Beckwith v. R. T. L. Beckwith* (D.C. App. 1976, 355 A.2d 537).

§ 16-910. Dissolution of property rights; jurisdiction of court

Upon the entry of a final decree of annulment or divorce in the absence of a valid ante-nuptial or post-nuptial agreement or a decree of legal separation disposing the property of the spouses, the court shall:

(a) assign to each party his or her sole and separate property acquired prior to the marriage, and his or her sole and separate property acquired during the marriage by gift, bequest, devise, or descent, and any increase thereof, or property acquired in exchange therefor; and

(b) distribute all other property accumulated during the marriage, regardless of whether title is held individually or by the parties in a form of joint tenancy or tenancy by the entireties, in a manner that is equitable, just and reasonable, after considering all relevant factors including, but not limited to: the duration of the marriage, any prior marriage of either party, the age, health, occupation, amount and sources of income, vocational skills, employability, assets, debts, and needs of each of the parties, provisions for the custody of minor children, whether the distribution is in lieu of or in addition to maintenance, and the opportunity of each for future acquisition of assets and income. The court shall also consider each party's contribution to the acquisition, preservation, appreciation, dissipation or depreciation in value of the assets subject to distribution under this subsection, and each party's contribution as a homemaker or to the family unit. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; Apr. 7, 1977, D.C. Law 1-107, title I, § 107, 23 DCR 8737.)

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-107, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 301 of act Apr. 7, 1977, D.C. Law 1-107, set out as a note under § 16-902.

NOTES TO DECISIONS**Annuities**

It was not error for divorce court to deny former wife a share of husband's foreign service annuity as her separate property. *C. C. Finch v. S. L. Finch* (D.C. App. 1977, 378 A. 2d 1092).

Appeals

Wife, who failed to timely serve husband with motion for consideration of her petition to appeal in forma pauperis from divorce decree and failed to timely serve husband's counsel with copy of letter expressing wife's desire to proceed on appeal in paid status, is not estopped from challenging custody order but is estopped from challenging validity of divorce decree or property settlement, in view of fact that husband, who received order stating that application for appeal at public expense was deemed withdrawn, had reasonably believed that wife's appeal was at an end and had remarried in reliance on such belief. *E. M. Neuman v. R. H. Neuman* (D.C. App. 1977, 377 A. 2d 393).

Apportionment of jointly held property

Although divorce court awarded the parties an equal interest in jointly owned realty, it was not abuse of discretion to vest exclusive possession in the wife for three years where she was required to assume sole responsibility for payment of encumbrances, taxes, insurance and maintenance. *C. C. Finch v. S. L. Finch* (D.C. App. 1977, 378 A. 2d 1092).

Trial court, in divorce proceedings, did not abuse discretion in award of sole title to jointly owned home to wife, despite husband's contention that appropriate significance was not attached to alleged disproportionality of spouses' relative contributions to freehold. *C. B. Campbell v. L. G. R. Campbell* (D.C. App. 1976, 353 A.2d 276).

Dividing marital property equally among the parties who are both employed and who had contributed equally to purchase and upkeep of property was not an abuse of discretion. *A. M. Lee v. B. N. Lee* (D.C. App. 1973, 307 A. 2d 757).

Compliance with order

Trial court did not err in denying motion of ex-wife that ex-husband be held in contempt for disregarding court order to render accounting of his income pursuant to property settlement agreement as to which there was dispute as to meaning of phrase "adjusted gross income." *G. I. Luchsinger v. P. C. Luchsinger* (D.C. App. 1977, 377 A. 2d 1146).

Evidence fully supports trial court's finding that wife's conduct in failing to make good-faith attempt to comply with court order to sell realty merited sanction of civil contempt adjudication. *K. G. Bolden v. E. L. Bolden* (D.C. App. 1977, 376 A. 2d 430).

Division of property

Where husband and wife, although separated, remained married, court, in action by wife against husband for maintenance and custody of parties' child, has no authority to award husband one half of proceeds of sale of marital abode and damages for personal property of husband allegedly appropriated by wife. *J. Maynard v. L. Maynard* (D.C. App. 1976, 360 A.2d 45).

Neither this section which empowers the domestic relations branch of the Superior Court to apportion, upon entry of final decree of divorce, property which is jointly owned by the spouses, nor section 16-912 giving the Court broad discretion to award alimony and continue a wife's dower interest, empowers the Court to grant to wife any interest in property solely owned by husband. *D. C. McGean v. H. O. McGean* (D.C. App. 1975, 339 A.2d 384).

Evidence

Evidence of wife's financial contributions was properly excluded where it was not sought to be introduced on issue of alimony but on question of wife's entitlement to property. *J. L. Sirianni v. J. F. Sirianni* (D.C. App. 1975, 338 A.2d 101).

Jurisdiction—Over foreign property

Although divorce decree is ineffective to accomplish transfer of title by its own force, as to properties located outside District of Columbia, it is effective as determination of property rights as between the parties. *C. E. Quarles, Jr. v. S. B. Quarles* (D.C. App. 1976, 353 A.2d 285; cert. denied 97 S.Ct. 321, 429 U.S. 922).

Because real property whose ownership was in dispute in divorce action was located in Maryland, Superior Court is empowered to "determine" and "adjudicate" the couple's rights to the property, but has no power to "award" or "apportion" the foreign property. *D. C. McGean v. H. O. McGean* (D.C. App. 1975, 339 A.2d 384).

Property rights

In attempting to show existence of purchase money resulting in trust in favor of wife, payments by wife subsequent to conveyance, made in accordance with original intention and understanding established by initial payment, may be included in her beneficial interest, but any payments, which must go toward the purchase price, made subsequent to time of conveyance must be in fulfillment of an obligation to pay incurred by wife at or before time of conveyance if they are to be included in her beneficial interest; payments made voluntarily, or pursuant to an arrangement entered into after the conveyance, may not be included. *D. C. McGean v. H. O. McGean* (D.C. App. 1975, 339 A.2d 384).

Evidence that deed to Maryland property used by parties in divorce action as a homestead was in name of husband only, that he was solely liable on the mortgage, and that wife had contributed \$400 to original purchase price of the property, does not justify holding that wife had a one-half interest in the property, whether based either on a finding of an agreement between the spouses that the property is jointly owned, or on a finding that wife is beneficiary of a resulting trust in that amount. *Id.*

Property settlement agreements

Where property settlement agreement expressly provided that property would continue to be held by husband and wife as tenants by entirety in order to help furnish support to wife as agreed, and where husband was in default of support payments as ordered by Maryland divorce court in amount which represented more than his interests in property, husband's interest in property located in District of Columbia can be awarded to wife as compensation for husband's failure to fulfill his support obligations. *J. A. Travis v. E. M. Benson* (D.C. App. 1976, 360 A.2d 506).

Even if communications between attorneys for parties constituted agreement that husband would give up specified property interests and that wife would expedite divorce action by not contesting it, such agreement was rescinded by mutual consent where husband breached purported agreement by insisting that his name be removed from mortgage, the case, which parties had originally intended to be heard on uncontested calendar, was then set for trial, and wife thereafter acted in manner inconsistent with agreement. *J. L. Sirianni v. J. F. Sirianni* (D.C. App. 1975, 338 A.2d 101).

— Statute of frauds

Husband's authorizing filing of pretrial praecipe and withdrawing countersuit in divorce proceeding commenced by wife is sufficient to bring oral agreement, which had been negotiated with consent of husband and wife, and which provided that title to marital estate was to be given to husband in return for cash payment and withdrawal of countersuit, outside statute of frauds, and thus trial court, after verifying consent of wife, was in error in refusing to hold that parties were bound by such agreement. *C. J. Brown v. P. F. Brown* (D.C. App. 1975, 343 A.2d 59).

Tenancy by the entirety

Provision of this section for apportionment of property subject to tenancy by entirety dissolved by final entry of divorce applies only to property in which tenancy by entirety is dissolved by operation of this section and does not affect general equitable power of court to adjudicate dispute between parties concerning their respective rights in property acquired by them during marriage. *J. A. Travis v. E. M. Benson* (D.C. App. 1976, 360 A.2d 506).

Where property settlement agreement expressly provided that property would continue to be held by husband and wife as tenants by entirety in order to help furnish support to wife as agreed, and where husband was in default of support payments as ordered by Maryland divorce court in amount which represented more than his interests in property, husband's interest in property located in District of Columbia can be awarded to wife as compensation for husband's failure to fulfill his support obligations. *Id.*

§ 16-911. Alimony pendente lite; suit money; enforcement; custody of children

(a) During the pendency of an action for divorce, or an action by the husband or wife to declare the marriage null and void, where the nullity is denied by the other spouse, the court may:

(1) require the husband or wife to pay alimony to the other spouse for the maintenance of himself or herself and their minor children committed to such other spouse's care, and suit money, including counsel fees, to enable such other spouse to conduct the case, whether as the plaintiff or the defendant, and enforce any order relating

thereto by attachment, garnishment and/or imprisonment for disobedience;

(2) enjoin any disposition of a spouse's property to avoid the collection of the allowances so required;

(3) if a spouse fails or refuses to pay the alimony or suit money, sequester his or her property and apply the income thereof to such objects;

(4) If a party under court order to make payments under this section is in arrears, order the party to make an assignment of part of his or her salary, wages, earnings or other income to the person entitled to receive the payments; and

(5) determine who shall have the care and custody of infant children pending the proceedings, without conclusive regard to the race, color, national origin, political affiliation, sex, or sexual orientation, in and of itself, of a party. In determining the care and custody of infant children, the best interest of the child shall be the primary consideration. To determine the best interest of the child, the court shall consider all relevant factors including, but not limited to:

(1) the wishes of the child as to his or her custodian, where practicable,

(2) the wishes of the child's parent or parents as to the child's custody,

(3) the interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may emotionally or psychologically affect the child's best interest,

(4) the child's adjustment to his or her home, school, and community,

(5) the mental and physical health of all individuals involved.

(b) The attachment, garnishment, or assignment under paragraphs (1) and (4) of subsection (a) is binding on the employer, trustee, or other payor of salary, wages, earnings, or other income. No employer shall discharge or otherwise discipline an employee because of such attachment, garnishment, or assignment.

(c) Upon its own motion or upon motion of either party, the court may order at any time, that maintenance or support payments be made to the clerk of the court for remittance to the person entitled to receive the payments. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; Oct. 1, 1976, D.C. Law 1-87, § 14, 23 DCR 2544; Apr. 7, 1977, D.C. Law 1-107, title I, § 108, 23 DCR 8737.)

AMENDMENTS

1977—Act Apr. 7, 1977, D.C. Law 1-107, amended section as follows:

(1) Redesignated prior provisions as subsec. (a) and added subsecs. (b) and (c).

(2) In subsec. (a) (1), substituted “, garnishment and/or imprisonment for disobedience” for “and imprisonment for disobedience”.

(3) In subsec. (a) (3), struck out “and” at the end thereof.

(4) Redesignated subsec. (a) (4) as subsec. (a) (5) and added a new subsec. (a) (4).

(5) In subsec. (a) (5), formerly subsec. (a) (4), added the last two sentences.

1976—Act Oct. 1, 1976, D.C. Law 1-87 amended section as follows:

(1) by substituting in the material preceding par. (1) "husband or wife" for "husband" and "other spouse" for "wife";

(2) by substituting in par. (1) "husband or wife" for "husband", "other spouse" for "wife", "himself or herself" for "herself", "such other spouse's care" for "her care", "to enable such other spouse to conduct the case" for "to enable her to conduct her case", and "whether as" for "whether she is";

(3) by substituting in par. (2) "a spouse's" for "the husband's";

(4) by substituting in par. (3) "a spouse" for "the husband" and "his or her" for "his"; and

(5) by adding at the end of par. (4) ", without conclusive regard to the race, color, national origin, political affiliation, sex, or sexual orientation, in and of itself, of a party".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 301 of act Apr. 7, 1977, D.C. Law 1-107, set out as a note under § 16-902.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

CROSS REFERENCE

Attachment and garnishment of remuneration of District employee to enforce child support or alimony, see § 1-323.

NOTES TO DECISIONS

Appeals

Divorce court order finding father in arrears on child support payments, increasing support payments, and holding father in contempt, which order as far as it related to father's imprisonment was stayed on condition that he comply with payment schedule ordered, is neither preliminary nor interlocutory in nature and is in all respects a conclusive determination on merits of mother's motion for contempt. *W. C. Wells v. D. A. Wells* (D.C. App. 1976, 358 A.2d 648).

Although father's appeal was timely as to trial court order of July 2, 1975, which order vacated stay of execution imposed upon father's previously ordered imprisonment for contempt of court in divorce action it was untimely and ineffective to challenge merits of original December order finding father in arrears on child support payments, increasing support payments, and holding father in contempt, which order as far as it related to father's imprisonment was stayed. *Id.*

Award of alimony

Where it was found that wife who sought divorce was unable to support herself and that husband was capable of rendering financial assistance, trial court could award alimony pendente lite without inquiring into merits of divorce action to determine probability of ultimate success. *L. E. Kreuz v. S. A. Kreuz* (D.C. App. 1976, 354 A.2d 867).

Contempt

Where father was informed in telephone conversation with a United States marshal of bench warrant for his arrest for contempt of court based on his failure to pay child support and where father voluntarily appeared in proceeding prior to entry of contempt order and subsequently recognized order's validity by making payments under it, father had adequate notice of proceeding and was bound to comply with order finding him in arrears on child support, increasing support payments, and holding him in contempt, but staying execution of imprisonment on condition that he comply with payment schedule ordered, regardless of fact that he was not personally served with original motion for contempt. *W. C. Wells v. D. A. Wells* (D.C. App. 1976, 358 A.2d 648).

Trial court, in divorce proceedings, did not abuse discretion in finding husband, who had repeatedly failed to make any significant attempt to satisfy requirements of previous lawful orders and judgments for arrearages, in willful contempt. *C. B. Campbell v. L. G. R. Campbell* (D.C. App. 1976, 353 A.2d 276).

Counsel fees

Court erred in making awards of \$555 per month in alimony and child support and \$1,300 for attorney's fees

and suit expenses where court did not first determine amount of husband's net monthly income and where record showed that husband's gross income was \$16,041 per year, husband owed over \$8,000 to local creditors requiring payments of almost \$410 per month, he had no source of income other than salary, owned no securities or real estate, and had only \$600 in savings. *D. H. Grasty v. C. A. Grasty* (D.C. App. 1973, 302 A.2d 218).

Custody of children

Case in which permanent custody of son was awarded to divorced mother would be remanded to trial court with directions to make written findings of fact and separate conclusions of law which are a prerequisite to meaningful appellate review. *J. P. O'Meara v. K. A. O'Meara* (D.C. App. 1976, 355 A.2d 561).

Enforcement of future payments

Where husband entered into separation and property settlement with wife in May, 1971, departed for foreign country in April, 1972, and entered into consent order in February, 1973, which acknowledged arrearages and directed that he pay wife certain sum per month, injunction and temporary restraining order obtained by wife in October, 1972, barring withdrawal of husband's retirement funds from first bank, is sufficient to give wife priority over claim to husband's funds of second bank which had paid husband's checks on September 28, September 29, and October 2, 1972, and which obtained lien on the funds in first bank on October 11, 1972, since wife's claim included future support and alimony installments not yet accrued and owing. *L. O. Trigo v. The Riggs National Bank of Washington, D.C.* (D.C. App. 1975, 338 A.2d 445).

Enforcement of order

Holding in escrow husband's funds which were proceeds of tort settlement to assure payment of arrearages of temporary support or alimony, whether pending initial appeal from divorce judgment or in anticipation of readjudication of cause on remand, lies within equitable authority of trial court arising from special provisions of this section governing divorce proceedings. *C. B. Campbell v. L. G. R. Campbell* (D.C. App. 1976, 353 A.2d 276).

Neither traditional doctrine of supersedeas nor more restrictive philosophy reflected in related general statutory attachment procedures mandate limitation of divorce court's exercise of distinct and supplemental authority under this section to enforce any order relating to divorce by attachment and by sequestration of husband's property. *Id.*

Trial court, in divorce proceeding, did not abuse its discretion in ordering disbursement of husband's sequestered extrinsic tort settlement funds to wife towards satisfaction of divorce judgment finding against husband for \$5,625 in arrearages of temporary support and maintenance. *Id.*

Imprisonment

Trial court has authority to order father jailed for failing to make child support payments as were set out in decree dissolving marriage, where sanction which was ultimately levied against him is one which is specifically provided for by statute. *W. C. Wells v. D. A. Wells* (D.C. App. 1976, 358 A.2d 648).

§ 16-912. Permanent alimony; enforcement; retention of dower

When a divorce is granted to either spouse, the court may decree him or her permanent alimony sufficient for his or her support and that of any minor children whom the court assigns to that spouse's care, and secure and enforce the payment of the alimony in the manner prescribed by section 16-911, and may, if it seems appropriate, retain to the wife her right of dower in the husband's estate; and the court may, in similar circumstances, retain to the husband his right of dower in the wife's estate. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; Oct. 1, 1976, D.C. Law 1-87, § 15, 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting "either spouse" for "the wife", "him or her" for "her", "his or her" for "her", and "that spouse's" for "her".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

CROSS REFERENCE

Attachment and garnishment of remuneration of District employee to enforce child support or alimony, see § 1-323.

NOTES TO DECISIONS

Advisory opinions

It was beyond power of trial court to state in its judgment for absolute divorce that because the subject of alimony was not mentioned in the property settlement agreement, the wife was foreclosed from claiming alimony at the present or any time in the future, since court could not render opinion on issue that may or may not arise. *E. R. Smith v. D. L. Smith* (D.C. App. 1973, 310 A. 2d 229).

Amount

Awarding divorced wife \$338 alimony was not abuse of discretion, notwithstanding that under support order she was receiving \$300, where trial court found that the former figure represented the difference between her monthly expenses and her monthly income, including the separate maintenance award. *C. C. Finch v. S. L. Finch* (D.C. App. 1977, 378 A. 2d 1092).

In divorce case, award to wife of \$500 monthly for child support did not constitute an abuse of discretion, nor did court abuse discretion in setting initial award for attorney fees at \$1,500 and in raising award thereafter to \$2,500, though wife was earning gross salary of \$11,175 annually. *C. E. Quarles, Jr. v. S. B. Quarles* (D.C. App. 1976, 353 A.2d 285; cert. denied 97 S.Ct. 321, 429 U.S. 922).

Court erred in making awards of \$555 per month in alimony and child support and \$1,300 for attorney's fees and suit expenses where court did not first determine amount of husband's net monthly income and where record showed that husband's gross income was \$16,041 per year, husband owed over \$8,000 to local creditors requiring payments of almost \$410 per month, he had no source of income other than salary, owned no securities or real estate, and had only \$600 in savings. *D. H. Grasty v. C. A. Grasty* (D.C. App. 1973, 302 A. 2d 218).

Award of alimony of \$900 per month to wife was not plainly wrong or without substantial evidence to support it in divorce action, where in making such determination consideration was given to the 14-year duration of the marriage, to the parties' standard of living based on the husband's 1971 gross income of \$67,000 earned as a practicing physician, to the future earning prospects of each, to wife's continuing medical problems, and to her inability to hold a job in "stressful situations." *J. O. Bradt v. G. C. Bradt* (D.C. App. 1973, 300 A. 2d 445).

Appeals

Divorce court order finding father in arrears on child support payments, increasing support payments, and holding father in contempt, which order as far as it related to father's imprisonment was stayed on condition that he comply with payment schedule ordered, is neither preliminary nor interlocutory in nature and is in all respects a conclusive determination on merits of mother's motion for contempt. *W. C. Wells v. D. A. Wells* (D.C. App. 1976, 358 A.2d 648).

Although father's appeal was timely as to trial court's order of July 2, 1975, which order vacated stay of execution imposed upon father's previously ordered imprisonment for contempt of court in divorce action it was untimely and ineffective to challenge merits of original December order finding father in arrears on child support payments, increasing support payments, and holding father in contempt, which order as far as it related to father's imprisonment was stayed. *Id.*

Contempt

Where father was informed in telephone conversation with a United States marshal of bench warrant for his arrest for contempt of court based on his failure to pay

child support and where father voluntarily appeared in proceeding prior to entry of contempt order and subsequently recognized order's validity by making payments under it, father had adequate notice of proceeding and was bound to comply with order finding him in arrears on child support, increasing support payments, and holding him in contempt, but staying execution of imprisonment on condition that he comply with payment schedule ordered, regardless of fact that he was not personally served with original motion for contempt. *W. C. Wells v. D. A. Wells* (D.C. App. 1976, 358 A.2d 648).

Enforcement of future payments

Where husband entered into separation and property settlement with wife in May, 1971, departed for foreign country in April, 1972, and entered into consent order in February, 1973, which acknowledged arrearages and directed that he pay wife certain sum per month, injunction and temporary restraining order obtained by wife in October, 1972, barring withdrawal of husband's retirement funds from first bank, is sufficient to give wife priority over claim to husband's funds of second bank which had paid husband's checks on September 28, September 29, and October 2, 1972, and which obtained lien on the funds in first bank on October 11, 1972, since wife's claim included future support and alimony installments not yet accrued and owing. *L. O. Trigo v. The Riggs National Bank of Washington, D.C.* (D.C. App. 1975, 338 A.2d 445).

Evidence

Evidence of wife's financial contributions was properly excluded where it was not sought to be introduced on issue of alimony but on question of wife's entitlement to property; and absence of any evidence offered to substantiate need for alimony constituted sufficient basis for denial of requested equitable relief, denominated "alimony in futuro." *J. L. Sirianni v. J. F. Sirianni* (D.C. App. 1975, 338 A.2d 101).

— Admissibility

Policy considerations against admission into evidence of compromise offers, which include encouraging settlement of disputes without trial and enabling a litigant to buy his peace without fear of future collateral consequences and subsequent litigation with third parties were not applicable to agreement by husband in divorce action to pay \$850 per month alimony pendente lite, since payment of alimony during pendency of an action for divorce is a preliminary step in the statutory scheme governing disposition of marital suits which differs from an offer to compromise in order to settle a dispute and avoid litigation. *J. O. Bradt v. G. C. Bradt* (D.C. App. 1973, 300 A. 2d 445).

Imprisonment

Trial court has authority to order father jailed for failing to make child support payments as were set out in decree dissolving marriage, where sanction which was ultimately levied against him is one which is specifically provided for by statute. *W. C. Wells v. D. A. Wells* (D.C. App. 1976, 358 A.2d 648).

Justiciability

Determination of right of wife to claim alimony can be made only when parties' rights may be immediately affected by such judicial decision. *E. R. Smith v. D. L. Smith* (D.C. App. 1973, 310 A. 2d 229).

Property rights

Neither section 16-910 which empowers the domestic relations branch of the Superior Court to apportion, upon entry of final decree of divorce, property which is jointly owned by the spouses, nor this section giving the Court broad discretion to award alimony and continue a wife's dower interest, empowers the Court to grant to wife any interest in property solely owned by husband. *D. C. McGean v. H. O. McGean* (D.C. App. 1975, 339 A.2d 384).

Property settlement agreements

Where property settlement agreement expressly provided that property would continue to be held by husband and wife as tenants by entirety in order to help furnish support to wife as agreed, and where husband was in default of support payments as ordered by Maryland divorce court in amount which represented more than his interests in property, husband's interest in

property located in District of Columbia can be awarded to wife as compensation for husband's failure to fulfill his support obligations. *J. A. Travis v. E. M. Benson* (D.C. App. 1976, 360 A.2d 506).

Separation agreement

Original support order in divorce case is conclusive on the parties where there is no showing by husband of a material change since time of decree in his ability to pay or in the needs of the children. *D. C. McGean v. H. O. McGean* (D.C. App. 1975, 339 A.2d 384).

Support provisions of separation agreement incorporated in divorce decree were modified, and husband could not be held in contempt for failure to comply therewith, where in subsequent custody and support proceeding court indicated, with acquiescence of wife's counsel, that support matters would be left for determination after custody matter, and custody was later awarded to husband, with observation that support would not be awarded wife. *L. A. Craig v. P. S. Craig* (D.C. App. 1973, 305 A. 2d 267).

Settlement agreement

Although parents agreed to \$20 per week child support, action of trial court in awarding \$25 per week child support, after hearing testimony as to needs of child, ability of husband to pay, and financial circumstances of parties, is within scope of trial court's discretion. *C. J. Brown v. P. F. Brown* (D.C. App. 1975, 343 A.2d 59).

§ 16-913. Alimony when divorce is granted

When a divorce is granted on the application of the husband or wife, the court may require him or her to pay alimony to the other spouse, if it seems just and proper. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; Oct. 1, 1976, D.C. Law 1-87, § 16(a), 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting "husband or wife" for "husband", "him or her" for "him", and "other spouse" for "wife" and section heading by striking "on husband's application" at the end thereof.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

NOTES TO DECISIONS

Amount of alimony

Where trial court in awarding alimony to wife in action granting divorce on husband's application merely stated that it found the husband to be able to underwrite an alimony award but made no mention of fact that wife required any amount for her support or how it arrived at amount granted as alimony, case would be remanded to trial court for a more detailed statement of reasons for the action taken. *C. V. Wood v. M. K. Wood* (D.C. App. 1973, 309 A. 2d 103).

Award

Where trial court heard evidence on issue whether alimony should be granted, and amount thereof, it was not fatal for court to use "support" in lieu of "alimony." *E. A. Mitchell, Jr. v. K. M. Mitchell* (D.C. App. 1973, 310 A. 2d 837).

It would have been better practice for court to specify how much of amount awarded was alimony for wife, but failure to do so was not fatal. *Id.*

Contempt

Where husband was not, in divorce order and judgment, punished for his disobedience of previous pendente lite orders, and where trial court imposed no remedial or coercive sanctions conditioned upon husband's obedience to contempt order, the order lacked the certainties, specificity and finality essential for judicial review, and provision of the order relating to wife's entitlement to permanent alimony, being inextricably a part of the contempt order, would have to share the infirmities of such order. *J. W. Ashcraft v. C. T. Ashcraft* (D.C. App. 1974, 318 A. 2d 284).

§ 16-914. Retention of jurisdiction as to alimony and custody of children

(a) After the issuance of a decree of divorce granting alimony and providing for the care and custody of children, the case shall still be considered open for any future orders relating to those matters. With respect to matters of custody and visitation, the race, color, national origin, political affiliation, sex, or sexual orientation, in and of itself, of a party shall not be a conclusive consideration.

In determining the care and custody of infant children, the best interest of the child shall be the primary consideration. To determine the best interest of the child, the court shall consider all relevant factors including, but not limited to:

(1) the wishes of the child as to his or her custodian, where practicable,

(2) the wishes of the child's parent or parents as to the child's custody,

(3) the interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may emotionally or psychologically affect the child's best interest,

(4) the child's adjustment to his or her home, school, and community,

(5) the mental and physical health of all individuals involved.

(b) Notice of a custody proceeding shall be given to the child's parents, guardian, or other custodian. The court, upon a showing of good cause, may permit intervention by any interested party. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; Oct. 1, 1976, D.C. Law 1-87, § 17, 23 DCR 2544; Apr. 7, 1977, D.C. Law 1-107, title I, § 109, 23 DCR 8737.)

AMENDMENTS

1977—Act Apr. 7, 1977, D.C. Law 1-107, amended section by designating the prior provisions as subsec. (a), adding the second paragraph of subsec. (a), and adding subsec. (b).

1976—Act Oct. 1, 1976, D.C. Law 1-87, added the second sentence.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 301 of act Apr. 7, 1977, D.C. Law 1-107, set out as a note under § 16-902.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

NOTES TO DECISIONS

Ability to pay

Failure to make specific findings as to husband's ability to pay does not preclude affirmance of order modifying husband's monthly child support obligation, where issue of husband's ability to pay was not raised in trial court. *D. A. Smith v. S. S. Smith* (D.C. App. 1975, 344 A.2d 221).

Appeals

Wife, who failed to timely serve husband with motion for consideration of her petition to appeal in forma pauperis from divorce decree and failed to timely serve husband's counsel with copy of letter expressing wife's desire to proceed on appeal in paid status, is not estopped from challenging custody order but is estopped from challenging validity of divorce decree or property settlement, in view of fact that husband, who received order stating that application for appeal at public expense was deemed withdrawn, had reasonably believed that wife's appeal was at an end and had remarried in reliance on such belief. *E. M. Neuman v. R. H. Neuman* (D.C. App. 1977, 377 A. 2d 393).

Care and custody of children

In proceeding in which former husband sought to modify divorce decree, trial court's determination, which was based on evaluations by psychiatrist and intrafamily and neglect branch, interviews with children, and testimony and arguments of counsel for both husband and wife, who, pursuant to agreement entered into by parties, had previously had custody of children, that best interests of minor children would be better served by warding custody to husband is not abuse of discretion. *K. S. Ross v. S. Ross* (D.C. App. 1975, 339 A.2d 447).

Where trial court, in proceeding on motion by wife, after absolute divorce, seeking to increase support payments and to modify husband's visitation rights, sua sponte raised issue of custody of children and adjourned the proceedings pending preparation of report on social, psychiatric and other related evaluations of both parents by the director of social services, refusal at adjourned hearing to permit counsel for husband and wife to litigate contents of report or to permit cross-examination of the persons who authorized the report violated due process. *J. L. Ziegler v. R. T. Ziegler* (D.C. App. 1973, 304 A. 2d 13).

Counsel fees

Award of \$600 attorney fees in connection with proceeding seeking modification of alimony and support payments is not excessive, even taking into account husband's relatively small resources. *J. L. Nelson v. A. C. Nelson* (D.C. App. 1977, 379 A. 2d 713).

Award of \$200 more in attorney's fees than was requested by attorney of former wife who was seeking increase in child support payments constitutes abuse of discretion; such award seems to include improper punitive element along with proper measure of reimbursement. *W. L. Wood v. L. H. Wood* (D.C. App. 1976, 360 A.2d 488).

Since the trial court ultimately found that the interests of two boys are best served by giving their mother legal custody, the court is authorized to order that she be reimbursed for the court costs and attorney's fees which she incurred in order to regain custody. *M. W. Eisenberg v. S. S. Eisenberg* (D.C. App. 1976, 357 A.2d 396).

In view of husband's unilateral withholding of part of weekly support payments as required by separation agreement, the interests and welfare of children were clearly affected and in issue, and hence award of counsel fees was proper. *R. L. Mohler v. P. A. Mohler* (D.C. App. 1973, 305 A. 2d 520).

Where legal custody of children had been placed in mother, and father by series of proceedings sought to change or modify their custody, and trial court found that mother's opposition to father's claim was for the best interests of the children, award of counsel fees to mother, not as counsel fees per se but as reimbursement to her for necessities for the minor children, was within jurisdiction of Domestic Relations Branch of Court of General Sessions. *R. E. Paine, Jr. v. E. S. Paine* (D.C. App. 1970, 267 A. 2d 356).

In action instituted against or by mother with respect to custody of minor children, mother is not entitled to recover counsel fees from father if litigation was brought about by her own misconduct or instituted for her own selfish reasons, but court may require reimbursement when it finds that engagement of counsel by mother was necessary to protect the interests and welfare of the children. *Id.*

Defamation, privileged statements

In domestic relations action in which husband sought modification of financial and custody terms of prior decree, statements contained in brief of his former wife's counsel, asserting, inter alia, that husband had abandoned his wife and children in favor of another woman at time when his wife was pregnant with their fifth child and that husband had shown little interest in children since their separation, are relevant to question of child custody in particular, and conflicting claims of husband and wife in general, and thus, attorney is protected by absolute privilege in subsequent defamation action brought against him by husband. *R. L. Mohler v. M. W. Houston* (D.C. App. 1976, 356 A.2d 646).

Discretion of court

In proceeding seeking modification of support decree, trial court did not abuse its discretion by refusing to modify alimony obligation of husband whose income was decreased as result of his election to voluntarily retire. *J. C. Tydings v. G. E. Tydings* (D.C. App. 1975, 349 A.2d 462).

Fair hearing

At hearing on divorced husband's motion to reduce alimony and child support, remarks of trial court referring to the thickness of the court jacket already existing in the case do not demonstrate such a bias on the part of the trial court as to deprive husband of a fair hearing. *C. C. Kieffer v. B. D. Kieffer* (D.C. App. 1975, 348 A.2d 887).

Findings of fact

Even if trial court's comments to the effect that splitting custody of minor child and giving father custody for one entire month each year would save money and prevent unnecessary expenses in transportation could be deemed findings of fact, they are insufficient to meet requirements of rule requiring trial court to make written findings of fact and separate conclusions of law. *E. F. Utley v. R. L. Utley* (D.C. App. 1976, 364 A.2d 1167).

Where trial court, upon motion for increase in child support payments, did not find what current expenses of children were, did not make findings concerning change in circumstances from time of original order to time of motion to increase, and did not even approximate husband's current net income, the Court of Appeals is unable to review propriety of trial court's ruling ordering husband to increase support payments; although under such circumstances the Court of Appeals will ordinarily remand case for further findings based on evidence adduced at hearing, since, upon reviewing record, it is evident that certain other findings by trial court are plainly wrong and without substantial evidence to support them and that other errors occurred at hearing, the Court of Appeals will vacate trial court's ruling and order new hearing on twin issues of need and ability. *W. L. Wood v. L. H. Wood* (D.C. App. 1976, 360 A.2d 488).

Though findings of trial court, in denying motion to reduce alimony and child support, stating only that movant husband had failed to carry his burden of proof are less than what would normally be required, case will not be remanded where husband, who bore burden of proving a diminution of income since prior order in the case, admitted at hearing in the trial court and oral argument on appeal that his income has not changed since the prior order. *C. C. Kieffer v. B. D. Kieffer* (D.C. App. 1975, 348 A.2d 887).

Forum non conveniens

Trial court did not abuse its discretion in dismissing, sua sponte, divorced mother's motion to increase child support payments on ground of forum non conveniens, in view of fact that both parties were residents of Maryland, children resided in Maryland and attended school in Maryland and Virginia, only significant contact of either party with District of Columbia was that divorced father was employed here, and there was no showing of unusual circumstances that would justify entertaining action in District of Columbia. *E. H. Haynes v. K. A. Carr* (D.C. App. 1977, 379 A. 2d 1178).

Modification of alimony

Increase in alimony is not justified on basis of a slight growth in husband's income where the wife's income has grown at a far more rapid pace. *J. L. Nelson v. A. C. Nelson* (D.C. App. 1977, 379 A. 2d 713).

In evaluating former wife's need for alimony it was improper to take into account expenditures made by wife on behalf of her son since such expenditures were properly considered in connection with the duty of child support. *Id.*

Alimony obligation of former husband was not subject to being terminated on ground that former wife was living with an individual and having sexual relations with him in absence of evidence that former husband was unable to pay amount previously decreed or that former wife was in any lesser need for alimony payments. *A. P. Alibrando v. J. A. Alibrando* (D.C. App. 1977, 375 A. 2d 9).

Where, following hearing in February 1974, divorced husband's motion for reduction in alimony and child support was denied despite his loss of a major client, and order entered at that time was not appealed, such order stands as a binding determination that as of February the existing alimony and support award was not so onerous as to require modification, and thus in October 1974 hearing on new motion for reduction, husband is limited to change in circumstances since February, and loss of said client cannot be placed in issue as showing change of circumstances. *C. C. Kieffer v. B. D. Kieffer* (D.C. App. 1975, 348 A.2d 887).

§ 16-915. Change of name on divorce

Upon divorce from the bond of marriage, the court shall, on request of a party who assumed a new name on marriage and desires to discontinue using it, state in the decree of divorce either the birth-given or other previous name which such person desires to use. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; Oct. 1, 1976, D.C. Law 1-87, § 18, 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section and section heading generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 16-916. Maintenance of spouse and minor children; maintenance of former spouse; maintenance of minor children; enforcement

(a) Whenever a husband or wife shall fail or refuse to maintain his or her needy spouse, minor children, or both, although able to do so, or whenever any parent shall fail or refuse to maintain his or her children by a marriage since dissolved, although able to do so, the court, upon proper application and upon a showing of genuine need of a spouse, may decree, pendente lite and permanently, that such husband or wife shall pay reasonable sums periodically for the support of such needy spouse and of the children, or such children, as the case may be, and the court may decree that he or she pay suit money, including counsel fees, pendente lite and permanently, to enable plaintiff to conduct the case.

(b) Whenever a former spouse has obtained a foreign ex parte divorce, the court thereafter, on application of the other former spouse and with personal service of process upon such former spouse in the District of Columbia, may decree that he or she shall pay him or her reasonable sums periodically for his or her maintenance and for suit money, including counsel fees, pendente lite and permanently, to enable plaintiff to conduct the case.

* * * * *

(As amended Oct. 1, 1976, D.C. Law 1-87, § 19(a)-(c), 23 DCR 2544.)

AMENDMENT

1976—Sec. 19(a) of act Oct. 1, 1976, D.C. Law 1-87, amended section heading by substituting "spouse" for "wife".

Sec. 19(b) of such act amended subsec. (a) by substituting "a husband or wife" for "any husband", "or her needy spouse" for "wife", "parent" for "father", "his or her" for "his", "such husband or wife" for "he", "needy spouse and the" for "wife and", and "he or she" for "he" and by inserting "and upon a showing of genuine need of a spouse" after "upon proper application".

Sec. 19(c) of such act amended subsec. (b) by substituting "spouse" for "husband", "other former spouse" for "former wife", "such former spouse" for "the former husband", "he or she" for "he", "him or her" for "her", and "his or her" for "her".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

NOTES TO DECISIONS

Ability to pay

In action for separate maintenance and support where husband is professional man with history of substantial earnings, extensive real estate holdings, and large cash flow of bank deposits, it is sufficient that trial court satisfy itself from sum total of evidence that husband has ability to maintain his wife and children in manner comparable to standard of living to which parties were accustomed at time of separation, and has refused to do so. *D. Cefaratti, Jr. v. H. Cefaratti* (D.C. App. 1974, 315 A. 2d 142).

Abuse of discretion

Whether or not father receives, on motion to adjudicate father in contempt for failure to comply with most recent court order for payment of support for divorced wife and their child, credit for amounts paid in excess of initial court order but in keeping with provisions of separation agreement incorporating such initial court order is matter within discretion of trial court, and in view of court's findings that needs of minor child could not be satisfied by payments made in the past, denial of such credit is not an abuse of discretion. *R. T. Foley v. S. A. Foley* (D.C. App. 1975, 336 A.2d 549).

Adjudication of property rights

Where husband and wife, although separated, remained married, court, in action by wife against husband for maintenance and custody of parties' child, has no authority to award husband one half of proceeds of sale of marital abode and damages for personal property of husband allegedly appropriated by wife. *J. Maynard v. L. Maynard* (D.C. App. 1976, 360 A.2d 45).

Amount of award

Award of \$1,350 per month for separate maintenance and support of three minor children was within range of court's permissible discretion on evidence showing that husband was successful attorney whose income had fluctuated between \$30,000 and \$60,000 for several years. *D. Cefaratti, Jr. v. H. Cefaratti* (D.C. App. 1974, 315 A. 2d 142).

Child support

Where original divorce decree ordered husband to pay unallocated alimony and child support of \$535 per month, when modification of child support was sought, evidentiary facts as they existed at time of original decree could be relitigated, provided that they had been presented for resolution to the court originally, and it was improper to subsequently order child support in amount of \$600 per month, in absence of determining the original child support award. *L. B. Tennyson v. A. G. Tennyson* (D.C. App. 1977, 381 A. 2d 264).

Husband is under no duty to support son after latter turned 21, notwithstanding that son is blind in one eye, where son is able to take care of himself even to point of driving his own automobile and is able to earn a living, although he was temporarily out of work due to illness. *J. L. Nelson v. A. C. Nelson* (D.C. App. 1977, 379 A. 2d 713).

Recomputation of arrearages to exclude any amount representing child support payments accruing after child turned 21 would not amount to a retroactive modification of support payments since order under which the arrearages accrued could not legally require husband to maintain the child after majority. *Id.*

Award of child support was a matter committed to trial court's discretion and included consideration of father's welfare and enforcement of his obligation commensurate with his financial ability to pay. *C. J. Roberson v. J. Roberson* (D.C. App. 1972, 297 A. 2d 769).

Absent a showing of abuse, order requiring husband to pay \$22.50 per week for support of child of tender years

did not constitute abuse of discretion and would not be disturbed on appeal. *Id.*

Contempt

Finding that husband had wilfully disobeyed separate maintenance and support order was sufficient to support adjudication of contempt. *D. Cefaratti, Jr. v. H. Cefaratti* (D.C. App. 1974, 315 A. 2d 142).

Counsel fees

Award of \$600 attorney fees in connection with proceeding seeking modification of alimony and support payments is not excessive, even taking into account husband's relatively small resources. *J. L. Nelson v. A. C. Nelson* (D.C. App. 1977, 379 A. 2d 713).

Ex-wife is not entitled to award of counsel fees on ex-husband's unsuccessful appeal of child support award where recovery was less than \$2,200 and trial court awarded ex-wife counsel fees of \$1,500. *K. A. Carr v. E. H. Haynes* (D.C. App. 1977, 374 A. 2d 868).

While the trial court properly exercised its discretionary authority when it determined that former wife was entitled to court costs and attorney's fees arising out of her action to enforce property settlement agreement, it does not appear that the trial judge considered all the relevant factors necessary to determine reasonable costs and fees. *M. W. Eisenberg v. S. S. Eisenberg* (D.C. App. 1976, 357 A.2d 396).

Where divorced wife was 81 years of age, her income was \$131 a month and, in order to meet her current living expenses, she had to borrow money from her son, so that if she were required to pay her counsel fees, her action to enforce court agreement requiring former husband to pay her \$150 a week would hardly be worth the effort, award of counsel fees was not improper. *R. Marlowe v. C. Marlowe* (D.C. App. 1973, 310 A. 2d 59).

Enforcement of future payments

Where husband entered into separation and property settlement with wife in May, 1971, departed for foreign country in April, 1972, and entered into consent order in February, 1973, which acknowledged arrearages and directed that he pay wife certain sum per month, injunction and temporary restraining order obtained by wife in October, 1972, barring withdrawal of husband's retirement funds from first bank, is sufficient to give wife priority over claim to husband's funds of second bank which had paid husband's checks on September 28, September 29, and October 2, 1972, and which obtained lien on the funds in first bank on October 11, 1972, since wife's claim included future support and alimony installments not yet accrued and owing. *L. O. Trigo v. The Riggs National Bank of Washington, D.C.* (D.C. App. 1975, 338 A.2d 445).

Findings of fact

Since grounds for modification of child support provisions of divorce decree must be changes in circumstances, those changes must be detailed, not only to support modification, but to prevent relitigation of facts and issues in the future. *L. B. Tennyson v. A. G. Tennyson* (D.C. App. 1977, 381 A. 2d 264).

Income tax

That portion of order requiring husband to pay federal and state income tax on wife's maintenance and support payment was eliminated by reviewing court where there was nothing in record regarding extent of wife's estate or federal tax liability nor any foundation regarding state tax law which, even on approximation, might be reached as to what her tax liability might be and wife had been granted rather liberal monthly award for support and maintenance of herself and children. *R. Foer v. E. Foer* (D.C. App. 1972, 297 A. 2d 339).

Jurisdiction

In wife's action for separate maintenance, in which husband was served with summons and complaint at his residence in London, England, via registered mail, husband did not, by filing untimely answer which, inter alia, raised defense of insufficiency of service of process, waive defenses of lack of personal jurisdiction and insufficiency of service of process. *S. C. Devoto v. W. Devoto* (D.C. App. 1976, 358 A.2d 312).

Temporary restraining order obtained by wife on October 2, 1972, barring any withdrawal of husband's retire-

ment funds in account at first bank, is a sufficient seizure of the funds to give the court in rem jurisdiction so as to permit determination of who is entitled to the funds, in case where second bank made a claim against the funds, husband had entered into separation and property agreement with wife in May, 1971, providing for alimony and child support, husband resigned his government position and departed for a foreign country in April 1972, apparently intending to seek a permanent residence there, and husband made no further alimony or support payments after July, 1972. *L. O. Trigo v. The Riggs National Bank of Washington, D.C.* (D.C. App. 1975, 338 A.2d 445).

Marriage validity

Finding of trial court, in support proceeding against man who claimed his marriage to woman instituting proceeding was void because he was legally married to another woman, that there had been no prior valid common-law marriage in District of Columbia between such man and woman with whom he had a void ceremonial marriage was not clearly erroneous, where the evidence was at best contradictory. *V. Johnson v. M. Young* (D.C. App. 1977, 372 A.2d 992).

Separate maintenance

When a wife leaves marital abode without just cause, her desertion is a bar to a claim for separate maintenance. *C. J. Roberson v. J. Roberson* (D.C. App. 1972, 297 A. 2d 769).

Separation agreement

Separation agreement intended as complete settlement of all claims between ex-husband and ex-wife did not necessarily bar ex-wife from seeking reimbursement from ex-husband for sum paid by her for private school tuition for two children for term prior to divorce, in view of fact that ex-husband willingly and knowingly consented to children entering school and thereby became bound to pay their tuition. *K. A. Carr v. E. H. Haynes* (D.C. App. 1977, 374 A. 2d 868).

In action by ex-wife against ex-husband to recover sum paid by her for private school tuition for two children for term prior to divorce, trial court did not err in permitting wife to testify to conversations between her and ex-husband concerning reenrolling children in school for the term in question, in that such testimony was not offered as parol evidence to vary terms of separation agreement between parties, but was offered to determine if parties intended by general terms of separation agreement to transfer tuition obligation from husband to wife. *Id.*

Although, under property settlement agreement, husband agreed to pay his children's private school tuition provided he approved of the school in advance, and although, in respect to certain private school, husband never responded to wife's request that he pay the first semester tuition and he expressly disapproved of the school for the second semester of the 1974-75 academic year, the record and proceedings establish that his actions were not the product of a reasonable and good faith consideration of the school and its program. *M. W. Eisenberg v. S. S. Eisenberg* (D.C. App. 1976, 357 A.2d 396).

Where husband and wife agreed by separation agreement that court order concerning support for wife and child would remain in force, and order was incorporated in agreement, subsequent divorce decree does not abrogate the order, which continues in force except as modified by subsequent order. *R. T. Foley v. S. A. Foley* (D.C. App. 1975, 336 A.2d 549).

Wife is precluded from seeking support for herself in excess of that provided by separation agreement, but court is not precluded from increasing child support payments in excess of monthly sum provided for by the agreement, where court found that needs of child had increased and husband was able to pay. *Id.*

Separation agreement which relieved husband of obligation to pay \$500 monthly if wife's gross income exceeded \$840 monthly and that if she earned less than \$840 husband should pay proportion of \$500 equal to proportion of wife's "gross income" to \$840 did not reflect intent and, where wife received disability retirement of \$409, husband would be required to pay proportion of \$500 equal to proportion \$409 bore to wife's loss of earnings. *P. M. Lewis v. D. Lewis* (D.C. App. 1973, 300 A. 2d 720).

Support agreement—Modification

Fact that husband's financial circumstances had changed for the worse since execution of separation and property settlement agreement, which obligated husband to pay child support and related expenses but which was not incorporated into divorce decree, did not justify modification of child support provisions, in absence of overreaching, fraud, duress or concealment, *S. S. Lanahan v. J. A. Nevius* (D.C. App. 1974, 317 A. 2d 521).

— Specific performance

Although divorced husband's salary had been reduced from \$60,000 to \$14,000 a year as a result of stockholders' derivative suit brought by former wife, where husband failed to explain adequately why he could not liquidate his personal assets worth more than \$500,000 or use them as collateral for a loan, trial court did not abuse its discretion in awarding specific performance of support agreement requiring him to pay \$150 a week for support of wife. *R. Marlowe v. C. Marlowe* (D.C. App. 1973, 310 A. 2d 59).

§ 16-917. Co-respondents as defendants; service of process**NOTES TO DECISIONS****Service of process**

Where husband's process server failed to make proper return so husband failed to make alleged correspondent a party, husband's counterclaim for divorce is not maintainable, *C. Williams v. L. Williams* (D.C. App. 1977, 378 A. 2d 668).

§ 16-918. Appointment of counsel; compensation; termination of appointment

(a) In all cases under this chapter, where the court deems it necessary or proper, a disinterested attorney may be appointed by the court to enter his appearance for the defendant and actively defend the cause.

(b) In any proceeding wherein the custody of a child is in question, the court may appoint a disinterested attorney to appear on behalf of the child and represent his best interests.

(c) An attorney appointed under this section may receive such compensation for his services as the court determines to be proper, which the court may order to be paid by either or both of the parties.

(d) Notwithstanding any other provision of law or any rule of court, the appearance of an attorney in any action under this chapter before a court of original jurisdiction shall be deemed to have terminated for the purpose of service of any motion, process, or any other pleading, upon completion of the case ending in a judgment, adjudication, decree, or final order from which no appeal has been taken when the time allowed for an appeal expires, and, if notice of appeal has been entered, upon the date of the final disposition of the appeal. There shall be no action required of any person or attorney under this subsection, but the court having jurisdiction over the matter may suspend the termination of the appearance on its own motion, or on the motion of any party to the case prior to the expiration of the time for appeal. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91-358, § 145(e)(3)(A), title I, 84 Stat. 557; Apr. 7, 1977, D.C. Law 1-107, title I, § 110, 23 DCR 8737.)

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-107, amended section and section heading generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 301 of act Apr. 7, 1977, D.C. Law 1-107, set out as a note under § 16-902.

NOTES TO DECISIONS**Attendance at hearing**

An attorney appointed pursuant to statute providing that in all uncontested divorce cases, and in any other divorce or annulment case where the court deems it necessary or proper, a disinterested attorney shall be appointed by the court to enter his appearance for the defendant and actively defend his cause, must be present at a divorce fact-finding hearing, even if he has been unable to contact the defendant, and it was error to grant a divorce without a fact-finding hearing at which the appointed attorney was present. *C. B. Campbell v. L. G. R. Campbell* (D.C. App. 1974, 325 A. 2d 188).

Compensation

Where record in divorce action did not reveal whether attorney appointed for wife had received minimum fee, or whether there had been consideration by court of attorney's requests for additional remuneration, Court of Appeals lacks basis upon which to determine whether proper compensation was denied and upon remand trial court is directed to address itself both to question of fair compensation of attorney for representing wife at prior proceedings and to question of compensation for any subsequent petition which might be submitted as result of new trial. *W. M. Feaster v. C. A. Feaster* (D.C. App. 1976, 359 A.2d 272).

§ 16-921. Validity of marriage, action to determine**NOTES TO DECISIONS****Estoppel**

Where two couples obtained Mexican divorces which were invalid because none of four parties was domiciled in Mexico, two of them merely spent a few hours in that country in year when divorces were obtained and absent spouses merely executed powers of attorney but entered no appearance in Mexican court, husband, who later married the other's supposed ex-wife, was estopped from challenging Mexican decrees on jurisdictional grounds in suit to annul his second marriage. *A. S. Clagett v. J. D. B. King* (D.C. App. 1973, 308 A. 2d 245).

Validity of foreign divorce

Divorce received in Mexico was void where neither party was domiciled in Mexico or even physically present there except for few hours in year divorce was obtained, and where absent spouse merely executed power of attorney, but entered no appearance in Mexico court. *A. S. Clagett v. J. D. B. King* (D.C. App. 1973, 308 A. 2d 245).

§ 16-923. Abolition of action for breach of promise, alienation of affections, and criminal conversation

Causes of action for breach of promise, alienation of affections, and criminal conversation are hereby abolished. (Added Apr. 7, 1977, D.C. Law 1-107, title I, § 111(a), 23 DCR 8737.)

EFFECTIVE DATE

See section 301 of act Apr. 7, 1977, D.C. Law 1-107, set out as a note under § 16-902.

Chapter 10.—PROCEEDINGS REGARDING INTRA-FAMILY OFFENSES**§ 16-1001. Definitions****CROSS REFERENCE**

Age of majority, see § 21-101 note.

NOTES TO DECISIONS**Intra-family offense**

Government is not required to refer case of defendant charged with unlawful entry into his girlfriend's apartment to director of social services for consideration as intrafamily offense, in view of fact that it is not clear that relationship between defendant and his girlfriend

was close enough to come within contemplation of statute governing intrafamily offenses. *P. R. Jackson v. United States* (D.C. App. 1976, 357 A.2d 409).

Relationship between mother, her assaulted child, and the defendant, who had been living with the mother for about three years at the time of the conduct involved, was close enough to require the government to notify the Director of Social Services of the offenses, but the failure to notify did not compel dismissal of the case on defendant's appeal from his convictions, since it would be inappropriate to permit defense counsel to remain silent as to possible intrafamily treatment of the case and then readily achieve a dismissal on appeal. *K. Robinson v. United States* (D.C. App. 1974, 317 A. 2d 508).

§ 16-1002. Complaint of criminal conduct; referrals to Family Division

NOTES TO DECISIONS

Prosecution

Ultimate control of the handling of an intrafamily offense is vested in the United States attorney, and only in an extreme case might dismissal be the appropriate judicial response to a failure to notify the director of social services. *K. Robinson v. United States* (D.C. App. 1974, 317 A. 2d 508).

Chapter 11.—EJECTMENT AND OTHER REAL PROPERTY ACTIONS

SUBCHAPTER I.—EJECTMENT

§ 16-1103. Contents of complaint; adverse possession

CROSS REFERENCES

Eviction, see § 45-1653.

Retaliatory action by landlord in rent control cases prohibited, see § 45-1654.

Chapter 13.—EMINENT DOMAIN

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 5-104, 6-505, 40-804.

SUBCHAPTER II.—REAL PROPERTY FOR DISTRICT OF COLUMBIA

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5-704, 5-1005, 11-921, 16-1303.

§ 16-1311. Condemnation proceedings by District of Columbia

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 16-1314. Declaration of taking; contents; deposit; transfer of title; determination; interest

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 16-1317. Objections to jurors; appraisalment

NOTES TO DECISIONS

Witnesses

Where, inter alia, landowner sought to introduce evidence not of comparability of two pieces of land but to demonstrate comparability of two similar business operations thereon, testimony was not so substantially based on incomparable piece of property as to override special rule permitting owners to testify as to value, and thus

landowner should have been permitted to testify as to value of condemned property even though his opinion was based in part on his experience with property which had been found not comparable with such factors as difference in size, frontage and location going to weight of testimony. *District of Columbia Redevelopment Land Agency v. Thirteen Parcels of Land etc. et al.* (1976, 534 F.2d 337, 175 U.S. App. D.C. 135).

§ 16-1319. Payment of award; transfer of title

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 16-1321. Abandonment of proceedings; liability

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER III.—EXCESS PROPERTY FOR DEVELOPMENT OF SEAT OF GOVERNMENT

§ 16-1331. Acquisition of property in excess of needs

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 16-1332. Sale of excess property; restrictions on use; fair market value; disposition of moneys

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 16-1336. Condemnation of excess real property by Commissioner; payment of awards, damages, and costs; no assessments for benefits

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER IV.—REAL PROPERTY FOR UNITED STATES

§ 16-1365. Appeal; deficiency judgment

NOTES TO DECISIONS

Finality

Order of possession to allow the Washington Metropolitan Area Transit Authority to conduct test boring in cemetery was subject to review by the Court of Appeals where, had such Court not stayed the order, the Authority would have taken possession and completed its borings before any review could have been had, leaving cemetery owner without remedy. *Washington Metropolitan Area Transit Authority v. One Parcel of Land, etc., et al.* (1975, 514 F.2d 1350, 169 U.S. App. D.C. 109).

Chapter 15.—FORCIBLE ENTRY AND DETAINER

§ 16-1501. Definition; summons

NOTES TO DECISIONS

Counterclaims

Power of court to assess amount of rent owed in summary possessory action does not give rise to an expanded authority simultaneously to adjudicate all conflicting claims between landlord and tenant. *Winchester Management Corporation v. C. L. Staten et al.* (D.C. App. 1976, 361 A.2d 187).

Judgment on pleadings

In action by landlord for possession of leased realty, where tenant contended that oral promise of five renewals of one-year lease was equivalent to a promise for the full five years and that it had made extensive renovations in reliance thereon, factual determination which was indispensable to a proper resolution of controversy could only be made on the basis of evidence adduced at trial and tenant should have been permitted to show what commitments were made by landlord's agent and nature and extent of its reliance thereon; motion for judgment on pleadings was improperly granted. *Amberger & Wohlfarth, Inc. v. District of Columbia* (D.C. App. 1973, 300 A.2d 460).

Jury trial

Since right to recover possession of real property was right ascertained and protected at common law, any party involved in suit under statutes of District of Columbia establishing summary procedure for recovery of possession of real property is entitled under Seventh Amendment to Constitution to trial by jury. *D. Pernell v. Southall Realty* (1974, 94 S.Ct. 1723, 416 U.S. 363; rev'g and rem'g 294 A.2d 490).

There is no right to a jury trial under District of Columbia statute in action for possession of leased land. *Amberger & Wohlfarth, Inc. v. District of Columbia* (D.C. App. 1973, 300 A.2d 460).

Laches

Equitable defense of laches was inapplicable to preclude landlord's possessory action, even though landlord had let many months go by after tenant had ceased to pay rent, where any prejudice suffered by tenant because of landlord's failure to act immediately after first default was largely self-imposed, in that as party to rental agreement tenant could not be ignorant of increasing financial obligations by reason of continued occupancy of premises and failure to pay rent. *National Capital Housing Authority v. L. Douglas* (D.C. App. 1975, 333 A.2d 55).

Stay of execution

All accrued and overdue rent must be unconditionally tendered before any stay of execution in summary possessory action can issue; thus, trial court has no discretion to stay judgment for summary possession for two years on condition that tenant pay accrued and overdue rent in monthly installments over such period in addition to such rent as would be regularly due by reason of continuing occupancy. *National Capital Housing Authority v. L. Douglas* (D.C. App. 1975, 333 A.2d 55).

§ 16-1503. Judgment and execution for possession

NOTES TO DECISIONS

Counterclaims

Power of court to assess amount of rent owed in summary possessory action does not give rise to an expanded authority simultaneously to adjudicate all conflicting claims between landlord and tenant. *Winchester Management Corporation v. C. L. Staten et al.* (D.C. App. 1976, 361 A.2d 187).

Chapter 19.—HABEAS CORPUS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11-921, 11-2601.

§ 16-1901. Petition; issuance of writ

CROSS REFERENCE

Representation of indigents, see § 11-2601.

NOTES TO DECISIONS

Construction

This section providing that person committed, detained, confined or restrained from his lawful liberty "within the district" may petition for writ of habeas corpus does not restrict the jurisdiction of the United States District Court for the District of Columbia in any way in which a federal district court located elsewhere is not restricted but is at most an additional jurisdictional statute relating to particular local problems, and its "within the district" language should be construed in pari materia with the "within their respective jurisdictions" of federal habeas corpus statute. *J. E. McCall v. C. L. Swain et al.* (1975, 510 F.2d 167, 166 U.S. App. D.C. 214).

The phrase "within the district" in this section providing that person committed, detained, confined, or restrained from his lawful liberties within the District may petition for a writ of habeas corpus does not prohibit a court, whether the District Court or the Superior Court, located in the District from entertaining habeas corpus petitions from individuals confined within the District's correctional facilities located outside the District limits. *Id.*

Jurisdiction

With respect to habeas corpus petition of petitioner convicted for local crimes in the United States District Court for the District of Columbia and confined in District of Columbia reformatory which was designated by the Attorney General as the appropriate facility in which the sentence was to be served, the director of the District of Columbia Department of Corrections and the superintendent of the reformatory were "federal officers or officials" within meaning of this section providing that petitions for writs of habeas corpus directed to federal officers and employees shall be filed in the United States District Court for the District of Columbia. *J. E. McCall v. C. L. Swain et al.* (1975, 510 F.2d 167, 166 U.S. App. D.C. 214).

Parties

With respect to inmates who were incarcerated in District of Columbia correctional complex in Virginia pursuant to sentences imposed by judges of United States District Court for the District of Columbia, warden of the complex was an "officer or employee of the United States" within this section permitting petitions for writs of habeas corpus directed to federal officers or employees to be heard by United States District Court for the District of Columbia and requiring all other such writs to be filed in the Superior Court for the District of Columbia. *E. J. Fitzgerald et al. v. M. J. Sigler et al.* (1974, 372 F. Supp. 889).

Director of District of Columbia Department of Corrections was not proper party to habeas corpus proceeding instituted in federal court by inmates who were incarcerated at District of Columbia correctional complex pursuant to sentences imposed by judges of United States District Court for the District of Columbia, as he was not the immediate custodian of the inmates. *Id.*

Place of confinement

Parolees who were incarcerated at District of Columbia correctional complex located in Virginia pursuant to sentences imposed by judges of United States District Court for the District of Columbia for offenses committed subsequent to their releases on parole were "confined" within District of Columbia within statute providing that a person must be committed, detained, confined or restrained within the District before writ of habeas corpus may be entertained in any court in the District. *E. J. Fitzgerald et al. v. M. J. Sigler et al.* (1974, 372 F. Supp. 889).

Prior proceedings

Prisoner's habeas corpus petition, in which he sought to compel Department of Corrections to recompute his sentence, was not barred by prior legal proceedings where, although prisoner had previously challenged computation of his sentence in two motions for reduction of sentence, record did not reveal that any other court had thoroughly considered issue raised in habeas corpus proceeding and United States Court of Appeals, in affirming second order denying prisoner's motion for reduction of sentence, did

so without prejudice to appellant's filing of petition for habeas corpus in an appropriate forum. *J. T. Cogdell v. D. C. Jackson et al.* (1975, 397 F.Supp. 362).

Youthful offenders

While some delays are inevitable in the transfer of a youthful offender to a certified facility pursuant to the Federal Youth Corrections Act, such delay should not be permitted to become protracted, and if the length of an offender's detention in an adult facility becomes unduly long, the appropriate means of seeking relief is the submission to the trial court of a petition for habeas corpus. *G. E. Austin v. United States* (D.C. App. 1973, 299 A. 2d 545).

§ 16-1908. Right of other persons to writ

CROSS REFERENCE

Representation of indigents, see § 11-2601.

Chapter 21.—JOINT CONTRACTS

§ 16-2101. Definition of joint and several contracts

NOTES TO DECISIONS

Construction

This section which provides that, for purpose of action thereon, contract and obligations entered into by two or more persons are deemed to be joint and several does not affect substantive rights and duties of parties. *S. Clayman et ano. v. Goodman Properties, Inc.* (1973, 518 F.2d 1026, 171 U.S. App. D.C. 88).

Joint liability

Although all claims against maker of note are merged into final judgment on note, merger doctrine does not prevent subsequent suit against other parties such as endorsers and accommodation parties whose liability on instrument is joint and several. *McLachlen National Bank v. L. I. S. Fields et al.* (D.C. App. 1976, 364 A.2d 1191).

§ 16-2103. Extinguishment or merger of cause of action

NOTES TO DECISIONS

Separate suit

Although all claims against maker of note are merged into final judgment on note, merger doctrine does not prevent subsequent suit against other parties such as endorsers and accommodation parties whose liability on instrument is joint and several. *McLachlen National Bank v. L. I. S. Fields et al.* (D.C. App. 1976, 364 A.2d 1191).

Chapter 23.—FAMILY DIVISION PROCEEDINGS

SUBCHAPTER I.—PROCEEDINGS REGARDING DELINQUENCY, NEGLECT, OR NEED OF SUPERVISION

Sec.

- 16-2304. Right to counsel; party status.
- 16-2323. Review of dispositional orders.
- 16-2324. Modification, termination of orders.
- 16-2325. Support of committed child.
- 16-2326. Court costs and expenses.
- 16-2327. Probation revocation; disposition.
- 16-2328. Interlocutory appeals.
- 16-2329. Finality of judgments; appeals; transcripts.
- 16-2330. Time computation.
- 16-2331. Juvenile case records; confidentiality; inspection and disclosure.
- 16-2332. Juvenile social records; confidentiality; inspection and disclosure.
- 16-2333. Police and other law enforcement records.
- 16-2334. Fingerprint records.
- 16-2335. Sealing of records.
- 16-2336. Unlawful disclosure of records; penalties.
- 16-2337. Additional powers of the Director of Social Services.
- 16-2338. Emergency medical treatment.

SUBCHAPTER II.—PARENTAGE PROCEEDINGS

- 16-2345. New birth record upon marriage or determination of natural parents.
- 16-2348. Parentage records; confidentiality; inspection and disclosure.

SUBCHAPTER III.—PROCEEDINGS REGARDING THE TERMINATION OF PARENTAL RIGHTS OF CERTAIN NEGLECTED CHILDEN

Sec.

- 16-2351. Purpose of the subchapter; construction of provisions.
- 16-2352. Definitions.
- 16-2353. Grounds for termination of parent and child relationship.
- 16-2354. Motions.
- 16-2355. Consideration of termination of the parent and child relationship at review hearings.
- 16-2356. Parties.
- 16-2357. Notice.
- 16-2358. Conduct of hearings.
- 16-2359. Adjudicatory hearing.
- 16-2360. Disposition after termination.
- 16-2361. Effect of termination decree.
- 16-2362. Decrees.
- 16-2363. Confidentiality of records.
- 16-2364. Unlawful disclosure.
- 16-2365. Termination decrees of other jurisdictions.

CODIFICATION

Items 16-2323 to 16-2337 were editorially renumbered as items 16-2324 to 16-2338, respectively, to reflect the corresponding renumbering of those sections by section 408(a) of act Sept. 23, 1977, D.C. Law 2-22, title IV. Item 16-2323 and the analysis for subchapter III were editorially supplied.

AMENDMENTS

1977—Sec. 402(a) of act Sept. 23, 1977, D.C. Law 2-22, amended item 16-2304 by substituting "Right to counsel; party status." for "Right to counsel."

Sec. 112(c) of act Apr. 7, 1977, D.C. Law 1-107, amended item 16-2345 by substituting "or determination of natural parents" for "of natural parents."

1976—Sec. 20(i) (1) of act Oct. 1, 1976, D.C. Law 1-87, amended heading for subchapter II by substituting "PARENTAGE" for "PATERNITY".

Sec. 20(i) (2) of such act amended item 16-2348 by substituting "Parentage" for "Paternity".

SUBCHAPTER I.—PROCEEDINGS REGARDING DELINQUENCY, NEGLECT, OR NEED OF SUPERVISION

§ 16-2301. Definitions

As used in this subchapter—

* * * * *

(9) The term "neglected child" means a child:

(A) who has been abandoned or abused by his or her parent, guardian, or other custodian; or

(B) who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his or her physical, mental, or emotional health, and the deprivation is not due to the lack of financial means of his or her parent, guardian, or other custodian; or

(C) whose parent, guardian, or other custodian is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity; or

(D) whose parent, guardian, or custodian refuses or is unable to assume the responsibility for the child's care, control or subsistence and the person or institution which is providing for the child states an intention to discontinue such care; or

(E) who is in imminent danger of being abused and whose sibling has been abused.

No child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall for that reason alone be considered a neglected child for the purposes of this subchapter.

(12) The term "custodian" means a person or agency, other than a parent or legal guardian, to whom the legal custody of a child has been granted by the order of a court or who is acting in loco parentis.

(23) The term "abused", when used with reference to a child, means a child whose parent, guardian, or custodian inflicts or fails to make reasonable efforts to prevent the infliction of physical or mental injury upon the child, including excessive corporal punishment or an act of sexual abuse or molestation. (As amended Sept. 23, 1977, D.C. Law 2-22, title I, § 110(a), 24 DCR 3341.)

AMENDMENT

1977—Act Sept. 23, 1977, D.C. Law 2-22, amended pars. (9) and (12) generally and added par. (23). For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 411 of act Sept. 23, 1977, D.C. Law 2-22, set out as a note under § 6-2101.

SHORT TITLE

Section 401 of act Sept. 23, 1977, D.C. Law 2-22, title IV, provided: "This title [enacting §§ 16-2323 and 16-2351 to 16-2365 and amending §§ 16-2304, 16-2310, 16-2313, 16-2315, 16-2319, 16-2320, and 16-2324 to 16-2338] may be cited as the 'Neglect Proceedings Amendment Act of 1977'."

DEFINITIONS

The definitions in § 6-2101 apply to terms appearing in the amendment to this section made by act Sept. 23, 1977, D.C. Law 2-22.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-162, 11-721, 11-1101, 16-2304, 16-2315, 16-2316, 16-2352.

CROSS REFERENCES

Age of majority, see § 21-101 note.

Federal Juvenile Delinquency Act, see 18 U.S.C. 5031 et seq.

Federal Youth Corrections Act, see 18 U.S.C. 5005 et seq.

Juvenile Justice and Delinquency Prevention Act of 1974, see 42 U.S.C. 5601 et seq.

Runaway Youth Act, see 42 U.S.C. 5701 et seq.

NOTES TO DECISIONS

Constitutionality

To the extent that First Amendment activities may be infringed when the "child in need of supervision" provision of this section is applied, the court, in balancing such infringement against the right and duty of a parent to teach, control and discipline a child, is obliged to grant the parent greater latitude in the First Amendment area than is permitted the state. *District of Columbia v. B. J. R.* (D.C. App. 1975, 332 A.2d 58; cert. denied 95 S. Ct. 2425, 421 U.S. 1016).

This section defining the term "child" as not including an individual 16 years of age or older who is charged by the United States Attorney with certain enumerated offenses is not unconstitutional either as an arbitrary legislative classification or as a negation of the presumption of innocence. *United States v. J. T. Bland* (1972, 472 F. 2d 1329, 153 U.S. App. D.C. 254, rev'g and remand'g 330 F. Supp. 34; cert. denied 93 S. Ct. 2294, 412 U.S. 909).

Construction

Even if United States attorney's election to charge juvenile as an adult is made after he has been subject to jurisdiction of Family Division by reason of a delinquency petition filed against him, attorney's statutory authority to determine whether juvenile, who is 16 years of age and who is charged with certain enumerated offenses, should be charged as adult is unfettered by section 16-2307, which provides that, on corporation counsel's motion for transfer of child for trial as adult, transfer can be ordered only after a hearing to determine prospects for child's rehabilitation in Family Division. *L. B. Brown v. United States* (D.C. App. 1975, 343 A.2d 48).

The 1970 amendment of this section limiting jurisdiction, for juvenile offender purposes, to age of 16 when an individual of that age or beyond is charged by United States Attorney with enumerated violent crime was meant to work a substantive contraction of Juvenile Court's prior jurisdiction. *B. L. Pendergrast v. United States* (D.C. App. 1975, 332 A.2d 919).

The "child in need of supervision" provision of this section is not a criminal statute in the ordinary sense; it reinforces the authority of parents to control their children through the giving of reasonable and lawful commands, and it may be invoked when children repeatedly refuse to recognize their obligation to obey such commands. *District of Columbia v. B. J. R.* (D.C. App. 1975, 332 A.2d 58; cert. denied 95 S. Ct. 2425, 421 U.S. 1016).

Construction with other laws

Regardless of fact that proceeding involving involuntary commitment of mentally retarded child was not brought under authority of child neglect statute, sections 16-2301 et seq., such statute furnished no ground for charging charitable organization, which had arranged for child's adoption, with cost of her commitment since section 21-586 governing right of District of Columbia to reimbursement is controlling where neglect proceedings are suspended because of incompetency of the child and such section did not provide a claim for reimbursement against the organization. *District of Columbia v. In the Matter of H. J. B.* (D.C. App. 1976, 359 A.2d 285).

Custodian

Social worker was not a "custodian" in whom custody of child involved in juvenile proceeding could be placed pending fact-finding hearing; thus, order placing child in social worker's custody pending detention hearing was void and could be disobeyed with impunity and social worker's refusal to comply with order was not punishable as contempt. *In the Matter of I. E. Banks* (D.C. App. 1973, 306 A.2d 270).

Delinquent act

Under statute which gives Family Division of the Superior Court jurisdiction over a child charged with a delinquent act, including an offense under the law of the District of Columbia or of a state or under federal law, act charged as a violation of a federal statute comes within the jurisdiction of the Family Division (Juvenile Branch) of the Superior Court. *District of Columbia v. P. L. M.* (D.C. App. 1974, 325 A.2d 600).

Dependency determination under prior law

Where nine-year-old girl had previously been adjudged a "dependent child," in that her natural mother had, when the child was four days old, consented to commitment of the child to the Child Welfare Division of the Department of Public Welfare, the child continued in that status, and there is no necessity for the trial court to make a "neglected child" finding in determining whether custody of the child should go to the natural mother or the child's foster parents with whom the child had lived virtually all her life. *In the Matter of N. M. S.* (D.C. App. 1975, 347 A.2d 924).

Due process

Decision vested in prosecutor whether juveniles, who are 16 years of age and who are charged with certain enumerated offenses, should be charged as adults is not subject to judicial review or to requirements of due process, at least in absence of particular circumstances of abuse of discretion. *L. B. Brown v. United States* (D.C. App. 1975, 343 A.2d 48).

"Child in need of supervision" provision of this section is not unconstitutionally vague; it gave appellee-child adequate warning that to abscond from home five times in four years, three of those times within the nine months preceding the filing of the petition alleging the appellee to be a child in need of supervision, would subject her to the sanctions provided for a child who is habitually disobedient of the reasonable and lawful commands of her parents. *District of Columbia v. B. J. R.* (D.C. App. 1975, 332 A.2d 58; cert. denied 95 S.Ct. 2425, 421 U.S. 1016).

Exercise of the discretion vested by statute in United States Attorney to charge a person 16 years of age or older with certain enumerated offenses, thereby initiating that person's prosecution as an adult, is not violative of due process. *United States v. J. T. Bland* (1972, 472 F.2d 1329, 153 U.S. App. D.C. 254, rev'g and remand'g 330 F. Supp. 34; cert. denied 93 S. Ct. 2294, 412 U.S. 909).

While there may be circumstances in which courts would be entitled to review the exercise of prosecutorial discretion as to whether a person should be charged as a juvenile or as an adult, those circumstances would necessarily include the deliberate presence of such factors as race, religion or other arbitrary classification. *Id.*

Exercise of discretion by the United States Attorney under statute, in part providing that the term "child" does not include an individual 16 years of age or older who is charged by the United States Attorney with certain enumerated offenses, is not violative of due process on theory that it denies the individual charged the presumption of innocence. *Id.*

Equal protection

Fact that, in federal jurisdictions other than that of the District of Columbia, juveniles who are charged with violation of federal law and who opt for treatment as an adult have the right of trial by jury does not mean that statute giving Superior Court of the District of Columbia primary jurisdiction over juvenile who is alleged to be delinquent, even though that delinquency is based on violation of federal law, denies equal protection. *District of Columbia v. P. L. M.* (D.C. App. 1974, 325 A.2d 600).

Jurisdiction

Fact that verdict of not guilty of armed robbery was returned, in proceeding in which 16-year-old accused was charged as an adult, does not require that verdicts of guilty of robbery and assault with a dangerous weapon be certified to Family Division for disposition. *L. B. Brown v. United States* (D.C. App. 1975, 343 A.2d 48).

Superior Court may assume jurisdiction over a juvenile charged with violation of federal law whether or not the United States district court waives its jurisdiction under a "surrender statute." *District of Columbia v. P. L. M.* (D.C. App. 1974, 325 A.2d 600).

Where juvenile is alleged to be delinquent on basis of violation of federal charge, the Family Division (Juvenile Branch) of the Superior Court, has primary, but not exclusive, jurisdiction over the matter. *Id.*

Until it is determined whether a person is a "child" within statutory definition, there is no family court jurisdiction; therefore, a fortiori, there can be no waiver of jurisdiction. *United States v. J. T. Bland* (1972, 472 F.2d 1329, 153 U.S. App. D.C. 254, rev'g and remand'g 330 F. Supp. 34; cert. denied 93 S.Ct. 2294, 412 U.S. 909).

§ 16-2302. Transfer of criminal matters to Family Division

REFERENCE IN TEXT

Sections 16-2330 through 16-2335, referred to in subsec. (b), were renumbered as sections 16-2331 through 16-2336 by act Sept. 23, 1977, D.C. Law 2-22.

NOTES TO DECISIONS UNDER PRESENT LAW

Construction

At time of juvenile's violation of narcotics laws in 1969, District of Columbia statute (§ 11-1552) relating to transfer of case to juvenile court from other courts required that United States District Court for the District of Columbia transfer case to Juvenile Court of the District of Columbia. *United States v. S. Williams* (1972, 351 F. Supp. 223).

Although no jurisdiction was obtained by United States District Court for District of Columbia over juvenile who violated narcotics laws in 1969, District of Columbia Court

Reorganization Act of 1970, if it were applicable, could dictate a different result. *Id.*

NOTES TO DECISIONS UNDER PRIOR LAW

Jurisdiction

Federal district court lacked jurisdiction to hear 1969 case against juvenile, and order committing juvenile to custody of Attorney General would be vacated. *United States v. S. Williams* (1972, 351 F. Supp. 223).

§ 16-2303. Retention of jurisdiction

NOTES TO DECISIONS

Time for appeal

Appeal from order terminating natural father's parental rights has to be taken within 30 days and appeal filed within 30 days of subsequent order continuing commitment of children to Department of Human Resources with instructions to seek prompt adoptive placements is not timely. *In the Matter of C.I.T. and C.M.T.* (D.C. App. 1977, 369 A.2d 171).

§ 16-2304. Right to counsel; party status

* * * * *

(b)(1) When a child is alleged to be neglected or when the termination of the parent and child relationship is under consideration, the parent, guardian or custodian of the child named in the petition or in a motion to terminate is entitled to be represented by counsel at all critical stages of the proceedings, and, if financially unable to obtain adequate representation, to have counsel appointed in accordance with rules established by the Superior Court of the District of Columbia.

(2) If the child has been living with a person other than the parent, such person shall receive notice of the neglect or the termination proceedings and, if the child has been with them for twelve (12) months or more, such person(s) may, upon his or her request, be designated a party to the proceedings: *Provided*, That if the child has been living with such person less than twelve (12) months, upon such person's request the judge may, at his or her discretion, designate the person a party to the proceedings: *Provided, further* That such person shall not be a party in those parts of the proceedings which pertain to the determination of neglect as defined in D.C. Code, section 16-2301. If such parent or other person party to the proceedings is financially unable to obtain adequate representation, counsel shall be appointed in accordance with rules established by the Superior Court of the District of Columbia. The Division shall in every case involving a neglected child which results in a judicial proceeding, including the termination of the parent and child relationship pursuant to subchapter III of this chapter, appoint a guardian ad litem who is an attorney to represent the child in such proceedings. The guardian ad litem shall in general be charged with the representation of the child's best interest. (As amended Sept. 23, 1977, D.C. Law 2-22, title IV, § 402, 24 DCR 3341.)

AMENDMENT

1977—Act Sept. 23, 1977, D.C. Law 2-22, amended subsec. (b) generally and section heading by substituting "Right to counsel; party status" for "Right to counsel". For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 411 of act Sept. 23, 1977, D.C. Law 2-22, set out as a note under § 6-2101.

DEFINITIONS

The definitions in § 6-2101 apply to terms appearing in the amendment to this section made by act Sept. 23, 1977, D.C. Law 2-22.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16-2306, 16-2308, 16-2311 to 16-2313.

CROSS REFERENCES

Representation by Public Defender Service, see § 2-2222.

Representation of indigents, generally, see § 11-2601 et seq.

§ 16-2305. Petition; contents; amendment

(a) Complaints alleging delinquency, need of supervision, or neglect shall be referred to the Director of Social Services who shall conduct a preliminary inquiry to determine whether the best interests of the child or the public require that a petition be filed. If judicial action appears warranted, under intake criteria established by rule of the Superior Court, the Director shall recommend that a petition be filed. If the Director decides not to recommend the filing of a petition, the complainant in a delinquency or neglect case shall have a right to have that decision reviewed by the Corporation Counsel, and the Director shall notify the complainant of such right of review. Complaints alleging neglect submitted by the Child Protective Services Division of the Department of Human Resources shall be referred directly to the Corporation Counsel of the District of Columbia.

(As amended Sept. 23, 1977, D.C. Law 2-22, title I, § 110(b), 24 DCR 3341.)

AMENDMENT

1977—Act Sept. 23, 1977, D.C. Law 2-22, provided for amending section by adding a new last sentence relating to complaints alleging neglect submitted by the Child Protective Services Division. This amendment has been executed to this section by adding the new sentence at the end of subsec. (a) as the probable intent of the Council.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 411 of act Sept. 23, 1977, D.C. Law 2-22, set out as a note under § 6-2101.

DEFINITIONS

The definitions in § 6-2101 apply to terms appearing in the amendment to this section made by act Sept. 23, 1977, D.C. Law 2-22.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-2107, 16-2334.

NOTES TO DECISIONS

Habeas corpus

Proper remedy for minors contending that, after their adjudication as "children in need of supervision" had been invalidated, they were improperly confined in facility in which they could not have been kept except for such adjudication, was appropriate action in District of Columbia Superior Court, not petition for writ of habeas corpus in federal district court. *I. Brown et al. v. J. Yeldell et al.* (1973, 487 F. 2d 1210, 159 U.S. App. D.C. 339).

Where petitioners could suffer no adverse collateral consequences due to their adjudication as "children in need of supervision" because it had been invalidated by District of Columbia Court of Appeals, and where two-year commitments ordered as result of that adjudication had elapsed, petitioners suffered no present harm cognizable by writ of habeas corpus. *Id.*

Petition—Adequacy

Notwithstanding the deficiency of petition, which was insufficient to support adjudication of child as habitually disobedient and ungovernable, rather than an outright reversal or dismissal thereby producing irrational consequences flowing from a forced reunion in an apparently deteriorated family structure Court of Appeals remanded cause to trial court for commencement of such further proceedings within 30 days as might be deemed just in circumstances; if further proceedings were not begun within that time adjudication would be vacated. *In the Matter of C. G. S.* (D.C. App. 1977, 372 A.2d 1017).

Petition given to juvenile satisfies due process requirement of adequate notice applicable to juvenile proceedings even though it is claimed that the petition is defective for failing to allege ownership of the premises which he allegedly burglarized. *In the Matter of M. D. J.* (D.C. App. 1975, 346 A.2d 733).

— Amendment

Permitting government to amend count of petition filed in Juvenile Branch of Family Division to change name of robbery victim was within trial court's discretion and was not prejudicial where defense was alibi. *In the Matter of W. K.* (D.C. App. 1974, 323 A. 2d 442).

Change in name of victim in petition filed in Juvenile Division of Family Court is not tantamount to charging a new offense. *Id.*

Superior Court has discretion to permit amendment of juvenile delinquency petition, which alleged violation of federal law, so as to allege violation of District law. *In the Matter of J. R. G.* (D.C. App. 1973, 305 A. 2d 529).

Government in juvenile delinquency proceeding may move to amend petition at any time before conclusion of fact-finding hearing. *Id.*

— Dismissal

Superior Court's use of the phrase "social reasons" alone did not fulfill the requirement of Juvenile Court Rule that the court, upon request of the corporation counsel, state why it was in the interests of justice and welfare of the child that delinquency petition be dismissed; moreover, effective appellate review would be impossible without a specific understanding of the reasoning applied by a trial court in reaching its conclusion that a juvenile petition should be dismissed without a fact finding hearing or an ultimate finding. *District of Columbia v. D. E. P.* (D.C. App. 1973, 311 A. 2d 831).

Where focus of counsel was never directed to precise issue of whether petitions alleging delinquency should be dismissed and proceedings terminated in interests of justice and juveniles' welfare, government must be given opportunity to address itself to trial court as whether such considerations justified dismissal of the petitions; thus orders of dismissal would be vacated and cases remanded for further proceedings. *In the Matter of R. L. R.* (D.C. App. 1973, 310 A. 2d 226).

Pleading

Rationale that purpose of pleading is to facilitate proper decision on merits has special significance in juvenile court proceedings. *In the Matter of J. R. G.* (D.C. App. 1973, 305 A. 2d 529).

Prosecution

Question of whether corporation counsel or United States attorney should conduct proceedings charging juvenile with act of delinquency was not properly certifiable since juvenile was not involved in criminal prosecution. *In the Matter of M. W. F.* (D.C. App. 1973, 312 A. 2d 302).

§ 16-2306. Service of summons and petition

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16-2307, 16-2309, 16-2327.

NOTES TO DECISIONS

Habeas corpus

Proper remedy for minors contending that, after their adjudication as "children in need of supervision" had been invalidated, they were improperly confined in facility in which they could not have been kept except for such adjudication, was appropriate action in District of Columbia Superior Court, not petition for writ of habeas

corpus in federal district court. *I. Brown et al. v. J. Yeldell et al.* (1973, 487 F. 2d 1210, 159 U.S. App. D.C. 339).

Where petitioners could suffer no adverse collateral consequences due to their adjudication as "children in need of supervision" because it had been invalidated by District of Columbia Court of Appeals, and where two-year commitments ordered as result of that adjudication had elapsed, petitioners suffered no present harm cognizable by writ of habeas corpus. *Id.*

§ 16-2307. Transfer for criminal prosecution

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16-2302, 16-2313, 16-2315, 16-2316, 16-2328, 16-2333, 16-2334, 21-1114, 24-301.

NOTES TO DECISIONS

Construction

Even if United States attorney's election to charge juvenile as an adult is made after he has been subject to jurisdiction of Family Division by reason of a delinquency petition filed against him, attorney's statutory authority to determine whether juvenile, who is 16 years of age and who is charged with certain enumerated offenses, should be charged as adult is unfettered by this section, which provides that, on corporation counsel's motion for transfer of child for trial as adult, transfer can be ordered only after a hearing to determine prospects for child's rehabilitation in Family Division. *L. B. Brown v. United States* (D.C. App. 1975, 343 A.2d 48).

Hearing

Although 17-year-old defendant was initially petitioned as a juvenile in Family Division on a charge of assault with intent to kill, a transfer hearing was not required before defendant, following death of victim some two months after the assault, could be charged by the United States Attorney as an adult with second-degree murder. *B. L. Pendergrast v. United States* (D.C. App. 1975, 332 A.2d 919).

Waiver

Until it is determined whether a person is a "child" within statutory definition, there is no family court jurisdiction; therefore, a fortiori, there can be no waiver of jurisdiction. *United States v. J. T. Bland* (1972, 472 F. 2d 1329, 153 U.S. App. D.C. 254, rev'g and remand'g 330 F. Supp. 34; cert. denied 93 S.Ct. 2294, 412 U.S. 909).

§ 16-2308. Initial appearance

NOTES TO DECISIONS

Habeas corpus

Proper remedy for minors contending that, after their adjudication as "children in need of supervision" had been invalidated, they were improperly confined in facility in which they could not have been kept except for such adjudication, was appropriate action in District of Columbia Superior Court, not petition for writ of habeas corpus in federal district court. *I. Brown et al. v. J. Yeldell et al.* (1973, 487 F. 2d 1210, 159 U.S. App. D.C. 339).

Where petitioners could suffer no adverse collateral consequences due to their adjudication as "children in need of supervision" because it had been invalidated by District of Columbia Court of Appeals, and where two-year commitments ordered as result of that adjudication had elapsed, petitioners suffered no present harm cognizable by writ of habeas corpus. *Id.*

§ 16-2309. Taking into custody

A child may be taken into custody—

* * * * *

(3) by a law enforcement officer when he or she has reasonable grounds to believe that the child is in immediate danger from his or her surroundings and that the removal of the child from his or her surroundings is necessary.

(4) by a law enforcement officer after he or she has consulted with the Chief of the Child Protective Services Division of the Department of Human Resources, or his or her designee, pursuant

to section 107(b) of the Prevention of Child Abuse and Neglect Act of 1977 when the officer has reasonable grounds to believe that the child is suffering from illness or injury or otherwise is endangered and that the child's removal from his or her surroundings is necessary.

(5) by a law enforcement officer when he has reasonable grounds to believe that the child has run away from his parent, guardian, or other custodian.

(As amended Sept. 23, 1977, D.C. Law 2-22, title I, § 110(c), 24 DCR 3341.)

REFERENCE IN TEXT

Section 107(b) of the Prevention of Child Abuse and Neglect Act of 1977, referred to in par. (4), is section 107(b) of act Sept. 23, 1977, D.C. Law 2-22, which is classified to section 6-2105(b).

AMENDMENT

1977—Act Sept. 23, 1977, D.C. Law 2-22, amended par. (3) generally, redesignated par. (4) as par. (5), and added a new par. (4).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 411 of act Sept. 23, 1977, D.C. Law 2-22, set out as a note under § 6-2101.

DEFINITIONS

The definitions in § 6-2101 apply to terms appearing in the amendment to this section made by act Sept. 23, 1977, D.C. Law 2-22.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-2103, 6-2105, 6-2134, 16-2306.

§ 16-2310. Criteria for detaining children

* * * * *

(b) A child shall not be placed in shelter care prior to a factfinding hearing or a dispositional hearing unless it appears from available information that shelter care is required—

(1) to protect the person of the child, or

(2) because the child has no parent, guardian, custodian, or other person or agency able to provide supervision and care for him, and the child appears unable to care for himself and that

(3) no alternative resources or arrangements are available to the family that would adequately safeguard the child without requiring removal.

* * * * *

(d) Whenever a child has been placed in shelter care, the child's parent, guardian or custodian shall be permitted visitation at least weekly unless it appears to the judge that such visitation rights would create an imminent danger to or be detrimental to the well-being of the child, in which case, the judge shall either prescribe a schedule of visitation rights or order that visitation rights not be allowed. (As amended Sept. 23, 1977, D.C. Law 2-22, title IV, § 403, 24 DCR 3341.)

AMENDMENT

1977—Act Sept. 23, 1977, D.C. Law 2-22, amended section by adding subssecs. (b)(3) and (d) and by substituting in subsec. (b)(2) "and that" for the period at the end thereof.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 411 of act Sept. 23, 1977, D.C. Law 2-22, set out as a note under § 6-2101.

DEFINITIONS

The definitions in § 6-2101 apply to terms appearing in the amendment to this section made by act Sept. 23, 1977, D.C. Law 2-22.

NOTES TO DECISIONS

Custodian

Social worker was not a "custodian" in whom custody of child involved in juvenile proceeding could be placed pending fact-finding hearing; thus, order placing child in social worker's custody pending detention hearing was void and could be disobeyed with impunity and social worker's refusal to comply with order was not punishable as contempt. *In the Matter of I. E. Banks* (D.C. App. 1973, 306 A. 2d 270).

§ 16-2311. Release or delivery to Family Division

(a) A person taking a child into custody shall with all reasonable speed—

(1) release the child to his parent, guardian, or custodian upon a promise to bring the child before the Division when requested by the Division, unless the child's placement in detention or shelter care appears required as provided in section 16-2310;

(2) bring a child alleged in need of supervision or delinquent before the Director of Social Services; or

(3) bring the child to a medical facility if the child appears to require prompt treatment or to require prompt diagnosis for medical or evidentiary purposes and may order the child retained at the hospital subject to a further order of the Metropolitan Police Department of the District of Columbia, the Chief of the Child Protective Services Division of the Department of Human Resources, or the Superior Court of the District of Columbia; or

(4) bring a child alleged to be a neglected child to the Chief of the Child Protective Services Division of the Department of Human Resources.

Any person taking a child into custody shall give prompt notice to the Corporation Counsel and to the parent, guardian, or custodian (if known) together with the reasons for custody.

(b) (1) When a child is brought before the Director of Social Services, the Director shall in all cases review the need for detention or shelter care prior to the admission of the child to the place of detention or shelter care. The child shall be released to his parent, guardian, or custodian unless the Director of Social Services finds that detention or shelter care is required under section 16-2310. If the child is not released, the Director of Social Services shall advise him of the right to counsel as provided in section 16-2304.

(2) when a child is brought before the Chief of the Child Protective Services Division of the Department of Human Resources, the Chief shall review the need for shelter care prior to the admission to shelter care. If shelter care is required the Chief shall select the most appropriate placement for the child. If the Chief determines that shelter care is not required the Chief may recommend to the Metropolitan Police Department of the District of Columbia the release of the child to his or her parent, guardian or custodian. When a child is being held in a hospital the case shall be reviewed by the Chief. If the Chief determines that shelter care is

not required, he or she shall recommend to said Police the release of the child to his or her parent, guardian, or custodian. If the Chief determines there is a need for shelter care but there is not a medical need requiring hospitalization, the Chief shall secure the appropriate shelter care.

(c) If a parent, guardian, or custodian fails, when requested, to bring the child to the Division as provided in subsection (a) (1), the Division may issue a warrant directing that the child be taken into custody and brought before the Division.

(d) a person taking a child into custody or a public agency having temporary care pending a detention or shelter care hearing may bring the child to a medical facility if the child appears to require prompt treatment or to require prompt diagnosis for medical, psychiatric, or evidentiary purposes and may authorize such diagnosis or emergency treatment. Routine medical treatment shall not be authorized unless a parent cannot be consulted. (Dec. 23, 1963, 77 Stat. 590, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91-358, § 121(a), title I, 84 Stat. 530; Sept. 23, 1977, D.C. Law 2-22, title I, § 110(d) 24 DCR 3341.)

AMENDMENT

1977—Act Sept. 23, 1977, D.C. Law 2-22, amended section as follows:

(1) amended subsec. (a) (2) generally;

(2) amended subsec. (a) (3) by adding at the end thereof "and may order the child retained at the hospital subject to a further order of the Metropolitan Police Department of the District of Columbia, the Chief of the Child Protective Services Division of the Department of Human Resources, or the Superior Court of the District of Columbia; or";

(3) added subsec. (a) (4);

(4) designated existing subsec. (b) as sub. (b) (1) and added subsec. (b) (2); and

(5) added subsec. (d).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 411 of act Sept. 23, 1977, D.C. Law 2-22, set out as a note under § 6-2101.

DEFINITIONS

The definitions in § 6-2101 apply to terms appearing in the amendment to this section made by act Sept. 23, 1977, D.C. Law 2-22.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-2105, 16-2306, 16-2309, 16-2312.

NOTES TO DECISIONS

Failure to present to Director

Juvenile's waiver of his rights to counsel and to refrain from self-incrimination, coupled with his agreeing to discuss offense and make a statement, constituted a temporary waiver of his right to prompt presentment before Director of Social Services, and confession rendered within three hours was not rendered invalid. *In the Matter of F. D. P.* (D.C. App. 1976, 352 A. 2d 378).

§ 16-2312. Detention or shelter care hearing; intermediate disposition

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16-2305, 16-2306, 16-2308, 16-2328.

NOTES TO DECISIONS

Abuse of discretion

Where complaining witness, who charged 15-year-old juvenile with burglary and robbery, could only have been considered presumptively hostile to juvenile's interest at hearing to determine whether probable cause existed of juvenile's delinquency, complainant's testimony could

properly have been compelled only if meaningful proffer were made showing that her testimony would negate probable cause, and thus it was not abuse of discretion for trial court to refuse to continue probable cause hearing or to issue subpoena to order complainant to appear, absent such proffer. *In the Matter of R. D. S.* (D.C. App. 1976, 359 A.2d 136).

Constitutional rights

Fact that hearing to determine probable cause of juvenile's delinquency was heard even though complaining witness did not appear did not deprive juvenile of his Sixth Amendment right to confront witnesses against him, for such constitutional guarantee is basically trial right. *In the Matter of R. D. S.* (D.C. App. 1976, 359 A. 2d 136).

Construction

Provisions of this section that, upon objection of child or his parent, a judge who conducted detention hearing shall not conduct a fact-finding hearing on petition operate to assure that judge who must make ultimate finding of guilty or not guilty is not predisposed toward guilt by having been exposed to testimony which may not be offered or may be inadmissible in fact-finding hearing. *In the Matter of W. N. W.* (D.C. App. 1975, 343 A.2d 55).

Custodian

Social worker was not a "custodian" in whom custody of child involved in juvenile proceeding could be placed pending fact-finding hearing; thus, order placing child in social worker's custody pending detention hearing was void and could be disobeyed with impunity and social worker's refusal to comply with order was not punishable as contempt. *In the Matter of I. E. Banks* (D.C. App. 1973, 306 A. 2d 270).

Evidence

Delinquency respondent has same basic rights in probable cause hearing as adult alleged offender does in preliminary examination, but respondent's right to present evidence and be heard does not connote right to discover who government's witnesses will be. *In the Matter of R. D. S.* (D.C. App. 1976, 359 A. 2d 136).

Probable cause that juvenile is delinquent may be established solely by hearsay testimony, but such testimony must be adequate to demonstrate probable cause to court's satisfaction, or juvenile must be released. *Id.*

Reasons for detention

Reasons for entry of detention order phrased in statutory language which are ultimate conclusions are insufficient. *In the Matter of M. L. DeJ.* (D.C. App. 1973, 310 A. 2d 834).

More finding that order detaining juvenile to protect person of others is necessary solely because of "nature and circumstances of pending charge," standing alone, would not constitute sufficient grounds for detention. *Id.*

Recuse

Where juvenile did not object to fact that same trial judge presided at his detention-probable cause hearing as well as his suppression hearing and fact-finding hearing, he is precluded from asserting such issue as error on appeal. *In the Matter of L. J. W.* (D.C. App. 1977, 370 A.2d 1333).

Fact that trial judge had conducted suppression hearing concerning juvenile's waiver of Fifth and Sixth Amendment rights before he made a confession and that juvenile had testified at that hearing but did not testify at fact-finding hearing does not require trial judge to recuse himself from the fact-finding hearing which followed hearing on motion to suppress. *In the Matter of M. D. J.* (D.C. App. 1975, 346 A.2d 733).

Even though better course would have been for trial judge who conducted prior detention hearing on sodomy charge against 17-year-old defendant and heard prejudicial evidence regarding defendant's history of committing sexual attacks to recuse himself from subsequent fact-finding hearing on assault charge against defendant, where record revealed no untoward conduct by judge during fact-finding hearing and where there was no defense testimony and defendant's confession was received in evidence without objection, judge's decision not to recuse himself does not require reversal. *In the Matter of W. N. W.* (D.C. App. 1975, 343 A.2d 55).

Where neither juvenile nor his attorney, both of whom had been present at pretrial detention hearing, requested trial judge to recuse himself, trial judge did not err in failing to recuse himself even though he had conducted the fact-finding hearing on the petition. *In the Matter of V. L. M.* (D.C. App. 1975, 340 A.2d 818).

Review

Family Division's probable cause determination of delinquency is properly subject to review by interlocutory appeal. *In the Matter of R. D. S.* (D.C. App. 1976, 359 A.2d 136).

§ 16-2313. Place of detention or shelter

* * * * *

(f) The department or agency having custody, pursuant to a shelter care order, of a child alleged to be a neglected child shall give notice, which may be oral, of any change in the placement of the child to the child's parent, the child's guardian ad litem and the child's foster parent, if any, at least forty-eight (48) hours prior to the change in placement, except that in the case of an emergency, notice shall be given no later than twenty-four (24) hours (excluding Saturdays, Sundays and legal holidays) after the change. Notice need not be given to the parent where the Division has found that visitation would be detrimental to the child or the Division has determined that the parent should not be apprised of the child's location. Upon the request of any person entitled to notice under this subsection, the department or agency having legal custody of the child shall afford an opportunity for an administrative hearing to review the proposed change in the placement of the child, except that the department or agency need not conduct such a hearing if the requestor does not qualify as a party pursuant to D.C. Code, section 16-2304. (As amended Sept. 23, 1977, D.C. Law 2-22, title IV, § 404, 24 DCR 3341.)

AMENDMENT

1977—Act Sept. 23, 1977, D.C. Law 2-22, added subsec. (f).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 411 of act Sept. 23, 1977, D.C. Law 2-22, set out as a note under § 6-2101.

DEFINITIONS

The definitions in § 6-2101 apply to terms appearing in the amendment to this section made by act Sept. 23, 1977, D.C. Law 2-22.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-2135, 16-2328.

§ 16-2314. Consent decree

NOTES TO DECISIONS

Dismissal

Superior Court's use of the phrase "social reasons" alone did not fulfill the requirement of Juvenile Court Rule that the court, upon request of the corporation counsel, state why it was in the interests of justice and welfare of the child that delinquency petition be dismissed; moreover, effective appellate review would be impossible without a specific understanding of the reasoning applied by a trial court in reaching its conclusion that a juvenile petition should be dismissed without a fact finding hearing or an ultimate finding. *District of Columbia v. D.E.P.* (D.C. App. 1973, 311 A. 2d 831).

Where focus of counsel was never directed to precise issue of whether petitions alleging delinquency should be dismissed and proceedings terminated in interests of justice and juveniles' welfare, government must be given opportunity to address itself to trial court as whether

such considerations justified dismissal of the petitions; thus orders of dismissal would be vacated and cases remanded for further proceedings. *In the Matter of R.L.R.* (D.C. App. 1973, 310 A. 2d 226).

§ 16-2315. Physical and mental examinations

(e) (1) At any time following the filing of a petition which alleges a neglected child as defined by D.C. Code, section 16-2301(9) (C) the Division may, on its own motion or the motion of any party, for good cause shown, order the mental or physical examination of the parent, guardian, or custodian of the child whose ability to care for the child is at issue.

(2) Following an adjudication that a child is neglected, the Division may, on its own motion or the motion of any party, order a mental or physical examination of the parent, guardian, or custodian of the child whose ability to care for the child is at issue.

(3) The Division may order additional mental examinations to be performed by independent experts upon a showing by any party that a prior examination is inadequate.

(4) The results of the mental or physical examination shall not be admissible evidence in the fact-finding hearing unless the allegations contained in the petition set forth facts which support a petition pursuant to D.C. Code, section 16-2301(9) (C).

(5) The results of the mental or physical examination shall be admissible at a dispositional hearing.

(6) The results of the mental or physical examination shall not be admissible as evidence in any criminal proceedings. (As amended Sept. 23, 1977, D.C. Law 2-22, title IV, § 405, 24 DCR 3341.)

AMENDMENT

1977—Act Sept. 23, 1977, D.C. Law 2-22, amended subsec. (e) generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 411 of act Sept. 23, 1977, D.C. Law 2-22, set out as a note under § 6-2101.

DEFINITIONS

The definitions in § 6-2101 apply to terms appearing in the amendment to this section made by act Sept. 23, 1977, D.C. Law 2-22.

NOTES TO DECISIONS

Construction with other laws

Regardless of fact that proceeding involving involuntary commitment of mentally retarded child was not brought under authority of child neglect statute, sections 16-2301 et seq., such statute furnished no ground for charging charitable organization, which had arranged for child's adoption, with cost of her commitment since section 21-586 governing right of District of Columbia to reimbursement is controlling where neglect proceedings are suspended because of incompetency of the child and such section did not provide a claim for reimbursement against the organization. *District of Columbia v. In the Matter of H. J. B.* (D.C. App. 1976, 359 A. 2d 285).

§ 16-2316. Conduct of hearings; evidence

(c) Where the petition alleges a child is a neglected child by reason of abuse, evidence of illness or injury to a child who was in the custody of his or her parent, guardian, or custodian for which the parent, guardian or custodian can give no satisfac-

tory explanation shall be sufficient to justify an inference of neglect.

(d) Where the petition alleges a child is abandoned as referred to in D.C. Code, sec. 16-2301(9) (A), is¹ amended by this act, the following evidence shall be sufficient to justify an inference of neglect:

(1) the child is a foundling whose parents have made no effort to maintain a parental relationship with the child and reasonable efforts have been made to identify the child and to locate the parents for a period of at least four (4) weeks since the child was found, or

(2) the child's parent gave a false identity at the time of the child's birth, since then has made no effort to maintain a parental relationship with the child and reasonable efforts have been made to locate the parent for a period of at least four (4) weeks since his or her disappearance; or

(3) the child's parent, guardian or custodian is known but has abandoned the child in that he or she has made no reasonable effort to maintain a parental relationship with the child for a period of at least four (4) months.

It shall not be necessary to prove that the parent, guardian or custodian intended to abandon the child or that he or she is now dead. However, if the judge is satisfied that there was a satisfactory explanation for the abandonment he or she need not enter a finding of neglect.

(e) All hearings and proceedings under this subchapter shall be recorded by appropriate means. Except in hearings to declare a person in contempt of court, the general public shall be excluded from hearings arising under this subchapter. Only persons necessary to the proceedings shall be admitted, but the Division may, pursuant to rule of the Superior Court, admit such other persons (including members of the press) as have a proper interest in the case or the work of the court on condition that they refrain from divulging information identifying the child or members of his family involved in the proceedings.

(f) If the Division finds that it is in the best interest of the child, it may temporarily exclude him from any proceeding except a factfinding hearing. If the petition alleges neglect, the child may also be temporarily excluded from a factfinding hearing. In any case, counsel for the child may not be excluded. (As amended Sept. 23, 1977, D.C. Law 2-22, title I, § 110(e), 24 DCR 3341.)

REFERENCE IN TEXT

This act, referred to in subsec. (d), is act Sept. 23, 1977, D.C. Law 2-22. Section 110(a) (1) of that act amended section 16-2301(9) (A) generally.

AMENDMENT

1977—Act Sept. 23, 1977, D.C. Law 2-22, amended section by redesignating subsecs. (c) and (d) as subsecs. (e) and (f), respectively and adding new subsecs. (c) and (d).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 411 of act Sept. 23, 1977, D.C. Law 2-22, set out as a note under § 6-2101.

¹ So in original. Probably should be "as".

DEFINITIONS

The definitions in § 6-2101 apply to terms appearing in the amendment to this section made by act Sept. 23, 1977, D.C. Law 2-22.

NOTES TO DECISIONS

Confessions

Given the length of time 15-year-old boy had been with homicide detectives before making statement beginning at 9:45 p.m., fact that he had a few minutes earlier responded in writing on form given him by youth service officer that he would not answer questions without an attorney, and fact that he had expressly asked homicide officers, and they had agreed, to terminate written statement he had commenced at 7:13 p.m., tape-recorded statement made by the juvenile beginning at 9:45 p.m. was not voluntary, and such statement, together with oral admissions subsequent to time he terminated his 7:13 p.m. written statement, would be suppressed. *In the Matter of T. T. T.* (D.C. App. 1976, 365 A.2d 366).

Where 15-year-old boy had himself initiated contact with police, was familiar with criminal justice system in light of prior arrests, was out of homicide squad office for various periods of time during questioning in attempt to link another person to the crime, and was repeatedly given Miranda warnings and later evidenced his ability to invoke his Miranda rights when he chose to do so, oral admission and subsequent written statement were voluntary and not product of adolescence fright or despair, despite confrontation with inconsistencies in prior story; neither announcement by detectives that they suspected juvenile had participated in the crime nor their arrest of juvenile after his oral admission and before his written admission rendered his admissions involuntary. *Id.*

Testimony by police officer that offer of immunity made to juvenile was not made with respect to the instant case but rather with respect to past conduct sustains finding that juvenile's inculpatory statements were not based upon improper inducement by police officers. *In the Matter of M. D. J.* (D.C. App. 1975, 346 A.2d 733).

Court of Appeals rejected so-called "per se" rule arbitrarily holding any juvenile's statement involuntary absent presence of a parent or counsel and recognized that some juveniles who commit criminal acts were essentially as sophisticated, or more so, in such matters as many just over the age limit. *In the Matter of J.F.T.* (D.C. App. 1974, 320 A.2d 322).

Record indicating that consideration was given to juvenile's degree of experience with law enforcement, history of juvenile's refusal to answer questions during a previous arrest, willingness of juvenile to answer "some" questions, and fact that mother, though absent from police station, was told that she could be with her son during critical period and, within two hours, was advised of his place of detention and date of court appearance provided an adequate basis for concluding that juvenile's custodial confession in absence of his mother was the product of a knowing and intelligent waiver of relevant rights and was voluntarily given. *Id.*

Where officers continued to interrogate juvenile after juvenile indicated he wanted counsel, confession made by juvenile and evidence obtained as result of such confession were inadmissible in delinquency proceeding. *In the Matter of R. A. H.* (D.C. App. 1974, 314 A.2d 133).

Evidence—Admissibility

Where following break up of altercation near front of tavern police officer was informed by unidentified person that one of the three participants, who went into tavern, had a gun, and on entering tavern officer observed four persons seated in a booth, one of whom answered description which had been given him, the officer had a duty to investigate and, in the process, to determine preliminarily whether described individual was armed; thus, pistol, which was observed on floor of booth, was admissible in delinquency proceeding. *District of Columbia v. M.E.H.* (D.C. App. 1973, 312 A.2d 561).

Habeas corpus

Proper remedy for minors contending that, after their adjudication as "children in need of supervision" had been invalidated, they were improperly confined in facility in which they could not have been kept except for such adjudication, was appropriate action in District of Colum-

bia Superior Court, not petition for writ of habeas corpus in federal district court. *I. Brown et al. v. J. Yeldell et al.* (1973, 487 F.2d 1210, 159 U.S. App. D.C. 339).

Where petitioners could suffer no adverse collateral consequences due to their adjudication as "children in need of supervision" because it had been invalidated by District of Columbia Court of Appeals, and where two-year commitments ordered as result of that adjudication had elapsed, petitioners suffered no present harm cognizable by writ of habeas corpus. *Id.*

Immunity

Statutory grant of immunity against the use "in any criminal case" of testimony which person claiming privilege against self-incrimination has been compelled to give extended to proceedings in juvenile court; thus, juvenile who claimed privilege against self-incrimination could be compelled to testify before grand jury despite contention that statutory grant of immunity was not co-extensive with scope of her privilege against self-incrimination. *In re Grand Jury Proceedings* (1974, 491 F.2d 42, 160 U.S. App. D.C. 249).

Miranda rights

Evidence that juvenile had five prior arrests and that, on the occasion of each arrest, he had been informed of his rights and testimony that he understood each individual right sustains finding that juvenile understood constitutional rights when they were read to him on his sixth arrest. *In the Matter of M. D. J.* (D.C. App. 1975, 346 A.2d 733).

Prosecution

Question of whether corporation counsel or United States attorney should conduct proceedings charging juvenile with act of delinquency was not properly certifiable since juvenile was not involved in criminal prosecution. *In the Matter of M.W.F.* (D.C. App. 1973, 312 A.2d 302).

Severance

Where prosecution of juvenile in juvenile court proceeded before judge without jury, court did not commit reversible error when it refused to grant juvenile separate trial after hearing witness testify that juvenile's correspondent had implicated him in correspondent's statement about burglary for which juvenile was being tried. *In the Matter of L. J. W.* (D.C. App. 1977, 370 A.2d 1333).

§ 16-2317. Hearings, findings; dismissal

NOTES TO DECISIONS

Delinquency adjudication

Adjudication of delinquency was warranted with respect to juvenile found carrying a pistol without a license. *In the Matter of E. F. B.* (D.C. App. 1974, 320 A.2d 95).

Dependency determination under prior law

Where nine-year-old girl had previously been adjudged a "dependent child," in that her natural mother had, when the child was four days old, consented to commitment of the child to the Child Welfare Division of the Department of Public Welfare, the child continued in that status, and there is no necessity for the trial court to make a "neglected child" finding in determining whether custody of the child should go to the natural mother or the child's foster parents with whom the child had lived virtually all her life. *In the Matter of N. M. S.* (D.C. App. 1975, 347 A.2d 924).

Dismissal

Superior Court's use of the phrase "social reasons" alone did not fulfill the requirement of Juvenile Court Rule that the court, upon request of the corporation counsel, state why it was in the interests of justice and welfare of the child that delinquency petition be dismissed; moreover, effective appellate review would be impossible without a specific understanding of the reasoning applied by a trial court in reaching its conclusion that a juvenile petition should be dismissed without a fact finding hearing or an ultimate finding. *District of Columbia v. D.E.P.* (D.C. App. 1973, 311 A.2d 831).

Where focus of counsel was never directed to precise issue of whether petitions alleging delinquency should be dismissed and proceedings terminated in interests of

justice and juveniles' welfare, government must be given opportunity to address itself to trial court as whether such considerations justified dismissal of the petitions; thus orders of dismissal would be vacated and cases remanded for further proceedings. *In the Matter of R.L.R.* (D.C. App. 1973, 310 A. 2d 226).

Double jeopardy

Where Family Division's sua sponte declaration of mistrial in fact-finding hearing on petition charging juvenile with robbery was not dictated by manifest necessity, retrial of juvenile is barred by constitutional prohibition on double jeopardy. *District of Columbia v. I. P.* (D.C. App. 1975, 335 A. 2d 224).

Juvenile whose counsel had secured oral ruling of acquittal on charge of unauthorized use of a motor vehicle, had waived any potential double jeopardy claim when his trial counsel acquiesced in continuation of hearing and reopening of court when registered owner of vehicle appeared in courtroom. *In the Matter of J. A. H.* (D.C. App. 1974, 315 A. 2d 825).

Even if double jeopardy claim had not been waived by defense counsel's failure to object to reopening following oral granting of motion for judgment of acquittal, such reopening would not have placed juvenile in double jeopardy since oral ruling was not equivalent to a final, written judgment. *Id.*

For double jeopardy purposes, a trial or fact-finding hearing does not terminate until the actual entry of judgment; until then, the court is free to reconsider its prior rulings. *Id.*

Habeas corpus

Proper remedy for minors contending that, after their adjudication as "children in need of supervision" had been invalidated, they were improperly confined in facility in which they could not have been kept except for such adjudication, was appropriate action in District of Columbia Superior Court, not petition for writ of habeas corpus in federal district court. *I. Brown et al. v. J. Yeldell et al.* (1973, 487 F. 2d 1210, 159 U.S. App. D.C. 339).

Where petitioners could suffer no adverse collateral consequences due to their adjudication as "children in need of supervision" because it had been invalidated by District of Columbia Court of Appeals, and where two-year commitments ordered as result of that adjudication had elapsed, petitioners suffered no present harm cognizable by writ of habeas corpus. *Id.*

Record on appeal

Where no judgment had been included in record of delinquency proceeding and, instead, a handwritten entry had been made on case jacket stating, "Respondent found guilty," so that, without recourse to transcript, it was not possible to know precise findings and adjudication, rule providing that judgment "shall set forth the plea, the findings, the adjudication, and the disposition of order" was not complied with and case was subject to being remanded for compliance. *In the Matter of J. F. T.* (D.C. App. 1974, 320 A. 2d 322).

§ 16-2318. Order of adjudication noncriminal

NOTES TO DECISIONS

Appeal

Words "charged with a criminal offense" as used in section 23-104 providing that District of Columbia may appeal a suppression order entered before trial of a person charged with a criminal offense includes the term "delinquent act." *District of Columbia v. M. E. H.* (D.C. App. 1973, 312 A. 2d 561).

Prosecution

Question of whether corporation counsel or United States attorney should conduct proceedings charging juvenile with act of delinquency was not properly certifiable since juvenile was not involved in criminal prosecution. *In the Matter of M. W. F.* (D.C. App. 1973, 312 A. 2d 302).

§ 16.2319. Predisposition study and report

(a) After a motion for transfer has been filed, or after the Division has made findings pursuant to subsection (c) of section 16-2317 sustaining the al-

legations of a petition and, in neglect cases, the conclusion that the child is neglected, the Division shall direct that a predisposition study and report to the Division be made by the Director of Social Services or a qualified agency designated by the Division concerning the child, his family, his environment, and other matters relevant to the need for treatment or disposition of the case. Except in connection with a hearing on a transfer motion, no predisposition study or report shall be furnished to or considered by the Division prior to completion of the fact-finding hearing.

(b) The social investigation and plan for the family prepared pursuant to section 109 of the Prevention of Child Abuse and Neglect Act of 1977 shall satisfy the requirements of subsection (a) of this section. Such investigation and plan shall be made available to all counsel in the proceedings at least five (5) days prior to the date of trial:¹ *Provided, however,* That the investigation and plan shall not be furnished to or considered by the court prior to the completion of the fact-finding hearing.

(c) (1) The report to the Division in neglect cases shall include, but not be limited to, the following information:

(A) the specific harms intervention is designed to alleviate;

(B) the plans for alleviating these harms including specific services, the proposed providers of the services recommended and the actions the parent, guardian, or custodian should take to alleviate these harms;

(C) the estimated time in which the goals of intervention may be achieved or in which it will be known that the goals may not be achieved; and

(D) the criteria to be used to determine that intervention is no longer necessary; and,

(2) If the removal of the child from his parent, guardian, or custodian is recommended, the report shall also include:

(A) the recommended type of placement;

(B) the reasons why the child cannot be protected in his or her home;

(C) the likely harm the child will suffer as a result of the separation from his or her parent, guardian, or custodian and recommended steps to be taken to minimize this harm; and

(D) the plans for maintaining contact between the parent and child through visitation rights in order to maximize the parent-child relationship consistent with the well-being of the child.

(Added July 29, 1970, Pub. L. 91-358, § 121(a), title I, 84 Stat. 535, and amended Sept. 23, 1977, D.C. Law 2-22, title I, § 110(f), title IV, § 406, 24 DCR 3341.)

REFERENCE IN TEXT

Section 109 of the Prevention of Child Abuse and Neglect Act of 1977, referred to in subsec. (b), is section 109 of act Sept. 23, 1977, D.C. Law 2-22, which is classified to section 6-2107.

AMENDMENT

1977—Section 110(f) of act Sept. 23, 1977, D.C. Law 2-22, amended section by designating existing provisions as subsec. (a) and adding subsec. (b).

Section 406 of such act added subsec. (c).

¹ So in original. Probably should be "trial".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 411 of act Sept. 23, 1977, D.C. Law 2-22, set out as a note under § 6-2101.

DEFINITIONS

The definitions in § 6-2101 apply to terms appearing in the amendment to this section made by act Sept. 23, 1977, D.C. Law 2-22.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16-2317, 16-2320.

§ 16-2320. Disposition of child who is neglected, delinquent, or in need of supervision

(a) If a child is found to be neglected, the Division may order any of the following dispositions which will be in the best interest of the child:

* * * * *

(3) Transfer legal custody to any of the following—

(A) a public agency responsible for the care of neglected children;

(B) a child placing agency or other private organization or facility which is licensed or otherwise authorized by law and is designated by the Commissioner of the District of Columbia to receive and provide care for the child; or

(C) a relative or other individual who is found by the Division to be qualified to receive and care for the child except that no child shall be ordered placed outside his or her home unless the Division finds the child cannot be protected in the home and there is an available placement likely to be less damaging to the child than the child's own home. It shall be presumed that it is generally preferable to leave a child in his or her own home.

* * * * *

(5) The Division may make such other disposition as is not prohibited by law and as the Division deems to be in the best interests of the child. The Division shall have the authority to (i) order any public agency of the District of Columbia to provide any service the Division determines is needed and which is within such agency's legal authority and (ii) order any private agency receiving public funds for services to families or children to provide any such services when the Division deems it is in the best interests of the child and within the scope of the legal obligations of the agency.

(6) Terminate the parent and child relationship for the purpose of seeking an adoptive placement for the child pursuant to subchapter III of this chapter.

* * * * *

(f) In its dispositional order the Division shall address the matters set forth in section 16-2319 (c) by accepting, modifying, or rejecting the plan submitted pursuant thereto. If the plan is rejected or major modifications are made, the agency charged with service responsibility shall within thirty (30) days submit to the Division and to all parties a plan which addresses the matters delineated in section 16-2319(b). The agency responsible for providing the services shall promptly report to the Division

and all parties if it is unable for whatever reasons to provide the services delineated in the plan.

(g) The department or agency to whom the legal custody of a child has been transferred pursuant to subsection (a) of this section shall give notice, which may be oral, of any change in the placement of the child to the child's parent, the child's guardian ad litem and the child's foster parent at least ten (10) days prior to the change in placement, except that in the case of an emergency notice shall be given no later than twenty-four (24) hours (excluding Saturdays, Sundays and legal holidays) after the change. Notice of a change in placement need not be given to the parent when the judge has determined that visitation would be detrimental to the child or the judge has determined that the parent should not be apprised of the child's location. Upon the request of any person entitled to notice under this subsection the department or agency having legal custody of the child shall afford an opportunity for an administrative hearing to review the proposed change in the placement of the child. Except in the case of an emergency, the hearing shall be held and a decision rendered prior to a change in the placement. (As amended Sept. 23, 1977, D.C. Law 2-22, title IV, § 407, 24 DCR 3341.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1977—Act Sept. 23, 1977, D.C. Law 2-22, amended section by adding the exception at the end of subsec. (a) (3) (C), by amending subsec. (a) (5) generally, and by adding subsecs. (a) (6), (f), and (g).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 411 of act Sept. 23, 1977, D.C. Law 2-22, set out as a note under § 6-2101.

DEFINITIONS

The definitions in § 6-2101 apply to terms appearing in the amendment to this section made by act Sept. 23, 1977, D.C. Law 2-22.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-2135, 16-2323, 16-2327.

NOTES TO DECISIONS

Custody of dependent child

Where nine-year-old girl has previously been adjudged a "dependent child," the trial court has the authority under its continuing jurisdiction over the child to hear and determine the question of whether custody of the child should be given to the natural mother, who, when the child was four days old, consented to commitment of the child to the Child Welfare Division of the Department of Public Welfare, or to the foster parents with whom the child had lived virtually all her life, and did not err in deciding that, subject to further order of the court, the child should remain with the foster parents. *In the Matter of N. M. S.* (D.C. App. 1975, 347 A.2d 924).

Trial court was correct in holding that the best interest of the child was the controlling factor in its decision as to whether to give custody of the child to her natural mother, who, when the child was four days old, consented to commitment of the child to the Child Welfare Division of the Department of Public Welfare, or to the

foster parents with whom the child had lived virtually all her life, despite contention that court ignored the interest of the mother in its decision. *Id.*

Parental rights—Termination

Preadoption termination of parental rights to minor should not have been granted, and such termination should, instead, have been obtained through statutory procedure to accomplish termination of parental rights as part of adoption proceeding. *G. H. X. White v. In the Matter of N. E. M.* (D.C. App. 1976, 358 A.2d 328).

The Superior Court exceeded its statutory grant of rule-making power by enacting procedural rule which abridged substantive right of a parent, i.e., rule permitting permanent severance of parent-child relationship in a nonadoption proceeding. *In the Matter of C. A. P.* (D.C. App. 1976, 356 A.2d 335).

Superior Court's parens patriae power is insufficient authority for its enactment of rule permitting termination of parental rights in nonadoption proceedings. *Id.*

Court of Appeals' holding that Superior Court's adoption of rule permitting termination of parental rights based on neglect was in excess of its statutory authority would be given prospective application only. *In the Matter of C. A. P.* (D.C. App. 1976, 359 A.2d 11).

Procedural requirements

Juvenile rule providing in effect that, in order for a judge to impose disposition in a case he did not try, the trial judge must be absent, dead, sick, or disabled, was intended to cover those situations where trial judge has left area to return to his regular court in another district, and not where the trial judge is available within a reasonable distance from place of trial; thus, judge's rotation from family division was not an absence within meaning of rule and disposition of juvenile must be vacated and remanded. *In the Matter of D. M. R.* (D.C. App. 1977, 373 A.2d 235).

Time for appeal

Appeal from order terminating natural father's parental rights has to be taken within 30 days and appeal filed within 30 days of subsequent order continuing commitment of children to Department of Human Resources with instructions to seek prompt adoptive placements is not timely. *In the Matter of C.I.T and C.M.T.* (D.C. App. 1977, 369 A.2d 171).

§ 16-2322. Limitation of time on dispositional orders

REFERENCE IN TEXT

Section 16-2334, referred to in subsec. (e), was renumbered section 16-2335 by act Sept. 23, 1977, D.C. Law 2-22.

§ 16-2323. Review of dispositional orders

(a) When a child has been adjudicated neglected and a dispositional order has been entered by the Division, the Division shall hold a review hearing.

(1) at least every six (6) months for a child under the age of six (6) years who is committed to the custody of an agency, department, or institution;

(2) at least every six (6) months for a child of any age who is committed to the custody of an agency, department, or institution but has not been committed for longer than two (2) years;

(3) at least every year for all other children.

(b) At least ten (10) days prior to each review hearing the Division or the department, agency, or institution responsible for the supervision of the services to the child and his parent, guardian, or custodian shall submit a report to the Division which shall include, but not be limited to, the following information:

(1) the services provided or offered to the child and his parent, guardian or other custodian;

(2) any evidence of the amelioration of the condition which resulted in the finding of neglect and

any evidence of new problems which would adversely affect the child;

(3) an evaluation of the cooperation of the parent, guardian or custodian with the Division or the applicable department, agency, or institution;

(4) in those cases in which the custody of the child has been vested in a department, agency, institution or person other than the parent—

(A) the extent to which visitation has occurred and any reasons why visitation has not occurred or has been infrequent,

(B) the estimated time in which the child can be returned to the home, and

(C) whether the agency has initiated or intends to initiate the filing by the Corporation Counsel of a motion requesting the termination of the parent and child relationship and any reasons why it does not intend to initiate the filing of such a motion; and

(5) such other information as may be required by rules of the Superior Court of the District of Columbia.

(c) A notice of a review hearing under this section shall be given to all parties and their attorneys of record as prescribed by rules of the Superior Court of the District of Columbia.

(d) If the Division finds that the commitment of the child to a department, agency, institution or person other than the parent is no longer necessary to safeguard the welfare of the child, the Division may order:

(1) the child returned to the home and the provision of supervision or other services; or

(2) any other disposition authorized by section 16-2320(a).

(Added Sept. 23, 1977, D.C. Law 2-22, title IV, § 408 (b), 24 DCR 3341.)

EFFECTIVE DATE

See section 411 of act Sept. 23, 1977, D.C. Law 2-22, set out as a note under § 6-2101.

DEFINITIONS

The definitions in § 6-2101 apply to terms appearing in this section.

PRIOR PROVISIONS

A prior section 16-2323 was renumbered section 16-2324 by act Sept. 23, 1977, D.C. Law 2-22.

§ 16-2324. Modification, termination of orders

(a) An order of the Division under this subchapter shall be set aside if—

(1) it was obtained by fraud or mistake sufficient to set aside an order or judgment in a civil action;

(2) the Division lacked jurisdiction; or

(3) newly discovered evidence so requires.

(b) A child who has been committed under this subchapter to the custody of an institution, agency, or person, or the parent or guardian of the child, may file a motion for modification or termination of the order of commitment on the ground that the child no longer is in need of commitment, if the child or his parent or guardian has applied to the institution or agency for release and the application was denied or not acted upon within a reasonable time.

(c) The Director of Social Services shall conduct a preliminary review of motions filed under subsection (b) and shall prepare a report to the Division on the allegations contained therein. The Division may dismiss the motion if it concludes from the report that it is without substance. Otherwise, the Division, after notice, shall hear and determine the issues raised by the motion and deny the motion, or enter an appropriate order modifying or terminating the order of commitment, if it finds such action necessary to safeguard the welfare of the child or the interest of the public.

(d) A motion may be filed under subsection (b) only once every six months. (Added July 29, 1970, Pub. L. 91-358, § 121(a), title I, 84 Stat. 537; renumbered § 16-2324, formerly § 16-2323, Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

PRIOR PROVISIONS

A prior section 16-2324 was renumbered section 16-2325 by act Sept. 23, 1977, D.C. Law 2-22.

NOTES TO DECISIONS UNDER PRIOR LAW

Change in law after commitment

Where interpretation of Juvenile Court Act, by appellate court which imposed duty on juvenile court to make appropriate inquiry with aim of providing individualized care and treatment of infants, was made subsequent to decision committing infant to custody of department of public welfare, juvenile court should have opportunity to conduct full hearing and make its determination in light of new decision. *In the Matter of J. G. Elmore* (1967, 382 F.2d 125, 127 U.S. App. D.C. 176).

§ 16-2325. Support of committed child

Whenever legal custody of a child is vested in any agency or individual other than the child's parent, after due notice to the parent or other persons legally obligated to care for and support the child and after hearing, the Division may, at the dispositional hearing or thereafter, order and decree that the parent or other legally obligated person shall pay, in such manner as the Division may direct, a reasonable sum that will cover in whole or in part the support and treatment of the child after the decree is entered. If the parent or other legally obligated person wilfully fails or refuses to pay such sum, the Division may proceed against him for contempt, or the order may be filed and shall have the effect of a civil judgment. (Added July 29, 1970, Pub. L. 91-358, § 121(a), title I, 84 Stat. 537; renumbered § 16-2325, formerly § 16-2324, Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

PRIOR PROVISIONS

A prior section 16-2325 was renumbered section 16-2326 by act Sept. 23, 1977, D.C. Law 2-22.

§ 16-2326. Court costs and expenses

(a) If, at the dispositional hearing or thereafter, the Division finds, after due notice and a hearing, that the parent or other person legally obligated to care for and support a child subject to proceedings under this subchapter is financially able to pay, the Division may order him or her to pay all of or part of the costs of—

(1) physical and mental examinations and treatment of the child ordered by the Division;

(2) except in neglect cases, a reasonable compensation for the services and related expenses of

counsel appointed by the Division to represent the child; and

(3) in neglect cases, a reasonable compensation for the services and related expenses of counsel appointed by the Division to represent the parent or person.

(b) Payment under this section shall be made as prescribed by rules of the Superior Court of the District of Columbia. (Added July 29, 1970, Pub. L. 91-358, § 121(a), title I, 84 Stat. 537; amended and renumbered § 16-2326, formerly § 16-2325 Sept. 23, 1977, D.C. Law 2-22, title IV, §§ 408(a), 409, 24 DCR 3341.)

AMENDMENT

1977—Section 409 of act Sept. 23, 1977, D.C. Law 2-22, provided for the general amendment of section 16-2325. In view of the renumbering of sections 16-2323 to 16-2337 as sections 16-2324 to 16-2338, respectively, by section 408(a) of that act, the amendment has been executed to this section as the probable intent of the Council. For prior provisions, see section 16-2325 of the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 411 of act Sept. 23, 1977, D.C. Law 2-22, set out as a note under § 6-2101.

DEFINITIONS

The definitions in § 6-2101 apply to terms appearing in the amendment to this section made by act Sept. 23, 1977, D.C. Law 2-22.

PRIOR PROVISIONS

A prior section 16-2326 was renumbered section 16-2327 by act Sept. 23, 1977, D.C. Law 2-22.

§ 16-2327. Probation revocation; disposition

(a) If a child on probation incident to an adjudication of delinquency or need of supervision violates any term of his probation he may be proceeded against in a probation revocation hearing.

(b) A proceeding to revoke probation shall be commenced by the filing of a revocation petition by the Corporation Counsel. The petition to revoke probation shall be in such form as may be prescribed by rule of the Superior Court and shall be served together with a summons in the manner provided in section 16-2306.

(c) Probation revocation proceedings shall be heard without a jury and shall require establishment of the facts alleged by a preponderance of the evidence. As nearly as may be appropriate, probation revocation proceedings shall conform to the procedures established by this subchapter for delinquency and need of supervision cases.

(d) If a child is found to have violated the terms of his probation, the Division may modify the terms and conditions of the probation order, extend the period of probation, or enter any other order of disposition specified in section 16-2320 for a delinquent child. (Added July 29, 1970, Pub. L. 91-358, § 121(a), title I, 84 Stat. 538; renumbered § 16-2327, formerly § 16-2326, Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

PRIOR PROVISIONS

A prior section 16-2327 was renumbered section 16-2328 by act Sept. 23, 1977, D.C. Law 2-22.

§ 16-2328. Interlocutory appeals

(a) A child who has been ordered transferred for criminal prosecution under section 16-2307 or de-

tained or placed in shelter care or subjected to conditions of release under section 16-2312, may, within two days of the date of entry of the Division's order, file a notice of interlocutory appeal.

(b) The District of Columbia Court of Appeals shall (1) hear argument on an appeal under subsection (a) on or before the third day (excluding Sundays) after the filing of notice under that subsection, (2) dispense with any requirement of written briefs other than the supporting materials previously submitted to the Division, and (3) render its decision on or before the next day following argument on appeal. The court may in rendering its decision dispense with the issuance of a written opinion.

(c) In cases involving transfer for criminal prosecution, the pendency of an interlocutory appeal shall act to stay criminal proceedings. Until the time for filing an interlocutory appeal has lapsed, or if an appeal is filed until its completion, no child who has been ordered transferred for criminal prosecution shall be removed to a place of adult detention, except as provided in section 16-2313, or otherwise treated as an adult.

(d) The decision of the District of Columbia Court of Appeals shall be final. (Added July 29, 1970, Pub. L. 91-358, § 121(a), title I, 84 Stat. 538; renumbered § 16-2328, formerly § 16-2327, Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

PRIOR PROVISIONS

A prior section 16-2328 was renumbered section 16-2329 by act Sept. 23, 1977, D.C. Law 2-22.

NOTES TO DECISIONS

Appealable orders

Family Division's probable cause determination of delinquency is properly subject to review by interlocutory appeal. *In the Matter of R. D. S.* (D.C. App. 1976, 359 A.2d 136).

Burden of proof

Juvenile seeking summary reversal of order detaining him pending trial on charges of carnal knowledge and assault had burden of demonstrating that merits of claim so clearly warranted relief as to justify expedited action. *In the Matter of M. L. DeJ.* (D.C. App. 1973, 310 A. 2d 834).

Jurisdiction

Even though juvenile did not file notice of appeal from order denying application to reconsider order detaining him pending trial within two-day period provided for interlocutory appeals, appellate court had jurisdiction to review order by viewing it as final order, as to which such two-day limitation did not apply. *In the Matter of M. L. DeJ.* (D.C. App. 1973, 310 A. 2d 834).

Record on appeal

Where record on appeal from order detaining juvenile pending trial on charges of carnal knowledge and assault was insufficient to indicate factors relied upon by the court in answering order, case would be remanded to Superior Court with directions that judge file statements of reasons for order or reconsider same. *In the Matter of M. L. DeJ.* (D.C. App. 1973, 310 A. 2d 834).

§ 16-2329. Finality of judgments; appeals; transcripts

(a) Except as otherwise expressly provided by law, in all hearings and cases tried before the Division pursuant to this subchapter, the judgment of the Division is final.

(b) In all appeals from decisions of the Division with respect to a child alleged to be neglected, delinquent, or in need of supervision, the child shall

be identified only by initials in all transcripts, briefs, and other papers filed, and all necessary steps, as prescribed by rule of the District of Columbia Court of Appeals, shall be taken to protect the identity of the child.

(c) Upon the filing of a motion and supporting affidavit stating that he is financially unable to purchase a transcript, a party who has filed notice of appeal or of interlocutory appeal shall be furnished, at no cost or at such part of cost as he is able to pay, so much of the transcript as is necessary adequately to prepare and support the appeal.

(d) An appeal does not operate to stay the order, judgment, or decree appealed from, but on application and hearing whenever the case is properly before the appellate court, that court may order otherwise if suitable provision is made for the care and custody of the child. (Added July 29, 1970, Pub. L. 91-358, § 121(a), title I, 84 Stat. 538; renumbered § 16-2329, formerly § 16-2328, Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

PRIOR PROVISIONS

A prior section 16-2329 was renumbered section 16-2330 by act Sept. 23, 1977, D.C. Law 2-22.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16-2362.

NOTES TO DECISIONS

Appealable orders

A ruling by the trial court denying a motion for a new trial or a motion for a new fact-finding hearing constitutes an appealable order where the motion is based on newly discovered evidence. *In the Matter of E. G. C.* (D.C. App. 1977, 373 A.2d 903).

Appeals—Mootness

Appeal from conviction in Family Division of the Superior Court of assault with intent to commit murder was not moot because defendant, subsequent to hearing, was convicted as an adult in another criminal case and had been discharged from jurisdiction of Family Division of Superior Court, where there was possibility of adverse collateral effects in later criminal proceedings resulting from use of juvenile records which included findings in assault prosecution. *In re S. W. B.* (D.C. App. 1974, 321 A.2d 564).

Finality of hearings

Where, following hearing in February 1974, divorced husband's motion for reduction in alimony and child support was denied despite his loss of a major client, and order entered at that time was not appealed, such order stands as a binding determination that as of February the existing alimony and support award was not so onerous as to require modification, and thus in October 1974 hearing on new motion for reduction, husband is limited to change in circumstances since February, and loss of said client cannot be placed in issue as showing change of circumstances. *C. C. Kieffer v. B. D. Kieffer* (D.C. App. 1975, 348 A.2d 887).

Time for appeal

Where claim of ineffective assistance of counsel was not raised in juvenile branch until motion for new fact-finding hearing based on such claim was filed and where juvenile failed to file notice of appeal within ten days from denial of such motion, Court of Appeals is precluded from reaching ineffective assistance issue on appeal of finding of guilt, despite fact that parties had entered into stipulation that record of hearing on motion would be included as a "supplemental record" on appeal. *In the Matter of E. G. C.* (D.C. App. 1977, 373 A.2d 903).

Appeal from order terminating natural father's parental rights has to be taken within 30 days and appeal filed within 30 days of subsequent order continuing commitment of children to Department of Human Resources

with instructions to seek prompt adoptive placements is not timely. *In the Matter of C.I.T. and C.M.T.* (D.C. App. 1977, 369 A.2d 171).

§ 16-2330. Time computation

(a) In all proceedings in the Division, time limitations shall be reasonably construed by the Division for the protection of the community and of the child.

(b) The following periods shall be excluded in computing the time limits established for proceedings under this subchapter:

(1) The period of delay resulting from a continuance granted, upon grounds constituting unusual circumstances, at the request or with the consent, in any case, of the child or his counsel, or, in neglect cases, also of the parent, guardian, or custodian.

(2) The period of delay resulting from other proceedings concerning the child, including but not limited to an examination or hearing on mental health or retardation and a hearing on a transfer motion.

(3) The period of delay resulting from a continuance granted at the request of the Corporation Counsel if the continuance is granted because of the unavailability of evidence material to the case, when the Corporation Counsel has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date; or if the continuance is granted to allow the Corporation Counsel additional time to prepare his case and additional time is required due to the exceptional circumstances of the case.

(4) The period of delay resulting from the imposition of a consent decree.

(5) The period of delay resulting from the absence or unavailability of the child.

(6) A reasonable period of delay when the child is joined for a hearing with another child as to whom the time for a hearing has not run and there is good cause for not hearing the case separately. (Added July 29, 1970, Pub. L. 91-358, § 121(a), title I, 84 Stat. 539; renumbered § 16-2330, formerly § 16-2329, Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

PRIOR PROVISIONS

A prior section 16-2330 was renumbered section 16-2331 by act Sept. 23, 1977, D.C. Law 2-22.

§ 16-2331. Juvenile case records; confidentiality; inspection and disclosure

(a) As used in this section, the term "juvenile case records" refers to the following records of a case over which the Division has jurisdiction under section 11-1101(13):

(1) Notices filed with the court by an arresting officer pursuant to this subchapter.

(2) The docket of the court and entries therein.

(3) Complaints, petitions, and other legal papers filed in the case.

(4) Transcripts of proceedings before the court.

(5) Findings, verdicts, judgments, orders, and decrees.

(6) Other writings filed in proceedings before the court, other than social records.

(b) Juvenile case records shall be kept confidential and shall not be open to inspection; but, subject to the limitations of subsection (c), the inspection of those records shall be permitted to—

(1) judges and professional staff of the Superior Court;

(2) the Corporation Counsel and his assistants assigned to the Division;

(3) the respondent, his parents or guardians, and their duly authorized attorneys;

(4) any court or its probation staff, for purposes of sentencing the respondent as a defendant in a criminal case and the counsel for the defendant in that case;

(5) public or private agencies or institutions providing supervision or treatment or having custody of the child, if supervision, treatment, or custody is under order of the Division;

(6) the United States Attorney for the District of Columbia, his assistants, and any other prosecuting attorneys involved in the investigation or trial of a criminal case arising out of the same transaction or occurrence as a case in which a child is alleged to be delinquent; and

(7) other persons having a professional interest in the protection, welfare, treatment, and rehabilitation of the respondent or of a member of his family, or in the work of the Superior Court, if authorized by rule or special order of the court. Records inspected may not be divulged to unauthorized persons. The prosecuting attorney inspecting records pursuant to paragraph (6) of this subsection may divulge the contents to the extent required in the prosecution of a criminal case, and the United States Attorney for the District of Columbia and his assistants may inspect a transcript of the testimony of any witness and divulge the contents to the extent required by the prosecution of the witness for perjury, without, wherever possible, naming or otherwise revealing the identity of a child under the jurisdiction of the Division.

(c) Notwithstanding subsection (b), the Superior Court may by rule or special order provide that particular items or classes of items in juvenile case records shall not be open to inspection except pursuant to rule or special order; but, in dispositional proceedings after an adjudication, no item considered by the judge (other than identification of the sources of confidential information) shall be withheld from inspection (1) in delinquency or need of supervision cases, by the attorney for the child, or (2) in neglect cases, by the attorney for the child and an attorney for the parent, guardian, or other custodian of the child.

(d) The Superior Court may by rule or special order provide procedures for the inspection or copying of juvenile case records by persons entitled to inspect them. No person receiving any record or information pursuant to this section may publish or use it for any purpose other than that for which it was received without a special order of the court.

(e) No person shall disclose, inspect, or use records in violation of this section. (Added July 29,

1970, Pub. L. 91-358, § 121(a), title I, 84 Stat. 539; renumbered § 16-2331, formerly § 16-2330, Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

PRIOR PROVISIONS

A prior section 16-2331 was renumbered section 16-2332 by act Sept. 23, 1977, D.C. Law 2-22.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16-2302, 16-2335, 16-2336, 16-2363.

NOTES TO DECISIONS UNDER PRIOR LAW

District Court entitled to records

On waiver of jurisdiction to district court by juvenile court, district court is entitled to juvenile court records. *M. A. Kent, Jr. v. C. Reid, Superintendent etc., and District of Columbia* (1963, 316 F. 2d 331, 114 U.S. App. D.C. 330).

Evidence—Admissibility

Testimony given in administrative suspension hearing of arresting officer that he and juvenile officer were responsible for seizing juvenile driver's permit and turning it over to Department of Motor Vehicles along with facts relative to the incident, was not product of a disclosure or use of information concerning a juvenile before the court, directly or indirectly derived from record, papers, files, or communications of the court, or acquired in the course of official duties. *K. P. Murphy, a minor etc. v. W. D. Heath, Director, etc.* (D.C. App. 1969, 256 A. 2d 421).

Testimony of arresting officer, in administrative suspension hearing indicating, in response to permit control officer's question, that driver refused to take urine test was not of sufficient magnitude to fatally infect the fairness of the hearing in view of testimony as to odoriferous condition of driver's automobile and driver, his unsteady condition, and his unchallenged admission that he had earlier consumed substantial quantity of beer. *Id.*

Presumption of accuracy

There is no irrebuttable presumption of accuracy attached to District of Columbia Juvenile Court's staff reports. *M. A. Kent, Jr. v. United States* (1960, 86 S. Ct. 1045, 383 U.S. 541, 16 L. Ed. 2d 84).

Records, inspection of by attorney

Under express terms of statute pertaining to juvenile court records, attorneys may seek, as a right, all juvenile court legal records, and an attorney may inspect social records in limited circumstances for the protection, welfare, treatment, and rehabilitation of the child. *J. L. Watkins v. United States* (1964, 343 F. 2d 278, 119 U.S. App. D.C. 409).

If a child's attorney challenges waiver of jurisdiction by the juvenile court in a criminal proceeding, the need for confidentiality of any parts of the social record must be compelling in order to bar disclosure to his attorney. *Id.*

Attorney for 16-year-old defendant who was charged with housebreaking and larceny had a legitimate interest generally in seeing his client's juvenile court social records, but record would be remanded for supplemental proceedings to determine extent to which the records might be disclosed pursuant to considerations of need to conceal identity of informants or interference with treatment and rehabilitation of the child, importance of the issue for which disclosure was sought to the welfare or freedom of child, and the relevance of the requested records to that issue. *Id.*

§ 16-2332. Juvenile social records; confidentiality; inspection and disclosure

(a) As used in this section, the term "juvenile social records" refers to all social records made with respect to a child in any proceedings over which the Division has jurisdiction under section 11-1101(13), including preliminary inquiries, predisposition studies, and examination reports.

(b) Juvenile social records shall be kept confidential and shall not be open to inspection; but,

subject to the limitations of subsection (c), the inspection of those records shall be permitted to—

(1) judges and professional staff of the Superior Court and the Corporation Counsel and his assistants assigned to the Division;

(2) the attorney for the child at any stage of a proceeding in the Division, including intake;

(3) any court or its probation staff, for purposes of sentencing the child as a defendant in a criminal case, and, if and to the extent other presentence materials are disclosed to him, the counsel for the defendant in that case;

(4) public or private agencies or institutions providing supervision or treatment, or having custody of the child, if the supervision, treatment, or custody is under order of the Division; and

(5) other persons having a professional interest in the protection, welfare, treatment, and rehabilitation of the respondent or of a member of his family, or in the work of the Division, if authorized by rule or special order of the court.

(6) professional employees of the Social Rehabilitation Administration of the Department of Human Resources when necessary for the discharge of their official duties.

Records inspected may not be divulged to unauthorized persons.

(c) Notwithstanding subsection (b), the Superior Court may by rule or special order provide that particular items or classes of items in juvenile social records shall not be open to inspection except pursuant to rule or special order; but, in dispositional proceedings after an adjudication, no item considered by the judge (other than identification of the sources of confidential information) shall be withheld from inspection (1) in delinquency or need of supervision cases, by the attorney for the child, or (2) in neglect cases, by the attorney for the child and an attorney for the parent, guardian, or other custodian of the child.

(d) The Superior Court may by rule or special order provide procedures for the inspection or copying of juvenile social records by persons entitled to inspect them. No person receiving any record or information pursuant to this section may publish or use it for any purpose other than that for which it was received without a special order of the court.

(e) No person shall disclose, inspect, or use records in violation of this section. (Added July 29, 1970, Pub. L. 91-358, § 121(a), title I, 84 Stat. 540; amended and renumbered § 16-2332, formerly § 16-2331, Sept. 23, 1977, D.C. Law 2-22, title I, § 110(g), title IV, § 408(a), 24 DCR 3341.)

AMENDMENT

1977—Section 110(g) of act Sept. 23, 1977, D.C. Law 2-22, amended section by adding subsec. (b) (6).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 411 of act Sept. 23, 1977, D.C. Law 2-22, set out as a note under § 6-2101.

DEFINITIONS

The definitions in § 6-2101 apply to terms appearing in the amendment to this section made by act Sept. 23, 1977, D.C. Law 2-22.

PRIOR PROVISIONS

A prior section 16-2332 was renumbered section 16-2333 by act Sept. 23, 1977, D.C. Law 2-22.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16-2302, 16-2335, 16-2336, 16-2363.

§ 16-2333. Police and other law enforcement records

(a) Law enforcement records and files concerning a child shall not be open to public inspection nor shall their contents or existence be disclosed to the public unless a charge of delinquency is transferred for criminal prosecution under section 16-2307, the interest of national security requires, or the court otherwise orders in the interest of the child.

(b) Inspection of such records and files is permitted by—

(1) the Superior Court, having the child currently before it in any proceeding;

(2) the officers of public and private institutions or agencies to which the child is currently committed, and those professional persons or agencies responsible for his supervision after release;

(3) any other person, agency or institution, by order of the court, having a professional interest in the child or in the work of the law enforcement department;

(4) law enforcement officers of the United States, the District of Columbia, and other jurisdictions when necessary for the discharge of their current official duties;

(5) a court in which a person is charged with a criminal offense for the purposes of determining conditions of release or bail;

(6) a court in which a person is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of penal institutions and other penal facilities to which he is committed, or by a parole board in considering his parole or discharge or in exercising supervision over him; and

(7) the parent, guardian, or other custodian and counsel for the child; and

(8) professional employees of the Social Rehabilitation Administration of the Department of Human Resources when necessary for the discharge of their official duties.

(c) Photographs may be displayed to potential witnesses for identification purposes, in accordance with the standards of fairness applicable to adults.

(d) No person shall disclose, inspect, or use records or files in violation of this section. (Added July 29, 1970, Pub. L. 91-358, § 121(a), title I, 84 Stat. 541; amended and renumbered § 16-2333, formerly § 16-2332, Sept. 23, 1977, D.C. Law 2-22, title I, § 110(h), title IV, § 408(a), 24 DCR 3341.)

AMENDMENT

1977—Section 110(h) of act Sept. 23, 1977, D.C. Law 2-22, amended subsec. (b)(7) by substituting “; and” for the period at the end thereof and added subsec. (b)(8).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 411 of act Sept. 23, 1977, D.C. Law 2-22, set out as a note under § 6-2101.

DEFINITIONS

The definitions in § 6-2101 apply to terms appearing in the amendment to this section made by act Sept. 23, 1977, D.C. Law 2-22.

PRIOR PROVISIONS

A prior section 16-2333 was renumbered section 16-2334 by act Sept. 23, 1977, D.C. Law 2-22.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16-2302, 16-2335, 16-2336.

§ 16-2334. Fingerprint records

(a) The contents or existence of law enforcement records and files of the fingerprints of a child shall not be disclosed by the custodians thereof, except—

(1) to a law enforcement officer of the United States, the District of Columbia, or other jurisdiction for purposes of the investigation and trial of a criminal offense; or

(2) pursuant to rule or special order of the court.

(b) When a child is transferred for criminal prosecution under section 16-2307, law enforcement records and files of his fingerprints relating to any matter so transferred shall be deemed those of an adult.

(c) No person shall disclose, inspect, or use records in violation of this section. (Added July 29, 1970, Pub. L. 91-358, § 121(a), title I, 84 Stat. 542; renumbered § 16-2334, formerly § 16-2333, Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

PRIOR PROVISIONS

A prior section 16-2334 was renumbered section 16-2335 by act Sept. 23, 1977, D.C. Law 2-22.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16-2302, 16-2336.

NOTES TO DECISIONS UNDER PRIOR LAW

Congressional objectives

Congressional objectives underlying nondisclosure provisions of Juvenile Court Act do not encompass such sheer physical facts as fingerprints which are a fundamental tool for identification of individual. *M. A. Kent, Jr. v. United States* (1965, 343 F. 2d 247, 119 U.S. App. D.C. 378, reversed on other grounds 86 S. Ct. 1045).

§ 16-2335. Sealing of records

(a) On motion of a person who has been the subject of a petition filed pursuant to section 16-2305, or on the Division's own motion, the Division shall vacate its order and findings and shall order the sealing of the case and social records referred to in sections 16-2330 and 16-2331 and the law enforcement records and files referred to in section 16-2332, or those of any other agency active in the case if it finds that—

(1) (A) a neglected child has reached his majority; or

(B) two years have elapsed since the final discharge of the person from legal custody or supervision, or since the entry of any other Division order not involving custody or supervision; and

(2) he has not been subsequently convicted of a crime, or adjudicated delinquent or in need of supervision prior to the filing of the motion, and no proceeding is pending seeking such conviction or adjudication.

(b) Reasonable notice of a motion shall be given to—

(1) the person who is the subject of the petition;

(2) the Corporation Counsel;

(3) the authority granting the discharge, if the final discharge was from an institution, parole, or probation; and

(4) the law enforcement department having custody of the files and records specified in section 16-2332.

(c) Upon the entry of the order, the proceedings in the case shall be treated as if they never occurred. All facts relating to the action including arrest, the filing of a petition, and the adjudication, filing, and disposition of the Division shall no longer exist as a matter of law. The Division, the law enforcement department, or any other department or agency that received notice under subsection (b) and was named in the order shall reply, and the person who is the subject matter of the records may reply, to any inquiry that no record exists with respect to such person.

(d) Inspection of the files and records included in the order may thereafter be permitted by the Division only upon motion by the person who is the subject of such records, and may be made only by those persons named in the motion; but the Division in its discretion may, by special order in an individual case, permit inspection by or release of information in the records to persons having a professional interest in the protection, welfare, treatment, and rehabilitation of the person who is the subject of the petition or other members of his family.

(e) Any adjudication of delinquency or need of supervision or conviction of a felony subsequent to sealing shall have the effect of nullifying the vacating and sealing order.

(f) A person who has been the subject of a petition filed under this subchapter shall be notified of his rights under subsection (a) at the time a dispositional order is entered and again at the time of his final discharge from supervision, treatment, or custody.

(g) No person shall disclose, receive, or use records in violation of this section. (Added July 29, 1970, Pub. L. 91-358, § 121(a), title I, 84 Stat. 542; renumbered § 16-2335, formerly § 16-2334, Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

REFERENCES IN TEXT

Sections 16-2330, 16-2331, and 16-2332, referred to in subsec. (a), were renumbered sections 16-2331, 16-2332, and 16-2333, respectively, by act Sept. 23, 1977, D.C. Law 2-22.

PRIOR PROVISIONS

A prior section 16-2335 was renumbered section 16-2336 by act Sept. 23, 1977, D.C. Law 2-22.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16-2302, 16-2322, 16-2336.

NOTES TO DECISIONS

Construction

Court's authority to seal juvenile records is not founded on doctrine of *parens patriae*; Congress has limited authority of the court to seal juvenile records to situations where requirements of this section are satisfied. *In the Matter of R. T.* (D.C. App. 1975, 345 A.2d 156).

§ 16-2336. Unlawful disclosure of records; penalties

Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information con-

cerning a child or other person in violation of sections 16-2330 through 16-2334, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$250 or imprisoned not more than ninety days, or both. Violations of this section shall be prosecuted by the Corporation Counsel in the name of the District of Columbia. (Added July 29, 1970, Pub. L. 91-358, § 121(a), title I, 84 Stat. 543; renumbered § 16-2336, formerly § 16-2335, Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

REFERENCE IN TEXT

Sections 16-2330 through 16-2334, referred to in text, were renumbered sections 16-2331 through 16-2335 by act Sept. 23, 1977, D.C. Law 2-22.

PRIOR PROVISIONS

A prior section 16-2336 was renumbered section 16-2337 by act Sept. 23, 1977, D.C. Law 2-22.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16-2302.

§ 16-2337. Additional powers of the Director of Social Services

In addition to the powers and duties prescribed in section 11-1722, the Director of Social Services shall have power to take into custody and place in detention or shelter care, in accordance with this subchapter, children who are under his supervision as delinquent, in need of supervision, or neglected, or children who have run away from agencies or institutions to which they were committed under this subchapter. (Added July 29, 1970, Pub. L. 91-358, § 121(a), title I, 84 Stat. 543; renumbered § 16-2337, formerly § 16-2336, Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

PRIOR PROVISIONS

A prior section 16-2337 was renumbered section 16-2338 by act Sept. 23, 1977, D.C. Law 2-22.

§ 16-2338. Emergency medical treatment

Nothing in this subchapter shall prevent a public agency having custody of a child who is under jurisdiction of the Division from providing the child with emergency medical treatment. (Added July 29, 1970, Pub. L. 91-358, § 121(a), title I, 84 Stat. 543; renumbered § 16-2338, formerly § 16-2337, Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

SUBCHAPTER II.—PARENTAGE PROCEEDINGS

AMENDMENT

1976—Sec. 20(h) of act Oct. 1, 1976, D.C. Law 1-87, amended subchapter heading by substituting "PARENTAGE" for "PATERNITY".

§ 16-2341. Representation

(a) Where a public support burden has been incurred or is threatened, the Corporation Counsel, or any of his assistants, shall bring a civil action in the Family Division on behalf of any spouse or child to enforce support of such spouse or child.

* * * * *

(As amended Oct. 1, 1976, D.C. Law 1-87, § 20(a), 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended subsec. (a) by substituting "spouse" for "wife".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

CROSS REFERENCE

Age of majority, see § 21-101 note.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16-909.

NOTES TO DECISIONS

Life insurance proceeds

Where man insured under the Federal Employees Group Life Insurance Act died leaving no widow and without having designated beneficiary of his policy, the claims of his children, who are illegitimate but who had been acknowledged by him, are entitled to take precedence over the claim of his mother. *M. A. Green v. D. Green et ano.* (D.C. App. 1976, 365 A.2d 610).

§ 16-2342. Time of bringing complaint

Proceedings over which the Division has jurisdiction under paragraphs (3) and (11) of section 11-1101 to establish parentage and provide for the support of a child born out of wedlock may be instituted after four months of pregnancy or within two years after the birth of the child, or within one year after the putative father or mother, as the case may be, has ceased making contributions for the support of the child. The time during which the respondent is absent from the jurisdiction shall be excluded from the computation of the time within which a complaint may be filed. (Dec. 23, 1963, 77 Stat. 591, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91-358, § 121(a), title I, 84 Stat. 544; Oct. 1, 1976, D.C. Law 1-87, § 20(b), 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting "parentage" for "paternity" and "father or mother, as the case may be," for "father".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

NOTES TO DECISIONS

Evidence—Sufficiency

In proceeding on petitions to establish paternity and to provide support for children who were 12 and 10 years of age, mother's testimony that defendant had given her money over the years as she needed it, that, on one specific date within one year from date of filing petitions, defendant had given her \$10 for visit to clinic (apparently occasioned by her cardiac condition) and that defendant knew that she never asked for money for herself was insufficient to support jurisdictional finding that defendant had contributed to support of children within one year prior to filing of petitions. *R. D. Lindsay v. District of Columbia ex rel. K. Lindsay et ano.* (D.C. App. 1972, 298 A. 2d 211).

Life insurance proceeds

Where man insured under the Federal Employees Group Life Insurance Act died leaving no widow and without having designated beneficiary of his policy, the claims of his children, who are illegitimate but who had been acknowledged by him, are entitled to take precedence over the claim of his mother. *M. A. Green v. D. Green et ano.* (D.C. App. 1976, 365 A.2d 610).

§ 16-2343. Blood tests

When it is relevant to an action over which the Division has jurisdiction under section 11-1101, the court may direct that the child, respondent and the other parent if available submit to one or more

blood tests to determine whether or not the respondent can be excluded as being the father or mother, as the case may be, of the child, but the results of the test may be admitted as evidence only in cases where the respondent does not object to its admissibility. Where the parties cannot afford the cost of a blood test, the court may direct the Department of Public Health to perform such tests without fee. (Dec. 23, 1963, 77 Stat. 591, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91-358, § 121(a), title I, 84 Stat. 544; Oct. 1, 1976, D.C. Law 1-87, § 20(c), 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting "child, respondent and the other parent if available" for "mother, child, and the respondent" and "father or mother, as the case may be," for "father".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

CROSS REFERENCE

Age of majority, see § 21-101 note.

NOTES TO DECISIONS

Constitutional rights

Ordering of blood-grouping tests of child to be performed by reputable medical laboratory following accepted medical procedures in divorce proceeding to prove adultery of child's mother does not violate child's constitutional right to privacy. *A. H. Beckwith v. R. T. L. Beckwith* (D.C. App. 1976, 355 A. 2d 537).

Jurisdiction

Superior Court had jurisdiction in action for absolute divorce on grounds of adultery to order mother, who was before court, to submit her child to blood-grouping tests for sole purpose of deciding issue of adultery even though child was not party, not resident, not represented by guardian ad litem, and there was no request to court for support, maintenance, or custody. *A. H. Beckwith v. R. T. L. Beckwith* (D.C. App. 1976, 355 A. 2d 537).

§ 16-2345. New birth record upon marriage or determination of natural parents

When a certified copy of a marriage certificate is submitted to the Director of Public Health, establishing that the previously unwed parents of a child born out of wedlock have intermarried subsequent to the birth of the child, and the parentage of the child has been judicially determined or acknowledged by each of the parents, or when the parenthood of a child born out of wedlock has been established by judicial process or by acknowledgement by the person whose parenthood is thus determined, a new certificate of birth bearing the original date of birth and the names of both parents shall be issued and substituted for the certificate of birth then on file. The new birth certificate shall nowhere on its face show that the parentage has been established by judicial process or by acknowledgement.¹ The original certificate of birth and all papers pertaining to the issuance of the new certificate shall be placed under seal and opened for inspection only upon order of the Family Division. (Dec. 23, 1963, 77 Stat. 592, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91-358, § 121(a), title I, 84 Stat. 544; Oct. 1, 1976, D.C. Law 1-87, § 20(d), 23 DCR 2544; Apr. 7, 1977, D.C. Law 1-107, title I, § 112, 23 DCR 8737.)

¹ So in original. There probably should be a period.

AMENDMENTS

1977—Act Apr. 7, 1977, D.C. Law 1-107, amended section as follows:

(1) Substituted “, or when the parenthood of a child born out of wedlock has been established by judicial process or by acknowledgement by the person whose parenthood is thus determined” for “before the Commissioner of the District of Columbia or his designated agent, or has been acknowledged in an affidavit sworn to by the husband before a judge or the clerk of a court of record, or before an officer of the armed forces of the United States authorized to administer oaths, and the affidavit is delivered to the Commissioner or his designated agent”.

(2) Inserted before the last sentence “The new birth certificate shall nowhere on its face show that the parentage has been established by judicial process or by acknowledgement”.

(3) Substituted in the section heading “or determination of natural parents.” for “of natural parents”.

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting “parentage” for “paternity” and “each of the parents” for “the husband”.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 301 of act Apr. 7, 1977, D.C. Law 1-107, set out as a note under § 16-902.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan. No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 16-2346. Reports to Director of Public Health

(a) Upon entry of a final judgment determining the parentage of a child born out of wedlock, the clerk of the court shall forward a certificate to the Director of Public Health of the District of Columbia, or his authorized representative in the jurisdiction in which the child was born, giving the names of the persons adjudged to be the father and mother of the child.

(b) Upon receipt of the certificate provided for by subsection (a) of this section, the Director of Public Health or his authorized representative shall file it with the original birth record, and thereafter may issue a certificate of birth registration including thereon the names of the persons adjudged to be the father and mother of the child. (Dec. 23, 1963, 77 Stat. 592, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91-358, § 121(a), title I, 84 Stat. 545; Oct. 1, 1976, D.C. Law 1-87, § 20(e), 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting in subsec. (a) “parentage” for “paternity”, and in subsecs. (a) and (b) “names of the persons adjudged to be the father and mother of the child” for “name of the person adjudged to be the father of the child”.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 16-2347. Death of respondent; liability of estate

If the respondent dies after parentage has been established and prior to the time the child reaches the age at which the child ceases to be a minor,

any sums due and unpaid under an order of the court at the time of his or her death shall constitute a valid claim against his or her estate. (Dec. 23, 1963, 77 Stat. 592, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91-358, § 121(a), title I, 84 Stat. 545; Oct. 1, 1976, D.C. Law 1-87, § 20(f), 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting “parentage” for “paternity”, “age at which the child ceases to be a minor”, for “age of 18 years”, and “his or her” for “his”.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

CROSS REFERENCE

Age of majority, see § 21-101 note.

NOTES TO DECISIONS

Life insurance proceeds

Where man insured under the Federal Employees Group Life Insurance Act died leaving no widow and without having designated beneficiary of his policy, the claims of his children, who are illegitimate but who had been acknowledged by him, are entitled to take precedence over the claim of his mother. *M. A. Green v. D. Green et ano.* (D.C. App. 1976, 365 A.2d 610).

§ 16-2348. Parentage records; confidentiality; inspection and disclosure

(a) Except on order of the Family Division, no records in a case over which the Division has jurisdiction under section 11-1101(11) shall be open to inspection by anyone other than the plaintiff, respondent, their attorneys of record, or authorized professional staff of the Superior Court. The Family Division, upon proper showing, may authorize the furnishing of certified copies of the records or portions thereof to the respondent, the other parent, or custodian of the child, a party in interest, or their duly authorized attorneys. Certified copies of the records or portions thereof may be furnished, upon request, to the Corporation Counsel for use as evidence in nonsupport proceedings and to the Director of Public Health as provided by section 16-2346(a).

* * * * *

(As amended Oct. 1, 1976, D.C. Law 1-87, § 20(g) 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended subsec. (a) by substituting “other parent” for “mother” and section heading by substituting “Parentage” for “Paternity”.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

SUBCHAPTER III.—PROCEEDINGS REGARDING THE TERMINATION OF PARENTAL RIGHTS OF CERTAIN NEGLECTED CHILDREN

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 16-2304, 16-2320.

§ 16-2351. Purpose of the subchapter; construction of provisions

(a) The general purposes of this subchapter are to:

(1) encourage stability in the lives of certain children who have been adjudicated neglected

and have been removed from the custody of their parent by providing judicial procedures for the permanent termination of the parent and child relationship in the circumstances set forth in this subchapter;

(2) ensure that the constitutional rights of all parties are recognized and enforced in all proceedings conducted pursuant to this subchapter while ensuring that the fundamental needs of children are not subjugated to the interests of others; and

(3) increase the opportunities for the prompt adoptive placement of children for whom parental rights have been terminated.

(b) This subchapter shall be liberally construed to promote the general purposes stated in this section. (Added Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

EFFECTIVE DATE OF SUBCHAPTER

See section 411 of act Sept. 23, 1977, D.C. Law 2-22, set out as a note under § 6-2101.

DEFINITIONS

The definitions in § 6-2101 apply to terms appearing in this subchapter.

§ 16-2352. Definitions

(a) As used in this subchapter, unless the context otherwise requires:

(1) "Parent and child relationship" includes all rights, powers, privileges, immunities, duties and obligations existing under law between a parent and child, including rights of inheritance. The words apply equally to every child and every parent regardless of the marital status of the parents of the child.

(2) "termination of the parent and child relationship" means the adjudication that a child is free from the custody and control of either or both of his or her living parents by means of a court order that completely severs and extinguishes the parent and child relationship.

(b) The terms found in this subchapter which are defined in section 16-2301 of this chapter shall be given the same definition herein. (Added Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

DEFINITIONS

The definitions in § 6-2101 apply to terms appearing in this subchapter.

§ 16-2353. Grounds for termination of parent and child relationship

(a) A judge may enter an order for the termination of the parent and child relationship when the judge finds from the evidence presented, after giving due consideration to the interests of all parties, that the termination is in the best interests of the child.

(b) In determining whether it is in the child's best interests that the parent and child relationship be terminated, a judge shall consider each of the following factors:

(1) the child's need for continuity of care and caretakers and for timely integration into a stable and permanent home, taking into account the

differences in the development and the concept of time of children of different ages;

(2) the physical, mental and emotional health of all individuals involved to the degree that such affects the welfare of the child, the decisive consideration being the physical, mental and emotional needs of the child;

(3) the quality of the interaction and interrelationship of the child with his or her parent, siblings, relative and/or caretakers, including the foster parent; and

(4) to the extent feasible, the child's opinion of his or her own best interests in the matter. (Added Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

§ 16-2354. Motions

(a) A motion for the termination of the parent and child relationship may be filed by the District of Columbia government or by the child through his or her legal representative.

(b) A motion for the termination of the parent and child relationship may be filed only when the child who is the subject of the motion has been adjudicated neglected at least six (6) months prior to the filing of the motion and the child is in the court-ordered custody of a department, agency, institution or person other than the parent; except that the motion for termination may be filed immediately—

(1) upon an adjudication that the child was abandoned; or

(2) when, despite reasonable efforts, the parent could not be located for the factfinding hearing and during the three (3) months prior to the hearing.

(c) A motion for the termination of the parent and child relationship¹ shall include but not be limited to:

(1) the name, sex, date and place of birth, and current placement of the child;

(2) the name and title of the petitioner;

(3) the name and address of the child's parent;

(4) a plain and concise statement of the facts and opinions on which the termination of the parent and child relationship is sought;

(5) a specification as to the health of the child;

(6) a statement as to the general prospects for or the barriers, if any, to the adoption of the child; and

(7) a statement as to the various efforts taken by the moving party to locate the parent of the child.

(d) When any facts required pursuant to subsection (c) of this section are not known to the moving party, if he or she shall so state in the motion, or on a motion by any party, for good cause shown, the judge may direct the filing of a bill of particulars to inform the moving party of the precise nature of the allegations contained in the motion for the termination of the parent and child relationship. (Added Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

¹ So in original. Probably should be "relationship".

§ 16-2355. Consideration of termination of the parent and child relationship at review hearings

(a) After a child adjudicated neglected by the Division pursuant to this chapter has been committed by the Division to the custody of a department, agency or institution for more than eighteen (18) months and no hearing on a motion for the termination of the parent and child relationship has been held within the preceding twelve (12) months, the Division shall, at a review hearing, determine why a motion to terminate the parent and child relationship has not been filed.

(b) For each child who remains in custody for three (3) years or more, the Division shall, at each annual review hearing, determine why a motion to terminate the parent and child relationships has not been filed. (Added Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

§ 16-2356. Parties

Parties to a proceeding for the termination of the parent and child relationship shall be the child, the parent of the named child, and the agency having the legal custody of the child. The judge may at his or her discretion, name on his or her own motion or in response to a motion for joinder or intervention, join additional parties to a proceeding to terminate the parent and child relationship. (Added Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

§ 16-2357. Notice

(a) When a motion to terminate the parent and child relationship is filed, a judge shall promptly set a time for an adjudicatory hearing and shall cause notice thereof to be given to all parties.

(b) A judge shall direct the issuance to and personal service upon the child's parent of a summons together with a copy of the motion to terminate the parent and child relationship.

(c) When it is appropriate to the proper disposition of the case, a judge may direct the service of a summons upon other persons.

(d) If a personal service under this section cannot be effected, then notice shall be made constructively pursuant to rules of the Superior Court of the District of Columbia. (Added Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

§ 16-2358. Conduct of hearings

(a) All hearings and proceedings on a motion to terminate the parent and child relationship shall be held by the judge, without a jury.

(b) All hearings and proceedings held pursuant to this subchapter shall be recorded by appropriate means.

(c) Except in hearings to declare a person in contempt of court, the general public shall be excluded from hearings and proceedings arising pursuant to this subchapter. Only persons necessary to such hearings and proceedings shall be admitted, but a judge may, pursuant to rules of the Superior Court of the District of Columbia, admit such other persons as have a proper interest in the case or the work of the Division on the condition that they re-

frain from divulging information identifying the child involved in the proceedings or members of his or her family.

(d) If a judge finds it is in the best interests of the child, he or she may temporarily exclude the child from any proceeding. Under no circumstances, however, may counsel in the case be excluded. (Added Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

§ 16-2359. Adjudicatory hearing

(a) A judge shall begin the adjudicatory hearing by determining whether all parties are present and whether proper notice of the hearing has been given. If the parent has been given proper notice but has failed to appear the judge may proceed in his or her absence.

(b) A judge shall hear evidence presented by the moving party and the burden of proof shall rest upon the moving party.

(c) Every party shall have the right to present evidence, to be heard in his or her own behalf and to cross-examine witnesses called by another party.

(d) All evidence which is relevant, material, and competent to the issues before the judge shall be admitted.

(e) Notwithstanding the provisions of D.C. Code, sections 14-306 and 14-307, neither the husband/wife privilege nor the physician/patient privilege shall be a ground for excluding evidence in any proceeding brought under this subchapter. (Added Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

§ 16-2360. Disposition after termination

(a) If a judge finds that sufficient grounds exist for the termination of the parent and child relationship, the judge shall so order and decree and shall vest the legal custody of the child in a department, agency or institution.

(b) The department, agency or institution to which a child is committed after the termination of the parent and child relationship pursuant to this subchapter shall be responsible for seeking the prompt adoptive placement of the child and, if an adoptive placement has not been made within three (3) months, the department, agency, or institution shall list the child on all appropriate local, regional and national adoption exchanges. If an adoptive placement has not been made within six (6) months of the termination, a hearing shall be held and within every six (6) months thereafter the department, agency or institution shall report to the Division on its efforts to secure an adoptive placement, including but not limited to the following information:

(1) the extent to which an adoption has been explored with the child's foster parent and any reasons why an adoption by the foster parent is not appropriate;

(2) all adoption exchanges with which the child has been listed and the date of each listing; and

(3) the limitations placed on the families to be considered for the adoption of the child.

(c) The information provided pursuant to subsection (b) shall be provided to the guardian ad litem at least ten (10) days prior to a review hearing.

(d) A notice of a review hearing shall be given as prescribed by rules of the Superior Court of the District of Columbia to the child's guardian ad litem. Any person with whom the child has been living for six (6) months or more shall be given notice of hearings and shall upon his or her request be joined as a party to a review hearing.

(e) If the Division finds that the department, agency or institution vested with the custody of the child is not making sufficient efforts to secure an adoptive placement for the child or that inappropriate limitations have been placed on potential adoptive families, the Division may order such additional efforts as it deems appropriate or may order that the imposition of inappropriate limitations be eliminated or may transfer the power to consent to an adoption together with the vestment of legal custody to any other licensed child placement agency. (Added Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

§ 16-2361. Effect of termination decree

(a) An order terminating the parent and child relationship divests the parent and the child of all legal rights, powers, privileges, immunities, duties and obligations with respect to each other, except the right of the child to inherit from his or her parent. The right of inheritance of the child shall be terminated only by a final order of adoption.

(b) When an order terminating the parent and child relationship has been issued, the parent whose right to object to the adoption or otherwise to participate in the proceedings for the adoption of the child by another nor shall such parent have any right to object to the adoption or otherwise to participate in the proceedings. (Added Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

§ 16-2362. Decrees

(a) Every order of the Division terminating the parent and child relationship shall be in writing and shall recite the findings upon which such order is based, including findings pertaining to the court's jurisdiction.

(b) Notwithstanding the provisions of D.C. Code, section 16-2329 as renumbered by the Prevention of Child Abuse and Neglect Act of 1977, all orders terminating the parent and child relationship entered pursuant to this subchapter shall not be final and effective until the time for noting an appeal has expired and, if a notice of appeal has been entered, the order shall not become effective until the date of the final disposition of the appeal. (Added Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

REFERENCE IN TEXT

The Prevention of Child Abuse and Neglect Act of 1977, referred to in subsec. (b), is act Sept. 23, 1977, D.C. Law 2-22. Section 408(a) of that act renumbered section 16-2328 as section 16-2329.

§ 16-2363. Confidentiality of records

The provisions of sections 16-2331 and 16-2332 of this chapter, as renumbered by the Prevention of Child Abuse and Neglect Act of 1977, shall apply to all juvenile case records and juvenile social records as defined therein which are created pursuant to the proceedings under this subchapter. (Added Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

REFERENCE IN TEXT

The Prevention of Child Abuse and Neglect Act of 1977, referred to in the text, is act Sept. 23, 1977, D.C. Law 2-22. Section 408(a) of that act renumbered sections 16-2330 and 16-2331 as sections 16-2331 and 16-2332, respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16-2364.

§ 16-2364. Unlawful disclosure

Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information concerning a child or other person in violation of section 16-2363 of this subchapter shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than two hundred and fifty dollars (\$250) or imprisoned for not more than ninety (90) days, or both. A violation of this section shall be prosecuted by the Corporation Counsel of the District of Columbia. (Added Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

§ 16-2365. Termination decrees of other jurisdictions

If the parent and child relationship has been terminated by judicial decree in another jurisdiction that decree, unless it is against the public policy of the District of Columbia, shall have the same force and effect in the District of Columbia as to matters within the jurisdiction of the District of Columbia court. (Added Sept. 23, 1977, Law 2-22, title IV, § 410, 24 DCR 3341.)

Chapter 27.—NEGLIGENCE CAUSING DEATH

§ 16-2701. Liability; damages; prior recovery as precluding action

When, by an injury done or happening within the limits of the District, the death of a person is caused by the wrongful act, neglect, or default of a person or corporation, and the act, neglect, or default is such as will, if death does not ensue, entitle the person injured, or if the person injured is married, entitle the spouse, either separately or by joining with the injured person, to maintain an action and recover damages, the person who or corporation that is liable if death does not ensue is liable to an action for damages for the death, notwithstanding the death of the person injured, even though the death is caused under circumstances that constitute a felony.

The damages shall be assessed with reference to the injury resulting from the act, neglect, or default causing the death, to the spouse and the next of kin of the deceased person; and shall include the reasonable expenses of last illness and burial. Where there is a surviving spouse, the jury shall allocate the portion of its verdict payable to the spouse and next of

kin, respectively, according to the finding of damage to the spouse and next of kin. If, in a particular case, the verdict is deemed excessive the trial judge or the appellate court, on appeal of the cause, may order a reduction of the verdict. An action may not be maintained pursuant to this chapter if the party injured by the wrongful act, neglect, or default has recovered damages therefor during his life. (Dec. 23, 1963, 77 Stat. 596, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91-358, title I, § 145(j), 84 Stat. 560; Oct. 1, 1976, D.C. Law 1-87, § 21, 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended first paragraph of section by substituting "or if the person injured is married, entitle the spouse, either separately or by joining with the injured person," for "or if the person injured is a married woman, entitle her husband, either separately or by joining with the wife,".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

NOTES TO DECISIONS

Choice of law

Wrongful death action brought by surviving spouse of resident against Delaware corporation, physicians who resided in Maryland, Maryland professional corporation and Washington corporation and arising out of alleged tortious acts which transpired in Maryland is governed by Maryland law. *M. L. Carr v. Bio-Medical Applications of Washington, Inc., et al.* (D.C. App. 1976, 368 A.2d 1089).

Complaint—Dismissal

Court does not have authority to reinstate wrongful death action dismissed with prejudice for lack of prosecution on basis of motion which alleged that plaintiff's failure to prosecute was due to financial hardship, which did not set forth any newly acquired information or allegations justifying release from dismissal order and which did not allege that plaintiff could present prima facie case. *Colbert Refrigeration Co., Inc. v. D. Edwards, Administratrix etc.* (D.C. App. 1976, 356 A.2d 331).

Damages

In wrongful death action in which liability is established, recovery is not precluded on ground that definite dollar values were not established with reference to the factors entering into a verdict. *H. B. Elliott, Individually and as Administratrix etc. v. Michael James, Inc.* (1977, 559 F.2d 759, 182 U.S. App. D.C. 138).

Instructions

Where restaurant owner violated building code provision requiring that doors be readily opened from the inside and decedent was stabbed to death in restaurant at time when doors could not be opened from the inside except with a key, there being evidence that she attempted to escape, instruction that, since owner violated the provision, this evidence established proximate cause unless jury was satisfied that the preponderance of the evidence was to the contrary with respect to proximate cause was not erroneous and may even have afforded defense more leeway than it was entitled to receive. *H. B. Elliott, Individually and as Administratrix etc. v. Michael James, Inc.* (1977, 559 F.2d 759, 182 U.S. App. D.C. 138).

Trial court's failure to instruct jury on question of contributory negligence of plaintiff's decedent who was shot and mortally wounded by police officer resulted in no harm to the District of Columbia or to police officer where theory of defense that decedent's own actions justified the response of the officer was clearly put before the jury. *District of Columbia et ano. v. I. Downs, Administratrix etc.* (D.C. App. 1976, 357 A.2d 857).

Negligence

In wrongful death arising from stabbing death of decedent in restaurant, where U.S. Court of Appeals on prior appeal had noted building code requirement that doors be readily opened from the inside, that decedent was within class of persons for whose protection a safety measure was adopted, and in that she apparently attempted to escape through the locked exists, and where evidence at second trial differed from that of the first only in minor respects, trial court on remand properly applied the law of the case and ruled that plaintiff had established negligence per se. *H. B. Elliott, Individually and as Administratrix etc. v. Michael James, Inc.* (1977, 559 F.2d 759, 182 U.S. App. D.C. 138).

In father's action against District of Columbia to recover damages for his daughter's rape and murder by parolee employed at apartment complex in which daughter resided, evidence supported trial court's action in submitting to jury issue whether District parole officer had duty to reveal parolee's prior history of violent sex-related crimes against women to management of apartment complex, as potential employer of parolee, thus preventing specific and unreasonable risk of harm to women tenants of such complex. *R. C. Rieser, Administrator etc. v. District of Columbia, et ano.* (1977, 563 F.2d 462, 183 U.S. App. D.C. 375).

Jury's negative response to interrogatory in wrongful death action as to whether police officer who shot and mortally wounded plaintiff's decedent assaulted the decedent does not entitle officer and the District of Columbia to judgment in view of affirmative answer to interrogatory that officer acted negligently and that negligence was the cause of death. *District of Columbia et ano. v. I. Downs, Administratrix etc.* (D.C. App. 1976, 357 A.2d 857).

§ 16-2702. Party plaintiff; statute of limitations

NOTES TO DECISIONS

Amendment of complaint

Where hospital was put on notice that it would have to defend a claim arising out of death of plaintiff's father by original complaint wherein deceased's son, individually and on behalf of deceased's estate, sought recovery under section 12-101 and this chapter, subsequent amendment wherein son brought suit in his capacity as administrator of estate would be allowed to relate back to time of filing of original complaint, and, thus, suit is not barred by statute of limitations. *O. W. Strother, Administrator etc. v. District of Columbia* (D.C. App. 1977, 372 A.2d 1291).

Personal representative

Although the term "personal representative" as used in this chapter is limited to qualified executors and administrators, a personal representative who brings an action under this chapter is a nominal party only and does not act in his capacity as executor or administrator. *O. W. Strother, Administrator etc. v. District of Columbia* (D.C. App. 1977, 372 A.2d 1291).

Chapter 29.—PARTITION AND ASSIGNMENT OF DOWER

SUBCHAPTER I.—PARTITION GENERALLY

§ 16-2901. Parties; accounting by tenant in common

CROSS REFERENCE

Service by publication on nonresidents, absent defendants, and unknown heirs or devisees, see § 13-336.

Chapter 33.—QUIETING TITLE OBTAINED BY ADVERSE POSSESSION

§ 16-3301. Complaint; allegations; parties; service; decree

CROSS REFERENCE

Service by publication on nonresidents, absent defendants, and unknown heirs or devisees, see § 13-336.

Chapter 37.—REPLEVIN

§ 16-3701. Demand prior to action; costs

NOTES TO DECISIONS

Due process

Even if Supreme Court decision holding that certain replevin statutes violate due process were applicable to replevin statute involved in instant case, decision should have prospective effect only since rights have vested and actions have been taken between time of judgment in instant case and date of Supreme Court decision. *J. R. Roebuck et ano. v. Walker-Thomas Furniture Co., Inc.* (D.C. App. 1973, 310 A. 2d 845).

Chapter 39.—SMALL CLAIMS AND CONCILIATION
PROCEDURE IN SUPERIOR COURT

§ 16-3906. Pre-trial settlement; trial; procedure; default; dismissal or nonsuit; other disposition

NOTES TO DECISIONS

Directed verdict

It is immaterial that defendant did not formally move for summary judgment before receiving favorable ruling in small claims court, but rather was awarded judgment by court sua sponte, since informal procedures govern and relevant inquiry is whether "substantial justice" has been achieved. *E. Eytan et ux. v. W. S. Bach* (D.C. App. 1977, 374 A.2d 879).

TITLE 16.—APPENDIX

DISTRICT OF COLUMBIA UNIFORM ARBITRATION ACT

Act Apr. 7, 1977, D.C. Law 1-117, 23 DCR 9690.

§ 1. Short title.

This act may be cited as the "District of Columbia Uniform Arbitration Act."

§ 2. Validity of arbitration agreement.

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. This act also applies to arbitration agreements between employers and employees or between their respective representatives.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3 of this Appendix.

§ 3. Proceedings to compel or stay arbitration.

(a) On application of a party showing an agreement described in Section 2, and the opposing party's refusal to arbitrate, the Court shall order the parties to proceed with arbitration, but if opposing party denies the existence of the agreement to arbitrate the Court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.

(b) On application, the Court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the Court shall order the parties to proceed to arbitration.

(c) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a Court other than the Superior Court of the District of Columbia, having jurisdiction to hear applications under subdivision (a) of this section, the application shall be made therein.

(d) Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefore has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(e) An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 18 of this Appendix.

§ 4. Appointment of arbitrators by Court.

If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and his successor has not been duly appointed, the Court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12 of this Appendix.

§ 5. Majority action by arbitrators.

The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this act.

§ 6. Hearing.

Unless otherwise provided by the agreement:

(a) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing. Appearance at the hearing waives any defect of such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The Court on application may direct the arbitrators to proceed promptly with the hearing and determination of controversy.

(b) The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(c) The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may con-

tinue with the hearing and determination of the controversy.

§ 7. Representation by attorney.

A party has the right to be represented by an attorney at any proceeding or hearing under this act. A waiver thereof prior to the proceeding or hearing is ineffective.

§ 8. Witnesses, subpoenas, depositions.

(a) The arbitrators may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths and affirmations and take acknowledgments. Subpoenas so issued shall be served, and upon application to the Court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the arbitrators may permit written interrogatories and prehearing documents to be obtained and/or a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be the same as for a witness in the Court.

§ 9. Award.

(a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, return receipt requested, or as provided in the agreement.

(b) An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the Court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

§ 10. Change of award by arbitrators.

On application of a party or, if an application to the Court is pending under sections 12, 13, or 14 on submission to the arbitrators by the Court under such conditions as the Court may order, the arbitrators may modify or correct the award upon the grounds stated in paragraphs (1) and (3) of subdivision (a) of section 14, or for the purpose of clarifying the award. The application shall be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating he must serve his objections thereto, if any, within 10 days from the notice. The award so modified or corrected is subject to the provisions of sections 12, 13 and 14.

§ 11. Fees and expenses of arbitration.

Unless otherwise provided in the agreement to arbitrate, the arbitrator's expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the Award. Upon application of a party, the Court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the Court shall proceed as provided in sections 13 and 14.

§ 12. Vacating an award.

(a) Upon application of a party, the Court shall vacate an award where:

(1) The award was procured by corruption, fraud or other undue means;

(2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(3) The arbitrators exceeded their powers;

(4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Section 16, as to prejudice substantially the rights of a party; or

(5) There was no arbitration agreement and the issue was not adversely determined in proceedings under section 13 and the party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by a Court of law or equity is not ground for vacating or refusing to confirm the award.

(b) An application under this section shall be made within ninety days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety days after such grounds are known or should have been known.

(c) In vacating the award on grounds other than stated in clause (5) of subsection (a) of this section the Court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the Court in accordance with section 4, or if the award is vacated on grounds set forth in clauses (3) and (4) of subsection (a) of this section the Court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with section 4. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(d) If the application to vacate is denied and no motion to modify or correct the award is pending, the Court shall confirm the award.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10 of this Appendix.

§ 13. Modification or correction of award.

(a) Upon application made within ninety days after delivery of a copy of the award to the applicant, the Court shall modify or correct the award where:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

(2) The arbitrators have awarded upon matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) If the application is granted, the Court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the Court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10, 11, 12 of this Appendix.

§ 14. Judgment or decree on award.

Upon granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the Court.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10, 11 of this Appendix.

§ 15. Docketing of judgments.

A judgment or decree entered pursuant to this act shall be docketed according to the appropriate rules of the Court.

§ 16. Applications to Court.

Except as otherwise provided, an application to the Court under this act shall be by motion and shall

be heard in the manner and upon the notice provided by law or rule of Court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12 of this Appendix.

§ 17. Court.

The term "court" means the Superior Court of the District of Columbia.

§ 18. Appeals.

(a) For purposes of writing an appeal, the following orders shall be deemed final:

(1) An order denying an application to compel arbitration made under Section 3;

(2) An order granting an application to stay arbitration made under Section 3(b);

(3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award;

(5) An order vacating an award without directing a rehearing.

(b) An appeal from an order or judgment entered pursuant to this act shall be taken in the manner and to the same extent as from any other order or judgment in a civil action.

§ 19. Prospective applicability to agreements.

The provisions of this act shall only apply to agreements made subsequent to its enactment.

§ 20. Construction.

This act shall be construed as to effectuate its general purpose of making uniform the law of the District of Columbia and those states which enact it.

§ 21. Effective date.

This act shall take effect as provided in Sec. 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [D.C. Code, sec. 1-147(c)].

TITLE 17.—REVIEW

Title 17 was enacted by Pub. L. 88-241, Dec. 23, 1963, 77 Stat. 612

Chapter 3.—DISTRICT OF COLUMBIA COURT OF APPEALS

§ 17-304. Stay upon application for review of, or pending appeal from, administrative order or decision

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 17-305. Scope of review

NOTES TO DECISIONS

Evidence—Sufficiency

In proceeding on petitions to establish paternity and to provide support for children who were 12 and 10 years of age, mother's testimony that defendant had given her money over the years as she needed it, that, on one specific date within one year from date of filing petitions, defendant had given her \$10 for visit to clinic (apparently occasioned by her cardiac condition) and that defendant knew that she never asked for money for herself was insufficient to support jurisdictional finding that defendant had contributed to support of children within one year prior to filing of petitions. *R. D. Lindsay v. District of Columbia ex rel. K. Lindsay et ano.* (D.C. App. 1972, 298 A. 2d 211).

Questions of fact

Even though police officer's specific testimony was that defendant had been looking "in the direction of the parked cars," inference drawn by trial court from totality of testimony adduced on motion to suppress is not plainly wrong or without evidence to support it and, accordingly, reviewing court would accept conclusion that defendant had been "looking into parked cars." *R. B. Sanders v. United States* (D.C. App. 1975, 339 A.2d 373).

Findings of fact by trial court are conclusive on appeal unless plainly wrong or without evidence to support them. *Lee Washington, Inc., etc. v. Washington Motor*

Truck Transportation Employees Health and Welfare Trust (D.C. App. 1973, 310 A. 2d 604).

Scope of review

Since ultimate issue was whether care of insured's wife by licensed nurses outside a hospital was medically necessary or required within meaning of health insurance policy, a mixed question of law and fact, scope of review of trial court's construction of terms of policy is broad. *Group Hospitalization, Inc. v. F. Westley* (D.C. App. 1976, 350 A.2d 745.)

Where trial court treated motion to dismiss in effect as one for summary judgment and disposed of motion pursuant to rule that adverse party must set forth specific facts showing a genuine issue for trial, review by Court of Appeals is limited to determining whether trial court properly concluded that appellant failed to set forth specific facts demonstrating genuine issue for trial, and if that conclusion is proper, whether trial court correctly applied relevant statute to undisputed facts. *J. H. Hill v. District of Columbia* (D.C. App. 1975, 345 A. 2d 867).

§ 17-306. Determination of appeals

NOTES TO DECISIONS

Modification

Where proof is insufficient to sustain conviction for grand larceny but is sufficient to sustain conviction for petit larceny, Court of Appeals can direct trial court to enter judgment accordingly. *J. C. Williams v. United States* (D.C. App. 1977, 376 A.2d 442).

Remand

Notwithstanding the deficiency of petition, which was insufficient to support adjudication of child as habitually disobedient and ungovernable, rather than an outright reversal or dismissal thereby producing irrational consequences flowing from a forced reunion in an apparently deteriorated family structure Court of Appeals remanded cause to trial court for commencement of such further proceedings within 30 days as might be deemed just in circumstances; if further proceedings were not begun within that time adjudication would be vacated. *In the Matter of C. G. S.* (D.C. App. 1977, 372 A.2d 1017).

PART III

DECEDENTS' ESTATES AND FIDUCIARY RELATIONS

Part III, consisting of Titles 18 to 21, was enacted by Pub. L. 89-183, § 1, Sept. 14, 1965, 79 Stat. 685, effective Jan. 1, 1966

TITLE 18. WILLS AND PROBATE OF WILLS.
TITLE 19. DESCENT AND DISTRIBUTION.

TITLE 20. ADMINISTRATION OF DECEDENTS' ESTATES.
TITLE 21. FIDUCIARY RELATIONS AND THE MENTALLY ILL.

TITLE 18.—WILLS AND PROBATE OF WILLS

Title 18 was enacted by Pub. L. 89-183, Sept. 14, 1965, 79 Stat. 685

Chapter 1.—GENERAL PROVISIONS

§ 18-102. Capacity to make a will

A will, testament, or codicil is not valid for any purpose unless the person making it is at least 18 years of age and, at the time of executing or acknowledging it as provided by this chapter, of sound and disposing mind and capable of executing a valid deed or contract. (Sept. 14, 1965, 79 Stat. 686, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 22, 1976, D.C. Law 1-75, § 4(a), 23 DCR 1180.)

AMENDMENT

1976—Act July 22, 1976, D.C. Law 1-75, amended section by substituting "is at least 18 years of age" for "is: (1) if a male, at least 21 years of age; or (2) if a female, at least 18 years of age—".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 8 of act July 22, 1976, D.C. Law 1-75, set out as a note under § 21-101.

NOTES TO DECISIONS

Capacity to make will

Trial court's determination that testator, who had sufficient clearness of mind and memory to know in general the nature and extent of his property and names and identity, of the objects of his bounty and his relation towards them, who corrected misspellings and page number changes on will and initialed such changes and who manifested concern for his estate and surviving spouse, had requisite testamentary capacity to execute a valid will was not erroneous. *J. W. Phelps v. R. S. Goldberg* (Md. Ct. App. 1974, 313 A. 2d 683).

There is a presumption in favor of testamentary capacity. *In re Estate of P. L. Weir* (1973, 475 F. 2d 988, 154 U.S. App. D.C. 404).

Fact that testator made "unnatural disposition" of his estate was not, in and of itself, indication of testamentary incapacity. *Id.*

Sound and disposing mind

Under this section, the "sound and disposing mind" necessary to make valid will means that the testator must have had, at the time of the execution of the instrument, sufficient mental capacity to dispose of his property or estate with judgment and understanding, considering the nature and character of the estate as well as the relative claims of different persons who would be the natural objects of his bounty. *In re Estate of P. L. Weir* (1973, 475 F. 2d 988, 154 U.S. App. D.C. 404).

§ 18-103. Execution of written will; attestation

NOTES TO DECISIONS

Alteration

Carbon copy of original will, despite handwritten notations and changes, some of which in minor respects differed from those on original, does not have efficacy separate and apart from original and carbon remains nothing more than a duplicate, a part of a set, drawn and executed at the same time and place and attested to by the same witnesses. *Estate of A. M. McKeever* (D.C. App. 1976, 361 A.2d 166).

§ 18-109. Revocation of wills; revival

NOTES TO DECISIONS

Dependent relative revocation

Although decedent had requested and received new will forms which were found in her apartment, where no will had been executed with a defect, doctrine of dependent relative revocation does not apply. *Estate of A. M. McKeever* (D.C. App. 1976, 361 A.2d 166).

Revocation

Where typed ribbon original of will was found in decedent's apartment with signature carefully torn and on which interlineations had been made and where decedent shortly prior to death had orally indicated to several persons that she was revoking her "old will" and had asked for and received new will forms which were found in her apartment, will was revoked by decedent with requisite intent and existence of carbon copy in decedent's safety deposit box does not operate in derogation of revocation. *Estate of A. M. McKeever* (D.C. App. 1976, 361 A.2d 166).

Carbon copy of original will, despite handwritten notations and changes, some of which in minor respects differed from those on original, does not have efficacy separate and apart from original and carbon remains nothing more than a duplicate, a part of a set, drawn and executed at the same time and place and attested to by the same witnesses. *Id.*

Chapter 3.—DEVICES AND BEQUESTS

§ 18-302. Devises or bequests for religious purposes

NOTES TO DECISIONS

Constitutionality

This section, invalidating devise or bequest to clergyman and religious organizations made within 30 days of testator's death, is invalid under due process and equal protection principles. *Estate of S. L. French* (D.C. App. 1976, 365 A.2d 621).

§ 18-308. Death of devisee or legatee; lapsed or void devises or bequests

NOTES TO DECISIONS

Death of legatee

Where testator provided that if any of three residual legatees did not survive him, his or her devise and bequest would lapse, where testator left no heirs, and where testator did not provide what would happen to a lapsed share, this section did not transfer lapsed share of residual legatee who predeceased testator to two remaining legatees and the lapsed share passed by intestacy and escheated to the District. *L. Starkey et al. v. District of Columbia* (D.C. App. 1977, 377 A.2d 382).

Chapter 5.—PROBATE OF WILLS

§ 18-504. Probate; waiver of notice; proof of execution

NOTES TO DECISIONS

Burden of proof

Once proponent of will has met his initial burden and will has been admitted to probate and record, subsequent caveators must bear ultimate burden of proof as to execution. *C. C. Curtis v. M. B. Curtis* (1973, 481 F. 2d 549, 156 U.S. App. D.C. 374).

Where will had been admitted to probate, caveator who subsequently brought action challenging its validity on ground that signature was a forgery, had burden of proof as to that issue. *Id.*

Burden of going forward, in will contest originating after initial admission to probate, shifts once record of that admission is introduced. *Id.*

Caveatee is entitled to rely on record of probate as prima facie proof of due execution of will. *Id.*

Proof

Even in absence of a challenge or caveat, will may not be admitted to probate and record except on formal proof, presented by will's proponent, of proper execution. *C. C. Curtis v. M. B. Curtis* (1973, 481 F. 2d 549, 156 U.S. App. D.C. 374).

§ 18-507. Admission to probate

NOTES TO DECISIONS

Counsel fees

Although he acted in good faith, representative of legatee who unsuccessfully attempted to have will probated is not entitled to recover costs and attorney's fees from the estate. *Estate of A. M. McKeever* (D.C. App. 1977, 378 A.2d 678).

Jurisdiction

Where life beneficiary under will is opposing attempted will probate on ground that testatrix had in fact died resident of and domiciled in Virginia and that Superior Court is therefore without jurisdiction to probate will, and allegedly most of testatrix' personal property was located in Virginia, such allegations placed jurisdiction of court in question and it is duty of Superior Court, of its own motion, to take notice of possible lack of jurisdiction, even if beneficiary has no standing to raise issue. *In re Estate of Dapolito* (D.C. App. 1975, 331 A.2d 327).

Where appellant is specific devisee and life beneficiary of testamentary trust under will, and as such has legally cognizable interest in taking her interest free from potentially successful collateral attacks in future such as lack of jurisdiction in court rendering judgment, appellant has standing, in proceeding brought to probate will, to contest admission of will to probate in Superior Court. *Id.*

Sufficiency of interest

Although issue of standing was not properly raised and was not before appellate court, duly qualified and appointed administratrix representing decedent's posture of intestacy would be viewed as having requisite interest to oppose probate of will that she does not believe to be genuine. *Estate of A. M. McKeever* (D.C. App. 1976, 361 A.2d 166).

§ 18-508. Caveat; will not to be probated while issues pending

NOTES TO DECISIONS

Admission to probate

District Court properly admitted documents to probate during a period in which no caveat was outstanding, that is, after first caveat had been dismissed with caveator's consent, and before second caveat was filed, where Court had available sworn statements of witnesses to will, and record showed that required notice had been given. *In re Estate of P. Himmelfarb* (D.C. App. 1975, 345 A.2d 477).

Burden of proof

Once proponent of will has met his initial burden and will has been admitted to probate and record, subsequent caveators must bear ultimate burden of proof as to execution. *C. C. Curtis v. M. B. Curtis* (1973, 481 F. 2d 549, 156 U.S. App. D.C. 374).

Where will had been admitted to probate, caveator who subsequently brought action challenging its validity on ground that signature was a forgery, had burden of proof as to that issue. *Id.*

Burden of going forward, in will contest originating after initial admission to probate, shifts once record of that admission is introduced. *Id.*

Caveatee is entitled to rely on record of probate as prima facie proof of due execution of will. *Id.*

Party in interest

Although issue of standing was not properly raised and was not before appellate court, duly qualified and appointed administratrix representing decedent's posture of intestacy would be viewed as having requisite interest to oppose probate of will that she does not believe to be genuine. *Estate of A. M. McKeever* (D.C. App. 1976, 361 A.2d 166).

§ 18-509. Caveat; time for filing

NOTES TO DECISIONS

Estoppel

Though it may have appeared to those who ultimately signed settlement agreement in first caveat proceeding that brother, by his inaction, was indicating a willingness to acquiesce in whatever steps his sister took with her caveat, where brother ceased to be inactive in time to give clear notice, several days in advance of settlement, that he would not acquiesce in compromise and would contest will, and signers, in proceeding with settlement, knowingly risked possibility that brother would bring another contest, as he had stated he would, doctrine of equitable estoppel does not operate to bar second caveat brought by brother. *In re Estate of P. Himmelfarb* (D.C. App. 1975, 345 A.2d 477).

Contestant's acceptance of distributions made to her pursuant to will, both prior to and subsequent to her filing of the caveat, did not estop her where the amounts contestant received under the will were less than the amounts she would have received under either intestacy or the prior will, no other beneficiaries who had received distributions under the will would be affected by the challenge, and there was no showing of prejudice. *In re Estate of D. H. Burrough* (1973, 475 F. 2d 370, 154 U.S. App. D.C. 259; rev'g 318 F. Supp. 366).

There is requisite prejudice and estoppel to contest a will when a party makes a claim outside the will after taking property under a will to which he would not otherwise have been entitled. *Id.*

Fact that contestant, who had accepted distributions made to her pursuant to the will, both prior to and subsequent to her filing of the caveat, had not made proffer of the items received was not an absolute bar to contest. *Id.*

Res judicata

Consent order which was entered in proceedings on first caveat filed by child of decedent to contest probate of will does not, under principles of res judicata, operate to bar second caveat filed by another child to adjudicate issue of decedent's testamentary capacity, where

second child not only failed to give his consent to compromise agreement upon which consent order was based, but put parties and court unequivocally on notice that he objected to compromise. *In re Estate of P. Himmelfarb* (D.C. App. 1975, 345 A.2d 477).

Settlement agreements

Plaintiff cannot complain that there was a lack of consideration to support settlement contract pertaining to rights to inherit from estate on ground that defendant's surrender of her statutory right to contest will cannot afford consideration for agreement since at time agreement was entered into defendant's right to contest will had already expired, where plaintiff and defendant had agreed to settlement contract orally four days prior to expiration of defendant's right to file a caveat and only

reason written agreement was not finalized prior to expiration of such right was plaintiff's refusal to sign the agreement until a later time. *B. Bullard v. A. Curry-Cloonan* (D.C. App. 1976, 367 A.2d 127).

Since plaintiff and defendant were both coexecutrices as well as residuary legatees under will, a fiduciary duty was imposed on each of them in their dealings vis-a-vis each other; however, the mere fact that such fiduciary duty existed does not, standing alone, preclude parties from entering into an agreement compromising their respective rights as legatees. *Id.*

§ 18-511. Guardian ad litem

CROSS REFERENCE

Age of majority, see § 21-101 note.

TITLE 19.—DESCENT AND DISTRIBUTION

Title 19 was enacted by Pub. L. 89-183, Sept. 14, 1965, 79 Stat. 693

Chapter 1.—RIGHTS OF SURVIVING SPOUSE AND CHILDREN

Sec.

19-107a.¹ Release of dower.

§ 19-101. Family allowance; construction; penalties

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 19-102. Dower; quarantine; curtesy abolished

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 19-106.

§ 19-107a. Release of dower

If the spouse of the party executing a deed, being not less than eighteen years of age, shall desire to release his or her dower in the property conveyed, he or she may do so either by joining in the same deed or by a separate deed, wherever executed, signed, sealed, and acknowledged by him or her in the same manner as provided in section 45-402, and his or her acknowledgment shall be certified in like manner. (Mar. 3, 1901, 31 Stat. 1267, ch. 854, § 494; June 30, 1902, 32 Stat. 531, ch. 1329; redesignated § 19-107a and amended Oct. 1, 1976, D.C. Law 1-87, § 33(c), 23 DCR 2544.)

CODIFICATION

Prior to redesignation as § 19-107a, section 494 of Act Mar. 3, 1901, was classified to § 30-217.

In the original, "section 45-402" read "the preceding section" meaning section 493 of Act Mar. 3, 1901 which is classified to section 45-402. Following redesignation of this section as § 19-107a, the words "the preceding section" literally may refer to § 19-107. However, reference to section 45-402 is retained as the probable intent.

AMENDMENTS

1976—Act Oct. 1, 1976, D.C. Law 1-87, made the following amendments:

- (1) Redesignated section 494 of Act of Mar. 3, 1901 (D.C. Code, sec. 30-216) as section 19-107a.
- (2) Substituted "spouse" for "wife".
- (3) Substituted "his or her dower" for "her dower".
- (4) Substituted "he or she" for "she".
- (5) Substituted "by him or her" for "by her".
- (6) Substituted "his or her acknowledgement" for "her acknowledgement".

1902—Act June 30, 1902, amended section generally. Prior to such amendment section read as follows: "If the wife of the party executing said deed, being not less than eighteen years of age, shall desire to release her right to dower in the property conveyed, she shall unite in the deed with her husband and sign, seal, and acknowledge the same in the same manner as her husband, and the officer taking her acknowledgment shall add to the above form of certificate a further certificate to the following effect, namely:

"And at the same time personally appeared before me, in said District, E F, the wife of said C D, personally well known to me (or proved by the oath of credible wit-

nesses) to be such, and acknowledged the same to be her act and deed.

"Such wife, however, may release her right of dower by her separate deed, when the release claims or derives title from, by, through or under her husband."

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

HUSBAND'S DOWER

Right of husband to dower, and general amendment of all laws relating to right of dower and its incidents to make them applicable to both husband and wife, see § 19-102, and § 3 of act Aug. 31, 1957, 71 Stat. 560, Pub. L. 85-244, as amended by acts Sept. 14, 1961, 75 Stat. 515, Pub. L. 87-246, § 3; Sept. 14, 1965, 79 Stat. 779, Pub. L. 89-183, § 3, set out in note under said § 19-102.

CROSS REFERENCE

Conveyance of real estate acquired after insanity or absence for seven years of wife, see § 19-104.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45-501.

§ 19-110. Assignment by guardian; rights of heir

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 19-113. Renunciation of devises and bequests; election; time limitations; renunciation or election by guardian or fiduciary; maximum rights; effect of no devise or bequest or if nothing passes under either; antenuptial or postnuptial agreements

NOTES TO DECISIONS

Inter vivos transfer

Factors controlling determination of whether inter vivos transfer was an improper circumvention of marital rights of the surviving spouse include "completeness" of the transfer, motive for the transfer, participation by transferee in alleged fraud on surviving spouse, time between transfer and death, and degree to which surviving spouse is left without interest in decedent's property or other means of support. *C. C. Windsor v. M. M. Leonard et al.* (1973, 475 F. 2d 932, 154 U.S. App. D.C. 348).

Net estate

Contention that revocable trust would be included in wife's estate for tax purposes was not proper basis for deciding whether it should be included in wife's "net estate" for purposes of determining husband's statutory share when he renounced his rights under wife's will; the proper basis was Maryland case law on marital property rights. *C. C. Windsor v. M. M. Leonard et al.* (1973, 475 F. 2d 932, 154 U.S. App. D.C. 348).

Though wife, in creating trust, reserved power of revocation, right to all income during her lifetime, right to withdraw from principal, and right to amend, trust was not an improper evasion of surviving husband's statutory rights when he renounced his rights under wife's will, and thus trust assets were properly excluded from wife's "net estate" in determining husband's statutory share, where there was no evidence of any unusual or fraudulent motive for the transaction, wife created trust at age of 54, some 18 months before she died, and husband was left with a 50% share in an estate exceeding \$100,000, in addition to personal holdings worth some \$140,000. *Id.*

¹ Analysis editorially supplied.

Chapter 3.—INTESTATES' ESTATES

Sec.

19-316. Share of illegitimate children; their issue; mother; father.

AMENDMENT

1976—Sec. 22(b) of act Oct. 1, 1976, D.C. Law 1-87, amended item 19-316 by inserting “; father” after “mother”.

§ 19-306. Children to share equally

NOTES TO DECISIONS

Illegitimate children

District of Columbia intestate succession statute (§ 19-316), whereby illegitimate children may inherit from their mother only, does not discriminate against illegitimate children in violation of due process. *E. L. Watts et al. v. J. G. Veneman et al.* (1971, 334 F. Supp. 482; aff'd 476 F. 2d 529, 155 U.S. App. D.C. 84).

§ 19-316. Share of illegitimate children; their issue; mother; father

Illegitimate children and the issue of illegitimate children are capable of taking real and personal estate by inheritance from their mother or from their father if parenthood has been established by judicial process or pursuant to sec. 19-318, or from each other, or from descendants of each other, as the case may be, in like manner as if born in lawful wedlock, and the mother and such father, and their respective heirs, are capable of inheriting from such children. (Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Oct. 1, 1976, D.C. Law 1-87, § 22 (a), (c), 23 DCR 2544.)

AMENDMENT

1976—Sec. 22(a) of act Oct. 1, 1976, D.C. Law 1-87, amended section generally. For prior provisions, see the 1973 edition of the Code.

Sec. 22(c) of such act amended section heading by inserting “; father” after “mother”.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

NOTES TO DECISIONS

Constitutionality

This section is not unconstitutional by reason of fact that it does not permit illegitimate children to inherit as freely as legitimate children. *B. Malcolm v. C. W. Weinberger, Secretary etc.* (1973, 362 F. Supp. 1348).

This section, whereby illegitimate children may inherit from their mother only, does not discriminate against illegitimate children in violation of due process. *E. L. Watts et al. v. J. G. Veneman et al.* (1971, 334 F. Supp. 482; aff'd 476 F. 2d 529, 155 U.S. App. D.C. 84).

Inheritance from father

While natural father could designate child as sole beneficiary under will, he could not, absent adoption, make child his heir at law. *In the Matter of the Petition for Adoption: J.H.* (D.C. App. 1974, 313 A. 2d 874).

Proceeds of insurance policy

Where man insured under the Federal Employees Group Life Insurance Act died leaving no widow and without having designated beneficiary of his policy, the claims of his children, who are illegitimate but who had been acknowledged by him, are entitled to take precedence over the claim of his mother. *M. A. Green v. D. Green et ano.* (D.C. App. 1976, 365 A.2d 610).

§ 19-318. Antenuptial children

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 19-316.

Chapter 7.—ESCHEAT

§ 19-701. Escheatment generally

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 20.—ADMINISTRATION OF DECEDENTS' ESTATES

Title 20 was enacted by Pub. L. 89-193, Sept. 14, 1965, 79 Stat. 702

Chapter 3.—EXECUTORS AND ADMINISTRATORS

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS RELATING TO EXECUTORS AND ADMINISTRATORS

Sec.

20-352. Persons between 18 and 21 years of age.¹

SUBCHAPTER I.—EXECUTORS

§ 20-304. Special bond of executor

NOTES TO DECISIONS

Estate taxes

Where husband's estate did not have enough assets to pay bequests to children and grandchildren, and wife executrix made voluntary promise to pay such bequests, such promise being rooted in moral, but not money's worth, consideration, and where such promise to make gift became enforceable under this section because it was cast in form of "special" bond undertaken to pay bequests, amounts paid from wife's estate after her death to satisfy husband's bequests, were not deductible, for estate tax purposes, as "claim against" wife's estate. *B. D. Young, Executrix etc. v. United States* (1977, 559 F.2d 695, 182 U.S. App. D.C. 74).

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS RELATING TO EXECUTORS AND ADMINISTRATORS

§ 20-352. Repealed. July 22, 1976, D.C. Law 1-75, § 4(h), 23 DCR 1181.

Section, Act Sept. 14, 1965, Pub. L. 89-183, § 1, 79 Stat. 708, dealt with bonds executed by persons between 18 and 21 years of age when letters testamentary or of administration are granted to them.

Chapter 9.—ASSETS OF ESTATE

§ 20-901. Assets to be included in inventory and administered

NOTES TO DECISIONS

Government bonds

Government bonds are not assets of estate, since under federal law they passed at time of decedent's death to named coowners notwithstanding provisions of will; thus, neither coexecutrix was charged with duty to bring bonds into estate, since actions would not have realistic chances of success, and hence agreement between friend of testator and testator's daughter, who were coexecutrices and principal residuary legatees, in settlement of their respective rights as legatees did not violate fiduciary obligations they owed to each other on asserted ground of breach of preexisting duty to bring all of decedent's assets into estate. *B. Bullard v. A. Curry-Cloonan* (D.C. App. 1976, 367 A.2d 127).

Chapter 13.—CLAIMS OF CREDITORS

§ 20-1301. Debts to be proved

NOTES TO DECISIONS

Legally authenticated claim

A "legally authenticated claim" against an executor or administrator of estate is one which has been filed with

¹ Section was repealed without corresponding amendment of analysis.

the register of wills under oath stating basis of the decedent's debt and fact that it has not been paid or that part has been paid and part is still outstanding. *American Security and Trust Company v. J. E. Bindeman, Executor etc., et ano.* (D.C. App. 1973, 303 A. 2d 188).

Purpose

Statutory framework of statutes dealing with administration of estates has dual purpose of giving executor notice of a claim against estate and thus protecting him from committing error of disbursing the assets of estate without first resolving validity of all claims and satisfying the debts, and of protection of the creditors of the estate. *American Security and Trust Company v. J. E. Bindeman, Executor etc., et ano.* (D.C. App. 1973, 303 A. 2d 188).

§ 20-1315. Retaining for claims

NOTES TO DECISIONS

Construction

This section requiring creditor who received written notice from executor to exhibit or pass claim within 30 days of notice if creditor is resident and within 90 days if creditor is a nonresident is an abbreviation of general statute of limitations and must be strictly construed. *D. Evans, Executor etc. v. Washington Hospital Center, Inc.* (D.C. App. 1972, 298 A. 2d 44).

Exhibition of claim

The purpose of exhibiting claim against estate to executor or administrator is to give executor or administrator an opportunity to make an informed decision as to whether it is a valid claim, and such exhibition has no bearing on running of statute of limitations, so that creditors who have duly docketed their claims against an estate are not required also to exhibit the claim to executor or administrator or to file suit in order to toll the running of the statute. *American Security and Trust Company v. J. E. Bindeman, Executor etc., et ano.* (D.C. App. 1973, 303 A. 2d 188).

Notice to creditor

Executor's two letters to hospital requesting copy of decedent's medical records and names of treating doctors and inquiring about existence of hospital bill were insufficient to commence running of 30-day statute of limitations for asserting claim after receiving written notice from executor requesting either exhibition or passing of claim, and hospital which did not present claim for services rendered to decedent within three months was not barred from presenting claim after decedent's assets had been distributed. *D. Evans, Executor etc. v. Washington Hospital Center, Inc.* (D.C. App. 1972, 298 A. 2d 44).

§ 20-1318. Period during which creditors may file suit after claim is contested

NOTES TO DECISIONS

Contested claim

If executor does not act on claim duly docketed with register of wills, the claimant, not being advised to the contrary, has the right to expect that the claim against estate will be paid when executor is in a position to do so. *American Security and Trust Company v. J. E. Bindeman, Executor etc., et ano.* (D.C. App. 1973, 303 A. 2d 188).

Exhibition of claim

The purpose of exhibiting claim against estate to executor or administrator is to give executor or administrator an opportunity to make an informed decision as to whether it is a valid claim, and such exhibition has no bearing on running of statute of limitations, so that creditors who have duly docketed their claims against an

estate are not required also to exhibit the claim to executor or administrator or to file suit in order to toll the running of the statute. *American Security and Trust Company v. J. E. Bindeman, Executor etc., et ano.* (D.C. App. 1973, 303 A. 2d 188).

Tolling limitations

The docketing of a duly authenticated claim against a decedent's estate in office of register of wills tolls the general three-year statute of limitations and brings the claim within special statute of limitations protecting claimant until three months after claim is rejected or disputed by the executor or administrator. *American Security and Trust Company v. J. E. Bindeman, Executor etc., et ano.* (D.C. App. 1973, 303 A. 2d 188).

§ 20-1320. Notice to creditors to file claims

NOTES TO DECISIONS

Knowledge of claim

Even though executor did not know exact amount of hospital's claim for services rendered to decedent, where executor actually knew of claim and knew that decedent's debts consisted principally of bill due hospital and funeral expenses, statute requiring that claims of which executor has no knowledge be presented within three months after executor's publication of notice to creditors did not bar hospital's claim brought after decedent's assets had been distributed. *D. Evans, Executor etc. v. Washington Hospital Center, Inc.* (D.C. App. 1972, 298 A. 2d 44).

Purpose

Purpose of this section requiring that claims of which executor has no knowledge be presented within three months after executor's publication of notice to creditors is to enable fiduciary to ascertain extent of estate's indebtedness so he may know what must be paid before making distribution and to protect him when unknown claims are not timely presented. *D. Evans, Executor etc. v. Washington Hospital Center, Inc.* (D.C. App. 1972, 298 A. 2d 44).

§ 20-1323. Docket of claims

NOTES TO DECISIONS

Effect of docketing

The docketing of a duly authenticated claim against a decedent's estate in office of register of wills tolls the general three-year statute of limitations and brings the claim within special statute of limitations protecting claimant until three months after claim is rejected or disputed by the executor or administrator. *American Security and Trust Company v. J. E. Bindeman, Executor etc., et ano.* (D.C. App. 1973, 303 A. 2d 188).

Once a duly authenticated claim against estate has been timely docketed in office of register of wills, an executor cannot close the estate without recognizing the existence of the claim. *Id.*

If executor does not act on claim duly docketed with register of wills, the claimant, not being advised to the contrary, has the right to expect that the claim against estate will be paid when executor is in a position to do so. *Id.*

Exhibition of claim

The purpose of exhibiting claim against estate to executor or administrator is to give executor or administrator an opportunity to make an informed decision as to whether it is a valid claim, and such exhibition has no bearing on running of statute of limitations, so that creditors who have duly docketed their claims against an estate are not required also to exhibit the claim to executor or administrator or to file suit in order to toll the running of the statute. *American Security and Trust Company v. J. E. Bindeman, Executor etc., et ano.* (D.C. App. 1973, 303 A. 2d 188).

§ 20-1324. Filed claim no evidence of correctness if disputed; filing as tolling limitations

NOTES TO DECISIONS

Purpose

Purpose of statute declaring that docketing of claim against estate does not afford evidence as to justice or

correctness of a debt when it is controverted by an executor or administrator and does not take a debt out of operation of defense of limitations was to make it clear that mere docketing of a claim would not necessarily establish its validity or deprive estate of any defense of limitations and would not operate to reinstate claim already barred by running of statute of limitations. *American Security and Trust Company v. J. E. Bindeman, Executor etc., et ano.* (D.C. App. 1973, 303 A. 2d 188).

Tolling limitations

The docketing of a duly authenticated claim against a decedent's estate in office of register of wills tolls the general three-year statute of limitations and brings the claim within special statute of limitations protecting claimant until three months after claim is rejected or disputed by the executor or administrator. *American Security and Trust Company v. J. E. Bindeman, Executor etc., et ano.* (D.C. App. 1973, 303 A. 2d 188).

§ 20-1326. No claim to be noticed unless legally authenticated

NOTES TO DECISIONS

Legally authenticated claim

A "legally authenticated claim" against an executor or administrator of estate is one which has been filed with the register of wills under oath stating basis of the decedent's debt and fact that it has not been paid or that part has been paid and part is still outstanding. *American Security and Trust Company v. J. E. Bindeman, Executor etc., et ano.* (D.C. App. 1973, 303 A. 2d 188).

Chapter 17.—ACCOUNTS

Sec.

20-1701. Time for rendering first account.

20-1702. Subsequent accounts.

20-1703. Failure to account.

20-1704. Assets to be charged.

20-1705. Disbursements and allowances.

20-1706. Bequests to executors.

20-1707. Executor of deceased executor or administrator to render account.

20-1709. Lost property.

20-1710. Executor or administrator of deceased executor or administrator entitled to commission; accounts.

AMENDMENT

1976—Sec. 23 of act Oct. 1, 1976, D.C. Law 1-87, amended analysis by deleting item 20-1708.

§ 20-1705. Disbursements and allowances

NOTES TO DECISIONS

Compensation of executor or administrator

Attorney, administrator of decedent's estate, is entitled to recover in quantum meruit from estate of heir the reasonable value of legal services rendered in connection with sale of inherited property, where conservator gave at least tacit approval to sale and acquiesced in attorney's efforts, court had earlier knowledge of transaction, and services benefited estate, although record fell short of establishing express oral agreement for services and court had not given prior approval to expenditure. *In re Conservatorship for C. L. Rich* (D.C. App. 1975, 337 A.2d 764).

As against assertion that there was no assurance that claim represented all compensation for services on probate assets which executors might ultimately claim and that compensation which might be later sought from trust assets might in fact represent compensation for services rendered to probate assets, probate court properly awarded compensation and expenses to executors and attorneys in connection with probate assets even though assets of estate would pour over into inter vivos trust and trust provided that trustee could make payments from principal of trust for administration expenses in connection with estate, since any further compensation derived from trust assets would be subject to scrutiny of out-of-state

court with jurisdiction to review trust administration. *In re Estate of W. L. Clark* (1973, 495 F. 2d 102, 161 U.S. App. D.C. 276).

§ 20-1708. Repealed. Oct. 1, 1976, D.C. Law 1-87, § 23, 23 DCR 2544.

Section, Act Sept. 14, 1965, Pub. L. 89-183, § 1, 79 Stat. 728, related to the accounts of a deceased executrix or administratrix.

Chapter 19.—DISTRIBUTION OF SURPLUS

Sec.

20-1906. Bequest conditioned on attainment of lawful age

AMENDMENT

1976—Sec. 24(b) of act Oct. 1, 1976, D.C. Law 1-87, amended item 20-1906 by substituting "conditioned on attainment of lawful age" for "to female".

§ 20-1906. Bequest conditioned on attainment of lawful age.

When a bequest of personal property or money is made to a person and directed by the will to be paid on his or her attaining to full, mature, or to a lawful age, such person is entitled to receive and demand the personal property or money on arriving at the age of 18 years or on being married. (Sept. 14, 1965, 79 Stat. 730, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Oct. 1, 1976, D.C. Law 1-87, § 24(a), 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting "a person" for "a female", "his or her" for "her", and "such person" for "the female" and section heading by substituting "conditioned on attainment of lawful age" for "to female".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 20-1908. Distribution of minor's share

If (1) any person entitled to a distributive share of a decedent's estate is under eighteen years of age and is not otherwise under a legal disability, (2) such distributive share consists of personal property or money of the value of not more than \$1,000, and (3) there is no duly appointed and qualified guardian for such person, the executor or administrator may deliver such share to the custodian of such person and the receipt of such custodian shall be sufficient voucher therefor. (Added Aug. 11, 1971, Pub. L. 92-85, § 1(a), 85 Stat. 307, and amended July 22, 1976, D.C. Law 1-75, § 4(b), 23 DCR 1180.)

AMENDMENT

1976—Act July 22, 1976, D.C. Law 1-75, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 8 of act July 22, 1976, D.C. Law 1-75, set out as a note under § 21-101.

Chapter 21.—ADMINISTRATION OF SMALL ESTATES

§ 20-2101. Petition for distribution of small estate; order

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20-2103, 20-2105, 47-1567g.

§ 20-2102. Waiver of administration; notice to creditors; final order

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20-2103, 20-2105, 47-1567g.

Chapter 23.—ESTATES OF ABSENTEES AND ABSCONDERS

Sec.

20-2310. Support of absentee's spouse and minor children.

AMENDMENT

1976—Sec. 26(b) of act Oct. 1, 1976, D.C. Law 1-87, amended item 20-2310 by substituting "spouse" for "wife".

§ 20-2301. Petition for appointment of receiver, where absentees interested in property; Corporation Counsel as party

(a) If a person entitled to or having an interest in property in the District of Columbia has disappeared or absconded from the District of Columbia, and it is not known where he or she is, or if he or she, having a spouse or minor child, dependent to any extent upon him or her for support, has disappeared or absconded without making sufficient provision for the support, and it is not known where he or she is or if his or her whereabouts is known and he or she has been without the District of Columbia continuously for two years or longer, a person who would under the law of the District of Columbia be entitled to administer upon the estate of the absentee if he or she were deceased, or, if no one is known to be so entitled, any suitable person, or the spouse, or someone in his or her or the minor's behalf, may file a petition, under oath, in the Probate Court, stating:

* * * * *

(As amended Oct. 1, 1976, D.C. Law 1-87, § 25, 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended subsec. (a) by substituting "spouse" for "wife", "he or she" for "he", "him or her" for "him", "his or her" for "his", and "his or her" for "her".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 20-2310. Support of absentee's spouse and minor children

The court may order the property held by the receiver under this chapter, or its proceeds acquired by mortgage, lease, or sale, to be applied in payment of charges incurred or that may be incurred in the support and maintenance of the absentee's spouse and minor children, and to the discharge of debts and claims for alimony proved against the absentee. (Sept. 14, 1965, 79 Stat. 735, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Oct. 1, 1976, D.C. Law 1-87, § 26(a), 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section and section heading by substituting "spouse" for "wife".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

CROSS REFERENCE

Age of majority, see § 21-101 note.

TITLE 21.—FIDUCIARY RELATIONS AND THE MENTALLY ILL

Title 21 was enacted by Pub. L. 89-183, Sept. 14, 1965, 79 Stat. 736

Chapter 1.—GUARDIANSHIP OF INFANTS

SUBCHAPTER I.—APPOINTMENT OF GUARDIAN; BOND

Sec.

21-109. Spouse as guardian of estate.

21-113. Enjoining spouse, parent, or testamentary guardian from interfering with minor's estate.

SUBCHAPTER III.—INDIGENT MINOR CHILDREN

21-181. Enlistment of indigent minor children.

AMENDMENT

1976—Sec. 29(b) of act Oct. 1, 1976, D.C. Law 1-87, amended item 21-109 by substituting "Spouse" for "Husband".

Sec. 30(b) of such act amended item 21-113 by substituting "spouse" for "husband".

Sec. 31(b) (1) of such act amended heading for subchapter III by substituting "MINOR CHILDREN" for "BOYS".

Sec. 31(b) (2) of such act amended item 21-181 by substituting "minor children" for "boys".

SUBCHAPTER I.—APPOINTMENT OF GUARDIAN; BOND

§ 21-101. Natural guardians of the person

EFFECTIVE DATE OF D.C. LAW 1-75

Section 8 of act July 22, 1976, D.C. Law 1-75, provided: "This act [for classification of act see Tables] shall take effect upon completion of the period provided for Congressional review in section 602(c) (1) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c) (1)]."

SHORT TITLE

The first section of act July 22, 1976, D.C. Law 1-75, provided "That this act [for classification of act see Tables] may be cited as the 'District of Columbia Age of Majority Act'."

PROSPECTIVE APPLICATION AND CONSTRUCTION OF D.C. LAW 1-75

Section 7 of act July 22, 1976, D.C. Law 1-75, provided:

"(a) The changes of District laws made by this act shall be construed prospectively and shall not have any application to any event occurring, any rights or liabilities existing, or any instrument (except District statutes, regulations, and orders) in effect, prior to the effective date of this act.

"(b) No changes of District law, other than changes made by specific provisions in this act, shall be construed to be made by this act."

RULES OF COMMON OR OTHER LAW RELATING TO AGE OF MAJORITY SUPERSEDED BY D.C. LAW 1-75

Section 2 of act July 22, 1976, D.C. Law 1-75, provided: "Notwithstanding any rule of common or other law to the contrary in effect on the effective date of this act, the age of majority in the District of Columbia shall be eighteen years of age, except that this act shall not affect any common law or statutory right to child support."

§ 21-102. Testamentary guardians of the person

When one parent is dead, the other, whether of full age or not, may, by last will and testament, appoint a guardian of the person to have the care,

custody, and tuition of his infant child, other than a married infant; and if the person so appointed refuses the trust, the Probate Court may appoint another person in his place. (Sept. 14, 1965, 79 Stat. 737, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Oct. 1, 1976, D.C. Law 1-87, § 27, 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting "other than a married infant" for "other than a married female".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 21-103. Appointment of guardians of the person by court; limitation of number of wards

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 21-104. Termination of guardianship of the person

A natural guardianship or an appointive guardianship of the person of an infant ceases when said infant becomes 18 years of age or marries. (Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 22, 1976, D.C. Law 1-75, § 4(d), 23 DCR 1181; Apr. 7, 1977, D.C. Law 1-107, title I, § 115, 23 DCR 8737.)

AMENDMENTS

1977—Act Apr. 7, 1977, D.C. Law 1-107, amended section by inserting "or marries" immediately after "becomes 18 years of age".

1976—Act July 22, 1976, D.C. Law 1-75, amended section by substituting "ceases when said infant becomes 18 years of age" for "ceases, in the case of a male infant when he becomes 21 years of age, and in the case of a female infant when she becomes 18 years of age or marries".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 301 of act Apr. 7, 1977, D.C. Law 1-107, set out as a note under § 16-902.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 8 of act July 22, 1976, D.C. Law 1-75, set out as a note under § 21-101.

§ 21-105. Appointment by deed or will for child inheriting from parent

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 21-106. Guardian of estate

(a) Subject to sections 21-101 to 21-104, when land descends or is devised to an infant under 18 years of age, or the infant is entitled to a distributive share of the personal estate of an intestate or to a legacy or bequest under a last will, or acquires real or personal property by gift or purchase, the Probate Court may appoint a guardian of the infant's estate; and if there is a guardian of the

person of the infant the guardian of the estate so appointed may be the same or a different person.

* * * * *

(As amended July 22, 1976, D.C. Law 1-75, § 4(e), 23 DCR 1181.)

AMENDMENT

1976—Act July 22, 1976, D.C. Law 1-75, amended section by substituting "18" for "21".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 8 of act July 22, 1976, D.C. Law 1-75, set out as a note under § 21-101.

§ 21-107. Preferences in appointment of guardian of estate

In appointing a guardian of the estate of an infant, unless said infant be over 14 years of age as hereinafter directed in section 21-108, the court shall give preference to—

(1) the parents, or either of them, if living; or

(2) the spouse if the infant is married to a person 18 years of age or older—

when in the judgment of the court the parent or spouse is a suitable person to have the management of the infant's estate. (Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Oct. 1, 1976, D.C. Law 1-87, § 28, 23 DCR 2544.)

AMENDMENT

1976—Act. Oct. 1, 1976, D.C. Law 1-87, amended section by substituting clauses (1) and (2) for clauses (1), (2), and (3) and by substituting "spouse" for "husband".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

§ 21-108. Selection of guardian by infant

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 21-109. Spouse as guardian of estate

When an infant to whom a guardian of his or her estate has been appointed marries, he or she may select his or her spouse as the guardian of his or her estate, with the approval of the court; and after he is duly appointed and qualified by giving bond, as is required in other cases, the powers of the guardian previously appointed shall cease, and he shall settle his final account and turn over his ward's estate to his or her spouse, according to the order and directions of the court. (Sept. 14, 1965, 79 Stat. 739, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Oct. 1, 1976, D.C. Law 1-87, § 29(a), 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting "When an infant" for "When a female infant", "guardian of his or her estate" for "guardian of her estate", "he or she may select his or her spouse" for "she may select her husband", "of his or her estate" for "of her estate", and "ward's estate to his or her spouse" for "ward's estate to her husband" and section heading by substituting "Spouse" for "Husband".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 21-111. Ancillary guardian of estate of nonresident infant

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 21-113. Enjoining spouse, parent, or testamentary guardian from interfering with minor's estate

On application of a friend of an infant entitled to real or personal estate, or in the exercise of its own discretion, the court may enjoin a parent or spouse or testamentary guardian from interfering with the infant's estate without being appointed and giving bond as guardian of the estate. (Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Oct. 1, 1976, D.C. Law 1-87, § 30(a), 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting "spouse" for "husband", and section heading by substituting "spouse, parent" for "husband, parents".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 21-114. Bond from parents of child entitled to property

CROSS REFERENCES

Age of majority, see § 21-101 note.

Undertaking in lieu of fiduciary's bond, see § 16-601.

§ 21-115. Bond of guardian of estate

CROSS REFERENCE

Undertaking in lieu of fiduciary's bond, see § 16-601.

§ 21-120. Settlement of actions involving minor children; appointment of guardian of estate

CROSS REFERENCE

Age of majority, see § 21-101 note.

SUBCHAPTER II.—PROPERTY OF INFANTS

§ 21-141. Possession of property

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 21-142. Inventory

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 21-143. Duties; accounts; maintenance and education; sales; compensation

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 21-144. Property subject to liens

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 21-145. Property subject to executory contract

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 21-146. Contract for sale by adult in behalf of himself and infant

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 21-147. Sale of infant's principal for maintenance or education

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 21-148. Sale or exchange of real estate; proceedings

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 21-149. Parties

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 21-151. Decree of sale; costs

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 21-154. Ratification of sales by court

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 21-155. Sale or exchange of particular estate or remainder; application of income.

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 21-156. Lease of infant's estate

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 21-157. Mortgage of infant's estate

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 21-158. Final account

On arrival of a ward at the age of 18 years the guardian shall exhibit a final account of his trust to the court and shall, agreeably to the court's order, deliver up to the ward all the property of the ward in his hands and if he fails to do so, his bond may be sued upon for the use of the party interested, and he may be attached. (Sept. 14, 1965, 79 Stat. 744, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(a)(3), 84 Stat. 567; July 22, 1976, D.C. Law 1-75, § 4(c), 23 DCR 1181.)

AMENDMENT

1976—Act July 22, 1976, D.C. Law 1-75, amended section by substituting "18" for "21".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 8 of act July 22, 1976, D.C. Law 1-75, set out as a note under § 21-101.

SUBCHAPTER III.—INDIGENT MINOR CHILDREN

AMENDMENT

1976—Sec. 31(a)(1) of act Oct. 1, 1976, D.C. Law 1-87, amended subchapter heading by substituting "MINOR CHILDREN" for "BOYS".

§ 21-181. Enlistment of indigent minor children

The Probate Court may appoint guardians to indigent minor children for the purpose of securing their enlistment in the naval or marine service of the United States, as provided by law, free of costs on account of the proceeding. (Sept. 14, 1965, 79 Stat. 744, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Oct. 1, 1976, D.C. Law 1-87, § 31(a)(2), (3), 23 DCR 2544.)

AMENDMENT

1976—Sec. 31(a)(2) of act Oct. 1, 1976, D.C. Law 1-87, amended section heading by substituting "minor children" for "boys".

Sec. 31(a)(3) of such act amended section by substituting "minor children" for "boys".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 21-182. Preparation of guardianship papers

The Register of Wills shall prepare papers in connection with appointment of guardians to enable indigent minor children to enlist in the United States Navy as provided by law, without making a charge therefor. (Sept. 14, 1965, 79 Stat. 744, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Oct. 1, 1976, D.C. Law 1-87, § 31(a)(4), 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting "minor children" for "boys".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

Chapter 3.—GIFTS TO MINORS—UNIFORM LAW

§ 21-301. Definitions

As used in this chapter:

(1) "adult" means a person who has attained the age of eighteen years;

* * * * *

(13) "minor" means a person who has not attained the age of 18 years;

* * * * *

(As amended July 22, 1976, D.C. Law 1-75, § 4(f), 23 DCR 1181.)

AMENDMENT

1976—Act July 22, 1976, D.C. Law 1-75, amended pars. (1) and (13) by substituting "eighteen" for "twenty-one" in par. (1) and by substituting "18" for "21" in par. (13).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 8 of act July 22, 1976, D.C. Law 1-75, set out as a note under § 21-101.

§ 21-304. Custodian to be one person; rights, powers, and duties of custodian

* * * * *

(d) To the extent that the custodial property is not so expended, the custodian shall:

(1) deliver or pay it over to the minor on his attaining the age of 18 years; or

(2) if the minor dies before attaining that age, thereupon deliver or pay it over to the estate of the minor.

* * * * *

(As amended July 22, 1976, D.C. Law 1-75, § 4(g), 23 DCR 1181.)

AMENDMENT

1976—Act July 22, 1976, D.C. Law 1-75, amended subsec. (d) (1) by substituting "18" for "21".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 8 of act July 22, 1976, D.C. Law 1-75, set out as a note under § 21-101.

Chapter 5.—HOSPITALIZATION OF THE MENTALLY ILL

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2-2222, 11-501, 11-921, 11-1101, 11-2601, 16-2315, 16-2321, 24-528.

SUBCHAPTER I.—DEFINITIONS; COMMISSION ON MENTAL HEALTH

§ 21-501. Definitions

CROSS REFERENCE

Representation of indigents, see §§ 2-2222, 11-2601.

NOTES TO DECISIONS

Construction—With other laws

Where proposed definition of mental illness for civil commitment purposes had excluded mental deficiency but version which was enacted by Congress included mental deficiency within definition of mental illness, such enactment expressed awareness that mental retardation and mental illness or disease are not mutually exclusive conditions. *United States v. D. Jackson* (1976, 553 F.2d 109, 179 U.S. App. D.C. 375).

§ 21-502. Commission on Mental Health; composition; appointment and terms of members; organization; chairman; salaries

(e) The salaries of the members of the Commission and its employees shall be fixed in accordance with the provisions of the Classification Act of 1949, as amended. The alternate Chairman shall be paid on a per diem basis at the same rate of compensation as fixed for the permanent Chairman.

REFERENCE IN TEXT

The Classification Act of 1949, as amended, referred to in subsec. (e), was repealed by Act Sept. 6, 1966, Pub. L. 89-554, § 8(a), 80 Stat. 632, section 1 of which enacted title 5, U.S.C., into law, and is now covered by chapter 51 and subchapter III of chapter 53 of title 5, U.S.C.

CODIFICATION

Subsec. (e) is set out in this supplement to correct editorial error appearing in the main edition.

SUBCHAPTER III.—EMERGENCY HOSPITALIZATION

§ 21-521. Detention of persons believed to be mentally ill; transportation and application to hospital

NOTES TO DECISIONS

Constitutionality

Fact that Congress has legislated two statutes for detaining mentally ill persons, one applicable to the metropolitan District of Columbia area containing federal reservations and one applicable to the District of Columbia, does not present a constitutionally suspect situation, inasmuch as the District of Columbia is neither a state nor territory, but a federal enclave, housing the federal government, and Congress may legislate a detention statute applicable only within the District. *E. Medynski v. L. S. Margolis* (1975, 389 F.Supp. 743).

Malpractice

Under section 21-522, the examination requirement preconditioning admission to and detention of suspected mental patient in hospital is imposed upon psychiatrist on duty at hospital and not upon the initiating physician who is clothed with a privilege immunizing his role as the agency by which such examinations become possible; thus, the United States, cannot be held liable under Federal Tort Claims Act on claim of former Veterans Administration hospital patient that he had been committed to hospital upon application executed by Veterans Administration hospital physician without complying

with reasonable medical standards of care required under circumstances then existing. *P. L. Johnson v. United States* (1976, 547 F.2d 688, 178 U.S. App. D.C. 391).

§ 21-522. Examination and admission to hospital; notice

NOTES TO DECISIONS

Malpractice

Under this section, the examination requirement preconditioning admission to and detention of suspected mental patient in hospital is imposed upon psychiatrist on duty at hospital and not upon the initiating physician who is clothed with a privilege immunizing his role as the agency by which such examinations become possible; thus, the United States, cannot be held liable under Federal Tort Claims Act on claim of former Veterans Administration hospital patient that he had been committed to hospital upon application executed by Veterans Administration hospital physician without complying with reasonable medical standards of care required under circumstances then existing. *P. L. Johnson v. United States* (1976, 547 F.2d 688, 178 U.S. App. D.C. 391).

Mootness

Case in which petitioner challenged validity of his prior emergency confinement as a person mentally ill and dangerous to himself or others presented sufficient adversariness to avoid mootness in constitutional sense, although hospital had initiated a judicial proceedings for long-term hospitalization and had later unconditionally released petitioner. *In re J. Curry* (1972, 470 F. 2d 368, 152 U.S. App. D.C. 220).

Voluntary treatment

Where petitioner voluntarily presented himself at university hospital and requested treatment, doctor at this hospital advised petitioner that he could not be admitted there and suggested that he file application for treatment at a public mental hospital, which petitioner was unwilling to do, and doctor then executed an application for emergency hospitalization and sent petitioner in an ambulance to mental hospital which admitted petitioner as involuntary emergency patient, and there was nothing to indicate that petitioner resisted treatment at mental hospital, petitioner's detention as an emergency's involuntary patient was null and void. *In re J. Curry* (1972, 470 F. 2d 368, 152 U.S. App. D.C. 220).

§ 21-523. Court order requirement for hospital detention beyond 48 hours; maximum period for observation

NOTES TO DECISIONS

Mootness

Case in which petitioner challenged validity of his prior emergency confinement as a person mentally ill and dangerous to himself or others presented sufficient adversariness to avoid mootness in constitutional sense, although hospital had initiated a judicial proceedings for long-term hospitalization and had later unconditionally released petitioner. *In re J. Curry* (1972, 470 F. 2d 368, 152 U.S. App. D.C. 220).

Voluntary treatment

Where petitioner voluntarily presented himself at university hospital and requested treatment, doctor at this hospital advised petitioner that he could not be admitted there and suggested that he file application for treatment at public mental hospital, which petitioner was unwilling to do, and doctor then executed an application for emergency hospitalization and sent petitioner in an ambulance to mental hospital which admitted petitioner as involuntary emergency patient, and there was nothing to indicate that petitioner resisted treatment at mental hospital, petitioner's detention as an emergency, involuntary patient was null and void. *In re J. Curry* (1972, 470 F. 2d 368, 152 U.S. App. D.C. 220).

§ 21-528. Detention of person pending judicial proceedings

NOTES TO DECISIONS

Mootness

Case in which petitioner challenged validity of his prior emergency confinement as a person mentally ill and dangerous to himself or others presented sufficient adversari-

ness to avoid mootness in constitutional sense, although hospital had initiated a judicial proceedings for long-term hospitalization and had later unconditionally released petitioner. *In re J. Curry* (1972, 470 F. 2d 368, 152 U.S. App. D.C. 220).

Voluntary treatment

Where petitioner voluntarily presented himself at university hospital and requested treatment, doctor at this hospital advised petitioner that he could not be admitted there and suggested that he file application for treatment at a public mental hospital, which petitioner was unwilling to do, and doctor then executed an application for emergency hospitalization and sent petitioner in an ambulance to mental hospital which admitted petitioner as involuntary emergency patient, and there was nothing to indicate that petitioner resisted treatment at mental hospital, petitioner's detention as an emergency, involuntary patient was null and void. *In re J. Curry* (1972, 470 F. 2d 368, 152 U.S. App. D.C. 220).

SUBCHAPTER IV.—HOSPITALIZATION UNDER COURT ORDER

§ 21-541. Petition to Commission; copy to person affected

NOTES TO DECISIONS

Adequacy of treatment facilities

Before trial court exercises any authority it may have to order 14-year-old involuntarily committed orphan treated at public expense outside the District of Columbia, on ground that no suitable facilities are available within the District, the District is entitled to reasonable time to attempt to design a program for alternate local care and court is also to consider the public's as well as the patient's interest; public interest requires that a request for commitment of an extraordinary amount of public funds for treatment of a single patient be given closest administrative and judicial scrutiny. *District of Columbia v. In the Matter of H. J. B.* (D.C. App. 1976, 359 A.2d 285).

Residence

Section 21-551 providing that a person committed to a public hospital but found not to be a resident of the District of Columbia is to be transferred to his state of residence if an appropriate institution in that state is willing to accept him may not be used to bar claim of a newly-arrived resident for medical public assistance since to do so would be unjustifiably discriminatory in violation of Fifth Amendment right to due process; also, resort to section 32-405 providing that all indigent insane persons residing in the District at the time they become insane are entitled to benefits of St. Elizabeths Hospital would also be invalid for such reason. *District of Columbia v. In the Matter of H. J. B.* (D.C. App. 1976, 359 A.2d 285).

In view of fact that custodian of mentally retarded orphan, who was brought to the United States for purpose of adoption, was a District of Columbia corporation, the orphan acquired a colorable claim to District of Columbia "residence" for purpose of medical treatment at public expense once she was placed directly in custody of officials operating from corporation's District of Columbia office absent evidence that transfer from New York office was intended as anything less than an indefinite arrangement for her care or some residue of permanent attachment to another jurisdiction, the District is liable for her care. *Id.*

§ 21-545. Hearing and determination by court or jury; order; witnesses; jurors

NOTES TO DECISIONS

Appeal and error

Under section 11-721 making reviewable all final orders of the Superior Court, hospital superintendent from whose custody allegedly mentally ill patient had been released by order of trial court in civil commitment proceedings was "aggrieved" by trial court's judgment and, therefore, would be a proper party to appeal. *In the Matter of E. R. Lomax* (D.C. App. 1976, 367 A.2d 1272).

In hospital superintendent's action for judicial hospitalization of patient alleged to be mentally ill, patient's counsel's opening remarks to effect that hospital's expert witness was "chagrined" at having failed to secure patient's involuntary commitment in prior trial and that patient had been tried by jury some months before in another mental health proceeding and that there the jury had concluded that patient did not present a danger to himself or to others were prejudicial error, despite judge's instruction to cure error and despite fact that government witness did make passing mention of prior jury trial. *Id.*

Appeal from commitment order, based on claim that patient was deprived of due process of law because jury did not determine beyond a reasonable doubt that he was mentally ill and consequently dangerous, was not moot because of patient's discharge, where, in light of patient's fixed delusions and testimony indicating likelihood of their persistence, prospect of patient again being subjected to commitment proceedings was not remote, and where collateral consequences of being adjudged mentally ill remained to plague patient. *In re J. Ballay* (1973, 482 F. 2d 648, 157 U.S. App. D.C. 59).

Burden of proof

Where burden of proof on issue of defendant's mental condition was placed on defendant at release hearing and defendant's request for jury trial was denied, defendant's commitment to mental institution following his acquittal by reason of insanity was not valid under the civil commitment statute of the District of Columbia. *United States v. B. L. Wright* (1975, 511 F.2d 1311, 167 U.S. App. D.C. 309).

In an involuntary civil commitment trial, due process required proof beyond a reasonable doubt that respondent was mentally ill and, because of the illness, was likely to injure herself or other persons if allowed to remain at liberty. *In the Matter of S. Hodges* (D. C. App. 1974, 325 A.2d 605).

Proof of mental illness and dangerousness in involuntary civil commitment proceedings must be beyond a reasonable doubt rather than by preponderance of evidence. *In re J. Ballay* (1973, 482 F. 2d 648, 157 U.S. App. D.C. 59).

There is justification for preponderance of proof standard for commitment of the insanity-acquitted even if higher standard is required prior to civil commitment for propensity and even though there is no justification for denying the insanity-acquitted the right to jury trial that is recognized for those involved in civil commitment proceedings. *United States v. J. J. Brown* (1973, 478 F. 2d 606, 155 U.S. App. D.C. 402).

Where insanity-acquitted individual has been in detention for considerable period of time, his continued detention vel non should be governed by same standard of burden of proof applied to civil commitments; extent of period calls for sound discretion, considering nature of crime, nature of treatment, and response of person, and generally will not exceed five years and should never exceed maximum sentence for offense, less mandatory release time. *Id.*

Defendant acquitted by reason of insanity could be committed on determination of mental illness by preponderance of evidence, despite contention that due process required reasonable doubt standard in involuntary civil commitment proceeding and that equal protection required same standard for the insanity-acquitted. *Id.*

Constitutional rights

While reliance upon labels of "civil" or "criminal" would be eschewed in determining applicability of constitutional protections to civil commitment proceedings, patient is not put in jeopardy by civil commitment proceedings aimed basically at treatment, rather than punishment, for the afflicted individual. *In the Matter of E. R. Lomax* (D.C. App. 1976, 367 A.2d 1272).

Although there is nothing in this chapter which would prevent hospital from repeatedly filing new petitions for judicial hospitalization whenever it perceived that a person's mental condition warranted confinement, repetitious commencement of proceedings might reach a level of oppressiveness which would be violative of due process rights. *Id.*

Corporation counsel, representation by

To accept or create additional obligation to obey court order for corporation counsel to undertake representation of private citizens in mental health cases is antithetical to section 1-301 setting forth duties of corporation counsel and is also contrary to separation of powers doctrine, and thus not only is corporation counsel not required by statute to represent private petitioners, seeking involuntary civil commitment of adult son or daughter, but Superior Court judge has no power to make such an appointment. *District of Columbia et ano. v. W. C. Pryor, Associate Judge etc.* (D.C. App. 1976, 366 A.2d 141).

Danger to community

Jury hearing psychiatrist's testimony of dangerousness of person sought to be committed following acquittal on criminal charge due to finding of insanity should be informed of the various components of such term, to what extent it reflects a predicting of behavior, and whether it is prediction of an occurrence of a kind of behavior that, however deviant, might be considered by the jury not to be dangerous. *United States v. W. E. Ashe* (1973 478 F.2d 661, 155 U.S. App. D.C. 457).

In proceedings for commitment as dangerous due to mental illness of a person who has been found not guilty of an offense by reason of insanity, instruction as to role of expert witnesses should be sent to the experts in advance of hearing and should be read at least once to the jury. *Id.*

Jury trial

Where burden of proof on issue of defendant's mental condition was placed on defendant at release hearing and defendant's request for jury trial was denied, defendant's commitment to mental institution following his acquittal by reason of insanity was not valid under the civil commitment statute of the District of Columbia. *United States v. B. L. Wright* (1975, 511 F.2d 1311, 167 U.S. App. D.C. 399).

Stay of release pending appeal

Where there was a strong likelihood that hospital superintendent would prevail on appeal from trial court's order dismissing superintendent's petition for judicial hospitalization of patient, where, whether or not superintendent of hospital himself would be irreparably injured, a denial of stay pending superintendent's appeal would have presented a risk of substantial harm to patient's wife as patient had previously attacked her, where stay undoubtedly benefited patient himself, and where public interest called for a stay, in light of possibility that patient might attack persons other than his wife, granting of stay pending appeal was proper. *In the Matter of E. R. Lomax* (D.C. App. 1976, 367 A.2d 1272).

Vacation of commitment under prior law

Person whose two commitments to mental hospital were procedurally defective is entitled to declaration of illegality of such commitments and to vacation of respective commitment orders so that he can explain to potential employers where he was during years in question without jeopardizing his chances of gaining employment. *In the Matter of R. A. Brown* (1975, 68 F.R.D. 172).

— Jurisdiction

Where proceeding by person previously committed to mental hospital is part of two commitment proceedings begun in District Court sometime previously, Court has jurisdiction over later petition to have commitments declared illegal and vacated despite fact that District of Columbia Court Reorganization Act of 1970 vested exclusive jurisdiction over mental health matters in Superior Court. *In the Matter of R. A. Brown* (1975, 68 F.R.D. 172).

§ 21-551. Nonresidents

NOTES TO DECISIONS

Adequacy of treatment facilities

Before trial court exercises any authority it may have to order 14-year-old involuntarily committed orphan treated at public expense outside the District of Columbia, on ground that no suitable facilities are available

within the District, the District is entitled to reasonable time to attempt to design a program for alternate local care and court is also to consider the public's as well as the patient's interest; public interest requires that a request for commitment of an extraordinary amount of public funds for treatment of a single patient be given closest administrative and judicial scrutiny. *District of Columbia v. In the Matter of H. J. B.* (D.C. App. 1976, 359 A.2d 285).

Constitutionality

This section providing that a person committed to a public hospital but found not to be a resident of the District of Columbia is to be transferred to his state of residence if an appropriate institution in that state is willing to accept him may not be used to bar claim of a newly-arrived resident for medical public assistance since to do so would be unjustifiably discriminatory in violation of Fifth Amendment right to due process; also, resort to section 32-405 providing that all indigent insane persons residing in the District at the time they become insane are entitled to benefits of St. Elizabeths Hospital would also be invalid for such reason. *District of Columbia v. In the Matter of H. J. B.* (D.C. App. 1976, 359 A.2d 285).

Residence

In view of fact that custodian of mentally retarded orphan, who was brought to the United States for purpose of adoption, was a District of Columbia corporation, the orphan acquired a colorable claim to District of Columbia "residence" for purpose of medical treatment at public expense once she was placed directly in custody of officials operating from corporation's District of Columbia office absent evidence that transfer from New York office was intended as anything less than an indefinite arrangement for her care or some residue of permanent attachment to another jurisdiction, the District is liable for her care. *District of Columbia v. In the Matter of H. J. B.* (D.C. App. 1976, 359 A.2d 285).

SUBCHAPTER V.—RIGHT TO COMMUNICATION; EXERCISE OF OTHER RIGHTS

§ 21-564. Exercise of property and other rights; notice of inability; persons hospitalized prior to September 15, 1964

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER VI.—MISCELLANEOUS PROVISIONS

§ 21-581. Proceedings instituted by Commissioner of the District of Columbia

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 21-586. Financial responsibility for care of hospitalized persons; judicial enforcement

NOTES TO DECISIONS

Construction

Since District of Columbia's right to reimbursement for treatment of persons involuntarily confined to a public hospital for the mentally ill arises solely by this section and is in derogation of common-law rules, such right is to be extended no further than necessary to permit those claims for recompense which are either specifically set out in the enabling provision or are fairly inferable from its

language in the natural course of interpretation. *District of Columbia v. In the Matter of H. J. B.* (D.C. App. 1976, 359 A.2d. 285).

Construction with other laws

Regardless of fact that proceeding involving involuntary commitment of mentally retarded child was not brought under authority of child neglect statute, sections 16-2301 et seq., such statute furnished no ground for charging charitable organization, which had arranged for child's adoption, with cost of her commitment since this section governing right of District of Columbia to reimbursement is controlling where neglect proceedings are suspended because of incompetency of the child and such section did not provide a claim for reimbursement against the organization. *District of Columbia v. In the Matter of H. J. B.* (D.C. App. 1976, 359 A.2d. 285).

Jurisdiction

Where District Court ordered wife committed to mental hospital, jurisdiction over any claim for contribution to her support remained in District Court while she was confined in hospital, but after she was released and placed in foster home, claim for contribution to her support is to be brought in Superior Court. *G. D. Randolph, Jr. v. District of Columbia* (D.C. App. 1975, 333 A.2d 380).

Liability of child placement agency

Grant to a child-placing agency of parental rights, as opposed to parental duties, is primarily for purpose of vesting agency with authority to consent to adoption and does not, of its own force, expand schedule of liabilities in this section governing District of Columbia's right to reimbursement for treatment of persons involuntarily confined to a public hospital for the mentally ill, at least where the agency has acquired its most recent custodial relation by default of an adoption proceeding outside the District and has been unable to find an alternative placement because of a disability unknown at time the child was released to the preadoptive family. *District of Columbia v. In the Matter of H. J. B.* (D.C. App. 1976, 359 A.2d. 285).

Although charitable corporation was organized to accept custody and control of children brought into the country for adoption and was authorized to do any acts which would prevent such individuals from becoming public charges, such objectives do not, of themselves, create a parental relation between the committee and those children who might come into its care and do not create third-party rights in District of Columbia to reimbursement for expenses incurred in connection with involuntary commitment of mentally retarded orphan who had been brought into the United States by the corporation for purpose of adoption. *Id.*

Where only by default on collapse of the adoption did custody of mentally retarded child, who was brought to the United States for purposes of adoption, fall to the charitable committee which had arranged for the adoption, custody had been maintained because of inability to locate a permanent arrangement because of the severe infirmity and committee had not been a penurious provider during its custodianship, doctrine of equitable estoppel furnishes no basis for claim of reimbursement against committee for maintenance of child during involuntary commitment to District of Columbia hospital for the mentally ill. *Id.*

§ 21-592. Return to hospital of an escaped mentally ill person

CROSS REFERENCE

Rewards for apprehension from fugitives from welfare institutions, see § 24-426.

Chapter 9.—MENTALLY ILL PERSONS FOUND IN CERTAIN FEDERAL RESERVATIONS

§ 21-902. Commitments by special commissioners of certain district courts

NOTES TO DECISIONS

Constitutionality

Provisions of this chapter governing involuntary detention and commitment of mentally ill persons on federal

reservations in metropolitan District of Columbia are not so inconsistent with provisions of chapter 5 of this title governing commitments in District of Columbia as to deprive an individual of due process and equal protection when committed pursuant to authority of provisions governing federal reservations. *E. Medynski v. L. S. Margolis* (1975, 389 F.Supp. 743).

Mootness

Action wherein plaintiff challenged constitutionality of procedure of this chapter for involuntary detention and commitment of mentally ill persons in metropolitan District of Columbia area was not moot by reason of plaintiff's discharge from hospital during pendency of litigation where defendant could again be detained pursuant to procedure and, thus, be forced to again advance her allegations, and collateral consequences of being adjudged mentally ill remained to plague plaintiff. *E. Medynski v. L. S. Margolis* (1975, 389 F.Supp. 743).

§ 21-903. Apprehension by certain officials of persons believed to be mentally ill; proceedings

NOTES TO DECISIONS

Constitutionality

Fact that Congress has legislated two statutes for detaining mentally ill persons, one applicable to the metropolitan District of Columbia area containing federal reservations and one applicable to the District of Columbia, does not present a constitutionally suspect situation, inasmuch as the District of Columbia is neither a state nor territory, but a federal enclave, housing the federal government, and Congress may legislate a detention statute applicable only within the District. *E. Medynski v. L. S. Margolis* (1975, 389 F.Supp. 743).

Provisions of this chapter governing involuntary detention and commitment of mentally ill persons on federal reservations in metropolitan District of Columbia are not so inconsistent with provisions of chapter 5 of this title governing commitments in District of Columbia as to deprive an individual of due process and equal protection when committed pursuant to authority of provisions governing federal reservations. *Id.*

Mootness

Action wherein plaintiff challenged constitutionality of procedure of this chapter for involuntary detention and commitment of mentally ill persons in metropolitan District of Columbia area was not moot by reason of plaintiff's discharge from hospital during pendency of litigation where defendant could again be detained pursuant to procedure and, thus, be forced to again advance her allegations, and collateral consequences of being adjudged mentally ill remained to plague plaintiff. *E. Medynski v. L. S. Margolis* (1975, 389 F.Supp. 743).

Chapter 11.—COMMITMENT AND MAINTENANCE OF SUBSTANTIALLY RETARDED PERSONS

§ 21-1101. Definitions

NOTES TO DECISIONS

Construction—With other laws

Where proposed definition of mental illness for civil commitment purposes had excluded mental deficiency but version which was enacted by Congress included mental deficiency within definition of mental illness, such enactment expressed awareness that mental retardation and mental illness or disease are not mutually exclusive conditions. *United States v. D. Jackson* (1976, 553 F.2d 109, 179 U.S. App. D.C. 375).

§ 21-1102. Persons received in Forest Haven; age limit

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 21-1111. Proceedings to charge relatives legally responsible for maintenance of public patient; collection of maintenance payments; enforcement of order; liability of decedent's estate

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 21-1120. Paroles; conditions; expense; discretion of superintendent; violation; return

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Rewards for apprehension of fugitives from welfare institutions, see § 24-426.

Chapter 15.—CONSERVATORS

§ 21-1501. Appointment of conservators

NOTES TO DECISIONS

Competency to be sued

Even if lis pendens had been filed or "suggestion of appointment of conservator" served as adequate notice in lieu thereof and deprived ward of capacity to make contract, such lack of capacity to contract is not dispositive of question whether ward is competent to be sued. *A. Carter v. G. E. Saxon* (D.C. App. 1976, 358 A.2d 639).

— Substitution of parties

Action should not be dismissed for failure to move for substitution of incompetent's representative where no contention has been raised that incompetent would be inadequately protected without such substitution. *A. Carter v. G. E. Saxon* (D.C. App. 1976, 358 A.2d 639).

Construction

This section requires a showing that the adult in question, by reason of mental weakness not amounting to unsoundness of mind, is unable to care for his property, and inability must be a present one, as it is insufficient to show a prior mental condition or that there may be, at some uncertain time in the future, an inability to handle property. *In the Matter of W. C. Kloman, Jr.* (D.C. App. 1974, 315 A. 2d 830).

Evidence—Sufficiency

In view of other evidence, fact that person had previously been committed to hospital for 10 months on two occasions and had at one point been found not guilty by reason of insanity of assaulting a police officer and had been diagnosed as a paranoid schizophrenic was insufficient to support finding that person was unable to handle his own funds and that a conservator should be appointed. *In the Matter of W. C. Kloman, Jr.* (D.C. App. 1974, 315 A. 2d 830).

§ 21-1503. Bond; powers and duties

CROSS REFERENCE

Age of majority, see § 21-101, note.

NOTES TO DECISIONS

Accounts—Disbursement

Where ward suffered stroke subsequent to court order for disbursement of estate's funds by conservator, fact that court order might have been based on projected budget does not require substitute conservator to expend funds in exact, or even approximate, proportion to amounts set forth in estimated budget, for large degree of flexibility, autonomy, and discretion is necessary in running household with changing needs. *S. Rosendorf et*

al. v. J. C. Toomey, Conservator (D.C. App. 1975, 349 A.2d 694).

Where ward of estate suffered stroke, and ward's wife became responsible for payment of bills, salaries, and other expenditures of household, it is not improper for substitute conservator to designate ward's wife as payee of checks for ward's living expenses. *Id.*

— Time for objections

Where substitute conservator of estate submitted accounts and reports of his disbursements to ward from 1966 to 1970, action by children of ward brought in 1972 which objected to such disbursements was not timely filed and is precluded, notwithstanding that such delay was attributable to heirs' successful challenge to testamentary instruments executed by ward. *S. Rosendorf et al. v. J. C. Toomey, Conservator* (D.C. App. 1975, 349 A.2d 694).

Collateral estoppel

Where it was decided in first case that contest was between children of decedent and his conservators and that possible liability of widow for conversion of funds paid by conservators to her for decedent's use was not in issue, executors were not barred by collateral estoppel from subsequently suing widow for conversion. *National Savings & Trust Company et ano., Executors etc. v. M. Rosendorf* (1977, 559 F.2d 837, 182 U.S. App. D.C. 216).

Costs

Where children of ward who challenged substitute conservator's disbursements from estate made no showing of wrongdoing by substitute conservator, trial court's prospective allowance to conservator of attorney's fees in regard to appeal, subject to future approval by trial court as to amount, is reasoned and proper exercise of trial court's discretion. *S. Rosendorf et al. v. J. C. Toomey, Conservator* (D.C. App. 1975, 349 A.2d 694).

Reasonable compensation

Under evidence that commission paid to substitute conservator of estate was based on character of services rendered, amount of time spent, and size of estate administered, and that commission did not exceed statutory limit of 5% of disbursements, trial court did not abuse its discretion in approving payment of such commission to conservator. *S. Rosendorf et al. v. J. C. Toomey, Conservator* (D.C. App. 1975, 349 A.2d 694).

§ 21-1505. Appointment of temporary conservator

NOTES TO DECISIONS

Costs and fees

Where physician initiated proceedings for appointment of conservator on behalf of one of his patients and, in petitioning court for reimbursement of his costs and attorney's fees resulting from temporary conservatorship, was called upon to defend his actions in having initiated the proceedings, which resulted in discharge of temporary conservator, the context in which physician incurred the expenses and costs in conservator proceedings did not amount to a "suit against the insured," and did not require physician to defend against a claim alleging "injury, sickness, disease" caused by "malpractice, error or mistake" within malpractice policy, and physician was not entitled to recover under policy for his costs and fees of defense of his actions. *W. M. Oler v. Liberty Mutual Insurance Company* (D.C. App. 1972, 297 A. 2d 333).

Medical services

Proceedings initiated by physician for appointment of conservator on behalf of patient, who physician alleged needed to have assets preserved so that he would not be deprived of treatment he needed, did not constitute the rendering of professional medical services within purview of malpractice policy. *W. M. Oler v. Liberty Mutual Insurance Company* (D.C. App. 1972, 297 A. 2d 333).

§ 21-1507. Lis pendens

NOTES TO DECISIONS

Competency to be sued

Even if lis pendens had been filed or "suggestion of appointment of conservator" served as adequate notice in lieu thereof and deprived ward of capacity to make contract, such lack of capacity to contract is not dispositive of question whether ward is competent to be sued. *A. Carter v. G. E. Saxon* (D.C. App. 1976, 358 A.2d 639).

— Substitution of parties

Action should not be dismissed for failure to move for substitution of incompetent's representative where no contention has been raised that incompetent would be inadequately protected without such substitution. *A. Carter v. G. E. Saxon* (D.C. App. 1976, 358 A.2d 639).

Chapter 17.—UNIFORM FIDUCIARIES ACT

§ 21-1706. Deposit in name of fiduciary as such

NOTES TO DECISIONS

Applicability

Uniform Fiduciaries Act applies only to liability for check transactions, so that maintenance of excessive de-

posits by defendant financial institutions, in action challenging various aspects of charitable hospital's fiscal management, would not fall within any of the Act's provisions. *D. M. Stern et al. v. Lucy Webb Hayes National Training School for Deaconesses and Missionaries et al.* (1974, 381 F. Supp. 1003).

Chapter 18.—CHARITABLE AND SPLIT-INTEREST TRUSTS

§ 21-1801. Charitable and split-interest trusts

CROSS REFERENCE

Institutional funds, management of, see §§ 32-1201 et seq.

PART IV

CRIMINAL LAW AND PROCEDURE

TITLE 22. CRIMINAL OFFENSES.
TITLE 23. CRIMINAL PROCEDURE.

TITLE 24. PRISONERS AND THEIR TREATMENT.

TITLE 22.—CRIMINAL OFFENSES

Chapter 1.—GENERAL PROVISIONS

§ 22-103. Attempts to commit crime.

NOTES TO DECISIONS

Cross-examination

In prosecution for attempted petty larceny, trial court did not abuse its discretion in refusing to allow cross-examination of prosecuting witness for bias or prejudice concerning witness' insistence that defendant be prosecuted rather than be accorded first offender treatment, which possibility was suggested to prosecuting witness by prosecutor. *S. P. Flecher v. United States* (D.C. App. 1976, 358 A. 2d 322; cert. denied 97 S. Ct. 486, 429 U.S. 977).

Joinder

Joinder of counts concerning second-degree burglary, grand larceny, and attempted burglary, was not improper. *L. P. Coleman v. United States* (D.C. App. 1972, 298 A. 2d 40; cert. denied 93 S. Ct. 3070, 413 U.S. 921).

Miranda rights

Defendant's incriminating statement, which was made one or two seconds after his apprehension by single police officer on roof of burglarized building in response to officer's inquiry as to what defendant was doing on roof, and which was given while officer was handcuffing defendant prior to any Miranda warnings, is admissible in defendant's subsequent prosecution for attempted burglary. *R. C. Owens v. United States* (D.C. App. 1975, 340 A. 2d 821).

Receiving stolen property

Defendant, who received a television set, which in fact had not been stolen, after having been advised that the set was a stolen set, did not commit crime of attempted receiving stolen property, since an unsuccessful attempt to do that which is not a crime cannot be held to be an attempt to commit crime specified. *United States v. F. Hair* (1973, 356 F. Supp. 339).

Sentences

Under Federal Youth Corrections Act requiring that youth offender be released on or before expiration of four years from date of his conviction and be discharged unconditionally on or before six years from date of his conviction, imposition of consecutive FYCA sentences is improper. *G. X. Royster v. United States* (D.C. App. 1976, 361 A. 2d 165).

Severance

Refusal to sever counts, in prosecution for second-degree burglary, grand larceny, and attempted burglary, was not an abuse of discretion where, inter alia, if there had been separate trials on each of the counts there would have been a substantial overlap of the evidence. *L. P. Coleman v. United States* (D.C. App. 1972, 298 A. 2d 40; cert. denied 93 S. Ct. 3070, 413 U.S. 921).

§ 22-104. Second conviction.

CROSS REFERENCE

Proceedings to establish previous convictions, see § 23-111.

NOTES TO DECISIONS

Peremptory challenges

Defendant who was charged with petit larceny, a misdemeanor for which maximum punishment was one year,

was entitled to only the three peremptory charges available to defendant charged with such an offense notwithstanding fact that Government had filed notice that, if convicted, defendant would be subjected to additional penalties of the third offender statute. *C. E. Tatum v. United States* (D.C. App. 1974, 330 A. 2d 522).

Procedure

Trial judge's failure to inquire of defendant whether he affirmed or denied previous convictions contained in government's information invalidates sentence for carrying a pistol without a license imposed under the recidivist sentencing procedure. *L. Irby v. United States* (D.C. App. 1975, 342 A.2d 33).

Purpose

Purpose of repeat offender statute is to provide new tools and sentencing alternatives to the trial judge to protect society and to secure certain additional safeguards, due process rights, and rehabilitation of the convicted offender. *E. Smith v. United States* (D.C. App. 1973, 304 A. 2d 28; cert. denied 94 S. Ct. 846, 414 U.S. 1114).

Sentence

A sentence under the recidivist statute is not a part of the offense itself; it is the possible punishment for the latter which determines whether the prosecution must be by indictment; recidivist statute comes into play after the trial and after accused has been found guilty and proceedings thereunder do not involve inquiry into guilt or innocence. *E. Smith v. United States* (D.C. App. 1973, 304 A. 2d 28; cert. denied 94 S. Ct. 846, 414 U.S. 1114).

§ 22-104a. Punishment of persons convicted of a felony with a prior record of at least two felony convictions—Definitions—Effect of convictions pardoned on the ground of innocence.

CROSS REFERENCE

Proceedings to establish previous convictions, see § 23-111.

NOTES TO DECISIONS

Prior convictions

Convictions arising from separate indictments handed down on same date cannot be relied on to enhance punishment as third offender. *D. L. Washington v. United States* (D.C. App. 1975, 343 A.2d 560).

Procedure

Trial judge's failure to inquire of defendant whether he affirmed or denied previous convictions contained in government's information invalidates sentence for carrying a pistol without a license imposed under the recidivist sentencing procedure. *L. Irby v. United States* (D.C. App. 1975, 342 A.2d 33).

An enhanced sentence could not be imposed upon defendant, found guilty of grand larceny, where the information as to the prior felony convictions was not filed with clerk of court prior to trial as required by § 23-111. *J. A. Bond v. United States* (D.C. App. 1973, 310 A. 2d 221).

Purpose

Purpose of repeat offender statute is to provide new tools and sentencing alternatives to the trial judge to protect society and to secure certain additional safeguards, due process rights, and rehabilitation of the con-

victed offender. *E. Smith v. United States* (D.C. App. 1973, 304 A. 2d 28; cert. denied 94 S. Ct. 846, 414 U.S. 1114).

§ 22-105. Persons advising, inciting, or conniving at criminal offense to be charged as principals.

NOTES TO DECISIONS

Acquittal of principal

Even if codefendant was granted a new trial on ground of insanity and was acquitted on that ground, defendant's conviction for aiding and abetting felony-murder would not be reversed for that reason, where killing was committed by codefendant in furtherance of a robbery. *P. Shanahan v. United States* (D.C. App. 1976, 354 A. 2d 524).

Fact that a jury made no finding as to guilt on charge of armed robbery of codefendant who eyewitness testified took money does not preclude defendant's conviction of armed robbery as an aider and abettor. *W. Strickland, Jr. v. United States* (D.C. App. 1975, 332 A.2d 746; cert. denied 96 S. Ct. 84, 423 U.S. 846).

Where codefendant was tried on theory he aided and abetted defendant, if the principal defendant was acquitted then codefendant should also have been found not guilty, and the error which damaged principal defendant's defense was also prejudicial to codefendant. *United States v. C. L. Smith* (1973, 478 F. 2d 976, 156 U.S. App. D.C. 66).

Aid and abet

Under statute authorizing charging of aiders and abettors as principals, particular defendants who distributed allegedly obscene motion picture film could be convicted of knowingly presenting the film in the District of Columbia where such defendants supplied film to exhibitor therein in return for share of proceeds from the exhibition. *United States v. Sherpax, Inc.* (1975, 512 F. 2d 1361, 168 U.S. App. D.C. 121).

Assistance of counsel

Defense counsel should be guided by American Bar Association Standards, should, inter alia, confer with client without delay and as often as necessary to elicit matters of defense or ascertain potential defenses, discuss potential strategies and tactical choices with client, promptly advise him of his rights and take actions necessary to preserve them, conduct investigations to determine matters of defense that can be developed, interview government witnesses if accessible, attempt to secure information in possession of prosecution and do adequate research. *United States v. W. DeCoster, Jr.* (1973, 487 F. 2d 1197, 159 U.S. App. D.C. 326).

Claim of ineffective assistance of counsel should first be presented to district court in motion for a new trial and in such proceeding, evidence dehors the record may be submitted by affidavit, and when necessary district judge may order a hearing or otherwise allow counsel to respond; if trial court is willing to grant motion, the Court of Appeals will remand and if motion is denied, appeal therefrom will be considered with appeal from conviction and sentence. *Id.*

Charged as principal

Defendant may be charged and convicted as principal even though proof is that he was only aider and abettor, but there must be evidence that someone other than defendant was principal whom defendant aided and abetted. *J. D. Payton, Jr. v. United States* (D.C. App. 1973, 305 A. 2d 512).

Construction

This section does not alter common-law rule with respect to legal responsibility of joint principals for each other's acts; it merely extended such doctrine of vicarious responsibility to additional classes of offenders by treating them as principals. *B. E. Hazel v. United States* (D.C. App. 1976, 353 A. 2d 280).

Elements of offense

While vital element of carnal knowledge is merely penetration, aiding and abetting carnal knowledge requires conduct which amounts to assistance or participation in commission of underlying offense and thus, while victim's consent can have no legal bearing as to the former, it may be of relevance to existence of the latter. *In the Matter of J. W. Y.* (D.C. App. 1976, 363 A. 2d 674).

To support conviction of aiding and abetting a felony-murder, the homicide must have been committed in the course of the felony and in furtherance of the common purpose to commit the felony, rather than merely coincidental with it. *United States v. J. F. Bolden* (1975, 514 F. 2d 1301, 169 U.S. App. D.C. 60).

Essential elements of aiding and abetting are: (1) that an offense was committed by someone, (2) that the accused assisted or participated in its commission and (3) that he did so with guilty knowledge; hallmark of an aider and abettor is that the accused in some sort associated himself with the venture, participated in it as in something that he wished to bring about and sought by his action to make it succeed. *E. Blango v. United States* (D.C. App. 1975, 335 A. 2d 230).

Aiding and abetting a crime is established if the accused associated himself with the venture, participated in it as in something that he wished to bring about and sought by his action to make it succeed. *R. F. Creek v. United States* (D.C. App. 1974, 324 A. 2d 688).

In order to obtain a conviction for aiding and abetting the commission of a crime, the government must show that the defendant in some way associated himself with the criminal venture, that he participated in it as in something he wished to bring about and that he sought by his action to make it succeed. *G. G. Quarles v. United States* (D.C. App. 1973, 308 A. 2d 773).

Evidence—Sufficiency

Evidence in prosecution for attempted first-degree burglary while armed sustains defendant's conviction as aider and abettor. *M. E. Harris v. United States* (D.C. App. 1977, 377 A.2d 34).

Record in juvenile delinquency proceeding supports trial court's conclusion that juvenile's conduct as an aider and abettor during commission of felonies was sufficiently culpable to infer criminal complicity and does not support his contention that he attempted to withdraw from the activity. *In the Matter of D. M. R.* (D.C. App. 1977, 373 A.2d 235).

Fact that there was some evidence in first-degree murder prosecution that defendant attempted to break up earlier fight between his codefendant and murder victim and later cautioned his codefendant against shooting victim did not exonerate defendant as aider and abettor; such evidence was controverted and, in any event, did not otherwise negate account of his assisting with commission of homicide. *R. C. Byrd v. United States* (D.C. App. 1976, 364 A.2d 1215).

Evidence in delinquency proceeding is sufficient to sustain finding that juvenile is guilty of aiding and abetting act of carnal knowledge of 13-year-old girl. *In the Matter of J. W. Y.* (D.C. App. 1976, 363 A. 2d 674).

Evidence is sufficient to support convictions for aiding and abetting robbery and for felony-murder. *P. Shanahan v. United States* (D.C. App. 1976, 354 A. 2d 524).

In murder prosecution against two defendants one of whom shot the victim, evidence including showing of continuous association of codefendant with defendant who shot the victim, their furtive consultation immediately preceding the murder and codefendant's holding of bags of valuables that other defendant carried moments earlier and standing close by while the defendant fought with and shot the victim sustained conviction of second-degree murder. *United States v. J. Clayborne* (1974, 509 F. 2d 473, 166 U.S. App. D.C. 140).

Evidence was not sufficient to support conviction of petit larceny as an aider and abettor by pushing victim at the very time that pickpocket pushed the victim from the rear and removed victim's wallet from his pocket. *G. G. Quarles v. United States* (D.C. App. 1973, 308 A. 2d 773).

Indictment

Indictment charging defendant with assault with a deadly weapon was not constructively amended by prosecution when it presented evidence that defendant acted as a principal by threatening victim with a pistol and that defendant also acted as an aider and abettor when he passed pistol to companion who shot victim, and such indictment was not constructively amended by trial court when it instructed jury that defendant could be found guilty of such crime either as a principal or as an aider and abettor. *J. L. Barker v. United States* (D.C. App. 1977, 373 A.2d 1215).

Instructions

Instructions relating to aiding and abetting with respect to charge of robbery, read in their entirety rather than in segments, does not warrant reversal, despite contention that instruction failed to require finding of intent to support robbery conviction. *P. Shanahan v. United States* (D.C. App. 1976, 354 A. 2d 524).

An instruction under this section relating to aiding and abetting is not necessary in order for the acts of one principal in furtherance of a crime to be imputed to another principal; hence, fact that defendant may have only held gun during armed robbery of supermarket did not require finding that since he did not physically commit all elements of the offense he could not be held legally responsible for the acts of the other individual, who seized the cash from the safe, unless he was found to have aided and abetted such individual. *B. E. Hazel v. United States* (D.C. App. 1976, 353 A. 2d 280).

Where soon after retiring jury requested instruction on whether aiding and abetting instruction applied to armed robbery count of indictment as well as assault charge, trial court's charging jury that aiding and abetting instruction was applicable to both counts in absence of defendant was, at most, harmless error. *United States v. J. Jones, Jr.* (1975, 517 F. 2d 176, 170 U.S. App. D.C. 362).

Minor variation from locally suggested instructions on aiding and abetting was insignificant. *United States v. J. Clayborne* (1974, 509 F. 2d 473, 166 U.S. App. D.C. 140).

Joinder

Failure to require election between substantive count and accessory count of indictment for murder was not prejudicial on theory that, had the Government been required to elect, and chosen the accessory counts, defendant could have testified without adversely affecting the jury's consideration of the first-degree murder count. *R. Dean v. United States* (D.C. App. 1977, 377 A.2d 423).

Jury question

In murder prosecution against two defendants one of whom shot the victim, whether the codefendant had aided and abetted the offense was for jury under the evidence. *United States v. J. Clayborne* (1974, 509 F. 2d 473, 166 U.S. App. D.C. 140).

Lesser included offense

An aider and abettor of an armed robbery is not guilty of a lesser included offense but is a principal to the robbery. *R. W. Atkinson v. United States* (D.C. App. 1974, 322 A. 2d 587).

Plea of guilty

Where defendant was fully informed about concept of aiding and abetting at guilty plea hearing, defendant specifically acknowledged that he was outside at scene of burglary knowing that others were going to commit crime and defendant admitted that he was assisting and advising the other perpetrators, defendant's plea of guilty to charge of first-degree burglary was made voluntarily, with understanding of nature of charge and consequences of plea and there was factual basis for plea; and trial court did not abuse its discretion in refusing to allow withdrawal of plea upon defendant's subsequent denial that he had known that perpetrators of crime were going to burglarize apartment in question. *L. L. Austin v. United States* (D.C. App. 1976, 356 A. 2d 648).

Presence at commission

Presence at scene of crime, while insufficient without more to prove criminal complicity, will constitute aiding and abetting if it designedly encourages the perpetrator, facilitates the unlawful deed or stimulates others to render assistance to criminal act. *R. F. Creek v. United States* (D.C. App. 1974, 324 A. 2d 688).

Evidence sustained robbery conviction of defendant who was one of robber's companions watched commission of robbery, and ran from scene of crime with robber and other companion. *Id.*

Proof of an accused's presence at the scene of a crime alone cannot support a conviction of aiding and abetting the commission of a crime. *G. G. Quarles v. United States* (D.C. App. 1973, 308 A. 2d 773).

Proof of presence at scene of crime plus conduct which designedly encourages or facilitates a crime will support

an inference of guilty participation in the crime as an aider and abettor. *Id.*

Prosecutor's comments

Prosecutor's closing and rebuttal arguments which referred to defenses of insanity interposed by famous defendants in other cases and to actions of Hitler and Napoleon were improper and were so highly prejudicial as to require reversal. *United States v. W. E. Hawkins* (1973, 480 F. 2d 1151, 156 U.S. App. D.C. 259).

Where prosecutor's improper closing and rebuttal arguments were so highly prejudicial as to require reversal of conviction of defendant who relied upon insanity as a defense and was convicted of first-degree murder and assault with intent to kill while armed, judgment of conviction of codefendant, who was charged as an aider and abettor, asserted lack of intent to commit murder, and was convicted of second-degree murder, would also be nullified. *Id.*

Witnesses

Government's refusal to accommodate defense by employing its discretionary authority to strip proffered witness of his right to remain silent by offering him immunity from prosecution does not amount to suppression of exculpatory evidence. *In the Matter of J. W. Y.* (D.C. App. 1976, 363 A. 2d 674).

Where juvenile charged with aiding and abetting act of carnal knowledge of 13-year-old girl subpoenaed several potential defense witnesses who allegedly would testify as to independent sexual experiences with complainant, government did not act improperly in suggesting to trial court that proffered testimony could result in prosecution of witnesses, which resulted in trial court's appointing independent counsel and witnesses' subsequently announcing their intentions to assert their privilege against self-incrimination with respect to their alleged independent sexual experiences with complainant. *Id.*

§ 22-105a. Punishment of persons convicted of conspiracies to commit crimes—Proof—Conspiracies to commit crimes within or outside of the District.

NOTES TO DECISIONS**Presentence hearing**

Plea of guilty to conspiracy to commit abortion did not insulate accused from inquiry in presentence hearing as to extent of his conduct in abortion, notwithstanding contention that determination of guilt of a different offense resulted. *G. L. Warren v. United States* (D.C. App. 1973, 310 A. 2d 228).

§ 22-106. Accessories after the fact.

NOTES TO DECISIONS**Abuse of discretion**

Trial court did not abuse its discretion in denying defendant's request that jury defer rendering a verdict as to him until after resolution of insanity phase of codefendant's bifurcated trial, despite contention that expert medical testimony as to codefendant's mental condition was necessary for defendant's duress defense. *P. Shanahan v. United States* (D.C. App. 1976, 354 A. 2d 524).

Evidence—Sufficiency

Even though evidence might have been sufficient to support charge that juvenile was accessory after the fact to commission of robbery by reason of his assistance to two other persons to prevent their apprehension by police, evidence was insufficient to support trial court's finding that juvenile was guilty of obstruction of justice. *In the Matter of K. W. G.* (D.C. App. 1977, 374 A.2d 852).

§ 22-108. Offenses committed beyond District of Columbia.

CROSS REFERENCES

Receiving embezzled goods, see § 22-1204.

Receiving stolen goods, see §§ 22-2205, 22-2207.

NOTES TO DECISIONS**Convictions—Mutually exclusive**

Convictions of second defendant for burglary and grand larceny were mutually exclusive with conviction for

receiving stolen property and bringing it into the District of Columbia, and vacating the burglary and larceny convictions which carried longer sentences cured any prejudice which resulted from the failure to properly instruct. *United States v. M. Lemonakis* (1973, 485 F. 2d 941, 158 U.S. App. D.C. 162; cert. denied 94 S. Ct. 1586, 1587, 415 U.S. 989).

Evidence—Admissibility

Error, if any, in introduction into evidence of recordings between since deceased accomplice-informer and first defendant was not reversible error, in prosecution for conspiracy, burglary, grand larceny, interstate transportation of stolen property and bringing stolen property into the District of Columbia. *United States v. M. Lemonakis* (1973, 485 F. 2d 941, 158 U.S. App. D.C. 162; cert. denied 94 S. Ct. 1586, 1587, 415 U.S. 989).

Admission into evidence of recorded conversations between since deceased accomplice-informer and first defendant which contained references to second defendant in joint trial did not violate second defendant's rights under the confrontation clause. *Id.*

Introduction in evidence in joint trial of recordings of conversation between first defendant and since deceased accomplice-informer was not improper on ground that recordings, which were made outside the presence of counsel, denied defendants' right to counsel. *Id.*

Government informer's suicide note, written six days prior to suicide, and which contained language exculpating second defendant, was not within the dying declaration hearsay rule exception where the note was not made with belief that death was imminent and did not concern the cause or circumstances of what was believed to be impending death. *Id.*

Accomplice-informer's handwritten suicide note, which contained language exculpating second defendant, was not admissible as declaration against the informer's penal interest where there was no corroboration of the exculpatory statement. *Id.*

Severance

Trial court did not abuse its discretion in prosecution for conspiracy, burglary, grand larceny, interstate transportation of stolen property, and bringing stolen property into the District of Columbia by denying severance to second defendant on ground of antagonistic defenses. *United States v. M. Lemonakis* (1973, 485 F. 2d 941, 158 U.S. App. D.C. 162; cert. denied 94 S. Ct. 1586, 1587, 415 U.S. 989).

Chapter 2.—ABORTION

§ 22-201. Definition and penalty.

NOTES TO DECISIONS

Presentence hearing

Plea of guilty to conspiracy to commit abortion did not insulate accused from inquiry in presentence hearing as to extent of his conduct in abortion, notwithstanding contention that determination of guilt of a different offense resulted. *G. L. Warren v. United States* (D.C. App. 1973, 310 A. 2d 228).

Chapter 4.—ARSON

§ 22-401. Definition and penalty.

NOTES TO DECISIONS

Defense

In proceeding in which accused was convicted of second-degree murder and arson, trial judge did not err in refusing to admit proffered evidence that accused's voluntary ingestion of drugs induced a toxic psychosis on date of offense or err in instructing jury that voluntary taking of drugs is not a defense to the charges. *J. Barrett v. United States* (D.C. App. 1977, 377 A.2d 62).

Evidence—Admissibility

In proceeding in which accused was convicted of second-degree murder and arson, trial judge did not err in refusing to admit proffered evidence that accused's voluntary ingestion of drugs induced a toxic psychosis on date of offense or err in instructing jury that voluntary taking of drugs is not a defense to the charges. *J. Barrett v. United States* (D.C. App. 1977, 377 A.2d 62).

— Sufficiency

Evidence was not sufficient to support convictions for arson, second-degree burglary while armed with a Molotov cocktail and possession of a Molotov cocktail. *United States v. L. S. Carter* (1975, 522 F.2d 666, 173 U.S. App. D.C. 54).

Convictions of arson and of malicious burning of defendant's own property with intent to defraud were sustained by evidence including evidence with respect to access to premises, alibi evidence found by trial court to be incredible, evidence that fire occurred shortly before time for expiration of insurance policy for which continuance had not been arranged and evidence concerning cigarette match bomb and gasoline. *P. K. Chaconas v. United States* (D.C. App. 1974, 326 A. 2d 792).

— Suppression

Where fire inspectors, after fire, entered premises occupied by defendant, without objection by defendant, and defendant consented to removal of various items, items were not subject to suppression as evidence. *P. K. Chaconas v. United States* (D.C. App. 1974, 326 A. 2d 792).

Inferences

Giving of instruction that jurors were permitted to infer that second defendant was "guilty of the crimes charged," if they determined, beyond a reasonable doubt, that he was found in unexplained, exclusive possession of recently stolen property was reversible error where the presumed fact of guilt of arson, possession of a Molotov cocktail and second-degree burglary while armed with a Molotov cocktail did not flow from possession of recently stolen military rifles. *United States v. L. S. Carter* (1975, 522 F. 2d 666, 173 U.S. App. D.C. 54).

Speedy trial

Government delay of 15 months, due to administrative constraints, in bringing accused to trial on arson charge after he was arrested did not warrant dismissal of indictment, in light of fact that accused failed to assert his right to speedy trial during course of the 15-month delay and in view of fact that accused failed to take steps to preserve memory of defense witness who was unable to remember when the events pertaining to accused's alibi occurred and who was unable to identify accused. *C. L. Smith, III v. United States* (D.C. App. 1977, 379 A.2d 1166).

§ 22-402. Burning one's own property with intent to defraud or injure another.

NOTES TO DECISIONS

Evidence—Sufficiency

Convictions of arson and of malicious burning of defendant's own property with intent to defraud were sustained by evidence including evidence with respect to access to premises, alibi evidence found by trial court to be incredible, evidence that fire occurred shortly before time for expiration of insurance policy for which continuance had not been arranged and evidence concerning cigarette match bomb and gasoline. *P. K. Chaconas v. United States* (D.C. App. 1974, 326 A. 2d 792).

— Suppression

Where fire inspectors, after fire, entered premises occupied by defendant, without objection by defendant, and defendant consented to removal of various items, items were not subject to suppression as evidence. *P. K. Chaconas v. United States* (D.C. App. 1974, 326 A. 2d 792).

§ 22-403. Malicious burning, destruction, or injury of another's movable property.

NOTES TO DECISIONS

Arrest without warrant

Under circumstances, police officers' good-faith reliance on radio report and the resultant reasonable belief that valid traffic warrants were outstanding provided probable cause to arrest motorist, notwithstanding that motorist had posted collateral for his outstanding traffic warrants prior to arrest in question, where warrants were valid at least until motorist had posted collateral to satisfy them and four-day delay, two days of which were attributable to the weekend, were caused by administrative delay attendant to operation of any metropolitan

area police department. *M. Childress v. United States* (D.C. App. 1977, 381 A.2d 614).

Cross-examination

It was within trial court's discretion to limit cross-examination of Government's fingerprint expert when the inquiry became argumentative and unwarranted. *A. A. Terrell v. United States* (D.C. App. 1976, 361 A. 2d 207; cert. denied 97 S. Ct. 501, 429 U.S. 984).

Discovery

Government notes concerning past jury performances of members of the jury panel does not constitute Brady material and defendant is not entitled to the notes as a matter of mutuality of disclosure at trial. *A. A. Terrell v. United States* (D.C. App. 1976, 361 A. 2d 207; cert. denied 97 S. Ct. 501, 429 U.S. 984).

Elements of offense

The elements of malicious destruction of property are that the defendant injured or broke or destroyed or attempted to injure, break or destroy property; that the property was not the defendant's; that the defendant did so maliciously with intent to injure, break or destroy the property and for a bad or evil purpose, and not merely negligently or accidentally; and that the property was of a value of \$200 or more. *B. I. Nichols v. United States* (D.C. App. 1975, 343 A.2d 336).

Evidence—Judicial notice

Court would take judicial notice of fact that liquor store, which was the "store" referred to in indictment charging malicious destruction of property of a value of \$200 or more, had a value exceeding \$200. *B. I. Nichols v. United States* (D.C. App. 1975, 343 A. 2d 336).

— Sufficiency

In prosecution for petty larceny and destruction of property, evidence that one defendant had been apprehended in automobile containing three recently stolen items and tools with which a jury could infer that thefts had been accomplished, together with evidence of common plan and concerted action arising out of inference from defendant's close relationship with his accomplices, one of whom was his brother and codefendant, and from defendant's conduct in connection with a second codefendant on morning of arrest at which time police had observed both men peering through windows of parked automobiles, was sufficient for jury on issue of defendant's culpability. *M. Childress v. United States* (D.C. App. 1977, 381 A.2d 614).

Evidence that broken window, which defendant removed from door, had useful and functional purpose sustained conviction for malicious destruction of property. *L. J. Jenkins v. United States* (D.C. App. 1977, 374 A.2d 581; cert. denied 98 S.Ct. 274, —U.S.—).

Testimony of liquor store's manager that repairs to the store cost \$425 is sufficient to prove that the value of the property damaged was \$200 or more and is sufficient to support conviction for malicious destruction of property of a value of \$200 or more. *B. I. Nichols v. United States* (D.C. App. 1975, 343 A. 2d 336).

Where evidence in prosecution for destruction of window in apartment showed that apartment was rented and that defendant had merely been an overnight guest in apartment on a few occasions, defendant was properly convicted of destroying property despite his contention of lack of proof of ownership or possession of property. *J. N. Gurley v. United States* (D.C. App. 1973, 308 A. 2d 785).

Identification

Where witness did not have opportunity to see the face of the large man outside liquor store at close range because witness was watching from an eighth floor window but the parking lot outside the liquor store was illuminated, the witness did observe the man's general facial features, the cut of his hair, the shape of his head, his race, his height and his build and only 20 to 25 minutes elapsed between the crime and the identification, the on-the-scene identification procedures were permissible. *B. I. Nichols v. United States* (D.C. App. 1975, 343 A. 2d 336).

Witness' identification of the defendant's clothes as identical to those worn by driver of automobile observed at burglary scene was not impermissibly suggestive because the defendant was observed alone in patrol wagon

where witness had had two opportunities to view the driver's clothes both before and after the burglar alarm was activated, the identification occurred only 20 to 25 minutes after the second time witness saw the clothes and the witness identified the defendant's uniform rather than the defendant himself. *Id.*

Defendant's convictions of first-degree burglary, grand larceny, and malicious destruction of property were not supported by sufficient evidence, where, despite the complainant's testimony that he was able to identify defendant at showup because the image of defendant's face was implanted on his mind, the complainant was unable to identify defendant at trial, where his opportunity to observe the burglars was brief, where he saw them at night under artificial light, where his nearest observation of them was when they were running and 17 feet away, and where there was a significant discrepancy in almost all respects between the description given by complainant to the police and defendant's actual description, both physically and in respect to clothing. *W. B. Crawley v. United States* (D.C. App. 1974, 320 A. 2d 309).

Indictment

Relative imprecision in phrasing the value of the damaged property in indictment charging malicious destruction of property of a value of \$200 or more is not prejudicial error where defendants could not have been misled in any meaningful way and there was evidence to show that the cost of repair to the damaged store was well over \$200. *B. I. Nichols v. United States* (D.C. App. 1975, 343 A. 2d 336).

Instructions

In prosecution based on defendants' unconsented entry into offices of chemical company and their destruction of certain property in it, instruction that Vietnam war was not issue in case and that, if government proved beyond reasonable doubt that one or more of defendants committed elements of crimes charged, law does not recognize as defense that defendants were motivated to commit their acts by sincere political, religious or moral convictions or in obedience to some higher law was not improper despite contention that instructions were coercive, tantamount to directed verdict of guilty and outside proper scope of judicial instruction. *United States v. M. R. Dougherty* (1972, 473 F. 2d 1113, 154 U.S. App. D.C. 76).

Jencks Act

Trial court did not err in denying defendant's motions to strike suppression hearing testimony of sole government witness, a police officer, for failure of Government to comply with Jencks Act, where neither of forms of which defendants asserted they had been improperly deprived, an arrest form and a rights card, contained a "statement" within Jencks Act and nothing written on either form was related to subject matter of officer's testimony. *M. Childress v. United States* (D.C. App. 1977, 381 A.2d 614).

Investigating officer's drawing of scene of crime does not constitute a "statement" within Jencks Act; thus no Jencks Act sanction was warranted when Government was unable to produce the drawing upon request because prosecutor, on whose request the drawing had been made, had thrown it away after deciding that a larger map would be preferable for jury display. *T. E. Tansimore, Jr. v. United States* (D.C. App. 1976, 355 A. 2d 799).

Plea of guilty

Trial court did not abuse discretion in denying defendant's motion for withdrawal of guilty pleas to second-degree murder, attempted burglary and destruction of property where, inter alia, reasons given for defendant's change of heart did not amount to a claim of legal innocence, proffered evidence of guilt was overwhelmingly convincing, and there was no claim of coercion or incapacity. *G. R. Taylor v. United States* (D.C. App. 1976, 366 A.2d 444).

Prosecutor's comments

Denial of mistrial with respect to Government's appeal to public passion for community safety and security during its summation was not an abuse of discretion. *A. A. Terrell v. United States* (D.C. App. 1976, 361 A. 2d 207; cert. denied 97 S. Ct. 501, 429 U.S. 984).

Search and seizure

Motorist's lawful arrest legitimized the officers' presence at point of observation and under circumstances, including observation of motorist and others looking into automobiles coupled with condition of property, specifically protruding wires, and its proximity to a screwdriver, wire cutters and a hanger, police had requisite probable cause to seize the items which they observed in plain view, notwithstanding lack of search warrant. *M. Childress v. United States* (D.C. App. 1977, 381 A.2d 614).

Evidence disclosing that motorist insisted that he had purchased what he possessed, stated that he had nothing to hide and, consistent with this position, helped officers open his jammed trunk lock with his own screwdriver supported finding of consent to search trunk of automobile. *Id.*

Finding that entry into codefendant's apartment by officer and complaining witness who had followed a trail of hair oil from burglarized beauty shop to codefendant's apartment was consensual is not clearly erroneous. *A. A. Terrell v. United States* (D.C. App. 1976, 361 A. 2d 207; cert. denied 97 S. Ct. 501, 429 U.S. 984).

Sentence

Trial court did not erroneously fail to sentence youth under Federal Youth Corrections Act for misdemeanors he had admitted committing, where trial court expressly found that youth, who had committed the misdemeanors in question while still awaiting sentence by United States district court for attempted robbery and who had left without permission a development center and a halfway house while awaiting determination of armed robbery charges, was unlikely to be rehabilitated by Youth Corrections Act treatment. *R. J. Hubb v. United States* (D.C. App. 1972, 298 A. 2d 512).

Value of property

Within provisions of this section creating the felony of maliciously destroying property of a value of \$200 or more, the word "value" refers to the fair market value of the object or entity involved immediately before the crime occurred regardless of whether there is destruction of an entire item of property or only injury which falls short of total destruction. *B. I. Nichols v. United States* (D.C. App. 1975, 343 A. 2d 336).

When reparable damage or destruction is caused to a portion or portions of a greater whole, the value of the property damaged or destroyed is to be measured by the reasonable cost of the repairs necessitated by the malicious conduct of the defendant charged with malicious destruction of property of the value of \$200 or more. *Id.*

Chapter 5.—ASSAULT—MAYHEM—THREAT OF BODILY HARM

§ 22-501. Assault with intent to kill, rob, rape, or poison.

NOTES TO DECISIONS

Appeal and error

Where defendants did not object at trial to giving of instruction on elements of charged crime but raised question of propriety of instruction for first time on appeal, claim of error based on instruction is not cognizable unless defendants can demonstrate that instruction was so plainly erroneous as to have resulted in a miscarriage of justice. *J. Anthony, Jr. v. United States* (D.C. App. 1976, 361 A. 2d 202).

Assistance of counsel

Defendant's rights to due process and effective representation by counsel are not violated because of fact that, in agreeing to continuance of trial date because of conflicts in court's calendar, defense counsel did not engage in on-the-record discussion of fact that defendant would become 22 years of age during interim and would thereafter not be eligible for sentencing under Youth Corrections Act (18 U.S.C. 5005 et seq.). *J. Coleman, Jr. v. United States* (D.C. App. 1975, 332 A. 2d 355).

Competency hearing

Where pretrial examination had resulted in certification by hospital staff of competency and Superior Court judge after hearing had reached like result, district judge was

not required to direct, sua sponte, further hearing on competency in prosecution for assault with intent to commit rape, and for robbery. *United States v. C. L. Tremble* (1972, 470 F. 2d 1272, 152 U.S. App. D.C. 363).

Corroboration

Sex charges may not be submitted to jury simply upon testimony of alleged victim; corroboration is essential to proof of each element. *United States v. C. L. Tremble* (1972, 470 F. 2d 1272, 152 U.S. App. D.C. 363).

Cross-examination

While defendant claims that the prosecutor improperly maneuvered him into admitting that the Army had discharged him for failure to disclose his juvenile arrest record, it appears that defendant himself precipitated discussion of his military record by wearing a national guard uniform in court, and that he volunteered the reason for his army discharge before the direct question was asked of him and before the trial judge had an opportunity to rule upon defense counsel's objection. *V. Johnson v. United States* (D.C. App. 1976, 366 A.2d 429).

While defendant claimed that the trial court curtailed to his detriment defense counsel's cross-examination of the complaining witnesses about their activities earlier in the evening before the shooting, the record discloses that reasonable latitude was afforded defense counsel in developing the setting of the criminal activity and the general background of the complaining witnesses. *Id.*

In prosecution for sodomy and assault with intent to commit rape, trial court's rulings limiting inquiry into events occurring on day of accused's apprehension are not improper on theory that they restricted his impeachment of certain witness' in-court identification of accused, in light of fact that the limitations were imposed in response to accused's own pretrial motions, that accused was given reasonable opportunity to test witness' in-court identifications and that there was a sufficient inquiry into the matter to provide trier with satisfactory basis for evaluating the truth. *V. A. March v. United States* (D.C. App. 1976, 362 A. 2d 691).

Defendant's presence in court

Where defendant, who was at liberty on bond and therefore had duty as well as right to be present at all stages of trial, and who was advised when proceedings were to reconvene, did not appear when trial court reconvened to settle jury instructions, and defendant's counsel stated that he would waive defendant's appearance for purpose of settling jury instructions, trial court did not err in proceeding to settle jury instructions without presence of the defendant. *C. Heiligh v. United States* (D.C. App. 1977, 379 A.2d 689).

Discovery

Motion for mistrial, based upon allegation that testimony of complainant concerning inculpatory remarks made to complainant by defendant was discoverable under rule providing for inspection by defendant of written or recorded confessions, was properly denied, in that rule does not require pretrial discovery of statements made by defendant to third parties not government agents. *C. Heiligh v. United States* (D.C. App. 1977, 379 A.2d 689).

Where, in prosecution for sodomy and assault with intent to commit rape, inconsistencies in identification testimony of government witnesses were trivial, were fully explored, and stood dwarfed beside positive and detailed identification testimony, detective's missing notations, which were made during initial interview of complainant and others and which assertedly would have substantiated the alleged inconsistencies, do not rise to level of materiality contemplated by *Brady v. Maryland* that suppression of evidence favorable to accused denies due process if it is material to guilt or punishment. *V. A. March v. United States* (D.C. App. 1976, 362 A. 2d 691).

In proceeding in which accused was convicted of sodomy and assault with intent to commit rape and in which complainant gave positive identification of accused, failure to produce photographs, which were shown to other witnesses during initial investigation and were abandoned following unrelated apprehension of accused, did not deny due process, notwithstanding contention that photographs of person, whom such other witnesses

identified as having similarity to perpetrator of offenses, may have revealed image so dissimilar to accused as to discredit such witnesses' identification testimony. *Id.*

With the exception of records of impeachable convictions, the criminal records and records of arrests of government witnesses were not discoverable and the suppression of the testimony of government witnesses, as sanction for disobedience of pretrial discovery order, was in excess of trial court's authority. *United States v. W. C. Ingram et ano.* (D.C. App. 1975, 337 A. 2d 488; cert. denied 96 S. Ct. 793, 423 U.S. 1058).

Double jeopardy

Where, during defendant's trial for serious criminal offenses, after selection of jury and presentation of substantial amount of prosecution's evidence, attorney in charge of prosecution revealed that highly significant exculpatory police report had not been disclosed to defense, and where defendant's motion to dismiss was denied, trial court erred in terminating prosecution by declaring mistrial over defendant's objection since other remedies existed, jeopardy attached, and there was no manifest necessity. *A. Sedgwick v. Superior Court of the District of Columbia* (1976, 417 F. Supp. 386).

Where trial court, acting on good faith but erroneous belief that defendant had been entitled to certain information long before trial, first suggested continuance, which was declined by defendant, and then unsuccessfully sought defendant's consent to mistrial, and finally declared mistrial and discharged jury, without any insistence by defendant upon any right to completion of the trial by the first jury, jeopardy did not attach. *United States v. A. D. Sedgwick* (D.C. App. 1975, 345 A.2d 465; cert. denied 96 S. Ct. 1751, 425 U.S. 966).

Where counts of original indictment on which defendant was convicted failed properly to charge offense of assault with intent to commit forcible rape, right to be free of double jeopardy does not bar retrial on new indictment properly charging such offense. *J. Hutchinson v. United States* (D.C. App. 1975, 339 A. 2d 381).

Elements of assault

Crime of assault does not require that perpetrator possess actual ability to inflict threatened harm; assailant's undisclosed inability to do harm does not preclude an assault conviction. *J. Anthony, Jr. v. United States* (D.C. App. 1976, 361 A. 2d 202).

Although question whether defendant's conduct produced fear in victim is relevant, crucial inquiry as to whether defendant committed assault is whether he acted in such a manner as would under the circumstances portend an immediate threat of danger to a person of reasonable sensibility. *Id.*

Evidence—Admissibility

Notwithstanding dismissal of counts charging defendant with obstructing justice by corruptly endeavoring by threats of force to influence, intimidate and impede two witnesses to alleged armed robbery and assault, threat evidence introduced on the obstruction count was probative of the other counts as evincing consciousness of guilt; thus trial court did not err in failing to instruct that such evidence was limited to impeachment. *L. Proctor v. United States* (D.C. App. 1977, 381 A.2d 249).

In prosecution for sodomy and assault with intent to commit rape, fact that the lighting revealed in several photographs of general scene of the assault differed from lighting on night in question does not render admission of photographs an abuse of discretion, in light of fact that complainant provided minutely detailed explanation of differences in lighting conditions and trial court properly cautioned jury concerning the variance. *V. A. March v. United States* (D.C. App. 1976, 362 A. 2d 691).

Spectrographic identification of defendant as maker of telephone call to which police officer was responding when shot was not sufficiently accepted by scientific community as a whole to form a basis for a jury's determination of guilt or innocence, and was inadmissible. *United States v. R. Addison* (1974, 498 F. 2d 741, 162 U.S. App. D.C. 199; aff'g 337 F. Supp. 641).

Erroneous admission of testimony based on spectrogram or so-called "voice print" analysis did not fatally infect jury's verdict and did not require a reversal, in light of overwhelming evidence of guilt. *Id.*

Defendant's conviction was not required to be set aside because of admissibility of testimony as to benzidine test which showed presence of blood on penis shortly after alleged assault with intent to commit rape even if test would yield a positive response to substances other than blood, where defendant admitted at trial that there was blood on penis and attempted to attribute its presence to another source. *United States v. L. Smith* (1972, 470 F. 2d 377, 152 U.S. App. D.C. 229).

— Disclosure to defense

In proceeding in which accused was convicted of assault with intent to commit robbery and in which officer's grand jury testimony referring to accused's statement that he was "con man" and had tried to "con" victim was admitted to impeach accused, prosecutor's incorrect representation that accused's only statements had been oral and exculpatory, coupled with prosecutor's implied delivery of officer's complete grand jury testimony as part of informal pretrial surrender of "Jencks material" when in fact officer's testimony in regard to the "con man" statement had not been disclosed was prejudicial error. *C. E. Rosser v. United States* (D.C. App. 1977, 381 A.2d 598).

Where matter which prosecution had not disclosed prior to trial of indictment is inadmissible hearsay, i.e., a street rumor which remained unverified despite immediate investigation by police detective, and where detective did not abandon investigation until after positive identification of defendant had been made by principal victim and defendant had confessed to the crime, undisclosed information is not kind of material which prosecution should have furnished defendant in advance of trial. *United States v. A. D. Sedgwick* (D.C. App. 1975, 345 A.2d 465; cert. denied 96 S. Ct. 1751, 425 U.S. 966).

Evidence in proceeding on motion for new trial, or alternatively, dismissal of indictment, supported trial court's findings that the statements and testimony of witnesses whose statements were allegedly wrongfully withheld from the defense did not include evidence that was relevant or material or that would be helpful to the defense or tend to exculpate accused and that the disclosure to accused prior to trial of the statements would not have led to evidence that was relevant or material or that would tend to be exculpatory of murder and assault with intent to rob charges. *United States v. D. J. Bowles* (1973, 488 F. 2d 1307, 159 U.S. App. D.C. 407; cert. denied 94 S. Ct. 1591, 415 U.S. 991).

Where statements given by witnesses to police during murder investigation did not include evidence that was relevant or material or that would be helpful in the defense or tend to exculpate accused and the disclosure to accused prior to trial would not have led to evidence that was relevant or material or that would tend to be exculpatory, accused was not denied due process of law because the statements were withheld from the defense. *Id.*

— Polygraph tests

Expert testimony based on results of defendant's polygraph examination was inadmissible. *United States v. E. Zeiger* (1972, 475 F. 2d 1280, 155 U.S. App. D.C. 11; rev'g 350 F. Supp. 685).

— Sufficiency

Evidence was sufficient for jury to infer beyond a reasonable doubt that defendant possessed the intent necessary to sustain conviction for assault with intent to commit rape while armed. *United States v. M. E. Jackson* (1977, 562 F.2d 789, 183 U.S. App. D.C. 270).

Evidence in prosecution brought against four defendants accused of robbing five victims in hallway of apartment building is sufficient to establish that one defendant, who asserted that he did not appear in hallway of building until victims' property had been taken and did not actually search any of victims, was aider and abettor of crimes charged, and thus is sufficient to support that defendant's conviction for assault with intent to commit robbery while armed. *C. Heiligh v. United States* (D.C. App. 1977, 379 A.2d 689).

Evidence that after defendants had taken money from 100-year-old victim the victim was choked with a cable until he lost consciousness is sufficient to support conviction for assault with intent to kill. *In the Matter of G. O. B.* (D.C. App. 1975, 343 A.2d 567).

Evidence, including testimony of complainant and others concerning incident, reasonably permitted a finding of guilt on charges of armed kidnapping, armed assault with intent to kill, and carrying a dangerous weapon. *R. N. Wooten v. United States* (D.C. App. 1975, 343 A.2d 281).

Evidence was sufficient to establish requisite intent to support conviction of assault with intent to kill of defendant, who shot victim from a distance of six feet. *United States v. T. L. Robertson* (1974, 507 F.2d 1148, 165 U.S. App. D.C. 325; 529 F.2d 879, 174 U.S. App. D.C. 125).

Evidence, including the testimony of an eyewitness involving all three defendants in the assault upon victim, was sufficient to support verdict of jury finding defendants guilty of felony-murder and assault with intent to commit rape while armed. *United States v. B. J. Heinlein* (1973, 490 F.2d 725, 160 U.S. App. D.C. 157).

Evidence in prosecution for assault with intent to commit rape was insufficient to establish that defendant intended to achieve sexual intercourse by force and violence and against will of prosecutrix. *United States v. C. L. Tremble* (1972, 470 F.2d 1272, 152 U.S. App. D.C. 363).

Evidence was sufficient to support convictions of assault with intent to kill while armed. *United States v. J. Hill* (1972, 470 F.2d 361, 152 U.S. App. D.C. 213).

— Weight

Generally, sexual assault charges by mentally abnormal girl should be subjected to great scrutiny. *United States v. H. Benn, Jr.* (1973, 476 F.2d 1127, 155 U.S. App. D.C. 180).

Identification

Record failed to establish that on-the-scene identification was unreliable on asserted ground that observation of defendant and companion had been minimal, where witness testified that he "got a good look" at two men when they entered his cab, and he positively identified them when they were brought before him only four or five minutes after attempted robbery and, although such witness based his identification "mostly on what they had on" he testified that he also recognized them by their bodily and facial characteristics and also identified sun glasses, a jacket, and a pistol which police found near suspects as ones which witness had seen during robbery. *H. L. Cates v. United States* (D.C. App. 1977, 379 A.2d 968).

Trial court, in prosecution for assault with intent to commit rape while armed, did not err reversibly by permitting one-witness identification of defendant to go to jury since reasonable juror could find circumstances surrounding identification convincing beyond reasonable doubt. *R. L. Berryman v. United States* (D.C. App. 1977, 378 A.2d 1317).

In respect to the post-lineup identification of defendant, out of the presence of the defense counsel, by witness, who initially withheld his identification because he did not want "to get involved," there is nothing in the record to suggest that the circumstances surrounding the witness' disclosure were in any way suggestive, or that an investigating officer may have pressured the witness into making the identification, and accordingly, there is not a very substantial likelihood of irreparable misidentification. *C. Graham v. United States* (D.C. App. 1977, 377 A.2d 1138; cert. denied 98 S.Ct. 748, — U.S. —).

Where complainant positively identified defendant as one of her attackers both at trial and at lineup, where she also identified defendant's photograph, and where she gave an in-court description of her assailant which was in agreement with that given by another witness, such identification evidence was sufficient for jury to reasonably conclude that defendant was among the complainant's attackers. *Id.*

In view of complainant's fairly detailed description of her assailant and the reasonableness of photographic array, identification procedure as a whole was not impermissibly suggestive despite detective's statement before showing the photographs that he had included a picture of suspect arrested for another offense whom he believed to have been the man who assaulted complainant or by his alleged statement after complainant selected defendant's photograph that defendant had raped other women in the neighborhood, despite contention that the latter

remark increased the likelihood that complainant would pick the same person in a lineup. *R. Harley v. United States* (D.C. App. 1977, 373 A.2d 898).

Where at hospital victim was shown sets of pictures which did not include defendant's picture, victim did not select any of these pictures, and after victim was released from hospital she selected defendant's picture from another group of photographs which were presented to her at her home, there was nothing improper in showing victim the picture she had selected before her appearance as a witness at trial, and fact that this did not come out at hearing on identification issue was not a ground for new trial. *United States v. J. E. Marshall* (1975, 511 F.2d 1308, 167 U.S. App. D.C. 306).

No prejudicial error occurred in assault with intent to commit robbery prosecution where victim, in violation of pretrial suppression order, made in-court identification of defendant, in view of fact that pretrial suppression order, based upon judge's determination that the identification testimony was too weak, was improper. *J. R. Brown v. United States* (D.C. App. 1975, 349 A.2d 467).

— Lineup

Generally, court-ordered out-of-court lineup on defense motion may be appropriate where defendant, on timely motion, makes showing that eyewitness identification is materially at issue, and there exists, in particular case, reasonable likelihood of mistaken identification which lineup would tend to resolve; same principles would appear to apply to motions for in-court lineup procedures. *R. L. Berryman v. United States* (D.C. App. 1977, 378 A.2d 1317).

Trial court, in prosecution for assault with intent to commit rape while armed, did not abuse discretion by denying defense counsel's motion for out-of-court lineup. *Id.*

Where officers who heard radio run for a crime arrested juvenile who was running from vicinity of the incident, and juvenile disclosed firsthand knowledge of the crime and implicated defendants, there was probable cause to arrest defendants and showup identification is not the product of an unlawful arrest. *In the Matter of G. O. B.* (D.C. App. 1975, 343 A.2d 567).

One-man showup held shortly after commission of offense is not unjustified because assault victim sustained head injury, where victim was alert and sitting up in hospital bed when confronting accused shortly after attack. *S. A. Washington v. United States* (D.C. App. 1975, 334 A.2d 185).

Remark of detective to complainant who was in hospital following assault, to effect that "We got your man, we think," does not violate due process by rendering showup procedure so suggestive as to create substantial likelihood of misidentification, where victim was able, prior to being struck, to observe defendant for sufficient period of time to be able to give detailed description, and where showup shortly followed the assault. *Id.*

Where defendant had been lawfully arrested for assault with intent to commit robbery while armed and was in custody or on bond, no court order was required before he could be viewed at lineup by victims of prior robbery, as long as presentment before magistrate was without undue delay and presence of counsel at lineup was assured. *United States v. J. F. Anderson* (1972, 352 F. Supp. 331).

Where a suspect arrested for one offense is to be viewed by witnesses to other offenses, there need be no Government disclosure or prior judicial determination of any kind concerning whether the suspect will be required to stand in a lineup, the number of witnesses who will view the lineup, the dates, times, places, nature, number or similarity of the offenses for which the suspect will be viewed, or the conditions under which the lineup will be held. *Id.*

Indictment

Any infirmity in grand jury proceedings because of failure of complainant and one of police officers to state that pistol used in shooting was victim's, that victim had informed grand jury that one defendant's job was that of a robber and that during the proceedings the prosecutor referred to another case against one defendant, is not of

such a nature as to warrant dismissal since there was ample other evidence on which the grand jury could have returned the indictment. *E. Blango v. United States* (D.C. App. 1975, 335 A.2d 230).

Counts of indictment charging defendant with assaulting female persons with intent to carnally know and abuse such persons did not charge offenses under District of Columbia law where victims were females over 16 years of age. *United States v. J. Hutchinson* (1973, 478 F.2d 997, 156 U.S. App. D.C. 87).

Insanity

Evidence that, inter alia, defendant suffered from severe personality disorder that caused him on occasion to disassociate when his sexual advances were rejected, and that while defendant was in this state, he did not have capacity for choice or control, was sufficient to allow jury to reasonably infer from all evidence that defendant had necessary mental capacity for first-degree burglary when he entered victim's apartment armed with knife but that he did not have capacity for choice or control when he killed victim because of a then dissociative condition. *C. R. Harman v. United States* (D.C. App. 1976, 351 A.2d 504; cert. denied 97 S. Ct. 116, 429 U.S. 841).

Instructions

In view of fact that defendant's companion could not justifiably return the fire of a security guard who was attempting to prevent a felony and who had been fired on first, defendant likewise had no right to shoot and, therefore, defendant charged with assault with intent to kill while armed was not entitled to an instruction of the defense of another based on theory that he drew his own gun and shot at security guard only after his companion fell to the ground and the security guard continued to fire. *D. L. Taylor v. United States* (D.C. App. 1977, 380 A.2d 989).

On the record presented, there is no substantial likelihood that the verdict of the jury was significantly affected by the trial court's failure to give, sua sponte, any kind of cautionary instruction on the use of defendant's record of prior arrests, considering, inter alia, that the prosecutor's cross-examination, which elicited the arrest evidence, was on a subject which had been injected into the case by defendant. *V. Johnson v. United States* (D.C. App. 1976, 366 A.2d 429).

Trial court in prosecution for assault with intent to commit robbery did not err in defining assault as an attempt or effort with force or violence to do injury to person of another, coupled with the "apparent present ability" to carry out such attempt or effort. *J. Anthony, Jr. v. United States* (D.C. App. 1976, 361 A.2d 202).

Where evidence introduced at trial on charges of first-degree burglary while armed, murder, and assault with intent to commit rape while armed supported a multiple-offense charge, trial court did not err in requiring jury to make a separate determination of defendant's sanity on each count for which he had been found guilty. *C. R. Harman v. United States* (D.C. App. 1976, 351 A.2d 504; cert. denied 97 S. Ct. 116, 429 U.S. 841).

Trial court's use of special verdict form did not confuse jury or prejudice defendant, in prosecution for first-degree burglary, murder, and assault with intent to commit rape while armed. *Id.*

Trial judge in prosecution for assault with intent to commit robbery did not err in denying defendant's request for instructions to jury on lesser included offense of simple assault where there was no showing that evidence was such that jury might rationally acquit defendant of greater charge and convict him of lesser charge and where element of intent to commit robbery was not sufficiently in dispute. *J. R. Brown v. United States* (D.C. App. 1975, 349 A.2d 467).

Court's instructions, after it received note mentioning that one juror did not believe testimony of the complainant, that since jury had been deliberating only two hours court was going to ask it to continue and that jurors were not to reveal to anyone how they stood numerically or otherwise on question of guilt or innocence, does not amount to coercion to find a guilty verdict, especially in the absence of suggestion that trial judge intimated impatience or displeasure with the jury by his instruction, facial expression or tone of voice and that send-

ing back of jury was suggested by counsel for one defendant and neither counsel objected to judge's statement. *E. Blango v. United States* (D.C. App. 1975, 335 A.2d 230).

Intent

Assault with intent to kill while armed is a crime requiring specific intent. *United States v. G. A. Martin* (1973, 475 F.2d 943, 154 U.S. App. D.C. 359).

In light of instructions as whole, erroneous instruction to effect that jury must find beyond reasonable doubt that defendant if he performed acts giving rise to charge of assault with intent to kill was in such a mental state that he was not capable of forming specific intent in question was harmless. *Id.*

Once defense of intoxication is interposed in prosecution on charge of assault with intent to kill while armed, burden rests with prosecution to establish that at time offense was committed defendant had capacity to form requisite specific intent. *Id.*

Jencks Act

In proceeding in which accused was convicted of assault with intent to commit robbery and in which officer's grand jury testimony referring to accused's statement that he was "con man" and had tried to "con" victim was admitted to impeach accused, prosecutor's incorrect representation that accused's only statements had been oral and exculpatory, coupled with prosecutor's implied delivery of officer's complete grand jury testimony as part of informal pretrial surrender of "Jencks material" when in fact officer's testimony in regard to the "con man" statement had not been disclosed was prejudicial error. *C. E. Rosser v. United States* (D.C. App. 1977, 381 A.2d 598).

In prosecution for sodomy and assault with intent to commit rape, detective's notations, which were made during initial interviews of complainant and others and assertedly consisted of words "Negro male, 16-25 years of age. Slim build, 5'8" to 5'9". Black leather three-quarter length jacket and dark trousers," are not a "substantially verbatim recital" of a witness' statement within meaning of Jencks Act. *V. A. March v. United States* (D.C. App. 1976, 362 A.2d 691).

Joinder

Where assault with intent to rape committed against two women and purse snatching committed against third woman occurred within short time of each other and in approximately the same location but were not otherwise related, the mere temporal and special proximity cannot justify characterization of the assault and robbery as different parts of the same series of acts or transactions and joinder of the robbery count with the other charges was improper and conferred upon the District Court no jurisdiction over the alleged D.C. Code offense of robbery. *United States v. M. E. Jackson* (1977, 562 F.2d 789, 183 U.S. App. D.C. 270).

Jury

Where individual polling of jurors followed answer by all jurors in unison confirming verdict of guilty, where one juror's recorded answer of "not guilty" during the individual polling was inaudible to the court and government counsel, where that answer was immediately corrected by the juror, and where the answer may have reflected a slip of the tongue or a mistranscription, trial court did not err in refusing to declare a mistrial or to send the jury back for further deliberation as the juror's answer did not show any likelihood of ambiguity or confusion and did not appear to be conditional. *J. Morgan, Jr. v. United States* (D.C. App. 1976, 363 A.2d 999; cert. denied 97 S. Ct. 2187, 431 U.S. 919).

Lesser included offense

Judgment convicting defendant of assault with intent to commit rape while armed, assault with intent to commit rape, and assault with dangerous weapon would be remanded with instructions to vacate so much of judgment of conviction as related to indicted lesser included offenses of assault with intent to commit rape and assault with dangerous weapon. *R. L. Berryman v. United States* (D.C. App. 1977, 378 A.2d 1317).

Counts of assault with a dangerous weapon were lesser included offenses of offenses of assault with attempt to commit robbery and armed robbery and, therefore, de-

fendant could not be convicted of the former offenses in addition to the latter. *E. Quick v. United States* (D.C. App. 1974, 316 A. 2d 875).

Assault with dangerous weapon is lesser included offense of assault with intent to rob while armed. *United States v. W. J. Chavis, Jr.* (1973, 476 F. 2d 1137, 155 U.S. App. D.C. 190).

Where charges of assault with intent to commit rape while armed and charges of assault with a dangerous weapon arose from the same act or transaction, the latter charge, requiring proof of two of the three elements constituting former offense, merged with and became a lesser offense to the charge of assault with intent to commit rape while armed, barring conviction on the lesser offense. *United States v. H. Benn, Jr.* (1973, 476 F. 2d 1127, 155 U.S. App. D.C. 180).

Merger of offenses

Assault with a dangerous weapon committed by one defendant who, while armed with shotgun, threatened and warned robbery victims to return to apartment building when victims attempted to follow robbers, was separate and distinct from assault with intent to commit robbery while armed committed immediately previous to warning not to follow by defendant and other robbers in hallway of apartment building, and thus former offense does not merge into latter. *C. Heiligh v. United States* (D.C. App. 1977, 379 A.2d 689).

In view of concurrent sentences imposed upon convictions for assault with intent to kill while armed and assault with a dangerous weapon, the mildness of the punishment adjudged, the trial judge's recommendation for psychiatric treatment and the necessity for conserving judicial resources, the Court of Appeals would not reach question as to whether the crime of assault with dangerous weapon merged into crime of assault with intent to kill while armed with a dangerous weapon, but would vacate the convictions on the four counts which charged assault with a dangerous weapon. *United States v. J. Hill* (1972, 470 F. 2d 361, 152 U.S. App. D.C. 213).

Miranda rights—Waiver

Where clear implication of police detective's remark was that if defendant wished to wait until morning to talk an attorney would then be provided and in view of fact that the detective twice emphasized that defendant did not have to talk to him, police detective's remark to defendant that since an attorney was not immediately available in the middle of the night, defendant would have to choose between talking to the detective or spending the night in a cell block was not so coercive as to render defendant's subsequent confession involuntary. *D. L. Taylor v. United States* (D.C. App. 1977, 380 A.2d 989).

New trial

Defendant, who had been convicted of assault with intent to commit robbery and armed robbery, was not entitled to new trial on ground of newly discovered evidence consisting of his posttrial information that an attempt had been made on his life by the "real" robber, whom defendant and another witness could identify, and that defendant had not given his attorney the information prior to trial because of fear for his life, as defendant had been apprehended on strength of positive identifications it was unlikely that the additional testimony, which would merely have been cumulative of defense of innocent presence, would have produced a different result. *E. Quick v. United States* (D.C. App. 1974, 316 A. 2d 875).

Probable cause

Where gold automobile was mentioned prominently in reports of two crimes occurring in vicinity of a bar and defendants were observed driving such a vehicle near that general location shortly after the crimes were committed, and the license number of the car matched number obtained from victim of one of the crimes, circumstances constituted probable cause for arrest. *United States v. M. E. Jackson* (1977, 562 F.2d 789, 183 U.S. App. D.C. 270).

Prosecutor's comments

Trial court did not err in refusing to give curative instruction after prosecutor suggested, in closing argument, that defendant may have carried his pistol prior to the

incident in question with intent of using it to commit a crime since that statement was a proper rebuttal to defense counsel's argument that defendant had been carrying the gun to defend himself and that the government had failed to show any motive for the shooting and, in addition, court subsequently instructed jury that arguments of counsel are not evidence. *A. C. Fletcher v. United States* (D.C. App. 1975, 335 A.2d 248).

Any error in allowing government to comment, in closing argument, on failure of the defendant to call one of his companions, who was present at scene, is harmless, notwithstanding that court had denied government's request for a missing witness instruction, where challenged remarks were limited to observation that such individual had not testified and did not directly urge jury to draw from that fact an adverse inference and defendant had previously explained that he had not attempted to secure such witness because he did not believe that the witness would be willing to incriminate himself. *Id.*

Prosecutor's closing comment that assault victim had the courage to take stand and had the guts to get up and tell what happened does not constitute reversible error as improper comment on defendants' failure to testify; in view of fact that statements by prosecutor were merely an attempt to rehabilitate victim, who was only prosecution witness who testified as to circumstances of shooting, after attack on his testimony, it cannot be said that jury would naturally and necessarily draw an adverse inference against the silent defendants; in any event, court emphasized that defendants had an absolute right not to testify. *E. Blango v. United States* (D.C. App. 1975, 335 A.2d 230).

Comments of prosecutor during assault trial to the effect, inter alia, that missing witness was too scared to come and testify, that defendants were killers and were dressed like gangsters, that one defendant was a "young buck," that guilty verdict would be a matter of achievement and courage, and that presumption of innocence might not apply as much to defendants as it might to others in less serious cases did not rise to the level of substantial prejudice necessary for reversal, in light of the strength of the Government's case and correcting instructions by the trial court. *R. L. Smith v. United States* (D.C. App. 1974, 315 A. 2d 163; cert. denied 95 S. Ct. 174, 419 U.S. 896).

Prosecutor's closing and rebuttal arguments which referred to defenses of insanity interposed by famous defendants in other cases and to actions of Hitler and Napoleon were improper and were so highly prejudicial as to require reversal. *United States v. W. E. Hawkins* (1973, 480 F. 2d 1151, 156 U.S. App. D.C. 259).

Where prosecutor's improper closing and rebuttal arguments were so highly prejudicial as to require reversal of conviction of defendant who relied upon insanity as a defense and was convicted of first-degree murder and assault with intent to kill while armed, judgment of conviction of codefendant, who was charged as an aider and abettor, asserted lack of intent to commit murder, and was convicted of second-degree murder, would also be nullified. *Id.*

Question for jury

Question whether defendants who each had his hand in pocket with protruding bulges aimed at victim's midsection and who attempted to rob victim are guilty of assault with intent to commit robbery is for jury. *J. Anthony, Jr. v. United States* (D.C. App. 1976, 361 A.2d 202).

Whether defendant and his accomplice intended to deprive off-duty security officer for apartment complex of some property at time he was forced at gunpoint to submit to successive searches by accomplice during robbery of rental office of complex was jury question, in prosecution for assault with intent to commit robbery while armed, even though nothing was taken from victim and robbers apparently only intended to assure themselves that the security officer was not armed while they were engaged in stealing money of rental company in contradistinction to money or valuables of individual employees. *W. Downtin, Jr. v. United States* (D.C. App. 1975, 330 A.2d 749).

Remand

Where evidence established offense of assault but not assault with intent to commit rape, remand was appro-

prate to determine whether new trial should be ordered or conviction entered for assault. *United States v. C. I. Tremble* (1972, 470 F. 2d 1272, 152 U.S. App. D.C. 363).

Right to counsel

Where defendant was arrested on probable cause for assault with intent to commit rape and was advised of right to counsel but did not request counsel, defendant's constitutional right to counsel was not infringed by the administration of a benzidine test by trained police technician to determine presence of blood on penis shortly after assault. *United States v. L. Smith* (1972, 470 F. 2d 377, 152 U.S. App. D.C. 229).

If counsel had been present and had advised defendant, validly arrested on probable cause for assault with intent to commit rape, against submitting to benzidine test to determine presence of blood on penis such advice would have been futile, since police were entitled to make such test which was one of the preparatory steps excluded from Sixth Amendment right to counsel. *Id.*

Search and seizure

Where defendant was accused of assault with intent to commit rape and taken to police station where there was administered to him shortly after his arrival at station and after a warning of his constitutional rights, a benzidine test to determine presence of blood on penis, the administration of the chemical test by a trained police technician was pursuant to valid arrest for which there was probable cause and was a constitutionally valid search. *United States v. L. Smith* (1972, 470 F. 2d 377, 152 U.S. App. D.C. 229).

Severance

In prosecution of defendants on murder and rape charges, trial court did not abuse its discretion in denying motion of defendant brothers for a severance from codefendant, who had fatally stabbed the victim, notwithstanding defendants' claim that the evidence against the codefendant was much stronger than the evidence against them. *United States v. B. J. Heinlein* (1973, 490 F. 2d 725, 160 U.S. App. D.C. 157).

Speedy trial

Even if it were assumed that Government was negligent in its efforts to locate defendant, on issue of denial of speedy trial, defendant's own actions more than counterbalanced weight to be accorded any presumed inefficiency on part of prosecution, where defendant gave a false name when he was arrested, became a fugitive from District of Columbia, used another name when he was arrested in North Carolina in order to conceal true identity from law enforcement officials and, although he had been paroled for approximately 11 months in 1973, he made no effort to return to the District to clear up pending charges. *H. L. Cates v. United States* (D.C. App. 1977, 379 A.2d 968).

Defendant is not denied speedy trial by virtue of court's granting continuance of trial date from November 2 to January 15 of succeeding year where delay was not instigated by prosecutor but was due solely to court's involvement in other litigation, trial was conducted less than eight months after alleged crime, and defendant made no objection in trial court to continuance and asserted no Sixth Amendment rights prior to his appeal. *J. Coleman, Jr. v. United States* (D.C. App. 1975, 332 A.2d 355).

Twenty-five month delay between attempted street robbery and trial did not deny defendant his constitutional right to speedy trial where first ten months were largely consumed by exigencies of indictment, pretrial motions, and efforts to reach disposition by plea, where ensuing 14-month delay was caused by trial court's heavy involvement in other litigation, where defendant voiced no speedy trial considerations until two days before trial, where there was no substantial showing of prejudice, and where defendant was free on bail for 17 of the 25 months. *United States v. M. E. Jones* (1973, 475 F. 2d 322, 154 U.S. App. D.C. 211).

Witnesses

Trial court did not commit reversible error in failing, sua sponte, to grant defendant a continuance until an alibi witness was released from a local hospital, since, if the presence of the witness was so essential to the credibility of defendant's alibi defense, it was incumbent upon counsel to draw the court's attention to the need

for further delay in the proceedings. *C. Graham v. United States* (D.C. App. 1977, 377 A.2d 1138; cert. denied 98 S.Ct. 748, — U.S. —).

Trial court, which denied a defense motion during trial to have key prosecution witness, who was a chronic alcoholic, subjected to a psychiatric examination with respect to his competency, did not abuse its discretion in refusing to treat the witness as a person of actual or potential incompetency, notwithstanding the claims of defendants, in support of their motion, that the testimony given by the witness was highly confusing and that hospital records indicated he had a clinical history which rendered him wholly unreliable. *United States v. B. J. Heinlein* (1973, 490 F. 2d 725, 160 U.S. App. D.C. 157).

Competency of mentally retarded 18-year-old prosecutrix to testify in prosecution for assault with intent to commit rape while armed, assault with a dangerous weapon and carrying a dangerous weapon, was a threshold question of law committed to the trial court's discretion; it remained for the jury, however, to assess credibility of the witness and the weight to be given her testimony. *United States v. H. Benn, Jr.* (1973, 476 F. 2d 1127, 155 U.S. App. D.C. 180).

§ 22-502. Assault with intent to commit mayhem or with dangerous weapon.

NOTES TO DECISIONS

Abuse of discretion

Although trial judge might have been unduly restrictive in curtailing counsel's examination of several defense witnesses, since most of the testimony as proffered was marginally relevant or cumulative its exclusion is not an abuse of discretion warranting reversal of conviction. *C. H. Randall v. United States* (D.C. App. 1976, 353 A.2d 12).

In prosecution of defendant on charges of cruelty to a child and assault with a dangerous weapon, namely, a belt, the trial court did not abuse its discretion in permitting the government to introduce, during its direct case, evidence of defendant's prior conviction of having assaulted the same child, where intent was placed clearly in issue by the contention in defendant's opening statement that an assault episode, involving the child's head being struck by a pliers tossed by defendant, was accidental. *K. Robinson v. United States* (D.C. App. 1974, 317 A. 2d 508).

Allen charge

Where Allen charge was given after jury which had not been sequestered had deliberated 2 hours and 20 minutes and announced that they had reached a verdict on charge of carrying a dangerous weapon but were deadlocked on charge of assault with deadly weapon and after court took jury verdict of acquittal on carrying charge and where jury deliberated only 25 minutes before returning verdict of guilty on assault charge, Allen charge was not coercive to the point of requiring reversal of conviction. *F. C. Winters v. United States* (D.C. App. 1974, 317 A. 2d 530).

Appeal and error

Appellate review of issue whether trial court erred in allowing in-court identifications of accused is precluded where accused did not file a pretrial motion to suppress identification evidence and no reason, which would excuse such failure, was advanced. *A. N. White v. United States* (D.C. App. 1976, 358 A.2d 645).

Arrest

Totality of facts and circumstances, including information from radio report about fleeing pedestrian and pursuing citizen, and identification of pursuing citizen, justified warrantless arrest of pedestrian while he was being transported by officers to scene of reported incident, even though sum total of information available to officers when they placed pedestrian under arrest came from an unidentified victim of an undisclosed robbery and assault. *G. W. Bates v. United States* (D.C. App. 1974, 327 A. 2d 542).

Assistance of counsel

Defendant was not denied effective assistance of counsel by defense counsel's refusal to present certain alibi witnesses that defendant wished to call, in light of fact that

proposed testimony of alibi witnesses was contradictory and prosecutor indicated that he would move for grand jury indictment for perjury if witnesses took the stand and told stories they had told him. *T. A. Horton v. United States* (D.C. App. 1977, 377 A.2d 390).

Trial court which considered merits of defendant's complaint that counsel did not tell him about the case and which considered adequacy of representation defendant received did not abuse discretion in deciding that defendant was receiving adequate representation and denying defendant's motion for substitution of counsel. *J. Tuckson v. United States* (D.C. App. 1976, 364 A.2d 138).

Failure to preserve, for appeal, the issue whether trial court erred in allowing in-court identifications of accused did not deny effective assistance of counsel where sole ground advanced for suppression of in-court identifications is the failure of government to conduct pretrial lineups and there is no indication that on-scene confrontations between accused and government witnesses were tainted by any impermissible police procedure. *A. N. White v. United States* (D.C. App. 1976, 358 A.2d 645).

Accused, who asserted that there had been inadequate preparation by his trial counsel, was not denied his right to effective assistance of counsel, absent any indication of any substantial defense which accused might have advanced and which was excluded as result of such alleged lack of preparation. *Id.*

Trial judge, when informed by attorney for defendant that he wished to withdraw because his client was going to take the stand and testify in a manner which the attorney knew to be false, should have, before certifying the case to another judge, ruled dispositively on the motion to withdraw rather than leaving that decision for the judge to whom the case was being transferred and should not have directed the second judge to refrain from inquiring into the grounds for the motion. *G. F. Thornton v. United States* (D.C. App. 1976, 357 A. 2d 429; cert. denied 97 S.Ct. 644, 429 U.S. 1024).

Attorney who was fully prepared and intimately acquainted with the details of the case and who considered defendant's pro se motions but decided against them because he thought that there was no merit did not render ineffective assistance of counsel. *Id.*

Where attorney's ethical conflict, which resulted in his making motion for leave to withdraw because he knew that his client would testify falsely, arose after he considered advisability of filing certain pretrial motions, defendant was not denied effective assistance of counsel on theory that counsel's desire to withdraw obstructed presentation of a full and vigorous defense through the submission of pretrial motions. *Id.*

Defendant whose attorney knew that defendant would testify and give false testimony, who informed the court that defendant was testifying against advice of counsel, who asked defendant to state his story and thereafter assisted in its full development only by asking limited questions such as "Then what happened?" and who, in argument to the jury, did not mention defendant's story but did meticulously attack the prosecution's case did not render defendant ineffective assistance of counsel by following the procedure recommended by American Bar Association standards for counsel who find themselves in the position of defending a client who intends to testify falsely. *Id.*

Even if pretrial identifications which resulted from one lineup and one two-man showup were improper, defendant was not denied effective assistance of counsel because of counsel's failure to move, pretrial, for suppression of the identifications where there was abundant evidence of sources independent of those pretrial identifications to support the in-court identifications. *S. S. Shelton v. United States* (D.C. App. 1974, 323 A. 2d 717).

Where an attorney has represented a convicted defendant at trial and, as defendant's attorney on appeal, concludes in good faith that a legitimate issue exists as to the constitutional adequacy of his representation of the defendant at trial, it is the duty of the attorney to move to withdraw as counsel on appeal. *Id.*

Construction

Where language of statute or statutory scheme in general does not fix punishment clearly and without ambiguity, a "rule of lenity" requires that court resolve

doubts against turning a single transaction into multiple offenses. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

Cross-examination

It was improper to cross-examine defendant to reveal an arrest for possession of a pistol without a license to contradict defendant's statement that he had never carried a weapon where defendant had not been convicted of the prior offense and where defendant's statement denying prior possession of weapon was made on cross-examination and not as part of his direct testimony. *S. Jackson v. United States* (D.C. App. 1977, 377 A.2d 1151).

Defense counsel, in prosecution for assault with a dangerous weapon, should have been allowed to impeach the prosecution's case by cross-examining one of the three prosecution witnesses as to his juvenile status, viz., the fact that he was on probation as a juvenile for a robbery conviction, since the three witnesses, two brothers and their cousin, were as one because of their unity of testimonial interest, to wit, their interest in keeping the one brother's probation from being revoked, and since the three may have thought that they themselves would be suspects, for any version of the shooting tending to make defendant's activities appear to have been in self-defense would concomitantly point the finger of accusation at the three witnesses. *C. L. Gillespie, Jr. v. United States* (D.C. App. 1977, 368 A.2d 1136).

While defendant claims that the prosecutor improperly maneuvered him into admitting that the Army had discharged him for failure to disclose his juvenile arrest record, it appears that defendant himself precipitated discussion of his military record by wearing a national guard uniform in court, and that he volunteered the reason for his army discharge before the direct question was asked of him and before the trial judge had an opportunity to rule upon defense counsel's objection. *V. Johnson v. United States* (D.C. App. 1976, 366 A.2d 429).

While defendant claimed that the trial court curtailed to his detriment defense counsel's cross-examination of the complaining witnesses about their activities earlier in the evening before the shooting, the record discloses that reasonable latitude was afforded defense counsel in developing the setting of the criminal activity and the general background of the complaining witnesses. *Id.*

In prosecution for unlawful entry and assault with deadly weapon, trial court did not improperly limit defendant's attempts to cross-examine government witnesses as to their possible desire to protect their employer from civil suit. *J. F. Hyman v. United States* (D.C. App. 1975, 342 A.2d 43).

Where defendant, charged with possession of prohibited weapon and with assault with a dangerous weapon, called as a character witness his employer who testified that defendant had a good reputation in the community of keeping the peace and good order, cross-examination of employer as to whether he had heard that defendant had been convicted of the crime of false pretenses was proper. *S. M. Darden v. United States* (D.C. App. 1975, 342 A.2d 24).

Where government's only witness to fact that stabbing was intentional was victim, refusal to permit defense counsel to cross-examine witness, with whom defendant had been living, as to whether or not she was aware of another woman in defendant's life was error. *S. White v. United States* (D.C. App. 1972, 297 A. 2d 766).

Dangerous weapon

An imitation or blank pistol used in an assault by pointing it at another is a "dangerous weapon" in that it is likely to produce great bodily harm. *E. Harris, Jr. v. United States* (D.C. App. 1975, 333 A.2d 397).

Defendant's presence in court

Where defendant, who was at liberty on bond and therefore had duty as well as right to be present at all stages of trial, and who was advised when proceedings were to reconvene, did not appear when trial court reconvened to settle jury instructions, and defendant's counsel stated that he would waive defendant's appearance for purpose of settling jury instructions, trial court did not err in proceeding to settle jury instructions without presence of the defendant. *C. Heiligh v. United States* (D.C. App. 1977, 379 A.2d 689).

Where it was only at beginning of trial that defendant was warned that his misconduct could lead to his exclusion and he was excluded following a single outburst on third day of trial, such misconduct did not constitute a waiver of his right to be present when proceedings were resumed; although circumstances necessitated his immediate removal and although in continuing proceedings in his absence trial judge was concerned with possibility that his return could result in further incidents to his prejudice, trial court could have addressed defendant in open court to determine whether he desired to return to the proceedings and, if so, whether he would refrain from further disrupting the trial. *B. E. Hazel v. United States* (D.C. App. 1976, 353 A.2d 280).

Although apparent strength of case against defendant and his probable inability to have actively assisted in his defense had been present were factors that serve to lessen possibility of prejudice from his exclusion during closing arguments and jury instructions, such exclusion, which was not warranted in view of remoteness of warning concerning misconduct and defendant's express desire to return to the courtroom, is not harmless error beyond a reasonable doubt. *Id.*

Discovery

Motion for mistrial, based upon allegation that testimony of complainant concerning inculpatory remarks made to complainant by defendant was discoverable under rule providing for inspection by defendant of written or recorded confessions, was properly denied, in that rule does not require pretrial discovery of statements made by defendant to third parties not government agents. *C. Heiligh v. United States* (D.C. App. 1977, 379 A.2d 689).

In prosecution for assault with a deadly weapon and possession of a pistol without a license, prosecutor did not violate defendant's due process right by withholding delivery to defense counsel of an eyewitness' pretrial written statement until trial was in progress, in view of fact that prosecution did in fact give counsel the statement before defense presented its case. *J. L. Barker v. United States* (D.C. App. 1977, 373 A.2d 1215).

Where record was clear and undisputed that there was no intentional or bad-faith loss of evidence by Government, trial court did not abuse its discretion in refusing to impose sanctions after Government reported that both original and copy of note allegedly written by assailant were lost. *B. Brown v. United States* (D.C. App. 1977, 372 A.2d 557; cert. denied 98 S.Ct. 397, —U.S.—).

Where matter which prosecution had not disclosed prior to trial of indictment is inadmissible hearsay, i.e., a street rumor which remained unverified despite immediate investigation by police detective, and where detective did not abandon investigation until after positive identification of defendant had been made by principal victim and defendant had confessed to the crime, undisclosed information is not kind of material which prosecution should have furnished defendant in advance of trial. *United States v. A. D. Sedgwick* (D.C. App. 1975, 345 A.2d 465; cert. denied 96 S. Ct. 1751, 425 U.S. 966).

Refusal, in criminal prosecution in which accused was convicted of sodomy, taking indecent liberties with a minor and assault with a deadly weapon and in which three potential government witnesses were of tender age, to grant accused discovery of names and addresses of government witnesses was not abuse of discretion. *J. C. Davis v. United States* (D.C. App. 1974, 315 A.2d 157).

Refusal to grant accused access to complaining witness' subpoenaed school records, which reflected no prior homosexual or other serious behavioral problems, was not reversible error. *Id.*

Double jeopardy

Where, during defendant's trial for serious criminal offenses, after selection of jury and presentation of substantial amount of prosecution's evidence, attorney in charge of prosecution revealed that highly significant exculpatory police report had not been disclosed to defense, and where defendant's motion to dismiss was denied, trial court erred in terminating prosecution by declaring mistrial over defendant's objection since other remedies existed, jeopardy attached, and there was no manifest necessity. *A. Sedgwick v. Superior Court of the District of Columbia* (1976, 417 F. Supp. 386).

Where trial court, acting on good faith but erroneous belief that defendant had been entitled to certain information long before trial, first suggested continuance, which was declined by defendant, and then unsuccessfully sought defendant's consent to mistrial, and finally declared mistrial and discharged jury, without any insistence by defendant upon any right to completion of the trial by the first jury, jeopardy did not attach. *United States v. A. D. Sedgwick* (D.C. App. 1975, 345 A.2d 465; cert. denied 96 S. Ct. 1751, 425 U.S. 966).

Elements of offense

Intent to use unlawfully is a required element in both the offense of assault with a dangerous weapon and the offense of possession of a dangerous weapon with intent to use unlawfully against another. *United States v. V. B. Brooks* (D.C. App. 1974, 330 A.2d 245).

In prosecution on charges of cruelty to child and assault with a dangerous weapon, namely, a belt, intent was an essential element of the offenses and hence had to be proved by the Government beyond a reasonable doubt. *K. Robinson v. United States* (D.C. App. 1974, 317 A.2d 508).

Evidence

Neither Fifth Amendment privilege against self-incrimination nor due process standards prevented standing of codefendants side by side before jury to assess their relative physical appearances, in prosecution for armed robbery, robbery and assault with a dangerous weapon, and it is of no consequence that defendant declined to take stand to testify on his own behalf since such physical display does not constitute "testimony." *C. S. Hill v. United States* (D.C. App. 1976, 367 A.2d 110).

—Admissibility

Government established a proper foundation for the admission of a gun into evidence, where one robbery victim stated that the gun used in the robbery was identical to the one introduced at trial, where the other victim testified that the gun used was probably the same as the one introduced at trial, and where a police officer testified that one defendant's girlfriend had led them to the basement of a building where the gun in question was found. *J. S. Adams v. United States* (D.C. App. 1977, 379 A.2d 961).

Where Government counsel conducted a very limited direct examination of certain prosecution witness, where counsel's questions were designed to elicit from the witness only the fact that the police investigating the robberies had acted on some information provided by a witness, and where it was defense counsel who questioned the witness as to another's motivation in writing down license tag number on a scrap of paper, and it was defense counsel who thereby opened the door for the witness' subsequent development of evidence related to the tag numbers, defendants cannot complain on appeal that they were prejudiced by evidence relating to the subject which they themselves opened up. *Id.*

Defendant was not substantially prejudiced by revelation of fact that he had undergone court ordered drug treatment where both he and a codefendant had admitted use of marijuana and a third defendant had been impeached by two narcotics convictions. *S. Jackson v. United States* (D.C. App. 1977, 377 A.2d 1151).

Admission of defendant, who was identified as second assailant in hallway of courthouse pending initial trial of his friend, that he was present in courthouse for purpose of being available to defense as alibi witness was admissible in subsequent prosecution of two parties as codefendants as relevant and probative to show that they knew each other and that original defendant had contemplated using alibi to put them together for at least part of evening in question and jury was free to consider such admission, which came in as substantive evidence, as such; there was nothing false or misleading about prosecutor's statement disclosing admission, nor was defendant prejudiced because remark was made in opening argument since testimony presented during trial supported content of opening statement. *C. S. Hill v. United States* (D.C. App. 1976, 367 A.2d 110).

Even if accused, who elected not to testify at trial, had "testimonial privilege" at trial to don jacket he was

alleged to have worn at time of the offenses, denial of request that he be permitted to put on such jacket "to make double sure" that jacket had never been seen by his wife, who had testified that she had never seen the jacket, is not error. *A. N. White v. United States* (D.C. App. 1976, 358 A.2d 645).

Though it is hearsay, testimony of defendant's employer concerning contents of alleged telephone threat against defendant, should have been admitted to show state of mind it might have induced in defendant, in prosecution for carrying pistol without license, assault with deadly weapon, and negligent homicide, but trial court's exclusion of this testimony is not reversible error, where any possible prejudice was cured by admission of other evidence, including testimony by defendant, as to the content of the threat and its effect on his state of mind. *N. L. Cooper v. United States* (D.C. App. 1975, 353 A.2d 696).

With respect to defendant's defense to charge of assault with a dangerous weapon that he was "only joking" when he pointed weapon at another, evidence that defendant was suffering withdrawal from heroin and was in need of money on the day of the incident and exhibited physical symptoms inconsistent with a frivolous state of mind is relevant to show intent or to negate lack thereof. *E. Harris, Jr. v. United States* (D.C. App. 1975, 333 A.2d 397).

Spectrographic identification of defendant as maker of telephone call to which police officer was responding when shot was not sufficiently accepted by scientific community as a whole to form a basis for a jury's determination of guilt or innocence, and was inadmissible. *United States v. R. Addison* (1974, 498 F. 2d 741, 162 U.S. App. D.C. 199; aff'g 337 F. Supp. 641).

Erroneous admission of testimony based on spectrogram or so-called "voice print" analysis did not fatally infect jury's verdict and did not require a reversal, in light of overwhelming evidence of guilt. *Id.*

Admitting colored photographs of complainant showing scars on upper portion of her body was not an abuse of discretion, in prosecution for, inter alia, assault with a dangerous weapon and malicious disfigurement, where photographs were not inflammatory and were clearly probative of the condition of complainant's body and, thus, were material on issue of malicious disfigurement. *B. F. Villines v. United States* (D.C. App. 1974, 320 A. 2d 313).

In prosecution on charges of cruelty to a child and assault with a dangerous weapon, prior assault by defendant on the same child, which occurred some 17 months earlier, was not too remote to preclude its receipt in evidence on the question of intent. *K. Robinson v. United States* (D.C. App. 1974, 317 A. 2d 508).

Evidence as to defendant's prior assault on the same child unquestionably was relevant as to whether he had the requisite intent to support verdicts finding him guilty of the charges of cruelty to a child and assault with a dangerous weapon, namely, a belt. *Id.*

Where only connection between gun and defendant was that gun, similar to one complainant said defendant had used, was found nearly five hours after alleged assault had occurred, not within neighborhood of hotel where assault took place, in an automobile owned and driven by defendant's brother and in which a short time before defendant had been a passenger, any connection between gun produced and alleged assault would be purely conjectural and where vital issue was whether gun was used in the altercation, admission of gun should have been rejected because connection with defendant was too conjectural and remote. *R. C. Burleson v. United States* (D.C. App. 1973, 306 A. 2d 659).

— Good character

Though a defendant's reputation for truthfulness might not always be sufficiently germane to charge of violent behavior to warrant admission, where defendant's credibility may play determinative role in jury's decision, it is error to bar competent testimony as to defendant's reputation for truthfulness, but where defendant was permitted to introduce testimony which bore on credibility, and court charged jury that character evidence alone may create reasonable doubt of guilt, error is harmless. *N. L. Cooper v. United States* (D.C. App. 1975, 353 A.2d 696).

Prosecutor cannot offer bad character evidence unless accused first introduces evidence of good character, and even then prosecutor's proof is restricted to community reputation and to trait and traits to which accused's own character evidence related. *United States v. J. A. Lewis* (1973, 482 F. 2d 632, 157 U.S. App. D.C. 43).

When character witness, either for accused or for prosecution, is offered, he is subject to cross-examination as to his testimonial qualifications just like any other witness, and probe on cross-examination may extend to those matters, among others, which legitimately affect witness' knowledge of accused's community reputation for the character trait or traits which he confirms. *Id.*

Where at time judge ruled, during second trial for armed robbery and related offenses, that if defense put on good character witnesses then prosecution could cross-examine such witnesses to determine if they were aware of defendant's arrest for narcotics two weeks before commencement of second trial but ten months after the occurrence of offenses for which he was being tried, judge did not know whether witness would speak to reputation for peace and good order or as to reputation for truth and veracity, trial judge did not have essential information and ruling was error, but in view of government's case error was not prejudicial. *Id.*

— Sufficiency

Evidence concerning threats made by one defendant to robbery victims as they attempted to follow robbers is sufficient to support conviction of that defendant for assault with a dangerous weapon. *C. Heiligh v. United States* (D.C. App. 1977, 379 A.2d 689).

Identification evidence was sufficient to support defendant's conviction of second-degree murder, assault with a dangerous weapon and carrying pistol without license. *B. Brown v. United States* (D.C. App. 1977, 372 A.2d 557; cert. denied 98 S.Ct. 397, —U.S.—).

Testimony by prison guards that they were locked in a cell and held as hostages, that defendant frequently checked the cell where the guards were confined, that he told the guards that he "had nothing to lose by going out looking," that defendant separated himself from a group of inmates who did not want to escape immediately before rebellious inmates clustered for breakout attempt, and that defendant thereafter came by the cell many times armed with a short piece of steel with a sharp end and threatened the hostages was sufficient to sustain defendant's convictions for attempted escape, armed kidnapping, robbery, and riot. *United States v. J. Bridgeman* (1975, 523 F.2d 1099, 173 U.S. App. D.C. 150; cert. denied 96 S. Ct. 1743, 1744, 425 U.S. 961).

Evidence, including testimony of identification witness, was sufficient to sustain conviction of armed robbery and assault with deadly weapon. *United States v. J. Jones, Jr.* (1975, 517 F.2d 176, 170 U.S. App. D.C. 362).

Evidence, even though resting solely upon victim's identification of defendant, was sufficient to go to jury on issue of identification of victim's assailant. *K. Smith v. United States* (D.C. App. 1975, 343 A.2d 40).

Uncontradicted evidence that defendant grabbed pistol out of hand of complainant and, as he threw pistol to his brother, yelled at brother to kill victim is sufficient for jury to find that defendant was guilty of assault with a dangerous weapon. *E. Blango v. United States* (D.C. App. 1975, 335 A.2d 230).

Evidence, including testimony that shotgun shells similar to those used in gun used in armed robbery were found in defendant's automobile, is sufficient to sustain convictions of armed robbery and assault with dangerous weapon. *D. Borrero v. United States* (D.C. App. 1975, 332 A.2d 363).

Positive identification by one eyewitness and somewhat tentative identifications by two other eyewitnesses were sufficient basis for finding juvenile guilty of robbery and assault with dangerous weapon. *In the Matter of W. K.* (D.C. App. 1974, 323 A. 2d 442).

Evidence was sufficient to sustain conviction for assault with a deadly weapon charged as separate and distinct from armed robbery offense. *C. M. Dixon, Jr. v. United States* (D.C. App. 1974, 320 A. 2d 318).

While the development of direct testimony on the beating of child was less than a model of precision, the evi-

dence as a whole was adequate to sustain jury's verdict finding defendant guilty of assault with a dangerous weapon, namely, a belt. *K. Robinson v. United States* (D.C. App. 1974, 317 A. 2d 508).

Evidence was sufficient to support convictions of first-degree burglary and of assault with a deadly weapon despite claim that, absent corroborating evidence, testimony of complaining witness alone could not support findings of guilt. *United States v. R. Carmichael* (1972, 469 F. 2d 937, 152 U.S. App. D.C. 197).

Where evidence disclosed a single act on part of defendant directed simultaneously at two persons, so that only a single conviction for assault on two persons was supported by evidence, convictions of first-degree burglary and of one assault would be affirmed, but conviction of an additional assault would be set aside, and sentences would be vacated and case would be remanded for resentencing. *Id.*

Identification

Denial of motion to sever counts of indictment in proceeding in which accused was convicted of four rape offenses and other offenses was not abuse of discretion, in view of similar characteristics of such offenses, in which assailant entered through rear of apartments, awoke victims, threatened them with weapon, demanded silence and submission and committed no act of violence if there was compliance with his orders, in which, in three of the cases, he sought to prevent victims from getting good look at him and cut or threatened to cut phone lines and in which he cut off any pants worn by victims. *M. Bridges v. United States* (D.C. App. 1977, 381 A. 2d 1073).

Record failed to establish that on-the-scene identification was unreliable on asserted ground that observation of defendant and companion had been minimal, where witness testified that he "got a good look" at two men when they entered his cab, and he positively identified them when they were brought before him only four or five minutes after attempted robbery and, although such witness based his identification "mostly on what they had on" he testified that he also recognized them by their bodily and facial characteristics and also identified sunglasses, a jacket, and a pistol which police found near suspects as ones which witness had seen during robbery. *H. L. Cates v. United States* (D.C. App. 1977, 379 A. 2d 968).

Although victim may not have been shown entire file when he picked out defendant's picture and, thus, technically, production of the "Washington" file from which victim chose defendant's picture was not production of the same array from which victim had identified defendant, where there was an inherent reliability of identification stemming from the fact that the "Washington" file was an alphabetical file of all persons in jurisdiction with last name "Washington" who had been arrested and probability that such an alphabetical file would be suggestive in any manner was realistically almost nonexistent, and where victim's testimony was that he was shown one picture at a time so that possibility of suggestivity was much less than in case in which a person is shown ten photographs at same time, there is no reversible errors in trial court not imposing sanctions on Government for its failure to preserve all the arrays. *D. L. Washington v. United States* (D.C. App. 1977, 377 A. 2d 1348).

Where victims' identification of defendant charged with armed robbery and assault with a dangerous weapon was reliable, where photograph of lineup showed little suggestivity, and where photograph of lineup was introduced into evidence at trial and defense counsel had the opportunity to, and did, argue to the jury that the lineup was suggestive, any error in attorney's failure to represent defendant at lineup due to his being informed that defendant was not in lineup and his failure to recognize defendant in lineup is harmless. *Id.*

With respect to failure to suppress photographic identification of defendant, fact that photographs were temporarily misplaced by police officer is not in and of itself sufficient cause for suppression, especially when police officer was willing to vouch that array was one shown to witness testified that he found pictures in desk drawer in which he had originally placed them and stated that they were still bound together with paper clip as he had left them. *C. S. Hill v. United States* (D.C. App. 1976, 367 A. 2d 110).

Where prime suspect was located near scene of the crime as result of uninterrupted search, where one-man show-up at hospital where victim was being treated was conducted as expeditiously as was reasonably possible, where defendant had no opportunity to alter his personal appearance, and where witness' identification was immediate and emphatic, risk of mistaken identification was slight and the show-up procedure did not deny due process. *G. F. Thornton v. United States* (D.C. App. 1976, 357 A.2d 429; cert. denied 97 S.Ct. 644, 429 U.S. 1024).

Identification procedure whereby occupants of car were returned in police van to site of gunshots where witness identified defendant from five persons in van, without any assistance from police, was not unduly suggestive. *G. S. Crawley v. United States* (D.C. App. 1974, 314 A. 2d 487).

Knowledge on part of an eyewitness that persons on trial were arrested for crime may be taken into account where there is other indication of suggestivity, but mere fact that suspects are included within lineup and that witnesses know or assume this to be the case is an inescapable aspect of lineup identification procedure and does not, without more, provide reason for exclusion of pretrial and in-court identifications. *United States v. C. L. Pearson* (1973, 478 F. 2d 659, 155 U.S. App. D.C. 455).

Pretrial and in-court identifications of defendant by eyewitness to crime were not subject to exclusion by reason of fact that investigating officer told witness at lineup that she had "done well," where there was no reason to suppose that officer's remark was more than a comforting gesture to witness, who was, quite naturally, on edge, and jury had before it testimony as to (slightly more tentative) lineup identification and was likely to credit this, which was uninfluenced by subsequent remark, far more than taken for granted in-court identification. *Id.*

Where there was substantial doubt as to validity of uncorroborated identification evidence, which was provided by two alleged victims in prosecution for robbery and assault with dangerous weapon and on which conviction was based, case would be remanded to permit district court to make fresh determination as to action which should be taken in interest of justice. *United States v. L. Harris* (1973, 475 F. 2d 359, 154 U.S. App. D.C. 248).

Impeachment

Trial court did not abuse its discretion in allowing the prosecutor to impeach an alibi witness, the mother of one defendant, by showing that she had not been truthful before the grand jury in a pending charge against her son for the unauthorized use of a motor vehicle. *J. S. Adams v. United States* (D.C. App. 1977, 379 A. 2d 961).

Indictment

Indictment charging defendant with assault with a deadly weapon was not constructively amended by prosecution when it presented evidence that defendant acted as a principal by threatening victim with a pistol and that defendant also acted as an aider and abettor when he passed pistol to companion who shot victim, and such indictment was not constructively amended by trial court when it instructed jury that defendant could be found guilty of such crime either as a principal or as an aider and abettor. *J. L. Barker v. United States* (D.C. App. 1977, 373 A.2d 1215).

No variance exists between indictment charging defendant with assault with a dangerous weapon and evidence presented at trial as result of Government's evidence that defendant acted as a principal by threatening victim with a pistol and that defendant also acted as an aider and abettor when he passed pistol to companion who shot victim, in view of fact that state's evidence at trial was based on same set of factual circumstances as was presented to grand jury at time of indictment. *Id.*

Joinder in indictment of counts charging both defendants with assault with a dangerous weapon and charging each defendant respectively with possession of a pistol without a license was proper, since each count was directed to a different facet of one continuous occurrence, and thus constituted a "series of acts" within meaning of rule governing joinder of offenses. *Id.*

Proof that defendant pointed a blank or gas cartridge-type pistol at another is not at variance with indictment

charging that the weapon was a "pistol," and, in any event, no prejudice to defendant exists in view of defendant's admission that he knew the nature of the weapon seized from him. *E. Harris, Jr. v. United States* (D.C. App. 1975, 333 A.2d 397).

Insanity defense

Where staff of hospital for mentally ill at which defendant was patient agreed that defendant was mentally ill at time he allegedly committed assault with dangerous weapon and mayhem but there were conflicting opinions as to whether offenses were product of mental illness, trial judge, before declining to raise issue of insanity *sua sponte* after defendant, whose competence to stand trial was not challenged, refused to rely on insanity defense, should have conducted evidentiary hearing on issue of criminal responsibility and case is therefore remanded for such a hearing. *United States v. J. R. Snyder* (1976, 529 F.2d 871, 174 U.S. App. D.C. 117).

Where defendant, indicted for sodomy, assault with dangerous weapon and mayhem, neither raised defense of insanity prior to return of jury verdict of guilty nor brought to court's attention prior imprisonment for sex-related crime or attempted suicide while in prison and confinement there for psychiatric treatment, defendant had not been improperly deprived of defense of insanity during trial. *E. T. Hughes v. United States* (D.C. App. 1973, 308 A.2d 238).

Instructions -

Trial court did not err when it gave cautionary instruction on the use of prior convictions after one witness had been cross-examined concerning his prior narcotics convictions despite contention of second defendant that action of the trial court in giving the instruction after the break between his testimony and that of the prior witness created expectancy on the part of the jury that a prior conviction would be shown when second defendant took the stand even though such defendant had no prior convictions. *S. Jackson v. United States* (D.C. App. 1977, 377 A.2d 1151).

In prosecution for assault with a deadly weapon and possession of a pistol without a license, evidence was sufficient to warrant trial court's "mere presence" jury instruction. *J. L. Barker v. United States* (D.C. App. 1977, 373 A.2d 1215).

Evidence in prosecution for assault with a deadly weapon and possession of a pistol without a license was insufficient to require jury instruction on defendant's alleged right to use reasonable force to prevent interference with his property and freedom of movement. *Id.*

On the record presented, there is no substantial likelihood that the verdict of the jury was significantly affected by the trial court's failure to give, *sua sponte*, any kind of cautionary instruction on the use of defendant's record of prior arrests, considering, *inter alia*, that the prosecutor's cross-examination, which elicited the arrest evidence, was on a subject which had been injected into the case by defendant. *V. Johnson v. United States* (D.C. App. 1976, 366 A.2d 429).

Instruction that jury had to find defendant guilty of charged crimes of burglary and assault if Government proved existence of each element of offenses beyond reasonable doubt is not equivalent to trial court directing guilty verdict in light of other instructions explaining, *inter alia*, presumption of innocence, Government's duty to prove each element of offense beyond reasonable doubt, meaning of reasonable doubt and Government's need to establish defendant's presence at time and place of offenses in face of his alibi defense and thus is not plain error. *S. Watts v. United States* (D.C. App. 1976, 362 A.2d 706).

It is appropriate in a criminal prosecution for court to instruct that jury has duty to find defendant guilty if Government has proven beyond reasonable doubt every element of charged offense and that jury must find defendant not guilty if Government has failed to prove any element of charged offense beyond reasonable doubt. *Id.*

Failure to give cautionary instruction that inconsistent grand jury statement by witness is admissible for impeachment purposes did not result in prejudice to defendant in that neither witness' trial testimony that she originally thought another person not defendant was her

assailant nor her grand jury testimony which identified defendant as assailant and which was based on information supplied to her by others after she regained consciousness had any probative value on issue of identity of her assailant. *Id.*

Where, during prosecution for assault with dangerous weapon and carrying pistol without license, defendant testified that he did not act at all, repudiating his initial admission to police that he shot complainant in self-defense, evidence of self-defense was absent and trial court properly refused instruction on that subject. *W. G. Hale v. United States* (D.C. App. 1976, 361 A.2d 212).

Trial court acted properly in giving missing witness instruction where witness in question was defendant's girl friend and where, because of testimony given by such witness before grand jury, inference of unfavorable testimony from such witness was natural and reasonable and grand jury testimony eliminated possibility that she would be "unavailable" by reason of invoking her Fifth Amendment privilege against self-incrimination. *Id.*

Trial court properly instructed jury on testimony of accomplices rather than testimony of informers with respect to testimony of witness who had pled guilty to one count of indictment under which he and defendant were charged on the day before defendant's trial and who had participated in the crime with defendant. *United States v. M. W. Thorne* (1975, 527 F.2d 840, 174 U.S. App. D.C. 57).

Where soon after retiring jury requested instruction on whether aiding and abetting instruction applied to armed robbery count of indictment as well as assault charge, trial court's charging jury that aiding and abetting instruction was applicable to both counts in absence of defendant was, at most, harmless error. *United States v. J. Jones, Jr.* (1975, 517 F.2d 176, 170 U.S. App. D.C. 362).

Giving of instruction that jury must acquit unless prosecution proved each element beyond a reasonable doubt is not plain error on ground that instruction compelled jury to find defendant guilty. *R. S. Hammond v. United States* (D.C. App. 1975, 345 A.2d 140).

The failure of trial court to give a model identification instruction *sua sponte* is not reversible error, even though prosecution was based on identification of only one witness, especially in view of other instructions apprising jury of duty to find identification convincing beyond a reasonable doubt. *K. Smith v. United States* (D.C. App. 1975, 343 A.2d 40).

Under the circumstances, trial judge did not abuse his discretion in denying requested "missing witness instruction." *Id.*

Promptly corrected misstatement of instruction by court to effect that no specific intent and only general intent need be found for conviction on count charging possession of a prohibited weapon was not so confusing as to prevent fair deliberation of defendant's innocence by jury which convicted him of the greater offense of assault with a dangerous weapon, the general intent crime, and reached no verdict, as it was instructed, on lesser included offense of possession of a prohibited weapon. *S. M. Darden v. United States* (D.C. App. 1975, 342 A.2d 24).

Where police officers testified that they arrived at apartment in response to disorderly conduct complaint, that they were confronted by defendant who was kicking at the door and yelling profanities, that they placed her under arrest, which she resisted violently, that she broke away and obtained a knife, and that she advanced on the officers, requiring them to draw their guns and seek reinforcements to subdue her, and where defendant testified that she had not threatened any officer with a knife but had herself been attacked by the officers, defendant is not entitled to an instruction on self-defense. *C. L. Holt v. United States* (D.C. App. 1975, 340 A.2d 827).

Even if aiding and abetting instruction was unwarranted in proceeding on charge of assault, giving of it did not necessitate reversal of defendant's conviction on assault counts, where the jury's acquittal of defendant on two counts of second degree murder indicated that it had not found defendant guilty of assault on aiding and abetting theory and there was strong evidence that defendant had committed his own assault upon such persons. *United States v. G. Alexander and B. Murdock* (1972, 471 F.2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

Jencks Act

Refusal to strike testimony of witnesses on account of prosecution's failure to preserve and produce their grand jury testimony was not error where it appeared that their testimony was not recorded due to a malfunction of a recording device, without negligence or bad faith on Government's part. *D. L. Washington v. United States* (D.C. App. 1975, 343 A.2d 560).

Joinder

Accused's claim that circumstances surrounding his identification were inadequate because of insufficient opportunities for observation available to victims is not a basis on which identification testimony could be suppressed in criminal proceeding. *M. Bridges v. United States* (D.C. App. 1977, 381 A.2d 1073).

In prosecution for robbery, armed rape, assault with intent to commit sodomy while armed, armed kidnapping, assault with intent to commit mayhem, armed robbery, obstruction of justice and assault with dangerous weapon, trial court did not err in refusing to sever counts on basis of separate dates of alleged offenses, in view of fact that all offenses flowed each from the other, evidence of each would have been admissible in separate trials to show motive, intent and identity and evidence as to each offense was simple and direct, consisting of victim accounts corroborated by eyewitness testimony. *T. A. Horton v. United States* (D.C. App. 1977, 377 A.2d 390).

Where each of two robberies was committed with sawed-off rifle, each involved as victim a delivery truck driver who collected money after each delivery, each driver was forced into truck and driven or made to drive to another location while the money was taken from him, the two offenses occurred within five days of each other and, when defendant was removed from police car after arrest, a revolver was found beside seat on side where he had been sitting, joinder of the two robbery charges and charge of carrying dangerous weapon is proper. *O. T. Goins v. United States* (D.C. App. 1976, 353 A.2d 298).

In view of fact that scene of armed robbery and assaults on January 17 was different from that of armed robbery and assault on January 11 and assaults on January 16, the victims were different, and only common factor was that in each case the offender was a man wearing a fur coat and fur hat, and that there was no evidence of a common scheme or plan embracing commission of all of the offenses, it was prejudicial error to join trial of charges relating to offenses on January 17 with trial on other counts alleging offenses on January 11 and January 16, notwithstanding Government's contention that evidence of each offense was simple and distinct so that jury could not possibly have been confused. *United States v. T. E. Carter* (1973, 475 F.2d 349, 154 U.S. App. D.C. 238).

Judge's comments

In prosecution for, inter alia, carrying a dangerous weapon, where comment by the court that if there was any believable evidence in the case, it was to effect that pistol was carried outside defendants' home or place of business was sustained by uncontradicted evidence and judge explicitly charged that all matters of fact were to be determined by the jury, no harm could result to defendants, who, in any event, failed to object. *United States v. T. B. Dixon* (1972, 469 F.2d 940, 152 U.S. App. D.C. 200).

Jury

Where juror had simply misstated himself when, during the poll procedure, he answered "not guilty" to one of the counts and corrected himself immediately thereafter when asked the same question, there was no error in the jury poll procedure. *S. Jackson v. United States* (D.C. App. 1977, 377 A.2d 1151).

Trial court acted properly in excluding question which defense counsel propounded to jury panel regarding effect of defendant's prior conviction on jury's consideration of guilt or innocence, and in dismissing the jury venire; such question prejudiced defendant more than it tested jurors' impartiality, and defendant had no apparent right to ask such question. *J. Tuckson v. United States* (D.C. App. 1976, 364 A.2d 138).

Where defendant's second trial was conducted with jury chosen from same jury panel as his first trial, trial court's questioning of second jury concerning possible

prior knowledge about case served to eliminate any remaining possibility of bias or prejudice on part of such jury. *W. G. Hale v. United States* (D.C. App. 1976, 361 A.2d 212).

Lesser included offense

Judgment convicting defendant of assault with intent to commit rape while armed, assault with intent to commit rape, and assault with dangerous weapon would be remanded with instructions to vacate so much of judgment of conviction as related to indicted lesser included offenses of assault with intent to commit rape and assault with dangerous weapon. *R. L. Berryman v. United States* (D.C. App. 1977, 378 A.2d 1317).

Conviction of assault with a deadly weapon would not be set aside as a lesser included offense of armed robbery, where jury's conviction of assault with a deadly weapon of necessity included finding that assault occurred after conclusion of all earlier crimes including armed robbery. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S.Ct. 154, — U.S. —).

Where armed assault was essential part of proof establishing armed rape, armed assault was lesser offense included within the armed rape, and assault conviction was vacated. *United States v. E. Edmonds, Jr.* (1975, 524 F.2d 62, 173 U.S. App. D.C. 241).

Conviction of assault with dangerous weapon upon individual is vacated as lesser included offense of armed rape against such individual. *M. Bell v. United States* (D.C. App. 1975, 332 A.2d 351).

Conviction of assault with dangerous weapon upon individual in connection with liquor store holdup is not vacated, where it is the only offense against such individual for which defendant was charged, despite fact that assaults against other individuals were vacated as lesser included offenses of armed robbery and armed rape against such individuals. *Id.*

Assault with dangerous weapon on motel clerk was lesser included offense of armed robbery of same person, and conviction of former could not stand as conviction for another offense. *United States v. H. E. Lee* (1974, 509 F.2d 400, 166 U.S. App. D.C. 67; cert. denied 95 S.Ct. 1451, 420 U.S. 1006).

Assaults of bank tellers with dangerous weapons were lesser included offenses of armed robberies of tellers and defendants could not be convicted of both the robberies and the assaults. *United States v. E. L. Cooper* (1974, 504 F.2d 260, 164 U.S. App. D.C. 191).

Assault with dangerous weapon was lesser included offense in armed robbery offense, and additional convictions for assault with dangerous weapon would accordingly be vacated where defendant had been convicted on three armed robbery counts. *United States v. S. Kearney, Jr.* (1974, 498 F.2d 61, 162 U.S. App. D.C. 110).

Where concurrent sentences imposed on each conviction for assault with a dangerous weapon were adjudged to run concurrently with burglary and armed robbery convictions, no remand for resentencing was necessary on vacation of convictions for assault with a dangerous weapon. *Id.*

Assault with dangerous weapon is lesser included offense of principal offense of armed robbery; accordingly, defendant could not be convicted of lesser offense in addition to greater. *United States v. E. L. Inge, Jr.* (1974, 494 F.2d 1102, 161 U.S. App. D.C. 183).

Inasmuch as assault with a dangerous weapon is included in armed robbery, and defendant was convicted of both offenses, judgments and sentences for assault with a dangerous weapon were required to be vacated. *United States v. J. F. Anderson* (1974, 490 F.2d 785, 160 U.S. App. D.C. 217).

It was improper to convict defendant both for assault with a dangerous weapon and armed robbery where the assault was a necessary part of the evidence needed to support the count of armed robbery. *R. Taylor v. United States* (D.C. App. 1974, 324 A.2d 683).

Since evidence showed that offenses arose out of separate acts no need existed to consider whether assault with a dangerous weapon was a lesser included charge of malicious disfigurement. *B. F. Villines v. United States* (D.C. App. 1974, 320 A.2d 313).

Counts of assault with a dangerous weapon were lesser included offenses of offenses of assault with attempt to

commit robbery and armed robbery and, therefore, defendant could not be convicted of the former offenses in addition to the latter. *E. Quick v. United States* (D.C. App. 1974, 316 A.2d 875).

Assault with dangerous weapon was lesser included offense of armed robbery; thus, defendants could not be convicted of both three counts of armed robbery and three counts of assault with a deadly weapon and convictions of assault would be reversed. *United States v. T. McKinley* (1973, 485 F.2d 1059, 158 U.S. App. D.C. 280).

Offense of assault with dangerous weapon is included in armed robbery; thus defendant should not have been sentenced to concurrent terms of five to 15 years on counts charging armed robbery and to terms of three to ten years on counts charging assault with dangerous weapon and the sentences imposed for assault with dangerous weapon must be vacated. *United States v. E. C. Thomas* (1973, 485 F.2d 1012, 233 U.S. App. D.C. 158).

Assault with a dangerous weapon is a lesser included offense of assault with intent to commit robbery while armed, and thus defendant could not be convicted of the lesser as well as the greater offense. *United States v. G. L. Alston* (1973, 483 F.2d 1264, 157 U.S. App. D.C. 261).

Assault with a dangerous weapon convictions were vacated as lesser included offenses in armed robbery and armed rape. *United States v. R. E. Adams, Jr.* (1973, 481 F.2d 1099, 156 U.S. App. D.C. 415).

Assault with dangerous weapon is lesser included offense of assault with intent to rob while armed. *United States v. W. J. Chavis, Jr.* (1973, 476 F.2d 1137, 155 U.S. App. D.C. 190).

Assault with a dangerous weapon is a lesser included offense of robbery while armed. *United States v. J. Johnson* (1973, 475 F.2d 1297, 155 U.S. App. D.C. 28).

Where jury returned a verdict of guilty on each of four counts of robbery while armed involving different victims it was error to receive verdicts from the jury on the four counts of assault with a dangerous weapon, a lesser included offense, with respect to the same victims. *Id.*

Crime of assault with a dangerous weapon is a lesser included offense within the crime of armed robbery and where defendant was sentenced upon conviction of both crimes, sentence on crime of assault with a dangerous weapon was vacated. *J. L. Skinner v. United States* (D.C. App. 1973, 310 A.2d 231).

Mental capacity

Record, including testimony of a private psychiatrist who examined defendant at government expense, was sufficient to support finding that criminal acts committed by defendant (armed robbery, assault with a dangerous weapon, and carrying a dangerous weapon) were not so proximately tied to defendants' mental impairment as to require his exculpation. *United States v. G. A. Wilson* (1972, 471 F.2d 1072, 153 U.S. App. D.C. 104; cert. denied 93 S. Ct. 1431, 410 U.S. 957).

Merger of offenses

Assault with a dangerous weapon committed by one defendant who, while armed with shotgun, threatened and warned robbery victims to return to apartment building when victims attempted to follow robbers, was separate and distinct from assault with intent to commit robbery while armed committed immediately previous to warning not to follow by defendant and other robbers in hallway of apartment building, and thus former offense does not merge into latter. *C. Heiligh v. United States* (D.C. App. 1977, 379 A.2d 689).

Application of merger doctrine is unwarranted where burglary based upon assault served as predicate for felony-murder, in view of fact that section 22-2401 expressly provided that even purposeless killing of another during housebreaking while armed constitutes first-degree murder, and in view of fact that societal interest served by section 22-1801 was separate and distinct from that of section 22-2401. *M. E. Harris v. United States* (D.C. App. 1977, 37 A.2d 34).

Convictions of both assault with dangerous weapon and simple assault were sustained where there were two separate assaults, each proved by different evidence, despite contention that conviction of simple assault should be vacated because it merged into conviction of assault with a dangerous weapon. *J. Tuckson v. United States* (D.C. App. 1976, 364 A.2d 138).

Where, in course of armed robbery, shotgun was pointed at two distinct individuals at different times, there was no error in entering separate judgments of conviction of armed robbery and assault with dangerous weapon. *D. Borrero v. United States* (D.C. App. 1975, 332 A.2d 363).

Where assault with dangerous weapon offense was submitted to jury on specific instruction that it could convict on assault with dangerous weapon charge only if it found that separate and apart from pointing the gun at complaining witness, the complaining witness were beaten with the gun, and jury returned verdict of guilty, assault with dangerous weapon was not a lesser included offense within the armed robbery, offenses did not merge, and punishment for both did not constitute cumulative punishment. *C. M. Dixon, Jr. v. United States* (D.C. App. 1974, 320 A.2d 318).

Convictions of assault with a dangerous weapon merged with armed robbery convictions connected with same robbery of drugstore and would thus be set aside. *United States v. T. R. Toy* (1973, 482 F.2d 741, 157 U.S. App. D.C. 152).

Where armed robberies and assaults with a dangerous weapon were committed against same persons, latter offenses merged into former, and convictions on assault charges could not stand, though a remand for resentencing was not required where defendant had been given separate sentences, and all sentences were set to run concurrently. *United States v. A. Holiday* (1973, 482 F.2d 729, 157 U.S. App. D.C. 140).

A count charging assault with a dangerous weapon is merged with a count charging armed robbery. *J. N. Smith v. United States* (D.C. App. 1973, 312 A.2d 781).

In view of concurrent sentences imposed upon convictions for assault with intent to kill while armed and assault with a dangerous weapon, the mildness of the punishment adjudged, the trial judge's recommendation for psychiatric treatment and the necessity for conserving judicial resources, the Court of Appeals would not reach question as to whether the crime of assault with dangerous weapon merged into crime of assault with intent to kill while armed with a dangerous weapon, but would vacate the convictions on the four counts which charged assault with a dangerous weapon. *United States v. J. Hill* (1972, 470 F.2d 361, 152 U.S. App. D.C. 213).

Miranda rights—Waiver

Where clear implication of police detective's remark was that if defendant wished to wait until morning to talk an attorney would be provided and in view of fact that the detective twice emphasized that defendant did not have to talk to him, police detective's remark to defendant that since an attorney was not immediately available in the middle of the night, defendant would have to choose between talking to the detective or spending the night in a cell block was not so coercive as to render defendant's subsequent confession involuntary. *D. L. Taylor v. United States* (D.C. App. 1977, 380 A.2d 989).

Mistrial

Refusal to declare a mistrial, on ground that disturbance which occurred outside the courtroom but in jury's presence, which involved defendant and his father and which was prompted by removal of the father for creating a disturbance in the courtroom, is not abuse of discretion where after full hearing trial judge found that incident was prompted by defendant, without provocation from prosecution, and court fully instructed jury to disregard incident and reach a verdict based solely on evidence presented in the courtroom. *R. S. Hammond v. United States* (D.C. App. 1975, 345 A.2d 140).

Plain error

In prosecution in which defendant was convicted of assault with a dangerous weapon and assault, admission of police officer's testimony that bullet fragment was given to him by woman who resided in apartment is not plain error affecting substantial rights. *J. Tuckson v. United States* (D.C. App. 1976, 364 A.2d 138).

In prosecution for cruelty to a child and assault with a dangerous weapon, it was not plain error for the trial judge to read to the jury evidence of defendant's prior guilty plea to a charge of assault involving the same child. *K. Robinson v. United States* (D.C. App. 1974, 317 A.2d 508).

The identification of defendant's photograph by assault victim, the two lineup identifications, the composite drawing, defendant's presence in the area of the attack, the two in-court identifications of him, and the clothing recovered from his home left so small a probability that probable cause was lacking in the case that the discretion of the Court of Appeals to consider plain error would not be wisely exercised by entertaining unraised issue regarding the trial court's alleged error in not suppressing identifications flowing from photographs taken of defendant when he was allegedly taken to police station without probable cause. *R. E. Adams, Jr. v. United States* (D.C. App. 1973, 302 A. 2d 232).

Plea of guilty

In prosecution for assault with a dangerous weapon, court's comments to defendant encouraging him to plead guilty to charge of assault with a dangerous weapon went beyond permissible range and thus defendant's motion to withdraw his plea of guilty should have been granted and failure to do so constituted reversible error. *S. L. Byrd v. United States* (D.C. App. 1977, 377 A. 2d 400).

Trial court's observation of defendant's apparent rationality and comprehension is insufficient basis for denying hearing on motion to vacate plea of guilty to criminal offense on grounds of lack of competence at time plea was entered. *United States v. J. Masthers* (1976, 539 F.2d 721, 176 U.S. App. D.C. 242).

Prearrest delay

Record was devoid of any indication that delay in arresting defendant, which occurred ten months after date of the offenses, was the product of any deliberate effort by police to gain an advantage, record furnished abundant evidentiary support for finding that a reasonable endeavor was made to locate defendant and, in addition, record sustained additional finding that, in any event, defendant was not harmed by the delay, in prosecution for armed robbery, assault with a dangerous weapon, and for carrying a pistol without a license. *United States v. L. Parish* (1972, 468 F. 2d 1129, 152 U.S. App. D.C. 72; cert. denied 93 S. Ct. 1430, 410 U.S. 957).

Prejudicial error

Where defendant's guilt on charge of assault with dangerous weapon turned wholly on credibility of complainant's testimony, refusal of trial court to permit defense counsel to ask complainant with whom defendant had been living whether she was aware of another woman in defendant's life was prejudicial error. *S. White v. United States* (D.C. App. 1972, 297 A. 2d 766).

Prosecution

Where juvenile, who had stopped at roadblock but on spying an opening swerved toward opening and approaching officer, with officer leaping to safety as vehicle brushed his trousers, was charged with, among other things, assault on a police officer and assault with a dangerous weapon, i. e., the automobile, dismissal of count charging assault on a police officer did not also require dismissal of charge of assault with a dangerous weapon. *In the Matter of J. A. H.* (D.C. App. 1974, 315 A. 2d 825).

The conviction of defendant for federal bank robbery by force and violence and in addition thereto for assault with a dangerous weapon under the D.C. Code permitting a maximum sentence of up to 30 years, whereas if defendant had been charged with federal crime of assault with a dangerous weapon in connection with bank robbery his maximum sentence would have been no more than 25 years, was plain error, since it permitted Government to obtain a sentence longer than the maximum authorized under highest tier of bank robbery scheme. *United States v. C. L. Canty* (1972, 469 F. 2d 114, 152 U.S. App. D.C. 103).

Under the sovereign doctrine a state could prosecute defendant for robbery or assault even though he had already been tried for federal bank robbery in a federal court and thus make it possible for defendant to serve longer sentence than Congress had authorized in federal statute, but doctrine had no application where the federal bank robbery statute and the D.C. Code were enacted by the same sovereign. *Id.*

Prosecutor's comments

In prosecution in which defendant was convicted of assault with a dangerous weapon and assault, prosecutor's remarks in closing argument regarding the finding of a bullet fragment in apartment into which defendant fled merely drew permissible inferences from evidence presented, and do not rise to the level of plain error. *J. Tuckson v. United States* (D.C. App. 1976, 364 A. 2d 138).

Examination of record shows that the protested remarks in prosecution's closing argument cannot be interpreted as an improper comment on defendant's failure to testify. *C. H. Randall v. United States* (D.C. App. 1976, 353 A.2d 12).

Where, although issue of witness' credibility was salient, Government's evidence was strong, objection to improper argument was promptly made and statement stricken, and only one such statement was made over entire course of prosecutor's closing and rebuttal arguments, no prejudicial error occurred when prosecutor told jury that it could fairly conclude that defendant "almost appeared irrational" on stand. *J. F. Hyman v. United States* (D.C. App. 1975, 342 A. 2d 43).

Comments of prosecutor during assault trial to the effect, inter alia, that missing witness was too scared to come and testify, that defendants were killers and were dressed like gangsters, that one defendant was a "young buck," that guilty verdict would be a matter of achievement and courage, and that presumption of innocence might not apply as much to defendants as it might to others in less serious cases did not rise to the level of substantial prejudice necessary for reversal, in light of the strength of the Government's case and correcting instructions by the trial court. *R. L. Smith v. United States* (D.C. App. 1974, 315 A. 2d 163; cert. denied 95 S. Ct. 174, 419 U.S. 896).

Prosecutor's closing and rebuttal arguments which referred to defenses of insanity interposed by famous defendants in other cases and to actions of Hitler and Napoleon were improper and were so highly prejudicial as to require reversal. *United States v. W. E. Hawkins* (1973, 480 F. 2d 1151, 156 U.S. App. D.C. 259).

Where prosecutor's improper closing and rebuttal arguments were so highly prejudicial as to require reversal of conviction of defendant who relied upon insanity as a defense and was convicted of first-degree murder and assault with intent to kill while armed, judgment of conviction of codefendant, who was charged as an aider and abettor, asserted lack of intent to commit murder, and was convicted of second-degree murder, would also be nullified. *Id.*

Search and seizure

Inasmuch as suitcase containing shoulder holster in immediate area of premises used by defendant cannot be carved out of Fourth Amendment protection afforded defendant in area even if he did not know of suitcase or consciously thought he had no interest in it, conviction of assault with a dangerous weapon and of carrying a pistol without a license is subject to being reversed, case is subject to being remanded for new trial, and issues of credibility have to be resolved without corroborative weight afforded shoulder holster and identification by victim of assault. *H. S. Ward v. United States* (D.C. App. 1976, 365 A. 2d 378).

Where police officers proceeded to area where gunshots were heard, where they were told "they went down the street in a red car," where officers observed red car traveling without lights within three or four blocks of such location, and where they observed occupants acting as if they were hiding something, officers acted properly in stopping car and ordering occupants out of it, thereby giving one officer opportunity to be in position to obtain plain view of shotgun and pistol. *G. S. Crawley v. United States* (D.C. App. 1974, 314 A. 2d 487).

Where police officers had reason to believe that revolver used by defendant charged with assault with a dangerous weapon might be concealed in defendant's truck and that bags of pastry and eyeglasses left behind by victims who had successfully escaped from the truck were also in the truck, warrantless search of the truck following arrest of defendant was lawful, and thus evidence seized in such search was admissible. *United States v. A. E. Bowles, Jr.* (D.C. App. 1973, 304 A. 2d 277).

Sentence

Trial court's imposition of a condition of restitution as part of sentence imposed upon defendant convicted of assault with a deadly weapon and possession of a pistol without a license is not contrary to statute nor an abuse of trial court's sentencing discretion. *J. L. Barker v. United States* (D.C. App. 1977, 373 A.2d 1215).

Where trial court did not abuse its discretion nor deny defendant any significant right by virtue of its consideration of defendant's prison records, which defendant claimed were vague and unreliable, in entertaining defendant's motion for reduction of sentence which due to administrative error was not reached for consideration until over two years after imposition of sentence, the Court of Appeals would not disturb trial court's ruling denying motion. *D. W. Walden v. United States* (D.C. App. 1976, 386 A.2d 1075).

Imposition of consecutive sentences for assault with a dangerous weapon and carrying a dangerous weapon is proper, notwithstanding that offenses arose out of the same transaction, since offense of carrying a dangerous weapon requires proof that the weapon was unlicensed while offense of assault with a dangerous weapon does not. *R. S. Hammond v. United States* (D.C. App. 1975, 345 A.2d 140).

Convictions arising from separate indictments handed down on same date can not be relied on to enhance punishment as third offender. *D. L. Washington v. United States* (D.C. App. 1975, 343 A.2d 560).

Defendant's assault on child with a dangerous weapon, namely, a belt, and his assault on the same child the following night with a dangerous weapon, namely, a pliers, were two separate offenses, and the trial court's imposition of consecutive sentences for them was within the area of its permissible discretion. *K. Robinson v. United States* (D.C. App. 1974, 317 A.2d 508).

Where defendant had been convicted of assault with intent to kill armed with dangerous weapon, with sentence of from three to nine years, for assault with dangerous weapon, with concurrent two to six-year sentence, and carrying pistol without license, with concurrent one-year sentence, two to six-year sentence would be vacated on appeal, without remand. *United States v. E. T. Wimbush* (1973, 475 F.2d 347, 154 U.S. App. D.C. 236).

Sentence of ten years' imprisonment, and refusal to commit defendant to institution for treatment of sexual psychopathy, did not constitute cruel and unusual punishment of defendant after conviction of sodomy and assault with dangerous weapon. *E. T. Hughes v. United States* (D.C. App. 1973, 308 A.2d 238).

Trial judge's statement that it was almost inconceivable that youth, who had been convicted of two counts of assault with a dangerous weapon, and one count of carrying a dangerous weapon, could be handled under Federal Youth Corrections Act in view of his prior convictions of armed robbery and assault with dangerous weapon, his extensive juvenile record and fact that he had repeatedly absconded from juvenile correctional facilities constituted a sufficient affirmative on-the-record finding that youth would not benefit from treatment under the Act and trial judge's refusal to sentence youth under the Act was within his discretion. *L. T. Paul v. United States* (D.C. App. 1973, 301 A.2d 226).

Imposition of separate convictions and consecutive sentences for assault with dangerous weapon was improper where defendant, by single act, put in fear four different members of a group toward whom his actions were collectively directed. *United States v. G. Alexander and B. Murdock* (1972, 471 F.2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

Separate offenses

Evidence sustained determination that assaults with dangerous weapons upon persons other than bank tellers, committed in connection with bank robbery, were separate assaults rather than a single group assault. *United States v. E. L. Cooper* (1974, 504 F.2d 260, 164 U.S. App. D.C. 191).

Where by a single act or course of action a defendant has put in fear different members of a group toward which the action is collectively directed, he is guilty of but one offense and multiple convictions and consecutive sentences will be appropriate only where distinct, successive

assaults have been omitted upon the individual victims. *United States v. G. Alexander and B. Murdock* (1972, 471 F.2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

Severance

Issue of whether severance should have been granted after codefendant testified in such manner as to negate planned joint defense was not preserved for appeal, where no motion was made to trial court upon which it could have exercised its discretion to grant a severance, and where defendant did not demonstrate any prejudice occasioned by his codefendant's testimony which would justify a holding of plain error in allowing the joint trial to proceed. *W. J. Edwards, Jr. v. United States* (D.C. App. 1974, 328 A.2d 90).

Speedy trial

Even if it were assumed that Government was negligent in its efforts to locate defendant, on issue of denial of speedy trial, defendant's own actions more than counterbalanced weight to be accorded any presumed inefficiency on part of prosecution, where defendant gave a false name when he was arrested, became a fugitive from District of Columbia, used another name when he was arrested in North Carolina in order to conceal true identity from law enforcement officials and, although he had been paroled for approximately 11 months in 1973, he made no effort to return to the District to clear up pending charges. *H. L. Cates v. United States* (D.C. App. 1977, 379 A.2d 968).

Defendants were not denied a speedy trial by reasons of the fact that their trial did not commence until 13 months after their arrest, where approximately eight months of the delay was occasioned by the grand jury's consideration of the evidence, where there was no inordinate delay caused by the court or by the prosecution, and where the trial was reset to an earlier date, rather than the original date, because of defendant's motions to dismiss for lack of a speedy trial. *J. S. Adams v. United States* (D.C. App. 1977, 379 A.2d 961).

Although slightly more than one year elapsed between defendant's arrest and trial for armed robbery and assault with a dangerous weapon, where over two months of delay was directly attributable to defense counsel's request for a continuance when defendant changed counsel, and where there was no showing that defendant was prejudiced, where two months of delay was due to such routine matters as preliminary hearing, return of indictment, and arraignment, and over four months' delay was due to crowded court's calendar, and where defendant did not assert his right to speedy trial until the eleventh month, defendant was not denied his Sixth Amendment right to a speedy trial. *D. L. Washington v. United States* (D.C. App. 1977, 377 A.2d 1348).

Where most delay was attributable to Government's successful interlocutory appeal on motion to suppress evidence, where there was release on recognizance and defendant's irrational actions contributed materially to delay in setting of trial date and there was no prejudice to conduct of defense, and where, after motion to suppress was resolved, there was further delay of only four to five months prior to date set by judge, with consent of counsel, for trial, there was no denial of speedy trial. *United States v. M. H. Rosenbloom* (1974, 511 F.2d 777, 167 U.S. App. D.C. 211).

Fifteen-month delay between arrest and trial was such as to constitute a denial of defendant's right to a speedy trial where delay was not, at all times, attributable to defendant, who suffered personal prejudice by reason of fact that he was confined throughout period, though he continually pressed his motion for release pending trial, and where personal prejudice resulting from pretrial incarceration was exacerbated by fact that defendant was a youth being confined in an adult jail and fact that defendant was especially handicapped by his social and educational background. *United States v. W. H. Calloway* (1974, 505 F.2d 311, 164 U.S. App. D.C. 204).

Thirteen months' delay between arrest and trial did not deny defendants their right to speedy trial where first seven months' delay was at least partially justifiable, one defendant was incarcerated only during that portion of period between arrest and trial in which delay was justifi-

fiable and longer period that other defendant spent in pretrial detention was attributable to fact that, having been released pending trial, he violated conditions of release and was reincarcerated. *United States v. E. L. Cooper* (1974, 504 F. 2d 260, 164 U.S. App. D.C. 191).

Right to speedy trial of defendant, charged with armed robbery, assault with dangerous weapon, and of carrying a pistol without a license, was not impinged by nine-month delay extending from his indictment to his trial where, during the first two months defendant was still at large and police were doing their best to locate him, where defendant did not press a speedy trial right until five months after he was arrested, and where record was sufficient to sustain finding that defendant suffered no prejudice to his defense which could be attributed to the delay at the postarrest stage of the prosecution. *United States v. L. Parish* (1972, 468 F. 2d 1129, 152 U.S. App. D.C. 72; cert. denied 93 S. Ct. 1430, 410 U.S. 957).

Verdict

In prosecution for armed robbery and for assault with a dangerous weapon, trial court did not erroneously permit jury to return a separate verdict on assault with a dangerous weapon charge, where evidence disclosed that after armed robbery of cash register of store defendant forced victim at gunpoint to walk to rear of store where she was searched and on leaving defendant warned victim about possibility of being shot if she came out before defendant got out of store. *G. W. Bates v. United States* (D.C. App. 1974, 327 A. 2d 542).

Fact that jury acquitted defendant on charge of carrying a dangerous weapon did not require them to find defendant not guilty on charge of assault with deadly weapon. *F. C. Winters v. United States* (D.C. App. 1974, 317 A. 2d 530).

Witnesses

Failure of trial court to admit into evidence prior inconsistent statement of a witness, after witness did not deny its truth, was error, but such error was not prejudicial where the inconsistent statement was read in whole by the witness to the jury and was used extensively by defense counsel in cross-examination. *C. A. Jefferson v. United States* (D.C. App. 1974, 328 A. 2d 85).

Prior inconsistent statement is admissible only to impeach credibility of a witness and may not be used as affirmative proof of its contents. *Id.*

Evidence that defendant's sole defense witness had been charged with obstruction of justice for her alleged efforts to persuade complaining witness not to identify codefendant, her brother, should not have been admitted over objection, in prosecution for assault and armed robbery, to impeach witness, where testimony of complaining witness revealed to jury facts which were basis for charge; prejudicial effect of admission of arrest and charge outweighed probative substance. *United States v. C. Maynard* (1973, 476 F. 2d 1170, 155 U.S. App. D.C. 223).

Competency of mentally retarded 18-year-old prosecutrix to testify in prosecution for assault with intent to commit rape while armed, assault with a dangerous weapon and carrying a dangerous weapon, was a threshold question of law committed to the trial court's discretion; it remained for the jury, however, to assess credibility of the witness and the weight to be given her testimony. *United States v. H. Benn, Jr.* (1973, 476 F. 2d 1127, 155 U.S. App. D.C. 180).

§ 22-503. Assault with intent to commit any other offense.

NOTES TO DECISIONS

Assistance of counsel

Defendant was not denied effective assistance of counsel by defense counsel's refusal to present certain alibi witnesses that defendant wished to call, in light of fact that proposed testimony of alibi witnesses was contradictory and prosecutor indicated that he would move for grand jury indictment for perjury if witnesses took the stand and told stories they had told him. *T. A. Horton v. United States* (D.C. App. 1977, 377 A. 2d 390).

Joinder

In prosecution for robbery, armed rape, assault with intent to commit sodomy while armed, armed kidnapp-

ing, assault with intent to commit mayhem, armed robbery, obstruction of justice and assault with dangerous weapon, trial court did not err in refusing to sever counts on basis of separate dates of alleged offenses, in view of fact that all offenses flowed each from the other, evidence of each would have been admissible in separate trials to show motive, intent and identity and evidence as to each offense was simple and direct, consisting of victim accounts corroborated by eyewitness testimony. *T. A. Horton v. United States* (D.C. App. 1977, 377 A. 2d 390).

§ 22-504. Assault or threatened assault in a menacing manner.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-1813, 23-581.

NOTES TO DECISIONS

Abuse of discretion

In prosecution for offenses relating to assault which accused police officers allegedly participated in while on off-duty status, trial court did not abuse its discretion in asking government witness, who was on-duty officer called to scene of crime, to state his reason for concluding that there had been no assault and in seeking to elicit his definition of the term "assault" or in inquiring of police lieutenant, who investigated alleged crime, with regard to his conclusory statement that an accused, who had not passed on his notes of interviews with eyewitnesses to lieutenant, did not impede but actually aided investigation. *T. M. Womack v. United States* (D.C. App. 1976, 350 A.2d 281).

Cause for arrest

In view of violent and brutal nature of crime, strong showing of probable cause, recentness of offense and likely destruction of evidence should entry be delayed, trial court, even while giving proper consideration to seriousness of officer's nighttime intrusion into defendant's apartment, could find that warrantless forced entry was permissible and presented no grounds for suppression of evidence seized. *R. Brooks, Jr. v. United States* (D.C. App. 1976, 367 A.2d 1297).

Police officer who had interviewed alleged assault victim and concluded that his complaint, to the effect that accused had pointed a gun at him and threatened to kill him, was genuine, had probable cause to believe that an armed assault had taken place and that accused had committed it, and in light of the exigent nature of the circumstances had probable cause to arrest accused without an arrest warrant. *United States v. H. Simpson* (D.C. App. 1975, 330 A.2d 756).

Cross-examination

In prosecution for simple assault and obstructing justice, limiting cross-examination of complaining witness on issues of his credibility and bias is not abuse of discretion. *C. W. Hall v. United States* (D.C. App. 1975, 343 A.2d 35).

Double jeopardy

Defendant's conviction of assault and of possession of prohibited weapon, both offenses arising out of same incident, does not result in double jeopardy, since each offense demanded proof of essential element not needed in other. *J. E. Walden v. United States* (D.C. App. 1976, 351 A.2d 515).

Evidence—Admissibility

In prosecution for assault and threats to do bodily harm, admission of defendant's prior conviction of manslaughter was not error, where at time prior conviction was introduced and during final instructions trial court informed jury that it should consider the conviction only in evaluating defendant's credibility. *W. B. Davis v. United States* (D.C. App. 1974, 313 A. 2d 886).

— Sufficiency

Evidence, including police officer's testimony that two accused, who were off duty police officers, approached while such officer held victim on ground and that officer could "feel punches being thrown" and another officer's testimony that victim was beaten when third accused, who was also off duty police officer, gave assurances that there was no need for the other officer's services is sufficient to sustain first accused's conviction of two counts

of simple assault, second accused's conviction of one count of simple assault and third accused's conviction of aiding and abetting commission of simple assault and obstruction of justice. *T. B. Womack v. United States* (D.C. App. 1976, 350 A.2d 281).

Merger of offenses

Convictions of both assault with dangerous weapon and simple assault were sustained where there were two separate assaults, each proved by different evidence, despite contention that conviction of simple assault should be vacated because it merged into conviction of assault with a dangerous weapon. *J. Tuckson v. United States* (D.C. App. 1976, 364 A.2d 138).

Simple assault is not a lesser included offense of obstruction of justice and thus charge of simple assault does not merge into accused's conviction of obstruction of justice. *C. W. Hall v. United States* (D.C. App. 1975, 343 A.2d 35).

Miranda rights

Evidence, including testimony of police officer, is sufficient to support trial judge's finding that defendant charged with assault and possession of prohibited weapon knowingly and intelligently waived his constitutional rights, despite fact that police officer failed to secure defendant's signature on standard police form which acknowledged that arrestee understood his rights and chose to waive them. *J. E. Walden v. United States* (D.C. App. 1976, 351 A.2d 515).

Contention that police did not give Miranda warnings immediately after arrest and before incriminating statements were made gives rise to credibility question of sort which is to be determined by trier of fact, and his determination is not subject to review nor will it be set aside on appeal. *Id.*

Prosecutor's comments

Prosecutor's allusion, in simple assault case, to complainant's belief that he was coming to court for defendant's sentencing, rather than his retrial, was not necessary to an effective rebuttal of defense counsel's insinuations and was therefore improper, but, viewing the trial as a whole, including the weight of the Government's case against defendant, it could not be said that the judgment of the jury against defendant was substantially swayed by the error. *F. S. Medina v. United States* (D.C. App. 1974, 315 A.2d 169).

Search and seizure

Where, even if there is sufficient basis in record for concluding that items seized were in fact within plain view, speed with which apprehension and arrest were consummated and breadth and duration of postarrest activities in defendant's apartment raise substantial possibility that some if not all of evidence was not found, as distinguished from being physically seized, until fatally remote from arrest, reviewing court cannot determine on existing record whether plain view doctrine is applicable. *R. Brooks, Jr. v. United States* (D.C. App. 1976, 367 A.2d 1297).

Police, who had learned of armed assault committed by accused, and, who, before entering accused's apartment, heard close of squeaky door, were entitled to make an arrest and effect a limited search for weapons incident thereto, for their own safety, and .38 revolver found in stove which was readily accessible to the three people in the room was admissible against the accused, subsequently identified by the victim, even though the accused was a functional cripple and was not arrested until the pistol had been seized. *United States v. H. Simpson* (D.C. App. 1975, 330 A.2d 756).

Speedy trial

After trial judge, who recused himself six days after accepting defendant's guilty plea, offered defendant option of either certifying case to another judge for sentencing or vacating his guilty plea, defendant's decision to vacate his guilty plea did not necessarily allow "clock to be turned back to zero" for purposes of timing delay, and thus Government had to satisfactorily explain 13-month delay between defendant's arrest and dismissal of indictment. *United States v. J. A. Bolden, Jr.* (D.C. App. 1977, 381 A.2d 624).

Government successfully rebutted presumption that any prejudice resulted from excessive delay of 13 months between defendant's arrest and dismissal of indictment, where defendant was not incarcerated except for six-day period and defendant's anxiety and concern over pendency of misdemeanor charge was diluted by felony charge pending for eight of 13 months complained of and defendant's anxiety and concern over pendency of misdemeanor charge alone for five months following dismissal of felony charge was minimal and defendant conceded that delay in no way impaired his defense. *Id.*

§ 22-505. Assault on member of police force or fire department.

NOTES TO DECISIONS

Abuse of discretion

Where action of government in regard to missing disciplinary report describing alleged assault on correctional officer for which defendant was being prosecuted did not amount to bad faith and did not rise to level of gross negligence but simply amounted to negligence, failure to apply sanction under Jencks Act (18 U.S.C. 3500) in striking testimony of correctional officer, who made report, and ordering new trial is not abuse of discretion. *H. B. Johnson v. United States* (D.C. App. 1975, 336 A.2d 545; cert. denied 96 S. Ct. 793, 423 U.S. 1058).

Appeal and error

Appellate review of issue whether trial court erred in allowing in-court identification of accused is precluded where accused did not file a pretrial motion to suppress identification evidence and no reason, which would excuse such failure, was advanced. *A. N. White v. United States* (D.C. App. 1976, 358 A.2d 645).

Assistance of counsel

Failure to preserve, for appeal, the issue whether trial court erred in allowing in-court identifications of accused did not deny effective assistance of counsel where sole ground advanced for suppression of in-court identifications is failure of government to conduct pretrial lineups and there is no indication that on-scene confrontations between accused and government witnesses were tainted by any impermissible police procedure. *A. N. White v. United States* (D.C. App. 1976, 358 A.2d 645).

Accused, who asserted that there had been inadequate preparation by his trial counsel, was not denied his right to effective assistance of counsel, absent any indication of any substantial defense which accused might have advanced and which was excluded as result of such alleged lack of preparation. *Id.*

Consecutive sentences

Trial court did not err in imposing consecutive sentences for separate assaults on two groups of police officers, one group of which was initially at scene and the other group of which arrived just before the shooting began. *A. C. Fletcher v. United States* (D.C. App. 1975, 335 A.2d 248).

Construction

This section, proscribing interfering with member of police force operating in District of Columbia, proscribing assaulting district employee charged with supervision of juveniles confined in district facility located within District or elsewhere and proscribing assaulting member of fire department operating in District, contains three different "laws," within meaning of section 11-923 providing that Superior Court has jurisdiction of any criminal case under any law applicable exclusively to District; thus Superior Court has jurisdiction of prosecution for assault on police officer in District, even if that Court has no jurisdiction over prosecution for assault on supervisor of confined juvenile on ground that it is an extra-territorial offense. *United States v. I. C. Thompson et ano.* (D.C. App. 1975, 347 A.2d 581).

This section making it unlawful to assault, without justifiable and excusable cause, any officer of any penal or correctional institution does not contemplate a level of conduct measurably different from simple assault. *H. B. Johnson v. United States* (D.C. App. 1972, 298 A.2d 516).

Discovery

In proceeding in which accused were charged with assault on three police officers, granting of accused's discovery requests, under rule providing for disclosure of documents material to preparation of the defense, for disclosure of certain documents, within officers' personnel records, on theory that accused, who did not assert that reputation of any officer for violence was known to accused at time of alleged assault, would be permitted at trial to introduce the documents as evidence of violence by officers to prove that they were of violent character and likely to have been the first aggressors was error. *United States v. W. Akers, Sr. et ano.* (D.C. App. 1977, 374 A.2d 874).

In proceeding in which accused were charged with assault on three police officers, even if documents, which were within officers' personnel records and which accused sought to discover, reflected prior unlawful assaultive acts on part of such officers, the documents were not discoverable, under rule providing for disclosure of documents material to preparation of the defense, on ground that such documents could be used to impeach officers' credibility, in view of fact that unlawful assaultive conduct does not involve dishonesty or false statement. *Id.*

Elements of offense

Fact that defendant knew or should have known that complainants were police officers is an element of offense of assault on a police officer with a dangerous weapon. *A. C. Fletcher v. United States* (D.C. App. 1975, 335 A.2d 248).

Evidence

Evidence sustained conviction for assault on police officer while armed with dangerous weapon. *United States v. H. E. Lee* (1974, 509 F.2d 400, 166 U.S. App. D.C. 67; cert. denied 95 S. Ct. 1451, 420 U.S. 1006).

— Admissibility

Evidence that police officer was investigating an alleged assault and attempted robbery by defendant is admissible in prosecution for assault of officer to explain events immediately preceding assault of officer and to show defendant's motive in attacking officer to escape arrest. *E. Day v. United States* (D.C. App. 1976, 360 A.2d 483).

Even if accused, who elected not to testify at trial, had "testimonial privilege" at trial to don jacket he was alleged to have worn at time of the offenses, denial of request that he be permitted to put on such jacket "to make double sure" that jacket had never been seen by his wife, who had testified that she had never seen the jacket, is not error. *A. N. White v. United States* (D.C. App. 1976, 358 A.2d 645).

Spectrographic identification of defendant as maker of telephone call to which police officer was responding when shot was not sufficiently accepted by scientific community as a whole to form a basis for a jury's determination of guilt or innocence, and was inadmissible. *United States v. R. Addison* (1974, 498 F. 2d 741, 162 U.S. App. D.C. 199; aff'g 337 F. Supp. 641).

Erroneous admission of testimony based on spectrogram or so-called "voice print" analysis did not fatally infect jury's verdict and did not require a reversal, in light of overwhelming evidence of guilt. *Id.*

Defendant's statement to epidemiologist, after epidemiologist had assisted in subduing defendant following attack on correctional officer and in response to epidemiologist's inquiry as to why defendant had attacked officer, that defendant had nothing to lose as he was a lifer was admissible in prosecution for assault on correctional officer and of assaulting and interfering with officer. *E. L. Smith v. United States* (D.C. App. 1974, 318 A. 2d 891).

Inferences

Evidence that defendant fired at police officers at close range before they drew their guns, knowing them to be police officers, would support inference that defendant acted with specific intent to kill. *A. C. Fletcher v. United States* (D.C. App. 1975, 335 A.2d 248).

Instructions

Where police officers testified that they arrived at apartment in response to disorderly conduct complaint, that

they were confronted by defendant who was kicking at the door and yelling profanities, that they placed her under arrest, which she resisted violently, that she broke away and obtained a knife, and that she advanced on the officers, requiring them to draw their guns and seek reinforcements to subdue her, and where defendant testified that she had not threatened any officer with a knife but had herself been attacked by the officers, defendant is not entitled to an instruction on self-defense. *C. L. Holt v. United States* (D.C. App. 1975, 340 A.2d 827).

Jurisdiction

Where petitioners were charged in unrelated proceedings in Superior Court with assaulting District of Columbia police officer and were not charged with federal misdemeanor, their cases were not within jurisdiction of federal Court of Appeals, and their petitions for leave to appeal from determination by District of Columbia Court of Appeals that Superior Court had power to act in their cases were accordingly dismissed. *I. C. Thompson v. United States* (1976, 548 F.2d 1031, 179 U.S. App. D.C. 76).

This section, proscribing interfering with member of police force operating in District of Columbia, proscribing assaulting district employee charged with supervision of juveniles confined in district facility located within District or elsewhere and proscribing assaulting member of fire department operating in District, contains three different "laws," within meaning of section 11-923 providing that Superior Court has jurisdiction of any criminal case under any law applicable exclusively to District; thus Superior Court has jurisdiction of prosecution for assault on police officer in District, even if that Court has no jurisdiction over prosecution for assault on supervisor of confined juvenile on ground that it is an extra-territorial offense. *United States v. I. C. Thompson et ano.* (D. C. App. 1975, 347 A. 2d 581).

Lesser included offense

Assault on a correctional officer was a lesser included offense of assault on a correctional officer while armed and conviction for the former could not stand in face of conviction of the latter. *E. L. Smith v. United States* (D.C. App. 1974, 318 A. 2d 891).

Plain error

Permitting clinical psychologist to testify about a psychiatric diagnosis reached at a staff conference which he did not attend did not constitute plain error in view of fact that no attempt was made to introduce any staff conference report nor were any further references made to substance of staff conference recommendation either in direct or cross-examination and Government produced as a second witness a psychiatrist whose opinion, for which he gave reasons, also was that defendant was not mentally ill. *E. L. Smith v. United States* (D.C. App. 1974, 318 A. 2d 891).

In prosecution for carrying a dangerous weapon, assaulting a police officer, and unlawful possession of narcotic drug, sustaining as valid Fifth Amendment privilege claimed by defense witness called to corroborate testimony of defendant, who did not claim infringement of his own Fifth Amendment privilege against self-incrimination, was not plain error, on theory that he was denied a fair trial, where there was no pretense the record would support an inference of prosecutorial misconduct or that Government's case was buttressed by the witness' exercise of the privilege against self-incrimination, and where witness was called by defense counsel with full prior knowledge that privilege would be invoked. *R. W. Mack v. United States* (D.C. App. 1973, 310 A. 2d 234).

Prosecutor's remarks

Trial court did not err in refusing to give curative instruction after prosecutor suggested, in closing argument, that defendant may have carried his pistol prior to the incident in question with intent of using it to commit a crime since that statement was a proper rebuttal to defense counsel's argument that defendant had been carrying the gun to defend himself and that the government had failed to show any motive for the shooting and, in addition, court subsequently instructed jury that arguments of counsel are not evidence. *A. C. Fletcher v. United States* (D.C. App. 1975, 335 A.2d 248).

Any error in allowing government to comment, in closing argument, on failure of the defendant to call one of his companions, who was present at scene, is harmless, notwithstanding that court had denied government's request for a missing witness instruction, where challenged remarks were limited to observation that such individual had not testified and did not directly urge jury to draw from that fact an adverse inference and defendant had previously explained that he had not attempted to secure such witness because he did not believe that the witness would be willing to incriminate himself. *Id.*

Refusal to declare a mistrial after prosecuting attorney stated in his summation that assaulting a correctional officer was basically no different from regular assault did not constitute error. *H. B. Johnson v. United States* (D.C. App. 1972, 298 A. 2d 516).

Speedy trial

Where most delay was attributable to Government's successful interlocutory appeal on motion to suppress evidence, where there was release on recognizance and defendant's irrational actions contributed materially to delay in setting of trial date and there was no prejudice to conduct of defense, and where, after motion to suppress was resolved, there was further delay of only four to five months prior to date set by judge, with consent of counsel, for trial, there was no denial of speedy trial. *United States v. M. H. Rosenbloom* (1974, 511 F.2d 777, 167 U.S. App. D.C. 211).

§ 22-506. Mayhem or maliciously disfiguring.

NOTES TO DECISIONS

Evidence—Admissibility

Golf club used in beatings was properly admitted into evidence in prosecution for, inter alia, malicious disfigurement, where complainant, who shared apartment with defendant, consented to warrantless search of the apartment. *B. F. Villines v. United States* (D.C. App. 1974, 320 A. 2d 313).

Admitting colored photographs of complainant showing scars on upper portion of her body was not an abuse of discretion, in prosecution for, inter alia, assault with a dangerous weapon and malicious disfigurement, where photographs were not inflammatory and were clearly probative of the condition of complainant's body and, thus, were material on issue of malicious disfigurement. *Id.*

—Sufficiency

Government's evidence, although partly circumstantial, reasonably permits finding that juvenile is guilty of mayhem and malicious disfigurement and robbery by force and violence. *In the Matter of E. G. C.* (D.C. App. 1977, 373 A.2d 903).

Insanity defense

Where staff of hospital for mentally ill at which defendant was patient agreed that defendant was mentally ill at time he allegedly committed assault with dangerous weapon and mayhem but there were conflicting opinions as to whether offenses were product of mental illness, trial judge, before declining to raise issue of insanity sua sponte after defendant, whose competence to stand trial was not challenged, refused to rely on insanity defense, should have conducted evidentiary hearing on issue of criminal responsibility and case is therefore remanded for such a hearing. *United States v. J. R. Snyder* (1976, 529 F.2d 871, 174 U.S. App. D.C. 117).

Where defendant, indicted for sodomy, assault with dangerous weapon and mayhem, neither raised defense of insanity prior to return of jury verdict of guilty nor brought to court's attention prior imprisonment for sex-related crime or attempted suicide while in prison and confinement there for psychiatric treatment, defendant had not been improperly deprived of defense of insanity during trial. *E. T. Hughes v. United States* (D.C. App. 1973, 308 A. 2d 238).

Lesser included offense

Since evidence showed that offenses arose out of separate acts no need existed to consider whether assault with a dangerous weapon was a lesser included charge of malicious disfigurement. *B. F. Villines v. United States* (D.C. App. 1974, 320 A. 2d 313).

§ 22-507. Threats to do bodily harm.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-1813.

NOTES TO DECISIONS

Constitutionality

Where evidence relied upon to prove a felony under section 22-2307 is identical to evidence needed to show a misdemeanor under this section, section 22-2307 is not rendered void for vagueness or unconstitutional in any other sense. *United States v. J. Young* (D.C. App. 1977, 376 A. 2d 809).

Construction

This section making it unlawful for one to threaten to do bodily harm does not require that threats be communicated directly to the threatened individual. *J. N. Gurley v. United States* (D.C. App. 1973, 308 A. 2d 785).

Evidence—Admissibility

In prosecution for assault and threats to do bodily harm, admission of defendant's prior conviction of manslaughter was not error, where at time prior conviction was introduced and during final instructions trial court informed jury that it should consider the conviction only in evaluating defendant's credibility. *W. B. Davis v. United States* (D.C. App. 1974, 313 A. 2d 886).

—Sufficiency

Evidence was sufficient to sustain conviction for threatening to do bodily harm of defendant whose threats were overheard by police officer and not by the intended victim. *J. N. Gurley v. United States* (D.C. App. 1973, 308 A. 2d 785).

Probable cause

In view of violent and brutal nature of crime, strong showing of probable cause, recentness of offense and likely destruction of evidence should entry be delayed, trial court, even while giving proper consideration to seriousness of officers' nighttime intrusion into defendant's apartment, could find that warrantless forced entry was permissible and presented no grounds for suppression of evidence seized. *R. Brooks, Jr. v. United States* (D.C. App. 1976, 367 A.2d 1297).

Prosecution

If facts show that conduct constitutes both a felony under section 22-2307 and a misdemeanor under this section, an election may be made to prosecute under either section; discretion to choose under which section to prosecute is broad and vested in the prosecuting attorney and grand jury. *United States v. J. Young* (D.C. App. 1977, 376 A. 2d 809).

Search and seizure

Where, even if there is sufficient basis in record for concluding that items seized were in fact within plain view, speed with which apprehension and arrest were consummated and breadth and duration of postarrest activities in defendant's apartment raise substantial possibility that some if not all of evidence was not found, as distinguished from being physically seized, until fatally remote from arrest, reviewing court cannot determine on existing record whether plain view doctrine is applicable. *R. Brooks, Jr. v. United States* (D.C. App. 1976, 367 A.2d 1297).

Chapter 7.—BRIBERY—OBSTRUCTING JUSTICE

§ 22-701. Definition and penalty.

NOTES TO DECISIONS

Search and seizure

Where defendant asserted on redirect examination that he was no longer addicted to narcotic drugs and had not possessed such drugs during month of his arrest, testimony regarding packages of cocaine obtained from defendant at time of his arrest by means of illegal seizure is admissible for purposes of impeachment. *L. A. Cowan v. United States* (D.C. App. 1975, 331 A. 2d 323).

§ 22-702. Offering or receiving money, property, or valuable consideration to procure office or promotion from District of Columbia Commissioners.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 22-703. Obstructing justice.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Abuse of discretion

Where any lack of trial preparation resulted from defendant's dilatory conduct in failing to appear for six scheduled pretrial conferences with his attorney and where defendant's ingestion of methadone on scheduled trial day did not hamper his ability to assist counsel in his own defense, trial court did not abuse discretion by denying defendant's motion for continuance made on scheduled trial date. *J. E. Poteat v. United States* (D.C. App. 1976, 363 A. 2d 295).

In prosecution for offenses relating to assault which accused police officers allegedly participated in while on off-duty status, trial court did not abuse its discretion in asking government witness, who was on-duty officer called to scene of crime, to state his reason for concluding that there had been no assault and in seeking to elicit his definition of the term "assault" or in inquiring of police lieutenant, who investigated alleged crime, with regard to his conclusory statement that an accused, who had not passed on his notes of interviews with eyewitnesses to lieutenant, did not impede but actually aided investigation. *T. B. Womack v. United States* (D.C. App. 1976, 350 A. 2d 281).

Assistance of counsel

Defendant was not denied effective assistance of counsel by defense counsel's refusal to present certain alibi witnesses that defendant wished to call, in light of fact that proposed testimony of alibi witnesses was contradictory and prosecutor indicated that he would move for grand jury indictment for perjury if witnesses took the stand and told stories they had told him. *T. A. Horton v. United States* (D.C. App. 1977, 377 A. 2d 390).

Construction

This section proscribing willful endeavor by means of misrepresentation to "obstruct, delay or prevent the communication to an investigator of the District of Columbia government by any person of information relating to a violation of any criminal statute" is directed towards protection of persons who would convey information to police except for interference from another person. *In the Matter of K. W. G.* (D.C. App. 1977, 374 A. 2d 852).

Endeavors to obstruct, delay, or prevent the communication of information to criminal investigators or prosecutors of the District of Columbia by means of bribery are prohibited without limitation to those acts having been committed prior to the initiation of judicial proceedings; this section covers actions of defendant who was under investigation for armed robbery and who before he was charged, offered \$100 to the victim to agree not to identify the defendant. *A. F. Smith v. United States* (D.C. App. 1976, 357 A. 2d 418).

Cross-examination

In prosecution for simple assault and obstructing justice, limiting cross-examination of complaining witness on issues of his credibility and bias is not abuse of discretion. *C. W. Hall v. United States* (D.C. App. 1975, 343 A. 2d 35).

Elements of offense

It is not necessary to establish that an assault has been committed in order to prove a violation of this section, proscribing one from corruptly, by threats or force, endeavoring to influence, intimidate or impede any witness in the discharge of his duties; acts such as blackmail and unfulfilled threats of violence can support an obstruction of justice charge. *C. W. Hall v. United States* (D.C. App. 1975, 343 A. 2d 35).

Estoppel

After accused was acquitted of a threat to do bodily harm and bribery and jury "hung" on charge of obstruction of justice, Government is not collaterally estopped from retrying accused on charge of obstruction of justice on theory that verdict of not guilty on "threats" charge determined the issue with respect to identical threats alleged in obstruction of justice charge. *United States v. L. M. Smith* (D.C. App. 1975, 337 A. 2d 499).

Evidence—Admissibility

Testimony concerning motivation of detective in pursuing his investigation of defendant was clearly not relevant to any material issue at defendant's trial for first-degree burglary and obstruction of justice and was, therefore, properly excluded. *J. E. Poteat v. United States* (D.C. App. 1976, 363 A. 2d 295).

Sufficiency

Even though evidence might have been sufficient to support charge that juvenile was accessory after the fact to commission of robbery by reason of his assistance to two other persons to prevent their apprehension by police, evidence was insufficient to support trial court's finding that juvenile was guilty of obstruction of justice. *In the Matter of K. W. G.* (D.C. App. 1977, 374 A. 2d 852).

Evidence that defendant offered robbery victim \$100 if the robbery victim would agree not to identify defendant at a lineup is sufficient to sustain his conviction for obstruction of justice. *A. F. Smith v. United States* (D.C. App. 1976, 357 A. 2d 418).

Evidence, including police officer's testimony that two accused, who were off duty police officers, approached while such officer held victim on ground and that officer could "feel punches being thrown" and another officer's testimony that victim was beaten when third accused, who was also off duty police officer, gave assurances that there was no need for the other officer's services is sufficient to sustain first accused's conviction of two counts of simple assault, second accused's conviction of one count of simple assault and third accused's conviction of aiding and abetting commission of simple assault and obstruction of justice. *T. B. Womack v. United States* (D.C. App. 1976, 350 A. 2d 281).

Evidence in prosecution for obstructing justice and simple assault is sufficient to support a finding that alleged assault was intended to prevent further cooperation of the complaining witness in a criminal case. *C. W. Hall v. United States* (D.C. App. 1975, 343 A. 2d 35).

Indictment

Indictment, which alleged, inter alia, that accused "corruptly endeavored * * * to influence, intimidate and impede" specified victim "in the discharge of his duties as a witness," implies, with sufficient clarity, knowledge that victim was a witness and in intent to impede witness in furtherance of his duties and such indictment sufficiently charges offense of obstruction of justice. *C. W. Hall v. United States* (D.C. App. 1975, 343 A. 2d 35).

Joinder

In prosecution for robbery, armed rape, assault with intent to commit sodomy while armed, armed kidnapping, assault with intent to commit mayhem, armed robbery, obstruction of justice and assault with dangerous weapon, trial court did not err in refusing to sever counts on basis of separate dates of alleged offenses, in view of fact that all offenses flowed each from the other, evidence of each would have been admissible in separate trials to show motive, intent and identity and evidence as to each offense was simple and direct, consisting of victim accounts corroborated by eyewitness testimony. *T. A. Horton v. United States* (D.C. App. 1977, 377 A. 2d 390).

Merger of offenses

Simple assault is not a lesser included offense of obstruction of justice and thus charge of simple assault does not merge into accused's conviction of obstruction of justice. *C. W. Hall v. United States* (D.C. App. 1975 343 A. 2d 35).

New trial

Where at time of his trial for first-degree burglary and obstruction of justice defendant was aware that affiant was witness to incident and knew affiant personally and was aware of his whereabouts, where defendant failed to subpoena affiant at trial, and where material contained in affidavit would in all likelihood not cause jury to acquit defendant, defendant is not entitled to new trial based on newly discovered evidence. *J. E. Poteat v. United States* (D.C. App. 1976, 363 A. 2d 295).

Sentence

Where notice of appeal was filed after trial court sentenced defendant but before trial court entered order setting minimum sentences, trial court was without jurisdiction to modify the sentence so as to provide for the minimum sentencing required by section 24-203; remand is required for entry of minimum sentences. *A. F. Smith v. United States* (D.C. App. 1976, 357 A. 2d 418).

Chapter 9.—DOMESTIC RELATIONS**§ 22-901. Cruelty to children.****NOTES TO DECISIONS****Abuse of discretion**

In prosecution of defendant on charges of cruelty to a child and assault with a dangerous weapon, namely, a belt, the trial court did not abuse its discretion in permitting the government to introduce, during its direct case, evidence of defendant's prior conviction of having assaulted the same child, where intent was placed clearly in issue by the contention in defendant's opening statement that an assault episode, involving the child's head being struck by a pliers tossed by defendant, was accidental. *K. Robinson v. United States* (D.C. App. 1974, 317 A. 2d 508).

Elements of offense

In prosecution on charges of cruelty to child and assault with a dangerous weapon, namely, a belt, intent was an essential element of the offenses and hence had to be proved by the Government beyond a reasonable doubt. *K. Robinson v. United States* (D.C. App. 1974, 317 A. 2d 508).

Evidence—Admissibility

In prosecution on charges of cruelty to a child and assault with a dangerous weapon, prior assault by defendant on the same child, which occurred some 17 months earlier, was not too remote to preclude its receipt in evidence on the question of intent. *K. Robinson v. United States* (D.C. App. 1974, 317 A. 2d 508).

Evidence as to defendant's prior assault on the same child unquestionably was relevant as to whether he had the requisite intent to support verdicts finding him guilty of the charges of cruelty to a child and assault with a dangerous weapon, namely, a belt. *Id.*

In prosecution for murder, deceased's prior conviction based on plea of guilty to an indictment that charged that deceased did "beat, abuse and otherwise willfully maltreat" his six-year-old son was admissible to prove deceased's violent character and court's barring of the evidence was improper. *United States v. J. H. Burks* (1972, 470 F. 2d 432, 152 U.S. App. D.C. 284).

—Sufficiency

Defendant's action in holding child under shower in such a manner as to cause child to fight for air, and in repeatedly slapping and kicking the child after removing him from the shower, supported verdict of guilty on charge of cruelty to a child, irrespective of fact that child was also beaten with a belt and defendant was also convicted of assault with a dangerous weapon. *K. Robinson v. United States* (D.C. App. 1974, 317 A. 2d 508).

Instructions

Evidence required to warrant "Intoxication-defense" instruction must reveal such a degree of complete drunkenness that a person is incapable of forming the necessary intent essential to commission of crime charged. *C. C. Smith, Sr. v. United States* (D.C. App. 1973, 309 A. 2d 58).

Where only evidence as to defendant's alleged intoxication came from defendant who testified that although he "had been drinking" he was not "dead drunk," evidence failed to warrant giving of requested instruction on issue of intoxication as bearing upon specific intent to commit charged offense of cruelty to children. *Id.*

Plain error

In prosecution for cruelty to a child and assault with a dangerous weapon, it was not plain error for the trial judge to read to the jury evidence of defendant's prior guilty plea to a charge of assault involving the same child. *K. Robinson v. United States* (D.C. App. 1974, 317 A. 2d 508).

Chapter 11.—DISORDERLY CONDUCT**§ 22-1107. Unlawful assembly—Profane and indecent language.****NOTES TO DECISIONS****Arrest—Probable cause**

Disorderly conduct arrest of plaintiff, who brought suit under the Federal Tort Claims Act for false arrest, was without probable cause, since the obscene expression addressed by plaintiff to police officer cannot be deemed grossly offensive to those fellow workers and passers-by who may have heard it but, instead, is an everyday expression that punctuates everyday street language, and since plaintiff's loud protestations did not create a substantial risk of provoking violence. *J. Stewart v. United States* (1976, 428 F.Supp. 321).

Police officer who, while walking his beat in an area considered high in narcotic traffic, noticed defendant and two other young men standing in the shadows of a building, who observed that their hands were "passing and changing" among them, who crossed the street to investigate whereupon defendant began to walk away rapidly, who called out "I would like to talk with you a minute," in response to which defendant, within the earshot of pedestrians, shouted a four-letter expletive and ran, had probable cause to arrest defendant for disorderly conduct; thus, the ensuing search for weapons incident to the arrest, which search yielded a bag of heroin, was likewise lawful. *W. Von Sleichter v. United States* (1972, 472 F. 2d 1244, 153 U.S. App. D.C. 169; aff'g 267 A. 2d 336; cert. denied 93 S. Ct. 555, 409 U.S. 1063).

Construction

Disorderly conduct statute is not applicable for mere use of indecent or obscene words, but only if the language is, under contemporary community standards, so grossly offensive to members of the public who actually overhear it as to amount to a nuisance. *W. Von Sleichter v. United States* (1972, 472 F. 2d 1244, 153 U.S. App. D.C. 169; aff'g 267 A. 2d 336; cert. denied 93 S. Ct. 555, 409 U.S. 1063).

Elements of offense

To justify a disorderly conduct or similar arrest, the words uttered must be lewd, obscene, insulting, fighting words which tend by their very nature to incite a breach of the peace. *J. Stewart v. United States* (1976, 428 F.Supp. 321).

Simply talking back to a policeman does not justify an arrest for disorderly conduct. *W. Von Sleichter v. United States* (1972, 472 F. 2d 1244, 153 U.S. App. D.C. 169; aff'g 267 A. 2d 336; cert. denied 93 S. Ct. 555, 409 U.S. 1063).

Search and seizure

While disorderly conduct is a crime without physical evidence or fruits, a policeman apprehending the possibility of danger may conduct a search incident to a lawful arrest for disorderly conduct for the purpose of discovering and removing weapons, and may command the person arrested to place his hands where they can be seen. *W. Von Sleichter v. United States* (1972, 472 F. 2d 1244, 153 U.S. App. D.C. 169; aff'g 267 A. 2d 336; cert. denied 93 S. Ct. 555, 409 U.S. 1063).

§ 22-1112. Lewd, indecent, or obscene acts.

NOTES TO DECISIONS

Arrest—Notification of employer

Although trial court properly dismissed informations charging violations of statute making it unlawful to commit a lewd, obscene and indecent act on theory that statute was unconstitutionally vague, order purporting to enjoin police department from notifying employers of fact of arrest of an employee for other sex offenses until "formal charges" had been filed, when there was no person before the court who had sustained a direct injury as a result of the notification policy, was an abuse of discretion. *District of Columbia v. H. Walters et al.* (D.C. App. 1974, 319 A. 2d 332; cert. denied 95 S. Ct. 650, 419 U.S. 1065).

Constitutionality

"Sexual proposal" clause of this section providing that it shall be unlawful for any person to make any lewd, obscene, or indecent sexual proposal may be fairly construed to proscribe only proposals to commit sodomy, indecent exposure, or, in case of sexual proposals addressed to children, to perform some sexual act, and as so construed is not so vague as to amount to deprivation of due process of law. *District of Columbia v. A. Garcia* (D.C. App. 1975, 335 A.2d 217; cert. denied 96 S.Ct. 192, 423 U.S. 894).

Advocacy of sodomy as socially beneficial, and solicitation to commit sodomy, present entirely distinguishable threshold questions in terms of First Amendment freedom of speech; the latter is not protected speech. *Id.*

This section is not unconstitutional as applied to proposals to commit consensual sexual acts in private where, while sexual proposal made by defendant to officer was made in apparent privacy of parked automobile, it is clear from stipulated facts in the record that officer was not a "consenting person." *Id.*

Statute making it an offense to commit a lewd, obscene and indecent act is unconstitutionally vague in failing to give clear notice of what conduct is forbidden and in investing police with excessive discretion to decide, after the fact, who has violated the law, and statute could not be sustained on theory that police department practice supported construction of statute to mean the deliberate touching in public of one's own or another's genitals for purpose of sexual arousal or on theory that the indelicacy of the subject matter excused the failure to spell out precisely the acts covered. *District of Columbia v. H. Walters et al.* (D.C. App. 1974, 319 A. 2d 332; cert. denied 95 S. Ct. 650, 419 U.S. 1065.)

Statute making it unlawful to commit a lewd, obscene and indecent act was unconstitutionally vague as applied to defendants who were arrested inside a commercial establishment "engaging in acts of mutual masturbation." *Id.*

Construction

Of the various forms of sexual conduct prohibited by statute, such as adultery, indecent exposure, incest, fornication, seduction, indecent liberties with children, and sodomy, only sodomy, indecent exposure, and indecent sexual acts with children can reasonably be deemed "lewd, obscene or indecent," within meaning of this section, with the result that "sexual proposal" clause of this section can be fairly construed to prohibit only proposals to commit sodomy, indecent exposure, or in the case of sexual proposals with children, to perform some sexual act. *District of Columbia v. A. Garcia* (D.C. App. 1975, 335 A.2d 217; cert. denied 96 S.Ct. 192, 423 U.S. 894).

Elements of offense

Words used in cases under this section may or may not be obscene in themselves; what matters is that sexual acts proposed are lewd, obscene or indecent and lawfully prohibited by statute, not the character of the particular words in which the proposal is framed. *District of Columbia v. A. Garcia* (D.C. App. 1975, 335 A.2d 217; cert. denied 96 S.Ct. 192, 423 U.S. 894).

Trial

Where reviewing court was unable to conduct meaningful review of the record because of the frequency and manner of the trial court's intrusions into the interroga-

tion of the witnesses in nonjury trial, the trial did not meet minimum standards for the administration of criminal justice and conviction would not be permitted to stand. *F. L. Shannon v. United States* (D.C. App. 1974, 319 A. 2d 135).

§ 22-1115. Interference with foreign diplomatic and consular offices, officers, and property.

NOTES TO DECISIONS

Construction

Second, third and fourth prohibitions of this section come into play only where there is a display of a flag, banner, placard, or device designed or adapted to produce one or more of the several consequences specified in those provisions; these demonstrative elements are essential, and speech alone is not prohibited. *S. Zaimi v. United States* (1973, 476 F. 2d 511, 155 U.S. App. D.C. 66; rev'g 261 A. 2d 233).

Evidence—Sufficiency

Defendant, who shouted inter alia, that Shah of Iran had come to Washington to purchase bombs to suppress people of Iran, could not be properly convicted of violating statute making it unlawful to bring into public disrepute any officer of any foreign government within 500 feet of any building used or occupied by foreign government or its representatives for official purposes, where there was no congregating, and where banner which defendant at one time carried was never displayed. *S. Zaimi v. United States* (1973, 476 F. 2d 511, 155 U.S. App. D.C. 66; rev'g 261 A. 2d 233).

Offenses

Under this section making it unlawful to bring into public disrepute any officer of any foreign government within 500 feet of any building used or occupied by foreign government or its representatives for official purposes, an offense is not committed simply by utterances unaccompanied by a congregating or a display of a flag, banner, placard, or other device which is designed or adapted to accomplish an end which the section undertakes to forbid. *S. Zaimi v. United States* (1973, 476 F. 2d 511, 155 U.S. App. D.C. 66; rev'g 261 A. 2d 233).

§ 22-1121. Disorderly conduct—Generally.

NOTES TO DECISIONS

Construction

Acts and conduct of demonstrators in obstructing streets and highways may amount to a nuisance and, therefore, constitute breach of the peace within meaning of this section; just as language may amount to a nuisance so may conduct of people blocking traffic at a critical intersection breach the peace as fully as those who hurl stones. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1977, 566 F.2d 107, 184 U.S. App. D.C.—).

Enforcement

The police have a duty to keep streets and sidewalks open for the movement of traffic; hence, failure-to-move-on provision of this section is a reasonable regulation empowering the police to fulfill such duty; provision does no more than that but in applying it the police must direct and control demonstrators only to the extent sufficient to protect legitimate state interests, such as free circulation of traffic and free access to public buildings; in ordering obstructive demonstrators to "move on" the initial police objective must be merely to clear passage, not to disperse demonstrators or suppress the free communication of their views. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1977, 566 F.2d 107, 184 U.S. App. D.C.—).

Although one who has violated no law is not to be arrested for the offenses of those who have been violent or obstructive, the police may validly order violent or obstructive demonstrators to disperse or clear the streets and if any demonstrator or bystander refuses to obey such an order after fair notice and opportunity to comply, his arrest does not violate the Constitution even though he has not previously been violent or obstructive; nonviolent demonstrators may be properly arrested for failure to obey a valid dispersal order. *Id.*

Lesser included offense

Testimony of defendant, who categorically denied that he bumped or jostled either complainant or her companion who denied that his hand was ever inside or near complainant's purse or handbag and insisted that he was never closer than one foot to either woman, not only negated essential elements of disorderly conduct but was also completely exculpatory of either offense, and thus trial court did not err in refusing to give requested lesser-included offense instruction in prosecution for attempted robbery. *P. Jones v. United States* (D.C. App. 1977, 374 A.2d 854).

§ 22-1122. Rioting or inciting to riot—Penalties.

NOTES TO DECISIONS

Construction

With the exception of requirement that five persons participate, this section's prohibition against riot or inciting to riot is intended to subsume all aspects of the common-law crime. *United States v. J. Bridgeman* (1975, 523 F. 2d 1099, 173 U.S. App. D.C. 150; cert. denied 96 S. Ct. 1743, 1744, 425 U.S. 961).

This section is sufficiently comprehensive to cover disturbance which occurred at District of Columbia jail when inmates attempted to escape and held certain persons hostage and attacked and beat them. *Id.*

"Riot" is a breach of the peace which causes public terror and which is committed by an unlawful assembly of the stated number of persons, in the case of the District of Columbia, five. *Id.*

It is a "breach of the peace" when acts or threats of violence cause consternation and alarm and thus disturb the tranquility of the citizens or of a community, threatening their security and invading the protection which the law affords to every citizen. *Id.*

Elements of offense

Location of a disturbance is immaterial to the determination of whether it fits the statutory definition of riot; riot may take place in a penitentiary or in a military camp. *United States v. J. Bridgeman* (1975, 523 F.2d 1099, 173 U.S. App. D.C. 150; cert. denied 96 S. Ct. 1743, 1744, 425 U.S. 961).

Terror inflicted by rioting inmates on director of corrections department whom they held hostage and whom they continually beat and assaulted, to the point where he, at one time, asked them to kill him rather than to continue to torture him, satisfied "public disturbance" requirements of this section. *Id.*

Evidence—Admissibility

Since evidence that homosexual rapes were perpetrated by rioting inmates on hostages was indispensable in proving allegation of serious bodily harm for purpose of this section, testimony concerning sexual assaults on one of the hostages was properly admitted over objections that prejudicial effect outweighed its probative value; evidence was admissible although government also alleged that the riot in question had resulted in property damage and section refers to riot involving property damage or serious bodily harm in the alternative. *United States v. J. Bridgeman* (1975, 523 F.2d 1099, 173 U.S. App. D.C. 150; cert. denied 96 S. Ct. 1743, 1744, 425 U.S. 961).

—Sufficiency

Disturbance at District of Columbia jail in which several inmates attempted to escape and in which numerous persons were held hostage, in which many of the hostages were beaten and sexually assaulted, which resulted in media coverage with several hundred members of the public congregated outside, forcing the police to surround the jail and block the streets around it, involved sufficient "public terror" to constitute violation of this section. *United States v. J. Bridgeman* (1975, 523 F.2d 1099, 173 U.S. App. D.C. 150; cert. denied 96 S. Ct. 1743, 1744, 425 U.S. 961).

Testimony by prison guards that they were locked in a cell and held as hostages, that defendant frequently checked the cell where the guards were confined, that he told the guards that he "had nothing to lose by going out looking," that defendant separated himself from a group of inmates who did not want to escape immediately before rebellious inmates clustered for

breakout attempt, and that defendant thereafter came by the cell many times armed with a short piece of steel with a sharp end and threatened the hostages was sufficient to sustain defendant's convictions for attempted escape, armed kidnapping, robbery, and riot. *Id.*

Chapter 12.—EMBEZZLEMENT

§ 22-1202. Embezzlement by agent, attorney, clerk, servant, or agent of a corporation.

NOTES TO DECISIONS

Abuse of discretion

Trial court did not err in denying motion for new trial in embezzlement prosecution where alleged newly discovered evidence would not probably lead to acquittal. *H. D. Wittenberg v. United States* (D.C. App. 1976, 366 A.2d 128).

Evidence—Sufficiency

Evidence of record supports conviction of counterman in automobile parts store of embezzling racing camshaft from employer. *H. D. Wittenberg v. United States* (D.C. App. 1976, 366 A.2d 128).

Indictment

In prosecution of counterman in automobile parts store for taking racing camshaft from employer, trial court did not err in allowing petit larceny information to be dismissed and embezzlement information substituted therefor. *H. D. Wittenberg v. United States* (D.C. App. 1976, 366 A.2d 128).

Where embezzlement information did not allege that converted property was of value exceeding \$100, it did not charge defendant with felony offense so as to require that he be tried by indictment. *Id.*

§ 22-1207. Punishment for violations of sections 22-1202 to 22-1206.

NOTES TO DECISIONS

Indictment

Where embezzlement information did not allege that converted property was of value exceeding \$100, it did not charge defendant with felony offense so as to require that he be tried by indictment. *H. D. Wittenberg v. United States* (D.C. App. 1976, 366 A.2d 128).

§ 22-1211. Taking property without right.

NOTES TO DECISIONS

Evidence

Where defendant removed automobiles, which either had valid license tags or were virtually undamaged and could not therefore have reasonably have been regarded as abandoned, from parking lot under authorization by property managers, who did not have authority to contract with defendant for removal of such vehicles, defendant had no right to tow away such automobiles and thus was properly found guilty of taking property without right. *L. R. Fogle, Sr. v. United States* (D.C. App. 1975, 336 A.2d 833).

Chapter 13.—FALSE PRETENSES—FALSE PERSONATION

§ 22-1301. False pretenses.

NOTES TO DECISIONS

Elements of crime

False pretenses merely requires proof of intent to defraud at time possession of property is obtained, while larceny requires proof of conversion after possession is obtained with intent to appropriate property to use inconsistent with owner's rights, and thus imposition of consecutive sentences upon defendant, who was convicted of five counts of grand larceny and five counts of false pretenses, who was shown not only to have defrauded complainant but also to have entertained specific intent to steal from very outset and who consummated his purpose by later converting funds he received to his own use, was not beyond trial court's authority since, although offenses arose out of same transaction, one required proof

of a fact which the other did not. *S. Fowler v. United States* (D.C. App. 1977, 374 A.2d 856).

Evidence

In prosecution for false pretenses, prosecution did not need to rely upon its proof of actual conversion of property by defendant in order to establish that representations which he made to complainants were false. *S. Fowler v. United States* (D.C. App. 1977, 374 A.2d 856).

Inconsistent offenses

Defendant, who was charged with grand larceny, larceny after trust and false pretenses, could be convicted of both grand larceny and false pretenses for each of seven transactions set forth in indictment and inconsistency would have arisen only if he had been convicted of larceny after trust, which would have required finding that defendant's original acquisition of victim's property was legal and did not involve an unlawful taking, in addition to grand larceny or false pretenses, both of which required jury to conclude that original acquisition of property was unlawful. *S. Fowler v. United States* (D.C. App. 1977, 374 A.2d 856).

Indictment

Absent any allegation whatsoever in indictment, which charged the obtaining of something of value by false pretenses with intent to defraud, as to what the false pretenses were, the indictment is fatally defective and should have been dismissed upon timely objection; the United States Attorney is not vested with authority to insert allegations as to the particular false pretenses used through response to bill of particulars. *United States v. M. Nance, Jr.* (1976, 533 F.2d 699, 174 U.S. App. D.C. 472).

Joinder

Where various offenses which congealed in indictment were all of a piece in that, taken together, they composed elements of a common scheme of deception which ultimately separated all four victims from their money, and individual fraudulent schemes were probative of each other and evidence of each would have been admissible in trial of the others had they been tried separately, trial court did not abuse its discretion in proceeding on unsevered indictment charging defendant with seven counts of grand larceny, seven counts of larceny after trust and seven counts of false pretenses. *S. Fowler v. United States* (D.C. App. 1977, 374 A.2d 856).

Sentence

False pretenses merely requires proof of intent to defraud at time possession of property is obtained, while larceny requires proof of conversion after possession is obtained with intent to appropriate property to use inconsistent with owner's rights, and thus imposition of consecutive sentences upon defendant, who was convicted of five counts of grand larceny and five counts of false pretenses, who was shown not only to have defrauded complainant but also to have entertained specific intent to steal from very outset and who consummated his purpose by later converting funds he received to his own use, was not beyond trial court's authority since, although offenses arose out of some transaction, one required proof of a fact which the other did not. *S. Fowler v. United States* (D.C. App. 1977, 374 A.2d 856).

Where trial judge intended to incarcerate defendant pursuant to guilty plea to unauthorized use of a motor vehicle and false pretenses and did not intend to grant probation, trial judge did not err in amending judgment and commitment orders which originally provided for commitment under section of Federal Youth Corrections Act providing for probation so as to conform written orders to sentence of incarceration which was pronounced in open court. *W. P. Rich v. United States* (D.C. App. 1976, 357 A.2d 421).

Chapter 14.—FORGERY—FRAUDS

§ 22-1401. Forgery.

NOTES TO DECISIONS

Construction

Under this section, which is written in the disjunctive, forging and uttering the same instrument are distinct

offenses and, under the section, a second uttering constitutes still another offense. *United States v. R. L. Peters* (1977, 434 F. Supp. 357).

Cross-examination

Defendant charged with uttering forged bank checks was entitled to cross-examine principal government witness to determine whether on plea of guilty to same charge witness had entered into agreement with Government for favorable recommendation in regard to his sentence in exchange for his testimony. *C. E. McCoy v. United States* (D.C. App. 1973, 301 A.2d 218).

Elements of offense

Offense of forgery requires only the signing of a fictitious name, accompanied by the necessary fraudulent intent, to an instrument capable of working a prejudice to the interests of another; it need not be shown that the accused in some manner assumed the identity of the fictitious individual and that there was some reliance thereupon. *T. L. Ashby v. United States* (D.C. App. 1976, 363 A.2d 685).

Evidence—Admissibility

In prosecution for forgery and uttering, trial judge did not abuse his discretion in admitting handwriting exemplars which were taken from police files and which were accompanied by information that the person who had written them had the same name and date of birth as the defendant. *M. L. Banks v. United States* (D.C. App. 1976, 359 A.2d 8).

Common-law rule which prohibits the determination of the genuineness of disputed handwriting to be made by comparing it with other handwriting of the party unless the writing which is unquestioned is in evidence for some other purpose is not applicable in the Superior Court. *Id.*

Codefendant's statement to arresting officer, to effect that defendant had given codefendant check in question, was admissible in uttering prosecution in which codefendant testified and affirmed statement and was subjected to cross-examination. *J. Q. Ellsworth v. United States* (D.C. App. 1973, 300 A.2d 456).

Evidence that codefendant had told arresting officer that defendant had given codefendant check in question was not hearsay in uttering prosecution, where used not to prove truth of matter asserted but to corroborate codefendant's testimony and rebut inference of recent fabrication, and defendant was not entitled to instruction that statement could be used only in determining codefendant's guilt, although defendant would have been entitled to cautionary instruction limiting use of evidence to corroboration and rebutting inference. *Id.*

— Sufficiency

While defendant, who was charged with forgery and uttering a forged instrument, alleged that he negotiated check, though he was not the payee thereon, with bona fide reliance upon the representations of a former counselor of rehabilitation bureau that he could cash the check without getting into any "trouble," the finding of intent to defraud is supported by the fact of defendant's acknowledged awareness that the name he affixed to the check for the purpose of cashing it was not his own, as well as other circumstantial evidence, e.g., the fact that on two previous occasions when he received assistance from the bureau, the checks had been made out in his own name. *T. L. Ashby v. United States* (D.C. App. 1976, 363 A.2d 685).

Evidence that defendant, owner of a detective agency, gave employees forged special police officer commissions, and that detective agency received more income from its customers because of use of such commissions, was sufficient to justify submitting to jury counts accusing defendant of forgery. *J. D. Payton, Jr. v. United States* (D.C. App. 1973, 305 A.2d 512).

Evidence, in prosecution for forging or uttering a forged document, that credit card taken from robbery victim was used to procure gasoline and services from filling stations, that automobile license recorded on sales slips coincided with registration of defendant's car and that it was highly probable that handwriting on the slips was that of defendant made admissible case. *H. M. Long v. United States* (D.C. App. 1972, 298 A.2d 213).

Fair trial

Where Government's case in prosecution for forgery, uttering and receiving stolen property rested on documents and unchallenged identification of accused, seven-month nondeliberate delay between date of such offenses and accused's arrest did not deprive accused of fair trial in violation of due process, notwithstanding contentions that if accused had been charged more promptly, he might have remembered what he was doing when he was accused of being in certain shop and could have located "former marine buddy" who assertedly accompanied accused to a second shop. *G. Hurt v. United States* (D.C. App. 1974, 314 A. 2d 489).

Indictment

Indictment charging defendant with uttering forged checks was fatally defective for failure to allege that defendant had knowledge that checks were forged. *D. Rosser v. United States* (D.C. App. 1973, 307 A. 2d 752).

Instructions

Where no evidence was adduced as to identity of forger, court erred in giving aiding and abetting instruction. *J. D. Payton, Jr. v. United States* (D.C. App. 1973, 305 A. 2d 512).

Joinder

Joinder of receiving stolen property count with forgery and uttering counts was not prejudicial misjoinder where all counts related to offenses at certain shop, where evidence on all counts was sufficient for jury and where, though evidence was elicited as to accused's use of stolen credit card at another shop, such evidence was probative as corroborative of handwriting evidence and limiting instruction was given. *G. Hurt v. United States* (D.C. App. 1974, 314 A. 2d 489).

Sentence

When the trial court imposes adult punishment on a youth offender the record (1) must show that the sentencing judge was aware of defendant's eligibility for Youth Act treatment before imposing adult sentence and (2) must contain an explicit and reasoned determination that defendant would not derive rehabilitative benefit from Youth Act treatment. *C. D. Small v. United States* (D.C. App. 1973, 304 A. 2d 641).

Sentence of youthful offender to term of imprisonment on conviction of forgery was required to be vacated and case remanded for resentencing where explicit and reasoned determination that defendant would not derive benefit from Youth Act treatment was absent from the record. *Id.*

Speedy trial

Where Government's delay in indicting defendant resulted in part from its decision to indict only after testing credibility of alleged accomplice before a grand jury and in part from bureaucratic neglect in failing to resolve scheduling conflicts between law enforcement officers and government counsel, it does not appear that Government engaged in preconceived effort to prejudice defendant's due process rights to a fair trial, and it does not appear that defendant's memory has been prejudicially dimmed by delay, prearrest delay violative of the due process clause of the Fifth Amendment is not shown. *United States v. R. L. Peters* (1977, 434 F. Supp. 357).

§ 22-1411. Fraudulent advertising.**NOTES TO DECISIONS****Construction**

This section making unlawful the publication of false advertising does not punish only a course of conduct but punishes each publication of a false advertisement. *J. Green et ano. v. United States* (D.C. App. 1973, 312 A. 2d 788; cert. denied 95 S. Ct. 45, 419 U.S. 827).

Evidence—Sufficiency

Evidence was sufficient to support finding in prosecution for publishing fraudulent advertising about sewing machines for sale that defendant who admitted he was in charge of advertising for sewing machines caused fraudulent advertising to be inserted in newspaper. *J. Green et ano. v. United States* (D.C. App. 1973, 312 A. 2d 788; cert. denied 95 S. Ct. 45, 419 U.S. 827).

Separate offense

Each daily publication of fraudulent advertising about sewing machines for sale in newspaper during 60-day period was properly treated as a separate offense of publishing fraudulent advertising. *J. Green et ano. v. United States* (D.C. App. 1973, 312 A. 2d 788; cert. denied 95 S. Ct. 45, 419 U.S. 827).

§ 22-1412. Prosecution under section 22-1411.**NOTES TO DECISIONS****Jurisdiction**

Superior Court has jurisdiction over prosecution of defendant publishing fraudulent advertising in newspaper. *J. Green et ano. v. United States* (D.C. App. 1973, 312 A. 2d 788; cert. denied 95 S. Ct. 45, 419 U.S. 827).

Prosecution

Proceeding by way of indictment charging defendant with 60 counts of publishing fraudulent advertising was not error. *J. Green et ano. v. United States* (D.C. App. 1973, 312 A. 2d 788; cert. denied 95 S. Ct. 45, 419 U.S. 827).

§ 22-1413. Penalty under section 22-1411.**NOTES TO DECISIONS****Sentence**

Sentence provided for in written judgment finding defendant guilty of 60 counts of publishing fraudulent advertising was not invalid because trial court in its oral pronouncement of sentence did not use words "for each" count, where court did state orally "all counts to run consecutively." *J. Green et ano. v. United States* (D.C. App. 1973, 312 A. 2d 788; cert. denied 95 S. Ct. 45, 419 U.S. 827).

Chapter 15.—GAMBLING**§ 22-1501. Lotteries—Promotion—Sale or possession of tickets.****NOTES TO DECISIONS****Double jeopardy**

Double jeopardy clause does not protect defendant, after his guilty plea is withdrawn, against a subsequent prosecution on count one, which had been dismissed at time guilty plea was entered and which carries a greater possible penalty than the offense to which defendant initially pleaded guilty; since, even assuming count one alleged the same offense as the other counts, allowing it to be brought does not expose defendant to a danger of multiple punishments, nor does it expose him to the danger of a repeated prosecution. *United States v. J. T. Myles* (1977, 430 F. Supp. 98).

Evidence—Sufficiency

Evidence that defendant and others had been observed going from stores to parked automobile and handing small pieces of white paper and money to occupant of automobile, that pieces of paper were recognized by officer as "numbers slips," that paper bag which defendant had placed behind trash can was recovered and found to contain numbers slips and that numbers slips, gambling paraphernalia and money were recovered from parked automobile is sufficient to sustain convictions of being concerned in a lottery and of possession of lottery tickets. *United States v. F. E. Loundmannz* (1972, 472 F. 2d 1376, 153 U.S. App. D.C. 301; cert. denied 93 S. Ct. 1431, 410 U.S. 957).

Instructions

While the trial court erred in giving the jury an example from everyday life in an effort to illustrate the meaning of the phrase "beyond a reasonable doubt," the error is not prejudicial in view of the overwhelming evidence of guilt. *United States v. J. T. Myles* (1977, 430 F. Supp. 98).

Probable cause for arrest

Where one police officer, through binoculars, observed defendant exiting from stores, walking to automobile and handing small pieces of white paper and money to occupant and other persons carrying on same type of activity in vicinity and then went to within three to five

feet of parked automobile and observed several of the other persons pass money and slips which he recognized as "numbers slips" to occupant of automobile, there was probable cause for arrest of defendant pursuant to radio orders given to arresting officers by officer who had observed defendant and the other persons. *United States v. F. E. Loundmannz* (1972, 472 F. 2d 1376, 153 U.S. App. D.C. 301; cert. denied 93 S. Ct. 1431, 410 U.S. 957).

Sentence

Insofar as the prosecution's revival of dismissed charges, following withdrawal by defendant of his guilty plea, is concerned, the "Blackledge" rule, prohibiting a prosecutor or judge from acting vindictively against a person for having successfully appealed a prior conviction, does not come into play at all, since the prosecution is merely returning defendant to the position he claims he would have liked to have been in originally. *United States v. J. T. Myles* (1977, 430 F. Supp. 98).

§ 22-1502. Possession of lottery or policy tickets.

NOTES TO DECISIONS

Double jeopardy

Double jeopardy clause does not protect defendant, after his guilty plea is withdrawn, against a subsequent prosecution on count one, which had been dismissed at time guilty plea was entered and which carries a greater possible penalty than the offense to which defendant initially pleaded guilty; since, even assuming count one alleged the same offense as the other counts, allowing it to be brought does not expose defendant to a danger of multiple punishments, nor does it expose him to the danger of a repeated prosecution. *United States v. J. T. Myles* (1977, 430 F. Supp. 98).

Evidence—Sufficiency

Evidence that defendant and others had been observed going from stores to parked automobile and handing small pieces of white paper and money to occupant of automobile, that pieces of paper were recognized by officer as "numbers slips," that paper bag which defendant had placed behind trash can was recovered and found to contain numbers slips and that numbers slips, gambling paraphernalia and money were recovered from parked automobile is sufficient to sustain convictions of being concerned in a lottery and of possession of lottery tickets. *United States v. F. E. Loundmannz* (1972, 472 F. 2d 1376, 153 U.S. App. D.C. 301; cert. denied 93 S. Ct. 1431, 410 U.S. 957).

Instructions

While the trial court erred in giving the jury an example from everyday life in an effort to illustrate the meaning of the phrase "beyond a reasonable doubt," the error is not prejudicial in view of the overwhelming evidence of guilt. *United States v. J. T. Myles* (1977, 430 F. Supp. 98).

Probable cause for arrest

Where one police officer, through binoculars, observed defendant exiting from stores, walking to automobile and handing small pieces of white paper and money to occupant and other persons carrying on same type of activity in vicinity and then went to within three to five feet of parked automobile and observed several of the other persons pass money and slips which he recognized as "numbers slips" to occupant of automobile, there was probable cause for arrest of defendant pursuant to radio orders given to arresting officers by officer who had observed defendant and the other persons. *United States v. F. E. Loundmannz* (1972, 472 F. 2d 1376, 153 U.S. App. D.C. 301; cert. denied 93 S. Ct. 1431, 410 U.S. 957).

Sentence

Insofar as the prosecution's revival of dismissed charges, following withdrawal by defendant of his guilty plea, is concerned, the "Blackledge" rule, prohibiting a prosecutor or judge from acting vindictively against a person for having successfully appealed a prior conviction, does not come into play at all, since the prosecution is merely returning defendant to the position he claims he would have liked to have been in originally. *United States v. J. T. Myles* (1977, 430 F. Supp. 98).

§ 22-1505. Gambling premises—Definition—Prohibition against maintaining—Forfeiture—Liens—Deposit of moneys in Treasury—Penalty—Subsequent offenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Double jeopardy

Double jeopardy clause does not protect defendant, after his guilty plea is withdrawn, against a subsequent prosecution on count one, which had been dismissed at time guilty plea was entered and which carries a greater possible penalty than the offense to which defendant initially pleaded guilty; since, even assuming count one alleged the same offense as the other counts, allowing it to be brought does not expose defendant to a danger of multiple punishments, nor does it expose him to the danger of a repeated prosecution. *United States v. J. T. Myles* (1977, 430 F. Supp. 98).

Evidence—Sufficiency

Evidence not objected to was sufficient to support finding that money seized in execution of search warrant was the product of an illegal activity. *E. A. Short v. District of Columbia* (D.C. App. 1973, 300 A. 2d 450).

Forfeiture—Hearing

Fact that in preliminary hearing stage a judge of the District of Columbia Court of General Sessions had discharged defendant on basis of suppressibility of evidence due to unlawful execution of search warrant did not foreclose District of Columbia from a hearing in libel action aimed at property seized during execution of the warrant inasmuch as only legal issue before judge at preliminary hearing was question of probable cause to hold defendant for action of grand jury and preliminary hearing judge was not competent to decide question of admissibility of seized evidence. *District of Columbia v. C. Ray, Jr.* (D.C. App. 1973, 305 A. 2d 531).

Determination of federal district court, on motion to suppress in prior criminal action, that search warrant was illegally executed did not foreclose District of Columbia from a hearing on legality of the seizure in libel action aimed at money and equipment seized during execution of the search warrant; rather, the Congressional mandate that the District of Columbia should have status in libel action precluded Court of the District from fashioning such a quasi-collateral estoppel rule. *Id.*

Instructions

While the trial court erred in giving the jury an example from everyday life in an effort to illustrate the meaning of the phrase "beyond a reasonable doubt," the error is not prejudicial in view of the overwhelming evidence of guilt. *United States v. J. T. Myles* (1977, 430 F. Supp. 98).

Sentence

Insofar as the prosecution's revival of dismissed charges, following withdrawal by defendant of his guilty plea, is concerned, the "Blackledge" rule, prohibiting a prosecutor or judge from acting vindictively against a person for having successfully appealed a prior conviction, does not come into play at all, since the prosecution is merely returning defendant to the position he claims he would have liked to have been in originally. *United States v. J. T. Myles* (1977, 430 F. Supp. 98).

Trial by jury

Claimant of property, which was not per se unlawful and which was sought to be forfeited pursuant to statute authorizing forfeiture of property used or to be used in gambling enterprise, was entitled to trial by jury to decide issue whether property was illegally employed. *W. B. Carithers v. District of Columbia* (D.C. App. 1974, 326 A. 2d 798).

§ 22-1506. Three-card monte and confidence games.

NOTES TO DECISIONS

Construction

"Three-card monte" statute does not apply to commission of classic "short con" game known as "pigeon drop." *J. Pender v. United States* (D.C. App. 1973, 310 A. 2d 252).

Three-card monte statute can not be applied for purpose of prosecuting the obtaining of money by trick. *J. A. Bond v. United States* (D.C. App. 1973, 310 A. 2d 221).

Conduct of defendant, in two-man scheme procuring money from victim to place in envelope, with subsequent substitution of envelope for another containing newspaper clippings, was not violative of this section prescribing confidence game known as "three-card monte" and any other such games or swindles. *T. Mozelle v. United States* (D.C. App. 1973, 310 A. 2d 213).

Since the thrust of this section prescribing penalty for practicing the confidence game known as three-card monte "or any other confidence game, play, or practice" is against gambling, the doctrine of ejusdem generis is controlling and the general language "any other confidence game, play, or practice" must be limited in application to gambling activities similar to "three-card monte." *United States v. D. L. Brown et ano.* (D.C. App. 1973, 309 A. 2d 256).

Under the doctrine of "ejusdem generis," where general words follow the enumeration of specific classes of persons or things, the general words will be construed as applicable only to the persons or things of the same general nature or class as those enumerated. *Id.*

Elements of offense

The elements of the crime of "confidence game" are (1) an intentional false representation to the victim as to some present fact, (2) knowing it to be false, (3) with intent that the victim rely on the representation, (4) the representation being made to obtain the victim's confidence and thereafter his money and property, (5) which confidence is then abused by defendant. *United States v. D. L. Brown et ano.* (D.C. App. 1973, 309 A. 2d 256).

Indictment

Indictments charging that defendants practice a confidence game and swindle the nature of which was to persuade victim to entrust money to defendants, which money defendants allegedly intended to fraudulently convert to their own use, did not sufficiently state the elements of the offense called the "confidence game or swindle known as three-card monte." *United States v. D. L. Brown et ano.* (D.C. App. 1973, 309 A. 2d 256).

Prosecution

Though denominated a misdemeanor by this section, prescribed penalty of up to five years imprisonment made offense of "three-card monte and confidence games" prosecutable only by indictment. *United States v. D. L. Brown et ano.* (D.C. App. 1973, 309 A. 2d 256).

Since the "three-card monte" statute deals with gambling, it is not a proper vehicle for prosecuting other forms of fraud or deceit. *Id.*

§ 22-1510. Penalty for bucketing or keeping bucket-shop.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 22-1515. Presence in illegal establishments.

NOTES TO DECISIONS

Search and seizure

Where on executing warrant authorizing search of after-hours club or bar for a "gaming table and other related gambling paraphernalia," police officers knocked twice and announced they were police officers with a search warrant, after hearing someone run away from the door, officers waited approximately 30 seconds and

then forced door open and from previous observations police had probable cause to believe that extensive gambling was being carried on, police had sufficient grounds to search the individuals present and tinfoil packet found on in-depth search of an occupant was properly seized and would be admissible in prosecution for possession of heroin; officers had reasonable cause to believe that occupants possessed, concealed and were about to remove or destroy evidence for which they had a search warrant. *United States v. W. Miller* (D.C. App. 1972, 298 A. 2d 34).

Chapter 16.—GAME AND FISH LAWS

§ 22-1628. Council's authority with respect to wild animals, fishing licenses, and migratory birds—Exception—"Wild Animals" defined.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 22-1629. Inspection of business or vocational establishments requiring a license or permit or any vehicle, boat, market box, market stall or cold storage plant, during business hours.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 22-1630. Seizure of hunting and fishing equipment by police officer—Return of seized property upon acquittal—Forfeiture of seized property upon conviction and sale at public auction—Disposal of proceeds of sale—Disposal of property not sold at auction—Payment of valid liens after sale of seized property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 22-1632. Delegation of functions by Secretary of Interior and Commissioner—Council authorized to make regulations subject to approval of Secretary of Interior where they involve areas under his jurisdiction—Definition of "Commissioner" and "Secretary of Interior" for purposes of chapter.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 22-1633. Existing authority of Secretary of Interior not impaired to control and manage fish and wildlife on land and waters in District under his jurisdiction.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 17.—HARBOR REGULATIONS

§ 22-1701. Harbor regulations—Authority vested in Council to make—Federal approval if affecting navigable waters—Parks and waterfront—Penalty.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Mooring

Mooring barge lengthwise under span of highway bridge over Potomac river so that it occupied 93 feet of a 133-foot wide passage violated Harbor Regulation of the District of Columbia Code requiring that moored vessel be secured so as to keep long axis of vessel parallel with that of the channel. *E. S. Petersen et al. v. Head Construction Company* (1973, 367 F. Supp. 1072).

§ 22-1702. Throwing or depositing matter in Potomac River.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 18.—BURGLARY

§ 22-1801. Burglary—Penalties.

CROSS REFERENCE

Unlawful entry, see § 22-3102.

NOTES TO DECISIONS

Abuse of discretion

Where any lack of trial preparation resulted from defendant's dilatory conduct in failing to appear for six scheduled pre-trial conferences with his attorney and where defendant's ingestion of methadone on scheduled trial day did not hamper his ability to assist counsel in his own defense, trial court did not abuse discretion by denying defendant's motion for continuance made on scheduled trial date. *J. E. Poteat v. United States* (D.C. App. 1976, 363 A. 2d 295).

Adequate assistance of counsel

Defense counsel's jury summation in murder prosecution did not rise to level of ineffectiveness necessary to show that defendant was deprived of effective counsel; in light of fact that alibi witnesses had seriously contradicted each other, defense counsel's failure to discuss alibi defense could have been strategically motivated. *E. Coleman v. United States* (D.C. App. 1977, 379 A.2d 710).

Error which occurred when defendant was unrepresented by counsel when jury returned its verdict was harmless in view of lack of irregularity in actual rendition of verdict and subsequent polling of jury by trial judge. *M. Headen v. United States* (D.C. App. 1977, 373 A. 2d 599).

Where during 45-day interval between defendant's arrest and his rearrest he was free on his own recognition and in a position to assist counsel in locating necessary witnesses, where after his rearrest he remained free on bond until his arraignment approximately a month later, and where there was no reasonable explanation of counsel's failure to seek defendant's assistance in finding defense witnesses during this period, trial judge's failure to comply with mandate of the Court of Appeals with respect to amount of bond did not deprive defendant of effective assistance of counsel. *M. A. Hampton v. United States* (D.C. App. 1975, 340 A.2d 813).

It is not denial of effective assistance of counsel for defendant's trial counsel to make a conscientious deci-

sion not to put on alibi testimony which, after investigation, he is convinced would be perjured. *J. Herbert, Jr. v. United States* (D.C. App. 1975, 340 A.2d 802).

Appeal and error

Failure to give standard instruction on identification in prosecution for burglary was not prejudicial error where identification was not a telling issue. *R. Massey v. United States* (D.C. App. 1974, 320 A. 2d 296).

Bifurcated trial

Defendant who did not request a second jury to hear her insanity defense and who failed to make a meritorious claim for second jury cannot claim on appeal that trial court abused its discretion in failing to impanel a new jury on its own motion. *M. E. Harris v. United States* (D.C. App. 1977, 377 A. 2d 34).

In prosecution for felony-murder, robbery, second-degree burglary, and petit larceny, trial court did not abuse its discretion in denying defendant's request for different juries to try merits and insanity defense, despite contention that voir dire examination on insanity defense might have had an effect on the jury and despite contentions not raised in trial court that defendant was prejudiced by extensive testimony linking him to homosexuality, alcohol, and drugs, and that this would not have reached a second jury determining the merits of the insanity defense. *P. Shanahan v. United States* (D.C. App. 1976, 354 A. 2d 524).

Confession

Defendant knowingly and intelligently waived her Fifth and Sixth Amendment rights in orally confessing to burglary in her home in the middle of the afternoon with her husband present to a single police officer who twice read her warnings concerning such rights and several times reminded her that she did not have to say anything, despite contentions that such rights were not effectively waived since the police officer failed to ask her whether she was willing to answer questions without an attorney being present and since he failed to have her respond in writing to questions concerning her understanding of the waiver of such rights. *B. Thomas v. United States* (D.C. App. 1976, 351 A. 2d 499).

Consent to entry

Even if entry against will of occupants was required for first-degree burglary in District of Columbia, there was vitiation of consent and thus entry against will of occupants, where consent to enter was obtained by use of pretense, subterfuge, misrepresentation and concealment. *United States v. S. Kearney, Jr.* (1974, 498 F. 2d 61, 162 U.S. App. D.C. 110).

Construction

Common-law crime of burglary has been replaced by statutory crime, denominated first-degree burglary, in the District of Columbia, and the common-law crime no longer exists. *United States v. S. Kearney, Jr.* (1974, 498 F. 2d 61, 162 U.S. App. D.C. 110).

Convictions—Mutually exclusive

Convictions of second defendant for burglary and grand larceny were mutually exclusive with conviction for receiving stolen property and bringing it into the District of Columbia, and vacating the burglary and larceny convictions which carried longer sentences cured any prejudice which resulted from the failure to properly instruct. *United States v. M. Lemonakis* (1973, 485 F. 2d 941, 158 U.S. App. D.C. 162; cert. denied 94 S. Ct. 1586, 1587, 415 U.S. 989).

Cross-examination

Even if trial court erred in refusing to allow defendant to interpose his Fifth Amendment privilege against self-incrimination in response to certain questions asked by Government on cross-examination, court's ruling and lack of subsequent cautionary instruction were harmless beyond reasonable doubt where defendant had already testified on same subject on direct examination and there was overwhelming evidence of his guilt. *E. Coleman v. United States* (D.C. App. 1977, 379 A. 2d 710).

It was improper to cross-examine defendant to reveal an arrest for possession of a pistol without a license to contradict defendant's statement that he had never carried a weapon where defendant had not been convicted of the prior offense and where defendant's statement

denying prior possession of weapon was made on cross-examination and not as part of his direct testimony. *S. Jackson v. United States* (D.C. App. 1977, 377 A. 2d 1151).

In prosecution for felony-murder and attempted first-degree burglary while armed, trial court did not err in permitting prosecutor's cross-examination of psychiatrist called by defendants as to whether psychiatrist, in the four cases in which he had testified, had ever found any of them to be without mental disease of defect. *M. E. Harris v. United States* (D.C. App. 1977, 377 A. 2d 34).

Curtailing cross-examination of Government's witness as to acquittal of defendant in another case where witness was the prosecution's lead witness was not an abuse of discretion where the acquittal could have been attributable to any number of factors and there was no evidence suggesting perjury on part of witness. *J. E. Miles v. United States* (D.C. App. 1977, 374 A. 2d 278).

In prosecution for first-degree premeditated murder, felony-murder and first-degree burglary, trial court did not err in sustaining state's objection, during defense counsel's cross-examination of police detective, to question which attempted to call into question the reasons and motives for defendant's arrest by police, in view of fact that such cross-examination would have led directly to hearsay testimony concerning a statement which declarant himself had denied making. *E. Blango v. United States* (D.C. App. 1977, 373 A. 2d 885).

It was within trial court's discretion to limit cross-examination of Government's fingerprint expert when the inquiry became argumentative and unwarranted. *A. A. Terrell v. United States* (D.C. App. 1976, 361 A. 2d 207; cert. denied 97 S. Ct. 501, 429 U.S. 984).

Improper prohibition on defendant from inquiring on cross-examination into federal narcotics charge pending against prosecution witness is harmless error where defendant was permitted to cross-examine witness extensively regarding his possession of narcotics paraphernalia and his possession and use of marijuana and cocaine on date of robbery, and where other evidence indicated defendant's guilt. *R. H. Rhodes v. United States* (D.C. App. 1976, 354 A. 2d 863).

Refusal, in prosecution for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary, to permit cross-examination of accomplice, who testified for government and whose counsel had been informed that government would be willing, with regard to unrelated narcotics and robbery charges against accomplice, to accept plea of guilty to one misdemeanor, as to whether government had made any disposition of such unrelated charges was reversible error when considered in conjunction with other errors. *United States v. I. E. Leonard* (1974, 494 F. 2d 955, 161 U.S. App. D.C. 36).

Defendant's absence during trial

Defense counsel's tactical decision not to let complainant see defendant before trial at suppression hearing is binding upon defendant and waiver of his presence at hearing does not constitute reversible error. *A. L. Fludd v. United States* (D.C. App. 1975, 336 A. 2d 539).

Defenses

Under this section defining burglary as entry without breaking with intent to commit any criminal offense, consent to enter is not defense where one is shown to have entered with the requisite criminal intent. *United States v. S. Kearney, Jr.* (1974, 498 F. 2d 61, 162 U.S. App. D.C. 110).

Discovery

Government notes concerning past jury performances of members of the jury panel does not constitute Brady material and defendant is not entitled to the notes as a matter of mutuality of disclosure at trial. *A. A. Terrell v. United States* (D.C. App. 1976, 361 A. 2d 207; cert. denied 97 S. Ct. 501, 429 U.S. 984).

With the exception of records of impeachable convictions, the criminal records and records of arrests of government witnesses were not discoverable and the suppression of the testimony of government witnesses, as sanction for disobedience of pretrial discovery order, was in excess of trial court's authority. *United States v. W. C. Engram et ano.* (D.C. App. 1975, 337 A.2d 488; cert. denied 96 S. Ct. 793, 423 U.S. 1058).

Double jeopardy

Where, during defendant's trial for serious criminal offenses, after selection of jury and presentation of substantial amount of prosecution's evidence, attorney in charge of prosecution revealed that highly significant exculpatory police report had not been disclosed to defense, and where defendant's motion to dismiss was denied, trial court erred in terminating prosecution by declaring mistrial over defendant's objection since other remedies existed, jeopardy attached, and there was no manifest necessity. *A. Sedgwick v. Superior Court of the District of Columbia* (1976, 417 F. Supp. 386).

Where trial court, acting on good faith but erroneous belief that defendant had been entitled to certain information long before trial, first suggested continuance, which was declined by defendant, and then unsuccessfully sought defendant's consent to mistrial, and finally declared mistrial and discharged jury, without any insistence by defendant upon any right to completion of the trial by the first jury, jeopardy did not attach. *United States v. A. D. Sedgwick* (D.C. App. 1975, 345 A. 2d 465; cert. denied 96 S. Ct. 1751, 425 U.S. 966).

Elements of offense

First-degree burglary, an offense against habitation, is completed when individual enters occupied dwelling with intent to commit criminal offense. *W. Strickland, Jr. v. United States* (D.C. App. 1975, 332 A. 2d 746; cert. denied 96 S.Ct. 84, 423 U.S. 846).

Neither the unlawful entry statute nor the forcible entry statute engrafts any additional elements on first-degree burglary statute of the District of Columbia; unlawful entry statute does not purport to amend burglary statutes and does not do so by operation of law, expressly or impliedly, nor do requirements of unlawful entry statute constitute additional elements of every second-degree burglary. *United States v. S. Kearney, Jr.* (1974, 498 F. 2d 61, 162 U.S. App. D.C. 110).

It is not necessary to burglary conviction that the theft or crime intended at time of entry be consummated. *R. Massey v. United States* (D.C. App. 1974, 320 A. 2d 296).

Element that distinguishes burglary from unlawful entry is the intent to commit crime once unlawful entry has been accomplished. *United States v. T. Melton, Jr.* (1973, 491 F. 2d 45, 160 U.S. App. D.C. 252).

While burglary does not include element of breaking or force, offense of forcible entry does. *Id.*

Proof of larceny does not, in itself, establish burglary. *H. L. White v. United States* (D.C. App. 1973, 300 A. 2d 716).

Where defendant was not present at government building when actual theft of equipment occurred, he could only be convicted of theft of government property and second-degree burglary as an aider and abettor. *United States v. W. J. Barlow, Jr.* (1972, 470 F. 2d 1245, 152 U.S. App. D.C. 336).

Evidence—Admissibility

Government established a proper foundation for the admission of a gun into evidence, where one robbery victim stated that the gun used in the robbery was identical to the one introduced at trial, where the other victim testified that the gun used was probably the same as the one introduced at trial, and where a police officer testified that one defendant's girlfriend had led them to the basement of a building where the gun in question was found. *J. S. Adams v. United States* (D.C. App. 1977, 379 A. 2d 961).

Where Government counsel conducted a very limited direct examination of certain prosecution witness, where counsel's questions were designed to elicit from the witness only the fact that the police investigating the robberies had acted on some information provided by a witness, and where it was defense counsel who questioned the witness as to another's motivation in writing down license tag number on a scrap of paper, and it was defense counsel who thereby opened the door for the witness' subsequent development of evidence related to the tag numbers, defendants cannot complain on appeal that they were prejudiced by evidence relating to the subject which they themselves opened up. *Id.*

In prosecution for murder and other crimes, trial court did not err in permitting Government to introduce photo-

graph of defendant with .45-caliber pistol in his waistband which was taken five months before alleged murders where pistol in question was of same type as that used in such murders and where picture was not so inflammatory as to show abuse of discretion. *E. Coleman v. United States* (D.C. App. 1977, 379 A. 2d 710).

Accused person's prior possession of physical means of committing crime is some evidence of probability of his guilt, and is therefore admissible. *Id.*

Exclusion of demonstrative evidence in form of photographs of area of crime because there had been no showing that conditions at time of burglary were same as those shown in photographs was not an abuse of discretion. *G. T. Nelson v. United States* (D.C. App. 1977, 378 A. 2d 657).

Defendant was not substantially prejudiced by revelation of fact that he had undergone court ordered drug treatment where both he and a codefendant had admitted use of marijuana and a third defendant had been impeached by two narcotics convictions. *S. Jackson v. United States* (D.C. App. 1977, 377 A. 2d 1151).

In prosecution for attempted first-degree burglary while armed, testimony of police detective and shooting victim's father-in-law concerning statement made by shooting victim in hospital a few hours before victim's death is admissible as a spontaneous utterance. *M. E. Harris v. United States* (D.C. App. 1977, 377 A. 2d 34).

In prosecution for attempted first-degree burglary while armed, admission of testimony of eyewitness, to the effect that someone at scene of shooting had yelled to a companion to blow the door off the hinges, was not error affecting substantial rights, even if such testimony was hearsay, and does not warrant reversal in absence of objection at trial. *Id.*

Defendant, who testified on cross-examination that he pleaded guilty to earlier offenses, was not prejudiced by further questions which were limited solely to promises made during plea bargain negotiations and which did not involve facts of prior offenses, since it was unlikely that rebuttal questions enhanced possibility that jury would consider prior convictions as substantive evidence of guilt, particularly in view of cautionary instruction and limiting instructions. *L. J. Jenkins v. United States* (D.C. App. 1977, 374 A. 2d 581; cert. denied 98 S. Ct. 274.—U.S.—).

Admission of testimony about defendant's various activities, some of which were criminal in nature, was not plain error where defense counsel made tactical decision to air fully evidence about defendant's activities with undercover agent to cast agent in a poor light. *J. E. Miles v. United States* (D.C. App. 1977, 374 A. 2d 278).

In proceeding in which accused was charged with armed robbery and burglary offenses alleged to have occurred in carryout restaurant on June 29 and July 8 and in which restaurant employee testified that she recognized accused when he entered on July 8, error in admitting employee's remark that she knew accused "From two previous robberies where he robbed us before" is harmless, in that untainted testimony overpoweringly establishes that accused committed July 8th offenses, that jury was instructed that remark was not to be considered on issue of guilt and that accused was only convicted of July 8th offenses. *C. Harris v. United States* (D.C. App. 1976, 366 A.2d 461).

Testimony concerning motivation of detective in pursuing his investigation of defendant was clearly not relevant to any material issue at defendant's trial for first-degree burglary and obstruction of justice and was, therefore, properly excluded. *J. E. Potat v. United States* (D.C. App. 1976, 363 A. 2d 295).

In prosecution for felony-murder, robbery, second-degree burglary, and petit larceny, trial court did not err in excluding testimony of woman whom defendant had raped to show that thereafter defendant apologized to her, despite contention that such apology was introduced to rebut government expert testimony on defendant's lack of remorse. *P. Shanahan v. United States* (D.C. App. 1976, 354 A. 2d 524).

In burglary prosecution, Confrontation Clause of Sixth Amendment barred admission of officer's rebuttal testimony as to defendant's companion's out-of-court statement that he was with defendant for only five

minutes. *United States v. R. E. Yates* (1975, 524 F.2d 1282, 173 U.S. App. D.C. 308).

Where, in prosecution for burglary of jewelry store, after prosecutor's introduction of evidence that store owner did not have insurance, court ruled that the evidence was not relevant and should be stricken from the record and gave cautionary instruction to the jury, defendant was amply protected from hazard of impermissible influence and the question and answer do not constitute such plain error as to require reversal. *C. R. Manago v. United States* (D.C. App. 1975, 331 A.2d 335).

Testimony by accomplices as to statements which were made to them by defendant during commission of crimes charged in prosecutions for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary and which incriminated codefendants, were admissible under either exception to hearsay rule for contemporaneous declarations which partake of the event or exception for spontaneous declarations of excited utterances. *United States v. I. E. Leonard* (1974, 494 F. 2d 955, 161 U.S. App. D.C. 36).

Error, if any, in introduction into evidence of recordings between since deceased accomplice-informer and first defendant was not reversible error, in prosecution for conspiracy, burglary, grand larceny, interstate transportation of stolen property and bringing stolen property into the District of Columbia. *United States v. M. Lemonakis* (1973, 485 F. 2d 941, 158 U.S. App. D.C. 162; cert. denied 94 S. Ct. 1586, 1587, 415 U.S. 989).

Admission into evidence of recorded conversations between since deceased accomplice-informer and first defendant which contained references to second defendant in joint trial did not violate second defendant's rights under the confrontation clause. *Id.*

Introduction in evidence in joint trial of recordings of conversation between first defendant and since deceased accomplice-informer was not improper on ground that recordings, which were made outside the presence of counsel, denied defendants' right to counsel. *Id.*

Government informer's suicide note, written six days prior to suicide, and which contained language exculpating second defendant, was not within the dying declaration hearsay rule exception where the note was not made with belief that death was imminent and did not concern the cause or circumstances of what was believed to be impending death. *Id.*

Accomplice-informer's handwritten suicide note, which contained language exculpating second defendant, was not admissible as declaration against the informer's penal interest where there was no corroboration of the exculpatory statement. *Id.*

Where codefendants denied actual knowledge of the stolen contents of two boxes with which they were connected, rebuttal evidence relating to prior suspicious acts not charged in indictment was properly admitted on question of intent or absence of mistake; since codefendants were only charged as aiders and abettors, with respect to the theft of government property and second-degree burglary counts such testimony was appropriately admitted to establish possible common scheme or plan whereby codefendants might be directly connected with the actual perpetrator of the crime; testimony of codefendants rendered evidence of prior suspicious activity of sufficient probative value in rebuttal to overcome possible prejudicial effect. *United States v. T. E. Fench* (1972, 470 F. 2d 1234, 152 U.S. App. D.C. 325; cert. denied 93 S. Ct. 964, 410 U.S. 909).

— Disclosure to defense

Where matter which prosecution had not disclosed prior to trial of indictment is inadmissible hearsay, i.e., a street rumor which remained unverified despite immediate investigation by police detective, and where detective did not abandon investigation until after positive identification of defendant had been made by principal victim and defendant had confessed to the crime, undisclosed information is not kind of material which prosecution should have furnished defendant in advance of trial. *United States v. A. D. Sedgwick* (D.C. App. 1975, 345 A.2d 465; cert. denied 96 S. Ct. 1751, 425 U.S. 966).

— Hearsay

Once submitted without objection, hearsay testimony directly material to prosecution's proof of various offenses with which defendant was accused could properly be accorded full weight of all other material testimony. *L. R. Wilson v. United States* (D.C. App. 1976, 357 A. 2d 861).

Where evidence clearly established defendant's guilt of burglary and petit larceny of grocery store, admission in evidence of hearsay testimony of proprietor of store that he had heard that defendant had stolen his keys to store was not substantial or prejudicial error. *P. T. Fredericks v. United States* (D.C. App. 1973, 306 A. 2d 268).

— Sufficiency

If defendants had several motives for firing weapons into the door of the house and if one of those motives was to gain entry into the house, that would be sufficient evidence to prove attempted first-degree burglary while armed. *E. F. Harris v. United States* (D.C. App. 1977, 373 A. 2d 590).

In prosecution for first-degree premeditated murder, felony-murder, and first-degree burglary, evidence on issues of intent and premeditation and deliberation sustains defendant's conviction. *E. Blango v. United States* (D.C. App. 1977, 373 A. 2d 885).

Evidence was not sufficient to support convictions for arson, second-degree burglary while armed with a Molotov cocktail and possession of a Molotov cocktail. *United States v. L. S. Carter* (1975, 522 F.2d 666, 173 U.S. App. D.C. 54).

In proceeding in which accused was convicted of burglary and grand larceny and in which accused's fingerprint in burglarized house was assertedly the only evidence linking accused to the offenses, evidence satisfies government's burden of negating the most reasonable explanations under which such fingerprint evidence would be consistent with innocence and of showing that fingerprint was made during commission of the offenses. *In re M. M. J.* (D.C. App. 1975, 341 A.2d 421).

Evidence, in prosecution for burglary of jewelry store, is sufficient to support conviction of defendant who, at 4:00 a.m., was seen by officers hastily running from window in vacant building through which burglars had gained access to jewelry store and who was apprehended in the possession of several pieces of jewelry, all identified as having been taken from the store. *C. R. Manago v. United States* (D.C. App. 1975, 331 A.2d 335).

Evidence that defendant made early morning forcible entry into bar and grill, prepared to carry away items of value, and attempted to conceal his actions inside the premises was sufficient on element of entry with intent to steal to make submissible case of second-degree burglary. *R. Massey v. United States* (D.C. App. 1974, 320 A. 2d 296).

Burglary conviction was sustained by evidence including testimony that defendant and codefendant were first seen about five feet from place of breaking and entry, in the middle of the night, that bags which appeared to have been hastily filled with merchandise were there, that officers saw defendant and codefendant running side by side and testimony that defendant gave two conflicting explanations for his presence at scene together with evidence that defendant as retail dealer had recently purchased goods from the burglarized wholesale firm which had then refused him more credit and that goods stolen would have had actual value only to one in retail business. *B. D. Forsyth v. United States* (D.C. App. 1974, 318 A. 2d 292).

Where there was no evidence of a breaking or evidence placing defendant within building, fact that defendant was in possession of recently stolen goods belonging to business did not establish burglary II. *H. L. White v. United States* (D.C. App. 1973, 300 A. 2d 716).

Evidence, including evidence that defendant's fingerprints were found on both sides of pane of glass removed from back door to apartment and that prints were found on surface of glass covered by molding strips which secured window in door, were sufficient to sustain determination that defendant was person who entered complainant's apartment. *United States v. J. E. Cary* (1972, 470 F. 2d 469, 152 U.S. App. D.C. 321).

Evidence was sufficient to support convictions of first-degree burglary and of assault with a deadly weapon

despite claim that, absent corroborating evidence, testimony of complaining witness alone could not support findings of guilt. *United States v. R. Carmichael* (1972, 469 F. 2d 937, 152 U.S. App. D.C. 197).

Where evidence disclosed a single act on part of defendant directed simultaneously at two persons, so that only a single conviction for assault on two persons was supported by evidence, convictions of first-degree burglary and of one assault would be affirmed, but conviction of an additional assault would be set aside, and sentences would be vacated and case would be remanded for resentencing. *Id.*

— Suppression

When, within minutes of a reported early morning burglary, officers came upon defendant in an area proximate to scene of crime, wearing clothing which effectively fit the description given police by complaining witness, officers had probable cause to arrest, and thus, irrespective of voluntary nature of defendant's return to the scene, trial judge is not required to suppress either identification testimony of complainant or clothing worn by defendant at time of arrest. *M. A. Hampton v. United States* (D.C. App. 1975, 340 A.2d 813).

Identification

Denial of motion to sever counts of indictment in proceeding in which accused was convicted of four rape offenses and other offenses was not abuse of discretion, in view of similar characteristics of such offenses, in which assailant entered through rear of apartments, awoke victims, threatened them with weapon, demanded silence and submission and committed no act of violence if there was compliance with his orders, in which, in three of the cases, he sought to prevent victims from getting good look at him and cut or threatened to cut phone lines and in which he cut off any pants worn by victims. *M. Bridges v. United States* (D.C. App. 1977, 381 A. 2d 1073).

Testimonial references to robbery victim's pretrial photographic identification of defendant did not unfairly prejudice defendant on theory that it suggested a history of prior difficulty with the law. *L. R. Wilson v. United States* (D.C. App. 1976, 357 A. 2d 861).

Where victim observed robber for several minutes in well lighted area, twice encountered defendant by chance and on second occasion alerted a police officer, showing to victim of defendant in back of police car immediately after his arrest by officers who responded to lookout broadcast by officer contacted by victim and who had not had prior connection with case is not so unnecessarily suggestive so as to require exclusion of out-of-court and in-court identification. *P. Jackson v. United States* (D.C. App. 1976, 354 A.2d 869).

Where witness did not have opportunity to see the face of the large man outside liquor store at close range because witness was watching from an eighth floor window, but the parking lot outside the liquor store was illuminated, the witness did observe the man's general facial features, the cut of his hair, the shape of his head, his race, his height and his build and only 20 to 25 minutes elapsed between the crime and the identification, the on-the-scene identification procedures were permissible. *B. I. Nichols v. United States* (D.C. App. 1975, 343 A.2d 336).

Witness's identification of the defendant's clothes as identical to those worn by driver of automobile observed at burglary scene was not impermissibly suggestive because the defendant was observed alone in patrol wagon where witness had had two opportunities to view the driver's clothes both before and after the burglar alarm was activated, the identification occurred only 20 to 25 minutes after the second time witness saw the clothes and the witness identified the defendant's uniform rather than the defendant himself. *Id.*

Defendant's convictions of first-degree burglary, grand larceny, and malicious destruction of property were not supported by sufficient evidence, where, despite the complainant's testimony that he was able to identify defendant at showup because the image of defendant's face was implanted on his mind, the complainant was unable to identify defendant at trial, where his opportunity to observe the burglars was brief, where he saw them at night under artificial light, where his nearest observation of them was when they were running and 17 feet away, and

where there was a significant discrepancy in almost all respects between the description given by complainant to the police and defendant's actual description, both physically and in respect to clothing. *W. B. Crawley v. United States* (D.C. App. 1974, 320 A.2d 309).

In determining whether out-of-court identification was improper, one must look to totality of circumstances surrounding it; only if procedure followed was so impermissibly suggestive as to give rise to very substantial likelihood of misidentification must testimony concerning the out-of-court identification be held inadmissible. *M. E. Conyers v. United States* (D.C. App. 1973, 309 A.2d 309).

— In-court

In criminal proceeding in which accused was charged with armed robbery and burglary offenses alleged to have occurred in carryout restaurant on June 29 and July 8 and in which restaurant employee testified that she recognized accused when he entered on July 8, employee's remark that she knew accused "From two previous robberies where he robbed us before" was not admissible for purpose of establishing identity, in that there was no need for reference to uncharged offense because employee could have testified that she recognized accused on basis of having seen him in restaurant on two prior occasions. *C. Harris v. United States* (D.C. App. 1976, 366 A.2d 461).

Refusal to suppress in-court identification testimony of burglary eyewitness, who had observed man in hallway close to scene of crime making his way into scene of crime as burglar alarm sounded and then, carrying two paper bags, emerging into the hallway and leaving the premises, and who selected photograph of defendant from among 13 shown her by police 12 hours later, on theory that witness' view of defendant while sitting in courtroom prior to trial, during extended bench conference with respect to defendant's representation, irreparably tainted her in-court identification, was not error. *C. J. Brown v. United States* (D.C. App. 1974, 327 A.2d 539).

Failure of burglary eyewitness, who had observed man in hallway close to scene of crime making his way into scene of crime as burglar alarm sounded and then, carrying two paper bags, emerging into hallway and leaving the premises, and who selected photograph of defendant from among 13 shown by police 12 hours later, to attend lineup did not render her in-court identification testimony inadmissible. *Id.*

— Lineup

Record discloses that lineup identification was not tainted by any suggestive photographic identification procedure or by police officer's subsequent remark to complainant that person whose photograph he had selected had been driver of car which complainant had stated he saw suspicious person drive away in. *A. L. Fludd v. United States* (D.C. App. 1975, 336 A.2d 539).

— Photographic

Where nothing in photographic identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification, trial court did not err in admitting identification testimony. *M. H. Roldan v. United States* (D.C. App. 1976, 353 A.2d 292).

Fact that defendant's clothes in photographic display somewhat resembled clothes which robbery victim said armed robber wore does not render the photographic display impermissibly suggestive in view of total number of pictures, 150, and number of men of comparable age and appearance in the array. *J. Herbert, Jr. v. United States* (D.C. App. 1975, 340 A.2d 802).

Even if procedure followed in photographic identification process was suggestive because defendant's picture was placed last in book of approximately 50 others, it was not so unduly suggestive as to raise substantial likelihood of irreparable misidentification and does not warrant reversal of conviction. *A. L. Fludd v. United States* (D.C. App. 1975, 336 A.2d 539).

Impartial jury

Even if trial court was correct in concluding that jury had been prejudiced, it went too far in dismissing indictment; proper remedy for trial before presumably tainted jury is new trial before impartial one. *United States v. P. J. Harvey* (D.C. App. 1977, 377 A.2d 411).

In prosecution for felony-murder and attempted first-degree burglary while armed, defendant was not denied her Sixth Amendment right to trial by impartial jury when trial court failed to voir dire the panel, sua sponte, to screen out persons prejudiced against insanity defense. *M. E. Harris v. United States* (D.C. App. 1977, 377 A.2d 34).

Two jurors, in prosecution for first-degree burglary and forcible rape, who had previously served on jury in another case wherein, after the verdict, judge remarked to jury that codefendants had absconded after release on bail and that acquitted defendant would remain in jail pending another trial for armed robbery, were not biased against defendant by judge's remarks in earlier case; remarks were relatively mild and constituted more of an allusion to problems of recidivism than direct criticism of verdict, defendant's trial judge held hearings to question the two jurors and his decision that they were not prejudiced had abundant evidentiary support, two trials were quite dissimilar, with different charges, judges, lawyers, witnesses and defendants, and evidence of defendant's guilt was undisputed. *W. G. Grady v. United States* (D.C. App. 1977, 376 A.2d 437).

Impeachment

Trial court did not abuse its discretion in allowing the prosecutor to impeach an alibi witness, the mother of one defendant, by showing that she had not been truthful before the grand jury in a pending charge against her son for the unauthorized use of a motor vehicle. *J. S. Adams v. United States* (D.C. App. 1977, 379 A.2d 961).

Refusal to rule on whether defendant's prior conviction of attempted house breaking was an impeachable one is improper, but error is harmless, in that since such conviction was admissible for impeachment purposes, defendant's decision whether to testify would have been same if trial judge had expressly ruled on its admissibility. *M. A. Hampton v. United States* (D.C. App. 1975, 340 A.2d 813).

Defendant was properly impeached by use of prior inconsistent statement given by him to representative of District of Columbia Bail Agency in the prosecution of offense for which the Bail Agency statement was given. *J. Herbert, Jr. v. United States* (D.C. App. 1975, 340 A.2d 802).

Refusal, in criminal prosecution, to admit testimony regarding effect of drug use on perception for purposes of impeaching testimony of accomplice, who testified for government and who was a heroin user, unless it was established that accomplice had used narcotics on day of offenses was not error. *United States v. I. E. Leonard* (1974, 494 F.2d 955, 161 U.S. App. D.C. 36).

Indictment

Where count of indictment charging first-degree burglary alleged in the conjunctive that defendant had entered the dwelling of another "with intent to steal the property of another and to commit an assault," count presented an unseverable, unitary charge and where Government's evidence of theft was legally insufficient, it was error for trial court to permit Government at the close of its case-in-chief to amend count to delete words "to steal the property of another and"; because it was at best speculative that grand jury would have returned a true bill on the count if the indictment had been presented to it as it appeared after the amendment, trial court's action intruded impermissibly on defendant's Fifth Amendment right to be charged for serious crimes only by grand jury indictment. *T. W. Whalen v. United States* (D.C. App. 1977, 379 A.2d 1152).

Where an indictment charges several offenses or the commission of one offense in several ways, withdrawal from jury's consideration of one offense or one alleged method of committing it would not constitute a forbidden amendment of the indictment. *Id.*

Inferences

Giving of instruction that jurors were permitted to infer that second defendant was "guilty of the crimes charged," if they determined, beyond a reasonable doubt, that he was found in unexplained, exclusive possession of recently stolen property was reversible error where the presumed fact of guilt of arson, possession of a Molotov cocktail and second-degree burglary while

armed with a Molotov cocktail did not flow from possession of recently stolen military rifles. *United States v. L. S. Carter* (1975, 522 F.2d 666, 173 U.S. App. D.C. 54).

Due process would not be violated by permitting jury to infer from a defendant's possession of recently stolen property that defendant intended to commit an offense at the time of his unlawful entry into building. *Id.*

Fact of unlawful entry, even in the nighttime, may not support inference that entry was made with intent to steal. *United States v. T. Melton, Jr.* (1973, 491 F.2d 45, 160 U.S. App. D.C. 252).

Where there was no proof of burglary, possession of recently stolen property could not give rise to inference respecting commission by possessor of burglary. *H. L. White v. United States* (D.C. App. 1973, 300 A.2d 716).

Crime of burglary requires, inter alia, breaking or entering without breaking and such must be established before an inference from possession of recently stolen property may properly be indulged to establish defendant's guilt of burglary. *Id.*

Insanity defense

Evidence that, inter alia, defendant suffered from severe personality disorder that caused him on occasion to disassociate when his sexual advances were rejected, and that while defendant was in this state, he did not have capacity for choice or control, was sufficient to allow jury to reasonably infer from all evidence that defendant had necessary mental capacity for first-degree burglary when he entered victim's apartment armed with knife but that he did not have capacity for choice or control when he killed victim because of a then dissociative condition. *C. R. Harmon v. United States* (D.C. App. 1976, 351 A.2d 504; cert. denied 97 S. Ct. 116, 429 U.S. 841).

Instructions

Instruction to apparently deadlocked jury that "[T]his is a very serious matter, and I don't know of any reason under the sun why you cannot come to a unanimous verdict in this case, and at this moment I remain convinced that you can" does not rise to level of plain error given fact that it was not directed to any particular juror and that its effect was attenuated because panel was discharged for rest of day and did not reach its verdict until late on following day. *G. T. Nelson v. United States* (D.C. App. 1977, 378 A.2d 657).

Trial court did not err when it gave cautionary instruction on the use of prior convictions after one witness had been cross-examined concerning his prior narcotics convictions despite contention of second defendant that action of the trial court in giving the instruction after the break between his testimony and that of the prior witness created expectancy on the part of the jury that a prior conviction would be shown when second defendant took the stand even though such defendant had no prior convictions. *S. Jackson v. United States* (D.C. App. 1977, 377 A.2d 1151).

In prosecution for first-degree premeditated murder, felony-murder and first-degree burglary, trial court did not err in giving a deadlock-dissolving charge to jury one-half day after jury had returned its verdict against one of defendants. *E. Blango v. United States* (D.C. App. 1977, 373 A.2d 885).

Instruction that jury had to find defendant guilty of charged crimes of burglary and assault if Government proved existence of each element of offenses beyond reasonable doubt is not equivalent to trial court directing guilty verdict in light of other instructions explaining, inter alia, presumption of innocence, Government's duty to prove each element of offense beyond reasonable doubt, meaning of reasonable doubt and Government's need to establish defendant's presence at time and place of offenses in face of his alibi defense and thus is not plain error. *S. Watts v. United States* (D.C. App. 1976, 362 A.2d 706).

It is appropriate in a criminal prosecution for court to instruct that jury has duty to find defendant guilty if Government has proven beyond reasonable doubt every element of charged offense and that jury must find defendant not guilty if Government has failed to prove any element of charged offense beyond reasonable doubt. *Id.*

Failure to give cautionary instruction that inconsistent grand jury statement by witness is admissible for impeachment purposes did not result in prejudice to

defendant in that neither witness' trial testimony that she originally thought another person not defendant was her assailant nor her grand jury testimony which identified defendant as assailant and which was based on information supplied to her by others after she regained consciousness had any probative value on issue of identity of her assailant. *Id.*

Whatever prejudice might have followed from use of "innocence" for "not guilty" in supplemental instruction was overcome by trial court's previous unequivocal explanation of manner in which jury was to reach a decision, either favorable or unfavorable to defendant, and, in any event, use of "innocence" did not create such clear prejudice to defendant's substantial rights as to allow notice of matter which was not raised in trial court. *L. R. Wilson v. United States* (D.C. App. 1976, 357 A.2d 861).

Defendant's request that trial court submit list of charges to jury without comment was insufficient to constitute a proper objection to specific content of supplemental instruction which followed rejection of request. *Id.*

Where defendant testified that he had been employed when arrested and prosecutor was unsuccessful in his attempt on cross-examination to produce proof that defendant had told bail agencies he was unemployed at that time, a cautionary instruction is not required. *Id.*

Where prior written statement by victim was both consistent and inconsistent with victim's trial testimony and court in regard to inconsistency charged that prior statement could be used only in evaluating victim's credibility and not as establishing the truth of any fact set forth in statement, trial court did not err in not instructing as to the consistency that the prior statement could be considered by jury only in evaluating credibility and not as establishing truth of any facts set forth in it. *P. Jackson v. United States* (D.C. App. 1976, 354 A.2d 869).

Trial court did not commit plain error by instructing jury under test of insanity which defense counsel specifically requested and which was given over the objection of the Government, despite defendant's contention on appeal that wrong test was given in instruction. *P. Shanahan v. United States* (D.C. App. 1976, 354 A.2d 524).

Where evidence introduced at trial on charges of first-degree burglary while armed, murder, and assault with intent to commit rape while armed supported a multiple-offense charge, trial court did not err in requiring jury to make a separate determination of defendant's sanity on each count for which he had been found guilty. *C. R. Harmon v. United States* (D.C. App. 1976, 351 A.2d 504; cert. denied 97 S. Ct. 116, 429 U.S. 841).

Trial court's use of special verdict form did not confuse jury or prejudice defendant, in prosecution for first-degree burglary, murder, and assault with intent to commit rape while armed. *Id.*

There was no plain error in instructions on specific intent required for first-degree burglary even though instructions could have been more expansive on "specific intent" where instructions were not objected to at trial. *United States v. P. G. Thornton* (1974, 498 F.2d 749, 162 U.S. App. D.C. 207).

Failure to give an accomplice instruction with regard to accomplices who testified for government was not plain error where nonaccomplice testimony corroborated accomplice testimony to significant extent against one accused and to lesser extent against another and where accomplices did not appear to have extraordinary disposition to prevaricate. *United States v. I. E. Leonard* (1974, 494 F.2d 955, 161 U.S. App. D.C. 36).

Refusal to instruct that testimony of accomplices, who testified for government after having been granted immunity, should be considered with caution was reversible error. *Id.*

Absent waiver of instruction, failure, in prosecution for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary, to give immediate limiting instruction as to admissibility where testimony of arresting officer was admitted to impeach defendant's testimony that he had not stated that codefendant "lived across the street" was plain error requiring reversal, though general instruction on impeachment evidence was given in very long charge. *Id.*

Instruction that jury could infer from the unexplained or unsatisfactorily explained possession of stolen money orders that defendants were guilty of taking such money orders, that defendant's possession of the recently stolen property did not shift burden of proof and that Government always had burden of proving beyond reasonable doubt every essential element of offense did not place burden on defendants, alone, to testify and explain satisfactorily their possession of stolen money orders. *United States v. J. M. Joyner* (1974, 492 F. 2d 650, 160 U.S. App. D.C. 384; cert. denied 95 S. Ct. 94, 419 U.S. 852).

In prosecution based on defendants' unconsented entry into offices of chemical company and their destruction of certain property in it, instruction that Vietnam war was not issue in case and that, if government proved beyond reasonable doubt that one or more of defendants committed elements of crimes charged, law does not recognize as defense that defendants were motivated to commit their acts by sincere political, religious or moral convictions or in obedience to some higher law was not improper despite contention that instructions were coercive, tantamount to directed verdict of guilty and outside proper scope of judicial instruction. *United States v. M. R. Dougherty* (1972, 473 F. 2d 1113, 154 U.S. App. D.C. 76).

Instructions with respect to identification in prosecution for burglary, rape, and robbery was sufficient for circumstances of case wherein complaining witness did not identify defendant but identity was established from fingerprint evidence. *United States v. J. E. Cary* (1972, 470 F. 2d 469, 152 U.S. App. D.C. 321).

Intent

Proof that accused entered premises armed and disguised as woman and accompanied by another man who also carried concealed firearm, that they both obtained consent to their entry under pretext and, as soon as money appeared on game table, accused and his companion whipped out their guns, robbed occupants and fled sustained finding that when accused entered apartment, he possessed criminal intent required by this section. *United States v. S. Kearney, Jr.* (1974, 498 F. 2d 61, 162 U.S. App. D.C. 110).

An intent to steal or commit a crime at the time of entry is a requisite element of proof in burglary case. *R. Massey v. United States* (D.C. App. 1974, 320 A. 2d 296).

Circumstances which together with unauthorized presence in another's premises will support inference of entry with criminal purpose need not include the actual commission of a crime within the premises but are such as might lead reasonable people, based upon common experience, to conclude beyond a reasonable doubt that the accused possessed the requisite intent. *Id.*

Where there was complete absence of any evidence of an intent to commit crime after unlawful entry, defendant could not be found guilty of first-degree burglary and it was error to submit such charge thereby inviting jury to speculate on why defendant entered dwelling. *United States v. T. Melton, Jr.* (1973, 491 F. 2d 45, 160 U.S. App. D.C. 252).

Jencks Act

Even assuming rough notes taken by police officer at scene of showup identification constitute Jencks Act statements, loss of the notes is harmless and does not preclude testimony as to subsequent lineup identification nor in-court identification, considering, inter alia, that defendant was arrested immediately after the crime on the basis of police radio broadcast, stolen money was found in his possession, much other material was produced for possible impeachment, and overall credibility of victim's identification of defendant was abundantly supported in the record. *D. M. Fields v. United States* (D.C. App. 1977, 368 A. 2d 537).

In criminal proceeding, refusal, after in camera inspection, to order production of notes taken by prosecutor in pretrial interviews of two government witnesses is proper where such notes are merely random notations in regard to background material such as age, address and place of employment, where notes are not a substantially verbatim recital of oral statements of witnesses and where notes are not relevant, except peripherally, to subject matter of witnesses' testimony. *F. A. Brown v. United States* (D.C. App. 1976, 359 A. 2d 600).

Failure to produce at trial rough notes which were allegedly prepared on night of robbery by police officer responding to scene of crime and which allegedly contained description by victim of robber different from that given by victim at trial did not prejudice defendant so as to require striking of victim's testimony, where discrepancy between description given by victim prior to and at trial was presented to and fully developed before jury through officer's testimony and offense report prepared by officer several weeks after robbery. *P. Jackson v. United States* (D.C. App. 1976, 354 A. 2d 869).

Although trial court was required by Jencks Act to direct prosecution to produce notes taken by prosecutor during interview with witness on morning of trial, trial court's refusal to so order is harmless error and does not prejudice defendant where evidence from sources other than such witness overwhelmingly indicates defendant's guilt. *In the Matter of R. D. J.* (D.C. App. 1975, 348 A. 2d 301).

Joinder

Accused's claim that circumstances surrounding his identification were inadequate because of insufficient opportunities for observation available to victims is not a basis on which identification testimony could be suppressed in criminal proceeding. *M. Bridges v. United States* (D.C. App. 1977, 381 A. 2d 1073).

Joinder of counts concerning second-degree burglary, grand larceny, and attempted burglary, was not improper. *L. P. Coleman v. United States* (D.C. App. 1972, 298 A. 2d 40; cert. denied 93 S. Ct. 3070, 413 U.S. 921).

Jury

Conduct of juror in temporarily absents herself during a part of the deliberations did not operate to deprive the defendants of their right to a trial by 12 impartial and unprejudiced jurors in absence of some indication of prejudicial activity during the brief period in which juror was not present. *G. T. Nelson v. United States* (D.C. App. 1977, 378 A. 2d 657).

Where juror had simply misstated himself when, during the poll procedure, he answered "not guilty" to one of the counts and corrected himself immediately thereafter when asked the same question, there was no error in the jury poll procedure. *S. Jackson v. United States* (D.C. App. 1977, 377 A. 2d 1151).

Where trial judge asked each prospective juror to stand as his or her name was called, gave defendant and his counsel opportunity to turn their chairs to better view panel and offered to have any panel member stand again to aid defendant in connecting faces with names, procedure for jury selection was fair to both sides, and court did not err in refusing to seat in jury box first 12 members who had passed challenge for cause and thereby allegedly depriving defendant of opportunity to visually inspect jurors before exercising peremptory strikes. *A. R. Taylor v. United States* (D.C. App. 1977, 372 A. 2d 1009).

Jury question

In prosecution for theft of government property and second-degree burglary, whether defendant had aided and abetted the larceny by assisting in continuing asportation of property he knew had been stolen was jury question. *United States v. W. J. Barlow, Jr.* (1972, 470 F. 2d 1245, 152 U.S. App. D.C. 336).

Jury was properly permitted to find guilty participation in burglary from defendant's exclusive possession of recently stolen property. *Id.*

Merger of offenses

Application of merger doctrine is unwarranted where burglary based upon assault served as predicate for felony-murder, in view of fact that section 22-2401 expressly provided that even purposeless killing of another during housebreaking while armed constitutes first-degree murder, and in view of fact that societal interest served by this section was separate and distinct from that of section 22-2401. *M. E. Harris v. United States* (D.C. App. 1977, 377 A. 2d 34).

Defendant can properly be convicted of both first-degree burglary and felony-murder, in view of fact that felony of first-degree burglary while armed and murder are separately identifiable crimes that offend multiple societal interests, and therefore, doctrine of merger is in-

applicable. *E. Blango v. United States* (D.C. App. 1977, 373 A.2d 885).

Armed robbery, committed after burglary, is not lesser included offense of first-degree burglary or an offense co-extensive with first-degree burglary but an offense separate and distinct from burglary so that defendant can be convicted of both offenses. *W. Strickland, Jr. v. United States* (D.C. App. 1975, 332 A.2d 746; cert. denied 96 S.Ct. 84, 423 U.S. 846).

Housebreaking and robbery convictions can stand together since robbery and burglary statutes which codify common law protect distinct societal interests. *C. M. Dixon, Jr. v. United States* (D.C. App. 1974, 320 A.2d 318).

Miranda rights—Waiver

Incriminating statement which was made by juvenile at police station after he had indicated unwillingness to answer any questions by police but which was made in response to question asked by his stepfather and not question asked by police is admissible, despite contentions that statement was elicited in violation of juvenile's Miranda rights and that statement was not voluntary. *In the Matter of C. P. D.* (D.C. App. 1976, 367 A.2d 133).

Where accused was informed of his Miranda rights repeatedly during course of criminal investigation, he twice executed written waiver of such rights and he asserted that he was generally cognizant of such rights from previous arrests and that he had been represented by counsel on prior occasions and knew their names, accused had knowingly and intelligently waived his constitutional rights, though he made request for counsel at one point during the investigation. *F. A. Brown v. United States* (D.C. App. 1976, 359 A.2d 600).

New trial

Where at time of his trial for first-degree burglary and obstruction of justice defendant was aware that affiant was witness to incident and knew affiant personally and was aware of his whereabouts, where defendant failed to subpoena affiant at trial, and where material contained in affidavit would in all likelihood not cause jury to acquit defendant, defendant is not entitled to new trial based on newly discovered evidence. *J. E. Poteat v. United States* (D.C. App. 1976, 363 A.2d 295).

Plea bargaining

Where Government as part of plea bargaining only agreed to waive its statutory right of allocation at time of imposing of sentence for burglary, defendant did not have right to reasonably expect that Government's agreement not to allocate would extend to a hearing on his subsequent request that the imposed sentence be reduced and Government was entitled to submit information in opposition to motion to reduce. *M. L. Braxton v. United States* (D.C. App. 1974, 328 A.2d 385).

Plea of guilty

Trial court did not abuse discretion in denying defendant's motion for withdrawal of guilty pleas to second-degree murder, attempted burglary and destruction of property where, inter alia, reasons given for defendant's change of heart did not amount to a claim of legal innocence, proffered evidence of guilt was overwhelmingly convincing, and there was no claim of coercion or incapacity. *G. R. Taylor v. United States* (D.C. App. 1976, 366 A.2d 444).

Where defendant was fully informed about concept of aiding and abetting at guilty plea hearing, defendant specifically acknowledged that he was outside at scene of burglary knowing that others were going to commit crime and defendant admitted that he was assisting and advising the other perpetrators, defendant's plea of guilty to charge of first-degree burglary was made voluntarily, with understanding of nature of charge and consequences of plea and there was factual basis for plea; and trial court did not abuse its discretion in refusing to allow withdrawal of plea upon defendant's subsequent denial that he had known that perpetrators of crime were going to burglarize apartment in question. *L. L. Austin v. United States* (D.C. App. 1976, 356 A.2d 648).

Where prosecution in its opening statement had outlined overwhelming case against defendants, charged with burglary of political party headquarters, pleas were accepted only after extraordinarily elaborate procedure, stretching over four days, conducted largely in camera,

and involving two competent attorneys, and neither counsel, prosecutor, nor judge exerted the slightest pressure on defendants to induce them to plead guilty, withdrawal of pleas would substantially prejudice legitimate prosecution interests, defendants were granted "use immunity" so that they might testify before grand jury and congressional committees and, at time of plea, defendants had denied employment by government intelligence agencies, defendants would not be entitled, eight months after pleading guilty, to withdraw their pleas because they honestly, though mistakenly, believed that "national security" considerations required their silence. *United States v. B. L. Barker* (1975, 514 F.2d 208, 168 U.S. App. D.C. 312; cert. denied 95 S. Ct. 2420, 421 U.S. 1013).

Where defendant charged with first-degree burglary tendered plea of guilty to lesser-included offense of unlawful entry, and trial judge was presented with a factual basis for the plea, plea should not have been refused simply because defendant refused to accompany his plea with an admission of guilt. *United States v. T. Gaskins* (1973, 485 F.2d 1046, 158 U.S. App. D.C. 267).

Prearrest delay

Dismissal of charges against accused is not warranted merely on basis of his assertion that prearrest delay, which was slightly more than three months and with regard to which there had been some lack of diligence on part of police but no intentional delay, deprived him of his ability to present a defense because he could not recall his activities or whereabouts on night of the offenses. *In re M. M. J.* (D.C. App. 1975, 341 A.2d 421).

Probable cause

When, within minutes of a reported early morning burglary, officers came upon defendant in an area proximate to scene of crime wearing clothing which effectively fit the description given police by complaining witness, officers had probable cause to arrest, and thus, irrespective of voluntary nature of defendant's return to the scene, trial judge is not required to suppress either identification testimony of complainant or clothing worn by defendant at time of arrest. *M. A. Hampton v. United States* (D.C. App. 1975, 340 A.2d 813).

Prosecutor's conduct

Where defendant charged with second-degree burglary chose to negotiate with Government without consulting or informing his appointed attorney by using information he had about homicide matter to better his position in his own case, and prosecutor insisted that defendant talk only about pending homicide case, in which defendant was neither involved nor suspected of involvement, action of prosecutor, did not violate due process of law nor constitute overreaching on part of Government. *E. N. Judge v. United States* (D.C. App. 1977, 379 A.2d 966).

Prosecutor's remarks to jury

In prosecution for felony-murder and attempted first-degree burglary while armed, prosecutor's improper statement in closing argument, implying that defendant would shortly be released if jury did not reject her insanity defense, does not rise to level of substantial prejudice mandating reversal, particularly in view of fact that effects of such error were mitigated by instruction. *M. E. Harris v. United States* (D.C. App. 1977, 377 A.2d 34).

Prosecutor's remarks reflecting his own opinion as to defendant's lack of veracity and suggesting that defendant's presence during trial facilitated his ability to fabricate were improper as permitting adverse inferences from defendant's exercise of right to confront witnesses but were not prejudicial in view of strong evidence against him, instructions on jury's obligation to judge credibility and on status of statements by counsel, and judge's opinion that both counsel fought case hard and that jury would be able to render fair verdict. *L. J. Jenkins v. United States* (D.C. App. 1977, 374 A.2d 581; cert. denied 98 S. Ct. 274, — U.S. —).

Prosecutor's references in closing argument to Judas Iscariot and Benedict Arnold, though ill-advised, were harmless where prosecutor was making a legitimate point about the value of character testimony. *J. E. Miles v. United States* (D.C. App. 1977, 374 A.2d 278).

Denial of mistrial with respect to Government's appeal to public passion for community safety and security dur-

ing its summation was not an abuse of discretion. *A. A. Terrell v. United States* (D.C. App. 1976, 361 A.2d 207; cert. denied 97 S.Ct. 501, 429 U.S. 984).

Prosecutor did not overstep the bounds of permissible argument in referring to evidence inferring that defendant had stolen hotel keys and that he was involved in a series of other burglaries in hotel, offenses for which he was not on trial, in light of fact that evidence was relevant to the government's case in prosecution for two burglaries of rooms in such hotel. *M. H. Roldan v. United States* (D.C. App. 1976, 353 A.2d 292).

Prosecutor's rebuttal argument which was to the effect that all of the evidence came from the Government, which did not mention defendant, which followed defense counsel's previous reminder to the jury that defendant did not testify, and which was not objected to, does not amount to plain error. *C. R. Manago v. United States* (D.C. App. 1975, 331 A.2d 335).

Failure of prosecutor to obtain permission of judge to comment on absence of witness whom defendant allegedly could have produced and whose testimony allegedly would have elucidated transaction in question, was error, but the error was rendered harmless by trial court's prompt instruction to jury to disregard prosecutor's remarks. *M. E. Conyers v. United States* (D.C. App. 1973, 309 A.2d 309).

Remand

Where defendant's first-degree burglary conviction had to be set aside for lack of proof of intent to commit crime in premises entered but jury necessarily found facts required for conviction of lesser included offense of unlawful entry and the evidence was sufficient to support this determination, Court of Appeals would remand case with instructions to enter, if government consents, judgment of conviction of unlawful entry or, if court believes it in interest of justice, to grant new trial on lesser offense. *United States v. T. Melton, Jr.* (1973, 491 F.2d 45, 160 U.S. App. D.C. 252).

Retrial, lesser included offense

Where the evidentiary failure relating to charge of second-degree burglary while armed with Molotov cocktail concerned only circumstance of defendant being armed, retrial of defendant, mandated on other grounds, could properly include lesser charge of second-degree burglary. *United States v. L. S. Carter* (1975, 522 F.2d 666, 173 U.S. App. D.C. 54).

Review—Record on appeal

Where there was nothing to indicate cause of delay between appointment of counsel on November 11, 1971 and status call on March 1, 1972, where there was no information concerning parole revocation proceedings involving defendant and Court of Appeals was left to speculate as to whether court-appointed counsel aided defendant in these proceedings and was therefore unable to avoid delay and where record did not indicate whether government's complaining witness, who was unavailable for March 17, 1972 trial date, was unavailable for entire period until August 31, 1972 trial, record was inadequate to determine whether defendant was denied his right to speedy trial, and record would be remanded for supplementation. *United States v. D. E. Douglas* (1973, 488 F.2d 1331, 160 U.S. App. D.C. 7).

Search and seizure

Police questioning defendant concerning two television sets he was carrying along street in neighborhood that had been beset by daytime burglaries was not unreasonable and, when defendant gave two versions concerning source of sets and newly arrived officer stated he had seen defendant emerge from neighboring house, looking up and down street, it was reasonable to take defendant to that house to make inquiry and such police action did not constitute "arrest"; thus defendant was not entitled to suppression of physical evidence taken from him after discovery of murder victim in house on theory that he had been arrested previously without probable cause. *D. A. Cooper v. United States* (D.C. App. 1977, 368 A.2d 554).

Finding that entry into codefendant's apartment by officer and complaining witness who had followed a trail

of hair oil from burglarized beauty shop to codefendant's apartment was consensual is not clearly erroneous. *A. A. Terrell v. United States* (D.C. App. 1976, 361 A.2d 207; cert. denied 97 S.Ct. 501, 429 U.S. 984).

Warrantless search and seizure which occurred when police officer removed blanket from object which defendant had placed in public hallway while he went next door to make a telephone call and when officer copied serial number from object cannot be justified on basis of a suspicion or hunch on part of officer that a crime had been committed. *United States v. R. F. Boswell* (D.C. App. 1975, 347 A.2d 270).

Police officer's brief observation of defendant carrying a blanket-covered object on street, proximity of defendant to object once he left it unattended in a public hallway, i.e., 20 to 30 feet, and reason for leaving object, i.e., to make a telephone call in an adjacent laundromat, do not reasonably allow an inference of an intent on part of defendant to abandon object and, thus, do not operate to preclude defendant from questioning legality of search and seizure which occurred when officer removed blanket and copied serial number from object. *Id.*

Where police officers on the scene at 5 a.m. had received eyewitness report of the commission of a burglary, corroborated by missing pane of glass near apartment door, and had received positive identification of the perpetrator which included name and address, and where officers then received another eyewitness report from complainant that suspect was at that very moment in an apartment across the street, warrantless search of the latter apartment was justified by probable cause to believe that fleeing felon was within and by exigent circumstances which precluded obtaining an arrest warrant. *W. L. Dunston v. United States* (D.C. App. 1974, 315 A.2d 563).

Sentence

Where concurrent sentences imposed on each conviction for assault with a dangerous weapon were adjudged to run concurrently with burglary and armed robbery convictions, no remand for resentencing was necessary on vacation of convictions for assault with a dangerous weapon. *United States v. S. Kearney, Jr.* (1974, 498 F.2d 61, 162 U.S. App. D.C. 110).

Severance

Refusal to grant severance in prosecution for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary, was not prejudicial to defendant due to fact that evidence placing a codefendant at scene of crime was quantitatively and qualitatively greater than evidence against defendant where evidence against defendant was both substantial and compelling, jury was specifically instructed to determine guilt of each defendant by considering only his own conduct and evidence which applied to him and where verdicts demonstrated that jury fulfilled its obligation under charge. *United States v. I. E. Leonard* (1974, 494 F.2d 955, 161 U.S. App. D.C. 36).

Fact that there was conflict in accused's defenses, in that codefendants relied on separate alibi defenses and defendant admitted his presence at scene of offenses and in that such defendant's efforts to discredit testimony that he and a codefendant knocked out victim assertedly undermined such codefendant's alibi defense and fact that defendant did not testify and thus codefendants were precluded from cross-examining him did not so prejudice codefendants as to render refusal to grant severance an abuse of discretion where damaging implications of defendant's defense were corroborated by substantial testimony. *Id.*

Admission, in criminal prosecution in which a defendant did not testify, of admissible testimony as to such defendant's hearsay statements which incriminated codefendants did not require severance on ground that admission violated codefendants' right of confrontation where, even if codefendants were tried separately, such testimony would have been admissible and defendant probably would have invoked Fifth Amendment, where there was substantial other eyewitness testimony incriminating codefendants and where, since defendant was an accomplice, reliability of his hearsay declaration was "inevitably suspect." *Id.*

Where count of indictment charging defendant with carrying pistol on day of his arrest was dismissed for

failure of proof before case was submitted to jury and indictment was retyped, omitting count, defendant was not prejudiced by court's refusal to sever such properly joined count from counts charging felony murder, first-degree burglary and armed robbery. *United States v. J. M. Joyner* (1974, 492 F. 2d 650, 160 U.S. App. D.C. 384; cert. denied 95 S. Ct. 94, 419 U.S. 852).

Trial court did not abuse its discretion in prosecution for conspiracy, burglary, grand larceny, interstate transportation of stolen property, and bringing stolen property into the District of Columbia by denying severance to second defendant on ground of antagonistic defenses. *United States v. M. Lemonakis* (1973, 485 F. 2d 941, 158 U.S. App. D.C. 162; cert. denied 94 S. Ct. 1586, 1587, 415 U.S. 989).

Refusal to sever counts, in prosecution for second-degree burglary, grand larceny, and attempted burglary, was not an abuse of discretion where, *inter alia*, if there had been separate trials on each of the counts there would have been a substantial overlap of the evidence. *L. P. Coleman v. United States* (D.C. App. 1972, 298 A. 2d 40; cert. denied 93 S. Ct. 3070, 413 U.S. 921).

Speedy trial

Defendants were not denied a speedy trial by reasons of the fact that their trial did not commence until 13 months after their arrest, where approximately eight months of the delay was occasioned by the grand jury's consideration of the evidence, where there was no inordinate delay caused by the court or by the prosecution, and where the trial was reset to an earlier date, rather than the original date, because of defendants' motions to dismiss for lack of a speedy trial. *J. S. Adams v. United States* (D.C. App. 1977, 379 A. 2d 961).

Defendants were not denied their constitutional right to speedy trial by reason of 16-month delay between arrest and trial, where defendants joined in explicit and intelligent waiver of trial in open court in presence of counsel and after discussion with trial judge in every instance of delay beyond one year and there was no evidence of legal detriment or prejudice attributable to delay. *W. W. Chatman v. United States* (D.C. App. 1977, 377 A. 2d 1155).

Under circumstances, the time between dismissal of first indictment without prejudice and the filing of a second indictment, was a delay properly chargeable to the Government, in determining denial of speedy trial claim. *B. A. Branch v. United States* (D.C. App. 1977, 372 A. 2d 998).

Under circumstances, defendant did not fail adequately to assert his right to a speedy trial, despite claim that he made no formal motion to dismiss until two days before trial, where defendant had been incarcerated for nine of 16 months between arrest and trial because he was unable to raise bond, although he had moved for and had been granted a reduction in bond, and defendant had moved to dismiss for lack of prosecution and such motion had been granted prior to filing of a second identical indictment. *Id.*

Eight months' incarceration which was detrimental both to defendant as an individual and to his ability to prepare his defense, together with the delay occasioned by the Government's failure to try case when called which heightened defendant's concern and anxiety, constitute personal interests of accused which were prejudiced by lack of speedy trial. *Id.*

Eight-month delay from arrest to trial, attributable first to hospitalization of government witness and later to crowded court docket, is not *prima facie* violation of defendant's right to speedy trial and where defendant did not assert right to speedy trial until almost four and a half months after his arrest and there is no indication of purposeful or unnecessary delay in bringing defendant to trial or loss of evidence crucial to defense, delay did not result in denial of defendant's right to speedy trial, notwithstanding fact that defendant was incarcerated for entire eight-month period. *W. L. Moore v. United States* (D.C. App. 1976, 359 A. 2d 299).

Fifteen-month delay between arrest and trial was such as to constitute a denial of defendant's right to a speedy trial where delay was not, at all times, attributable to defendant, who suffered personal prejudice by reason of fact that he was confined throughout period, though he continually pressed his motion for release pending trial, and where personal prejudice resulting from pretrial

incarceration was exacerbated by fact that defendant was a youth being confined in an adult jail and fact that defendant was especially handicapped by his social and educational background. *United States v. W. H. Calloway* (1974, 505 F. 2d 311, 164 U.S. App. D.C. 204).

Delay of approximately 11 months between indictment and trial, which initially was caused by defendants' confusion of his counsel situation, and which thereafter was contributed to by combination of heavy calendar of the judge and the necessity of trying prior scheduled cases, the impossibility for a long period of securing attendance of complaining witness, judge's commitment to official duties, and to minor extent by the absence on vacation of defendant's counsel, was insufficient to constitute a denial of defendant's right to a speedy trial, in absence of any prejudice. *United States v. D. E. Douglas* (1974, 504 F. 2d 213, 164 U.S. App. D.C. 144).

Evaluating alleged deprivation of right to speedy trial requires a careful balancing in which conduct of both government and defendant are weighed; relevant factors include length of delay, reason for delay, defendant's assertion of his right, and prejudice to defendant. *United States v. D. E. Douglas* (1973, 488 F. 2d 1331, 160 U.S. App. D.C. 7).

Witnesses

Denial of defense motion for continuance to permit an eyewitness to break in to recover from a serious back injury before testifying was not an abuse of discretion where denial did not come until after trial court conducted a voir dire of witness with respect to her physical condition and ability to accurately recall what she had observed. *G. T. Nelson v. United States* (D.C. App. 1977, 378 A. 2d 657).

— Appointment of counsel

Where evidence indicates that two minor witnesses were innocent bystanders to burglary, and where witnesses were at all times willing to testify against defendant, defendant does not have standing to assert that trial court's refusal to appoint counsel for such minor witnesses before they testified was violation of witnesses' Fifth Amendment privilege against self-incrimination. *In the Matter of R. D. J.* (D.C. App. 1975, 348 A. 2d 301).

— Missing

If a party has it peculiarly within his power to produce witnesses whose testimony would elucidate transaction in question, fact that he does not do so creates presumption that testimony, if produced, would be unfavorable and comment by counsel and instruction by judge as to absent witnesses is permitted. *M. E. Conyers v. United States* (D.C. App. 1973, 309 A. 2d 309).

— Immunity

Provisions of Organized Crime Control Act requiring prosecutor to obtain authorization from Attorney General before granting immunity to witnesses who refuse to testify does not bar prosecutor's grant of immunity to minor witnesses who at no time refused to testify and who were merely innocent bystanders of burglary with which defendant was charged. *In the Matter of R. D. J.* (D.C. App. 1975, 348 A. 2d 301).

Chapter 20.—OBSCENITY

§ 22-2001. Certain obscene activities and conduct declared unlawful—Definitions—Penalties—Affirmative defenses—Exception.

CROSS REFERENCE

Age of majority, see § 21-101 note.

NOTES TO DECISIONS

Community standards

Question of national standards of obscenity is matter of proof at trial. *F. P. Hermann v. United States* (D.C. App. 1973, 304 A. 2d 22).

Where Government rested after court viewed allegedly obscene film exhibited by defendants, and expert witness for defense then expressed opinion film did not violate contemporary national community standards, burden of proceeding shifted back to the Government to prove beyond a reasonable doubt a violation of contemporary national community standards. *Id.*

Obscenity per se relieves Government from offering any evidence of community standards to make a prima facie case. *Id.*

Constitutionality

Application of the Roth-Memoirs test following United States Supreme Court's decision in the Miller obscenity case is not improper, on ground that the Supreme Court abandoned such standard in the Miller case, since in Miller the Court merely reformulated and clarified a definition of obscenity which had proved difficult to apply and although Court indicated dissatisfaction with the Roth-Memoirs standard because it imposed a greater burden on the regulation of obscene materials than is constitutionally required the Court at no point rejected the Roth-Memoirs test as constitutionally infirm or cast doubt on validity of convictions based thereon. *W. C. Lakin v. United States* (D.C. App. 1976, 363 A.2d 990).

Retroactive application of the Miller obscenity guidelines to pre-Miller conduct did not deprive defendants of due process right to notice and did not violate constitutional prohibition against ex post facto laws; latter prohibition does not apply to modification by judicial construction and no due process violation occurred since applying Miller standards to pre-Miller conduct was not an attempt to make criminal conduct which had not previously been thought criminal, purpose of the Miller case was merely to add a clarifying gloss to the statute, and conduct at issue was criminal under pre-Miller standards. *Id.*

This section as applied to motion picture films, is not invalid for vagueness, even though it does not expressly limit the scope of what is covered by the words "obscene, indecent, or filthy," since such asserted defect can be cured by judicial construction that the kind of pictures at which the section is directed is limited only to those described in Miller decision which enumerates three criteria for a finding of obscenity. *C. P. Retzer, Jr. v. United States* (D.C. App. 1976, 363 A.2d 307).

Construction

District of Columbia obscenity statute, using language similar to that used in federal statutes, is to be given same construction as the federal statute and is constitutional. *United States v. Sherpix, Inc.* (1975, 512 F.2d 1361, 168 U.S. App. D.C. 121).

Although Court of Appeals was not presented with an authoritative construction of District of Columbia obscenity statute in view of the Miller decision, that is, that obscenity prosecution is limited to hard core sexual conduct specifically defined by the regulating state law, as written or construed, the Court would not undertake a definitive interpretation of the statute since it was convinced that the statute would receive a limiting construction that would maintain its application to the facts of the instant case. *United States v. T. E. Gower* (1974, 503 F. 2d 189, 164 U.S. App. D.C. 98; aff'g 316 F. Supp. 1390).

Elements of offense

Where at time of distribution and exhibition of allegedly obscene film by defendants a judicially declared test of obscenity was whether material was utterly without redeeming social value but, at the time of trial, court had revised test so as to require, for obscenity, only that the material lack serious literary, artistic, political or scientific value, defendants could be convicted only if material could be found to be obscene under both tests. *United States v. Sherpix, Inc.* (1975, 512 F.2d 1361, 168 U.S. App. D.C. 121).

Elements which must be proved before material or a performance can be found obscene are: appeal to a prurient interest in sex, utterly without redeeming social value, and violation of contemporary national community standards. *F. P. Hermann v. United States* (D.C. App. 1973, 304 A. 2d 22).

Although expert testimony would often substantially assist trial court determinations regarding obscenity as well as independent review on appeal, expert testimony is not required as matter of course to establish the elements on which material or a performance can be obscene. *Id.*

Evidence—Admissibility

Where a United States commissioner found probable cause to believe that suspect films were obscene and

issued a search warrant prior to their seizure, promptly after execution of warrant the Government arranged a hearing before a district judge at which defendant was afforded opportunity to oppose the Government's obscenity claim, and defendants made no effort to resist the claim but instead disclaimed the proceeding, use of films as evidence at defendant's trial was not impermissible because no adversary hearing leading to an affirmative determination of obscenity was held before they were seized. *United States v. D. E. Pryba* (1974, 502 F. 2d 391, 163 U.S. App. D.C. 389; cert. denied 95 S. Ct. 815, 419 U.S. 1127).

— Of community standards

In prosecution for knowingly exhibiting an obscene motion picture, the trial court did not err in excluding testimony of proffered defense witness on community standards, since the subject of obscenity is not beyond the ken of the average layman nor would the proffer of the witness have aided the jury's understanding of the fact issue, and since the witness, while professing experience with and exposure to sexually explicit films, failed to exhibit "sufficient skill, knowledge, or expertise" in the area of contemporary community standards relating to obscenity to make it appear that his opinion or inference would properly aid the trier of fact in its search for the truth. *O. Fennekohl v. United States* (D.C. App. 1976, 354 A.2d 238).

District Court in obscenity cases has wide discretion in its determination to admit and exclude evidence, and this is particularly true in case of expert testimony; although Government is not required to introduce expert testimony on community standards, defense should be free to introduce appropriate expert testimony, and summary exclusion of all testimony on community standards would thus be inappropriate. *United States v. Sherpix, Inc.* (1975, 512 F.2d 1361, 168 U.S. App. D.C. 121).

— Sufficiency

Evidence that bookstore clerk sold police officer a magazine, price of which was exhibited on front cover and front cover of which displayed a six by eight-inch photograph of three full-length nude males, two of whom were having their genitals fondled by the third, and back of which was similarly emblazoned with photograph of three men, each of whom was engaged in manual genital stimulation of the other, and that clerk was present four days after sale, when arrest and search were made, warranted finding that clerk had requisite knowledge of the character and contents of the magazine to support obscenity conviction. *W. C. Lakin v. United States* (D.C. App. 1976, 363 A.2d 990).

Evidence, including evidence that adult bookstore manager was present at time of arrest and search, that manager had been seen in vicinity of cash register on at least six occasions, that search uncovered a device used to encase publications in cellophane along with empty wrappings of the type covering magazines then on rack, including subject magazine, cover of which depicted three nude males, two of whom were having their genitals fondled by the third, was sufficient to warrant inference that manager, charged with possession of obscene matter with intent to disseminate, was on general notice of character of the publication and should have inquired further as to its contents. *Id.*

Hard-core pornography

Conviction of book sellers for violating District of Columbia obscenity statute by possession and sale of obscene photographs and films, which showed nude males and females engaged in explicit sexual intercourse, fellatio, cunnilingus and masturbation, was not required to be overturned in face of the Miller decision, that is, that obscenity prosecutions is limited to hard core sexual conduct specifically defined by the regulating state law, since reviewing court was convinced that the court-tried case would have reached exactly the same result if the case had been tried after Miller and had been conducted strictly in accordance with its instructions. *United States v. T. E. Gower* (1974, 503 F. 2d 189, 164 U.S. App. D.C. 98; aff'g 316 F. Supp. 1390).

In view of grave doubt as to whether "lesbian" pictures, which did not show ultimate sexual acts were violative of narrow and specific prohibitions that mark limit of

constitutionality, elementary constitutional considerations precluded affirmation of conviction for violating indecent publication statute, where jury was not instructed that it was its task, as surrogate for community, to determine whether there was depiction of sexual conduct to a point of patent offensiveness. *V. W. Huffman and D. E. Pryba v. United States* (1974, 502 F. 2d 419, 163 U.S. App. D.C. 417; rev'g and rem'g 259 A. 2d 342).

Intent to disseminate

Defendant enjoyed no immunity from prosecution for violation of this section outlawing possession of obscene matter with intent to disseminate by virtue of fact that only dissemination planned was a gift of copies of films to another. *United States v. D. E. Pryba* (1974, 502 F. 2d 391, 163 U.S. App. D.C. 389; cert. denied 95 S. Ct. 815, 419 U.S. 1127).

Obscene per se

Magazine, which was titled "Three in the Dark," cover of which depicted three nude males, two of them having their genitals fondled by the third, which included over 70 photographs depicting the three engaged in numerous homosexual acts, including anal intercourse, fellatio, masturbation and oral-anal activity, all in a variety of positions, and text of which was nothing more than a salacious and rather crude sequential account of aberrant homosexual acts and which was made available to general public over age of majority but directed particularly to male homosexual community, is obscene. *W. C. Lakin v. United States* (D.C. App. 1976, 363 A. 2d 990).

Record supports characterization of motion picture films as hardcore pornography and obscenity per se. *C. P. Retzer, Jr. v. United States* (D.C. App. 1976, 363 A.2d 307).

Film that was sexually morbid, grossly perverse and bizarre, and wholly without any artistic or scientific justification was properly found to be obscene per se. *J. J. Kaplan v. United States* (D.C. App. 1971, 277 A. 2d 477; cert. granted, judgment vacated, and remanded 93 S.Ct. 3030, 413 U.S. 913; aff'd on remand 311 A. 2d 506; cert. denied 94 S. Ct. 3229, 418 U.S. 942).

Scienter

Neither the Constitution nor obscenity statute requires that one be on notice of contemporary standards since it is sufficient that a defendant be on notice of the character and contents of the material; to compel the government to show their actual knowledge of the legal status of the materials would permit defendants to avoid prosecution by simply claiming that they had not brushed up on the law; the Constitution does not mandate proof of knowledge of contemporary community standards and neither the wording nor intent of the obscenity statute justifies such a holding. *W. C. Lakin v. United States* (D.C. App. 1976, 363 A. 2d 990).

Defendant, who was working at downtown arcade on more than one occasion when obscene film was being displayed and who had ownership interest in the arcade, had requisite knowledge that the film being exhibited in particular machine was obscene. *J. J. Kaplan v. United States* (D.C. App. 1971, 277 A. 2d 477; cert. granted, judgment vacated, and remanded 93 S.Ct. 3030, 413 U.S. 913; aff'd on remand 311 A. 2d 506; cert. denied 94 S. Ct. 3229, 418 U.S. 942).

Search and seizure

Magistrate's determination of probable cause to seize allegedly obscene film was entitled to "great deference"; affidavit which was lengthy account of film, describing each scene in detail and with explicit language, furnished substantial basis for his decision, and seizure of film pursuant to the warrant was valid though magistrate did not personally view the film. *United States v. Sherpix, Inc.* (1975, 512 F.2d 1361, 168 U.S. App. D.C. 121).

Ex parte hearings may be properly used to grant warrants authorizing seizure of limited amounts of alleged obscene materials. *V. W. Huffman and D. E. Pryba v. United States* (1974, 502 F. 2d 419, 163 U.S. App. D.C. 417; rev'g and rem'g 259 A. 2d 342).

Since the search warrant for film contained in peep-show machine located in downtown arcade was issued upon detailed affidavit, only one machine out of a number was seized and it contained a single 12-minute peep-show reel, and arcade owner was offered hearing on propriety

of the seizure the day after the seizure, the defendant-arcade owner was not entitled to hearing prior to issuance of the warrant. *J. J. Kaplan v. United States* (D.C. App. 1971, 277 A. 2d 477; cert. granted, judgment vacated, and remanded 93 S.Ct. 3030, 413 U.S. 913; aff'd on remand 311 A. 2d 506; cert. denied 94 S. Ct. 3229, 418 U.S. 942).

Chapter 21.—KIDNAPING

§ 22-2101. Definition and penalty—Conspiracy.

NOTES TO DECISIONS

Assistance of counsel

Defendant was not denied effective assistance of counsel by defense counsel's refusal to present certain alibi witnesses that defendant wished to call, in light of fact that proposed testimony of alibi witnesses was contradictory and prosecutor indicated that he would move for grand jury indictment for perjury if witnesses took the stand and told stories they had told him. *T. A. Horton v. United States* (D.C. App. 1977, 377 A. 2d 390).

Discovery

With the exception of records of impeachable convictions, the criminal records and records of arrests of government witnesses were not discoverable and the suppression of the testimony of government witnesses, as sanction for disobedience of pretrial discovery order, was in excess of trial court's authority. *United States v. W. C. Engram et ano.* (D.C. App. 1975, 337 A.2d 488; cert. denied 96 S. Ct. 793, 423 U.S. 1058).

Evidence—Admissibility

Since defendant in prosecution for kidnapping and assault of a federal officer in connection with attempted escape claimed he was involved in escape attempt but not in kidnapping and holding of hostages, cross-examination of defendant as to his prior escape attempts was admissible to show that defendant did intend that hostages be taken if the opportunity and need arose where consideration of previous escape evidence was limited by instruction as to whether it tended to show that defendant had a scheme or design to commit crime of sort with which he was charged. *United States v. O. D. Wilkerson* (1976, 548 F.2d 970, 179 U.S. App. D.C. 15).

Defendant was not prejudiced to such an extent that he was denied due process or fair trial when trial court allowed jury to hear evidence about complainant's rape in Maryland with which defendant was not charged, where such assault was described only briefly as part of total incident she was recounting and in order to explain circumstance of offense actually charged, where there were no questions that directly elicited such information, where the incident was not described in inflammatory terms or in any detail, and where there was substantial evidence of the defendant's guilt of other offenses and challenged testimony was only minor portion of evidence adduced at trial. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S.Ct. 154, — U.S. —).

Where contents of transcript of tape recording of statement made by prosecuting witness to police officer does not constitute the observation of first hand factual knowledge of the officer, the witness whose recollection it assertedly represents, but rather constitutes an unsworn, extrajudicial account given by the complaining witness, the transcript is not admissible under the doctrine of past recollection recorded. *D. B. Tibbs v. United States* (D.C. App. 1976, 359 A.2d 13).

Introduction of transcript of tape recording of statement made by prosecuting witness violates rule that prior consistent statements may not be used to support one's own unimpeached witness and is not harmless error as it resulted in the adding of weight to the complainant's testimony in what could be viewed as Government's standpoint. *Id.*

In prosecution of, inter alia, jail inmates for crimes arising out of jail break attempt in which they took District of Columbia Commissioner of Corrections hostage, there was no error in excluding from evidence statements which allegedly promised defendants immunity from prosecution in view of fact that neither District of Columbia Commissioner of Corrections nor federal district

judge, who made such statements, had such power and fact that statements were made while Commissioner was under duress. *United States v. F. Gorham, Jr.* (1975, 523 F.2d 1088, 173 U.S. App. D.C. 139; rehearing en banc denied 536 F.2d 410, 175 U.S. App. D.C. 383).

— Sufficiency

Evidence, including testimony of complainant and others concerning incident, reasonably permitted a finding of guilt on charges of armed kidnapping, armed assault with intent to kill, and carrying a dangerous weapon. *R. N. Wooten v. United States* (D.C. App. 1975, 343 A. 2d 281).

Identification

In respect to the post-lineup identification of defendant, out of the presence of the defense counsel, by witness, who initially withheld his identification because he did not want "to get involved," there is nothing in the record to suggest that the circumstances surrounding the witness' disclosure were in any way suggestive, or that an investigating officer may have pressured the witness into making the identification, and accordingly, there is not a very substantial likelihood of irreparable misidentification. *C. Graham v. United States* (D.C. App. 1977, 377 A. 2d 1138; cert. denied 98 S. Ct. 748, — U.S. —).

Where complainant positively identified defendant as one of her attackers both at trial and at lineup, where she also identified defendant's photograph, and where she gave an in-court description of her assailant which was in agreement with that given by another witness, such identification evidence was sufficient for jury to reasonably conclude that defendant was among the complainant's attackers. *Id.*

Photographic identification procedure in which victim, who had described assailant as wearing a dashiki, who had ample opportunity to observe attackers during course of abduction, who described defendant correctly and in detail, and who was unable to recall at trial whether man in photograph was wearing a dashiki, immediately and unequivocally selected defendant's photograph, which was only one in group of photographs showing man wearing dashiki, was not so impermissibly suggestive as to give rise to very substantial likelihood of irreparable misidentification and deny defendant due process of law. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S.Ct. 154, — U.S. —).

Police sketches, which are based on information communicated directly to artist by victims and which are criticized and approved by victims before use, are reliable and useful tools which provide a more accurate model for police officers than does a verbal or written description, despite contention that all police sketches are improperly suggestive and therefore should not be used to establish probable cause. *Id.*

Instructions

In prosecution for kidnapping 14-year-old boy for purpose of sexually assaulting him, failure to instruct that consent to accused's sexual advances is a defense to kidnapping was not error. *T. L. Ledbetter v. United States* (D.C. App. 1976, 350 A.2d 379).

Jencks Act

Introduction of transcript of tape recording of statement made by prosecuting witness, which tape recording was discovered by prosecution and defense and which transcript was produced pursuant to the Jencks Act, is incompatible with the general purpose of the Act which is to allow defendant access to prior statements of government witnesses for impeachment purposes and not to permit the Government to buttress its case-in-chief. *D. B. Tibbs v. United States* (D.C. App. 1976, 359 A.2d 13).

Joinder

In prosecution for robbery, armed rape, assault with intent to commit sodomy while armed, armed kidnapping, assault with intent to commit mayhem, armed robbery, obstruction of justice and assault with dangerous weapon, trial court did not err in refusing to sever counts on basis of separate dates of alleged offenses, in view of fact that all offenses flowed each from the other, evidence of each would have been admissible in separate trials to show motive, intent and identity and evidence as to each offense was simple and direct, consisting of victim

accounts corroborated by eyewitness testimony. *T. A. Horton v. United States* (D.C. App. 1977, 377 A. 2d 390).

Defendant, who contended on appeal that trial court erred in refusing to sever for trial seven offenses and 39 counts contained in indictment because cumulative effect of evidence introduced to prove all counts made fair trial impossible and that trial court's failure to sever such counts deprived him of his right to a fair trial, who made no motions for severance either before or during trial nor did he join in codefendant's motion for severance, and who was aware of all facts comprising his claim of prejudice before trial, should have raised such issue at trial rather than on appeal. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S.Ct. 154, — U.S. —).

Probable cause

Police officers who, after properly stopping automobile which matched description of automobile allegedly involved in series of abductions and rapes, observed that driver closely resembled composite sketches of one alleged assailant and that interior of automobile matched description of automobile allegedly involved in such crimes, and who called in superior officer who also agreed that driver's face was very similar to composite sketches, had probable cause to arrest driver, and detention, transportation to police station, and photographing of driver were lawful. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S.Ct. 154, — U.S. —).

Prosecution

Commissioner of Corrections' agreement not to prosecute jail inmates for crimes arising out of jail break attempt, made while he was their hostage, was not enforceable, in view of fact that Commissioner had no authority to make such agreement, agreement lacked consideration of knowing relinquishment of constitutional right, agreement involved performance of preexisting duty, agreement was induced by duress, and, agreements involving forbearance of prosecution are contrary to public policy. *United States v. F. Gorham, Jr.* (1975, 523 F.2d 1088, 173 U.S. App. 139; rehearing en banc denied 536 F.2d 410, 174 U.S. App. D.C. 383).

Prosecutor's remarks

Prosecutor's statement in closing argument allegedly suggesting that defendant who was charged with, inter alia, kidnapping while armed, armed robbery, and armed rape, was looking for a new victim when, on night of his arrest, he was seen in car talking to two women on street, was not so prejudicial as to substantially sway judgment of jury and require reversal of defendant's convictions, in light of overwhelming proof against defendant, minimal reference to such occurrence at end of all the evidence, and court's instruction that statements and arguments made by counsel are not evidence, even though such statement may have been unnecessary and improper. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S.Ct. 154, — U.S. —).

Publicity

Review of answers elicited on voir dire examination of prospective jurors showed that it was possible to get a jury which had not been so fixed by the extensive pre-trial publicity concerning the offenses of kidnapping and assault on federal officer that it was unable to render a fair verdict, so that trial judge, who followed approved procedure in deferring decision on motion for change of venue, did not err in refusing to grant motion. *United States v. O. D. Wilkerson* (1976, 548 F.2d 970, 179 U.S. App. D.C. 15).

Severance

In prosecution of two defendants who were charged in 44-count indictment with, inter alia, kidnapping while armed, armed robbery, and armed rape, reversible error resulted as to one defendant from joinder of counts charging such defendant and codefendant jointly with counts charging codefendant alone and with others unidentified where proof of each crime did not overlap and there was no economy and efficiency served by such joinder, and where testimony could lead to jury inference that defendant was in fact unidentified person. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S.Ct. 154, — U.S. —).

Speedy trial

Defendants were not denied their constitutional right to speedy trial by reason of 16-month delay between arrest and trial, where defendants joined in explicit and intelligent waiver of trial in open court in presence of counsel and after discussion with trial judge in every instance of delay beyond one year and there was no evidence of legal detriment or prejudice attributable to delay. *W. W. Chatman v. United States* (D.C. App. 1977, 377 A.2d 1155).

Witnesses

Trial court did not commit reversible error in failing, sua sponte, to grant defendant a continuance until an alibi witness was released from a local hospital, since, if the presence of the witness was so essential to the credibility of defendant's alibi defense, it was incumbent upon counsel to draw the court's attention to the need for further delay in the proceedings. *C. Graham v. United States* (D.C. App. 1977, 377 A.2d 1138; cert. denied 98 S. Ct. 748, — U.S. —).

Mental examination

Refusal to compel a mental examination of complaining witness in prosecution for kidnapping 14-year-old boy for purpose of sexually assaulting him was not an abuse of discretion, notwithstanding accused's contentions that such an examination would have revealed evidence of a distorted perception of reality and sexual fantasies helpful to defense theory that boy consented to the alleged assault and that refusal to order such examination constituted a violation of accused's right to effective assistance of counsel. *T. L. Ledbetter v. United States* (D.C. App. 1976, 350 A.2d 379).

Chapter 22.—LARCENY—RECEIVING STOLEN GOODS

§ 22-2201. Grand larceny.

NOTES TO DECISIONS

Aid and abet

Under statute authorizing charging of aiders and abettors as principals, particular defendants who distributed allegedly obscene motion picture film could be convicted of knowingly presenting the film in the District of Columbia where such defendants supplied film to exhibitor therein in return for share of proceeds from the exhibition. *United States v. Sherpix, Inc.* (1975, 512 F.2d 1361, 168 U.S. App. D.C. 121).

Construction

While larceny remains an offense against possession, robbery is basically a crime against the person. *United States v. T. B. Dixon* (1972, 469 F.2d 940, 152 U.S. App. D.C. 200).

Convictions—Mutually exclusive

Convictions of second defendant for burglary and grand larceny were mutually exclusive with conviction for receiving stolen property and bringing it into the District of Columbia, and vacating the burglary and larceny convictions which carried longer sentences cured any prejudice which resulted from the failure to properly instruct. *United States v. M. Lemonakis* (1973, 485 F.2d 941, 158 U.S. App. D.C. 162; cert. denied 94 S. Ct. 1586, 1587, 415 U.S. 989).

Cross-examination

It was improper to cross-examine defendant to reveal an arrest for possession of a pistol without a license to contradict defendant's statement that he had never carried a weapon where defendant had not been convicted of the prior offense and where defendant's statement denying prior possession of weapon was made on cross-examination and not as part of his direct testimony. *S. Jackson v. United States* (D.C. App. 1977, 377 A.2d 1151).

It was within trial court's discretion to limit cross-examination of Government's fingerprint expert when the inquiry became argumentative and unwarranted. *A. A. Terrell v. United States* (D.C. App. 1976, 361 A.2d 207; cert. denied 97 S. Ct. 501, 429 U.S. 984).

Discovery

Government notes concerning past jury performances of members of the jury panel does not constitute Brady

material and defendant is not entitled to the notes as a matter of mutuality of disclosure at trial. *A. A. Terrell v. United States* (D.C. App. 1976, 361 A.2d 207; cert. denied 97 S. Ct. 501, 429 U.S. 984).

With the exception of records of impeachable convictions, the criminal records and records of arrests of government witnesses were not discoverable and the suppression of the testimony of government witnesses, as sanction for disobedience of pretrial discovery order, was in excess of trial court's authority. *United States v. W. C. Engram et al.* (D.C. App. 1975, 337 A.2d 488; cert. denied 96 S. Ct. 793, 423 U.S. 1058).

Elements of offense

False pretenses merely requires proof of intent to defraud at time possession of property is obtained, while larceny requires proof of conversion after possession is obtained with intent to appropriate property to use inconsistent with owner's rights, and thus imposition of consecutive sentences upon defendant, who was convicted of five counts of grand larceny and five counts of false pretenses, who was shown not only to have defrauded complainant but also to have entertained specific intent to steal from very outset and who consummated his purpose by later converting funds he received to his own use, was not beyond trial court's authority since, although offenses arose out of same transaction, one required proof of a fact which the other did not. *S. Fowler v. United States* (D.C. App. 1977, 374 A.2d 856).

Evidence—Admissibility

Defendant was not substantially prejudiced by revelation of the fact that he had undergone court ordered drug treatment where both he and a codefendant had admitted use of marijuana and a third defendant had been impeached by two narcotics convictions. *S. Jackson v. United States* (D.C. App. 1977, 377 A.2d 1151).

Defendant, who testified on cross-examination that he pleaded guilty to earlier offenses, was not prejudiced by further questions which were limited solely to promises made during plea bargain negotiations and which did not involve facts of prior offenses, since it was unlikely that rebuttal questions enhanced possibility that jury would consider prior convictions as substantive evidence of guilt, particularly in view of cautionary instruction and limiting instructions. *L. J. Jenkins v. United States* (D.C. App. 1977, 374 A.2d 581; cert. denied 98 S. Ct. 274, — U.S. —).

Error, if any, in introduction into evidence of recordings between since deceased accomplice-informer and first defendant was not reversible error, in prosecution for conspiracy, burglary, grand larceny, interstate transportation of stolen property and bringing stolen property into the District of Columbia. *United States v. M. Lemonakis* (1973, 485 F.2d 941, 158 U.S. App. D.C. 162; cert. denied 94 S. Ct. 1586, 1587, 415 U.S. 989).

Admission into evidence of recorded conversations between since deceased accomplice-informer and first defendant which contained references to second defendant in joint trial did not violate second defendant's rights under the confrontation clause. *Id.*

Introduction in evidence in joint trial of recordings of conversation between first defendant and since deceased accomplice-informer was not improper on ground that recordings, which were made outside the presence of counsel, denied defendants' right to counsel. *Id.*

Government informer's suicide note, written six days prior to suicide, and which contained language exculpating second defendant, was not within the dying declaration hearsay rule exception where the note was not made with belief that death was imminent and did not concern the cause or circumstances of what was believed to be impending death. *Id.*

Accomplice-informer's handwritten suicide note, which contained language exculpating second defendant, was not admissible as declaration against the informer's penal interest where there was no corroboration of the exculpatory statement. *Id.*

Where officer had victim point out suspects, officer took victim to office of prosecutor for protection and upon returning was unable to find defendant and another and then went to motel at which defendant was reportedly staying and arrested defendant and his companion as they were about to leave the city, arrest without a warrant,

effectuated by unconsented to entry into motel room, for not only violations of the three-card monte statute but grand larceny was valid and paraphernalia seized as incident to arrest were admissible. *J. A. Bond v. United States* (D.C. App. 1973, 310 A. 2d 221).

Any conceivable prejudice by reception of testimony of arresting officers concerning nature of articles, which were characterized by officer as typical confidence game paraphernalia, as incident to proper arrest was cured by subsequent rejection of the exhibits as irrelevant in absence of a showing that the items were actually used in the particular incident on which prosecution for violation of three-card monte statute and grand jury was based. *Id.*

— Hearsay

Once submitted without objection, hearsay testimony directly material to prosecution's proof of various offenses with which defendant was accused could properly be accorded full weight of all other material testimony. *L. R. Wilson v. United States* (D.C. App. 1976, 357 A.2d 861).

— Sufficiency

In prosecution for grand larceny, evidence that original cost of stolen coat was \$150 and exhibition of such coat is insufficient to establish minimum value required for grand larceny, and cause would be remanded for entry of judgment of conviction to charge of petty larceny. *B. E. Wilson v. United States* (D.C. App. 1976, 358 A.2d 324).

In proceeding in which accused was convicted of burglary and grand larceny and in which accused's fingerprint in burglarized house was assertedly the only evidence linking accused to the offenses, evidence satisfies government's burden of negating the most reasonable explanations under which such fingerprint evidence would be consistent with innocence and of showing that fingerprint was made during commission of the offenses. *In re M. M. J.* (D.C. App. 1975, 341A.2d 421).

Evidence as to value of stolen articles was sufficient to support conviction of grand larceny, especially in view of testimony of buyer that articles stolen and recovered had a retail value of \$248 and a wholesale value of \$124. *L. Saunders v. United States* (D.C. App. 1974, 317 A. 2d 867).

Evidence that defendant drove off in car owned by another, which was parked in parking lot with keys in ignition, without permission of owner, supported conviction of defendant of grand larceny and unauthorized use of vehicle. *P. T. Fredericks v. United States* (D.C. App. 1973, 306 A. 2d 268).

Evidence sustained larceny conviction of defendant who had been observed entering alleyway without certain goods in automobile and who was observed some time thereafter leaving alley with goods taken from business in automobile. *H. L. White v. United States* (D.C. App. 1973, 300 A. 2d 716).

Identification

In respect to the post-lineup identification of defendant, out of the presence of the defense counsel, by witness, who initially withheld his identification because he did not want "to get involved," there is nothing in the record to suggest that the circumstances surrounding the witness' disclosure were in any way suggestive, or that an investigating officer may have pressured the witness into making the identification, and accordingly, there is not a very substantial likelihood of irreparable misidentification. *C. Graham v. United States* (D.C. App. 1977, 377 A. 2d 1138; cert. denied 98 S. Ct. 748, — U.S. —).

Where complainant positively identified defendant as one of her attackers both at trial and at lineup, where she also identified defendant's photograph, and where she gave an in-court description of her assailant which was in agreement with that given by another witness, such identification evidence was sufficient for jury to reasonably conclude that defendant was among the complainant's attackers. *Id.*

Testimonial references to robbery victim's pretrial photographic identification of defendant did not unfairly prejudice defendant on theory that it suggested a history of prior difficulty with the law. *L. R. Wilson v. United States* (D.C. App. 1976, 357 A.2d 861).

Defendant's convictions of first-degree burglary, grand larceny, and malicious destruction of property were not supported by sufficient evidence, where, despite the complainant's testimony that he was able to identify defendant at showup because the image of defendant's face was implanted on his mind, the complainant was unable to identify defendant at trial, where his opportunity to observe the burglars was brief, where he saw them at night under artificial light, where his nearest observation of them was when they were running and 17 feet away, and where there was a significant discrepancy in almost all respects between the description given by complainant to the police and defendant's actual description, both physically and in respect to clothing. *W. B. Crawley v. United States* (D.C. App. 1974, 320 A. 2d 309).

Where identification of defendant during and immediately after lineup was uncertain, such uncertainty diminished overall strength of prosecuting witness' identification testimony and it was thus clear beyond reasonable doubt that guilty verdict would have resulted even if jury had never heard such challenged testimony, and such testimony was therefore harmless beyond reasonable doubt. *J. Pender v. United States* (D.C. App. 1973, 310 A. 2d 252).

Where prosecuting witness had more than ample opportunity to observe and retain image of defendant while she was committing crime, and also identified defendant's photograph the day after crime from volumes given her by police, and at trial testified firmly and positively that her in-court identification was based on her observations of defendant during commission of crime, in-court identification was based on source independent of lineup and was admissible. *Id.*

— Photographic

Where nothing in photographic identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification, trial court did not err in admitting identification testimony. *M. H. Roldan v. United States* (D.C. App. 1976, 353 A.2d 292).

Inconsistent offenses

Defendant, who was charged with grand larceny, larceny after trust and false pretenses, could be convicted of both grand larceny and false pretenses for each of seven transactions set forth in indictment and inconsistency would have arisen only if he had been convicted of larceny after trust, which would have required finding that defendant's original acquisition of victim's property was legal and did not involve an unlawful taking, in addition to grand larceny or false pretenses, both of which required jury to conclude that original acquisition of property was unlawful. *S. Fowler v. United States* (D.C. App. 1977, 374 A. 2d 856).

Inferences

Unexplained or unsatisfactorily explained possession of property recently stolen permits inference that possessor is person who stole it. *H. L. White v. United States* (D.C. App. 1973, 300 A. 2d 716).

Where prosecution established corpus delicti of grand larceny, it was proper for jury to infer that defendant found in possession of stolen goods was guilty of the larceny. *Id.*

Instructions

Trial court did not err when it gave cautionary instruction on the use of prior convictions after one witness had been cross-examined concerning his prior narcotics convictions despite contention of second defendant that action of the trial court in giving the instruction after the break between his testimony and that of the prior witness created expectancy on the part of the jury that a prior conviction would be shown when second defendant took the stand even though such defendant had no prior convictions. *S. Jackson v. United States* (D.C. App. 1977, 377 A. 2d 1151).

Whatever prejudice might have followed from use of "innocence" for "not guilty" in supplemental instruction was overcome by trial court's previous unequivocal explanation of manner in which jury was to reach a decision, either favorable or unfavorable to defendant, and, in any event, use of "innocence" did not create such clear

prejudice to defendant's substantial rights as to allow notice of matter which was not raised in trial court. *L. R. Wilson v. United States* (D.C. App. 1976, 357 A.2d 861).

Defendant's request that trial court submit list of charges to jury without comment was insufficient to constitute a proper objection to specific content of supplemental instruction which followed rejection of request. *Id.*

Where defendant testified that he had been employed when arrested and prosecutor was unsuccessful in his attempt on cross-examination to produce proof that defendant had told bail agencies he was unemployed at that time, a cautionary instruction is not required. *Id.*

Evidence was sufficient to establish value of stolen property so as to support a conviction for grand larceny and so as to make an instruction on petit larceny unnecessary. *M. H. Roldan v. United States* (D.C. App. 1976, 353 A. 2d 292).

Intent

Sanity, as distinct from intent, is not element of either grand larceny or of unauthorized use of vehicle, nor does proof of insanity negate intent; instead, lack of sanity relieves a defendant of criminal responsibility for committing offense. *United States v. A. R. Tyler* (D.C. App. 1977, 376 A. 2d 798).

Defendant, who towed bus with valid tags without authorization to remove vehicle from housing authority parking lot, who used forged authority from housing authority to sell vehicle to used car dealer, and who, after rightful owner learned of such sale and contacted used car dealer, repurchased vehicle and took it to shredder at junkyard, had necessary felonious intent to sustain his conviction for grand larceny. *L. R. Fogle, Sr. v. United States* (D.C. App. 1975, 336 A.2d 833).

Grand larceny, as defined by this section, does not require intent to appropriate property permanently, but proof must merely manifest intent to appropriate property to use inconsistent with owner's rights. *P. T. Fredericks v. United States* (D.C. App. 1973, 306 A. 2d 268).

Jencks Act

Although trial court was required by Jencks Act to direct prosecution to produce notes taken by prosecutor during interview with witness on morning of trial, trial court's refusal to so order is harmless error and does not prejudice defendant where evidence from sources other than such witness overwhelmingly indicates defendant's guilt. *In the Matter of R. D. J.* (D.C. App. 1975, 348 A.2d 301).

Joinder

Where various offenses which congealed in indictment were all of a piece in that, taken together, they composed elements of a common scheme of deception which ultimately separated all four victims from their money, and individual fraudulent schemes were probative of each other and evidence of each would have been admissible in trial of the others had they been tried separately, trial court did not abuse its discretion in proceeding on unsevered indictment charging defendant with seven counts of grand larceny, seven counts of larceny after trust and seven counts of false pretenses. *S. Fowler v. United States* (D.C. App. 1977, 374 A. 2d 856).

Joinder of counts concerning second-degree burglary, grand larceny, and attempted burglary, was not improper. *L. P. Coleman v. United States* (D.C. App. 1972, 298 A. 2d 40; cert. denied 93 S. Ct. 3070, 413 U.S. 921).

Judgment—Modification

Where proof is insufficient to sustain conviction for grand larceny but is sufficient to sustain conviction for petit larceny, Court of Appeals can direct trial court to enter judgment accordingly. *J. C. Williams v. United States* (D.C. App. 1977, 376 A. 2d 442).

Jury

Where juror had simply misstated himself when, during the poll procedure, he answered "not guilty" to one of the counts and corrected himself immediately thereafter when asked the same question, there was no error in the jury poll procedure. *S. Jackson v. United States* (D.C. App. 1977, 377 A. 2d 1151).

Lesser included offense

If evidence in armed robbery prosecution did not warrant findings that the \$500 involved was taken from victim's person or immediate actual possession, then jury could only have properly found defendants guilty of the lesser included offense of grand larceny. *United States v. T. B. Dixon* (1972, 469 F. 2d 940, 152 U.S. App. D.C. 200).

Plea of guilty

No abuse of discretion was shown in denying defendant's request for withdrawal of guilty plea on ground that he was suffering withdrawal from methadone, in light of trial court's extensive questioning of defendant, prior to accepting plea, with awareness that defendant was receiving methadone treatment, so that trial court was capable of ascertaining that plea was voluntarily and intelligently made. *C. Durante v. United States* (D.C. App. 1973, 309 A. 2d 321).

Poisonous tree doctrine

Even assuming the illegality of prior arrest of defendant, he could not successfully invoke the poisonous tree doctrine where he pointed to no particular fruit of the alleged poisonous tree which was introduced into evidence against him and assuming that there was such actual fruit sought to be suppressed the connection between the fruits and the assertedly unlawful arrest and the evidence presented at trial for grand larceny in violation of three-card monte statute was so tenuous that any taint was dissipated. *J. A. Bond v. United States* (D.C. App. 1973, 310 A. 2d 221).

Poisonous tree doctrine does not operate so broadly as to bar all subsequent prosecutions but rather operates on particular evidence, either tangible or testimonial, and if properly invoked causes exclusion only of such evidence. *Id.*

Prearrest delay

Dismissal of charges against accused is not warranted merely on basis of his assertion that prearrest delay, which was slightly more than three months and with regard to which there had been some lack of diligence on part of police but no intentional delay, deprived him of his ability to present a defense because he could not recall his activities or whereabouts on night of the offenses. *In re M. M. J.* (D.C. App. 1975, 341 A.2d 421).

Probable cause

Where officer observed accused looking or searching behind desk in room of office building and observed him depart as soon as officer's presence became known and accused answered "Nothing" when officer addressed defendant outside building and asked him what he had been doing in the office, officer had probable cause to arrest accused and fruits of larcenies seized from accused's person incident to the arrest were admissible. *W. Arrington v. United States* (D.C. App. 1973, 311 A. 2d 838).

Prosecutor's comments

Prosecutor's remarks reflecting his own opinion as to defendant's lack of veracity and suggesting that defendant's presence during trial facilitated his ability to fabricate were improper as permitting adverse inferences from defendant's exercise of right to confront witnesses but were not prejudicial in view of strong evidence against him, instructions on jury's obligation to judge credibility and on status of statements by counsel, and judge's opinion that both counsel fought case hard and that jury would be able to render fair verdict. *L. J. Jenkins v. United States* (D.C. App. 1977, 374 A. 2d 581; cert. denied 98 S. Ct. 274, — U.S. —).

Denial of mistrial with respect to Government's appeal to public passion for community safety and security during its summation was not an abuse of discretion. *A. A. Terrell v. United States* (D.C. App. 1976, 361 A. 2d 207; cert. denied 97 S. Ct. 501, 429 U.S. 984).

Prosecutor did not overstep the bounds of permissible argument in referring to evidence inferring that defendant had stolen hotel keys and that he was involved in a series of other burglaries in hotel, offenses for which he was not on trial, in light of fact that evidence was rel-

evant to the government's case in prosecution for two burglaries of rooms in such hotel. *M. H. Roldan v. United States* (D.C. App. 1976, 353 A.2d 292).

Review—Record on appeal

Where there was nothing to indicate cause of delay between appointment of counsel on November 11, 1971 and status call on March 1, 1972, where there was no information concerning parole revocation proceedings involving defendant and Court of Appeals was left to speculate as to whether court-appointed counsel aided defendant in these proceedings and was therefore unable to avoid delay and where record did not indicate whether government's complaining witness, who was unavailable for March 17, 1972 trial date, was unavailable for entire period until August 31, 1972 trial, record was inadequate to determine whether defendant was denied his right to speedy trial, and record would be remanded for supplementation. *United States v. D. E. Douglas* (1973, 488 F. 2d 1331, 160 U.S. App. D.C. 7).

Search and seizure

Finding that entry into codefendant's apartment by officer and complaining witness who had followed a trail of hair oil from burglarized beauty shop to codefendant's apartment was consensual is not clearly erroneous. *A. A. Terrell v. United States* (D.C. App. 1976, 361 A.2d 207; cert. denied 97 S.Ct. 501, 429 U.S. 984).

Warrantless search and seizure which occurred when police officer removed blanket from object which defendant had placed in public hallway while he went next door to make a telephone call and when officer copied serial number from object cannot be justified on basis of a suspicion or hunch on part of officer that a crime had been committed. *United States v. R. F. Boswell* (D.C. App. 1975, 347 A.2d 270).

Police officer's brief observation of defendant carrying a blanket-covered object on street, proximity of defendant to object once he left it unattended in a public hallway, i.e., 20 to 30 feet, and reason for leaving object, i.e., to make a telephone call in an adjacent laundromat, do not reasonably allow an inference of an intent on part of defendant to abandon object and, thus, do not operate to preclude defendant from questioning legality of search and seizure which occurred when officer removed blanket and copied serial number from object. *Id.*

Sentence

False pretenses merely requires proof of intent to defraud at time possession of property is obtained, while larceny requires proof of conversion after possession is obtained with intent to appropriate property to use inconsistent with owner's rights, and thus imposition of consecutive sentences upon defendant, who was convicted of five counts of grand larceny and five counts of false pretenses, who was shown not only to have defrauded complainant but also to have entertained specific intent to steal from very outset and who consummated his purpose by later converting funds he received to his own use, was not beyond trial court's authority since, although offenses arose out of same transaction, one required proof of a fact which the other did not. *S. Fowler v. United States* (D.C. App. 1977, 374 A. 2d 856).

Severance

Trial court did not abuse its discretion in prosecution for conspiracy, burglary, grand larceny, interstate transportation of stolen property, and bringing stolen property into the District of Columbia by denying severance to second defendant on ground of antagonistic defenses. *United States v. M. Lemonakis* (1973, 485 F. 2d 941, 158 U.S. App. D.C. 162; cert. denied 94 S. Ct. 1586, 1587, 415 U.S. 989).

Refusal to sever counts, in prosecution for second-degree burglary, grand larceny, and attempted burglary, was not an abuse of discretion where, inter alia, if there had been separate trials on each of the counts there would have been a substantial overlap of the evidence. *L. P. Coleman v. United States* (D.C. App. 1972, 298 A. 2d 40; cert. denied 93 S. Ct. 3070, 413 U.S. 921).

Speedy trial

Delay of approximately 11 months between indictment and trial, which initially was caused by defendant's con-

fusion of his counsel situation, and which thereafter was contributed to by combination of heavy calendar of the judge and the necessity of trying prior scheduled cases, the impossibility for a long period of securing attendance of complaining witness, judge's commitment to official duties, and to minor extent by the absence on vacation of defendant's counsel, was insufficient to constitute a denial of defendant's right to a speedy trial, in absence of any prejudice. *United States v. D. E. Douglas* (1974, 504 F. 2d 213, 164 U.S. App. D.C. 144).

Evaluating alleged deprivation of right to speedy trial requires a careful balancing in which conduct of both government and defendant are weighed; relevant factors include length of delay, reason for delay, defendant's assertion of his right, and prejudice to defendant. *United States v. D. E. Douglas* (1973, 488 F. 2d 1331, 160 U.S. App. D.C. 7).

Value—Evidence of

Evidence that defendant stole television, leather coat and watch which complaining witness had purchased for a total of \$755, that there was nothing wrong with the television when it was taken, but the watch needed fixing, and that shortly after the theft one of defendant's friends sold the television set for \$50 or \$60 and defendant paid \$100 to buy it back after complaining witness told defendant she would not press charges if he returned the set is insufficient to support finding that the stolen articles had a value of \$100 or more, for purposes of grand larceny conviction, in absence of any testimony as to fair market value; since defendant was not a "willing" buyer, the price he paid to repurchase set was without probative value. *J. C. Williams v. United States* (D.C. App. 1977, 376 A. 2d 442).

Evidence that television set was purchased for \$160 and radio for approximately \$40 or \$50, and that both items were at least one to two years old and in good working condition, is insufficient to establish value in excess of \$100 at time of theft. *A. A. Terrell v. United States* (D.C. App. 1976, 361 A.2d 207; cert. denied 97 S.Ct. 501, 429 U.S. 984).

In prosecution for grand larceny, Government must present evidence of item's value at time of theft sufficient to eliminate the possibility of jury's verdict being based on surmise or conjecture; departure from such rule of proof is countenanced only when stolen property had been recently purchased at price well in excess of \$100, was in mint condition at time of theft and was not subject to prompt depreciation or obsolescence. *B. E. Wilson v. United States* (D.C. App. 1976, 358 A.2d 324).

Evidence was sufficient to establish value of stolen property so as to support a conviction for grand larceny and so as to make an instruction on petit larceny unnecessary. *M. H. Roldan v. United States* (D.C. App. 1976, 353 A.2d 292).

Evidence of value of items stolen by defendant and accomplices based on estimate of current market value and not original cost is sufficient to support defendant's conviction for grand larceny. *In the Matter of R. D. J.* (D.C. App. 1975, 348 A. 2d 301).

For purposes of determining whether chattel which was subject to larceny had value of \$100 or more, market value may be established by testimony of its nonexpert owner. *L. Saunders v. United States* (D.C. App. 1974, 317 A. 2d 867).

In determining whether value of article which was subject of larceny was \$100 or more, testimony of management employee as to value of chattel is generally acceptable. *Id.*

For purposes of determining whether value of article which was subject to larceny was \$100 or more, the relevant market value is usually the retail value. *Id.*

Witnesses

Trial court did not commit reversible error in failing, sua sponte, to grant defendant a continuance until an alibi witness was released from a local hospital, since, if the presence of the witness was so essential to the credibility of defendant's alibi defense, it was incumbent upon counsel to draw the court's attention to the need for further delay in the proceedings. *C. Graham v. United States* (D.C. App. 1977, 377 A. 2d 1138; cert. denied 98 S. Ct. 748, — U.S. —).

— Appointment of counsel

Where evidence indicates that two minor witnesses were innocent bystanders to burglary, and where witnesses were at all times willing to testify against defendant, defendant does not have standing to assert that trial court's refusal to appoint counsel for such minor witnesses before they testified was violation of witnesses' Fifth Amendment privilege against self-incrimination. *In the Matter of R. D. J.* (D.C. App. 1975, 348 A. 2d 301).

— Immunity

Provisions of Organized Crime Control Act requiring prosecutor to obtain authorization from Attorney General before granting immunity to witnesses who refuse to testify does not bar prosecutor's grant of immunity to minor witnesses who at no time refused to testify and who were merely innocent bystanders of burglary with which defendant was charged. *In the Matter of R. D. J.* (D.C. App. 1975, 348 A. 2d 301).

§ 22-2202. Petit larceny—Order of restitution.

NOTES TO DECISIONS

Abuse of discretion

Trial court did not abuse its discretion in denying defendant's motion to reopen his defense to present newly discovered evidence to impeach credibility of codefendant where some of the expected testimony would have been hearsay and, to the extent that some of it was admissible, it was collateral and not of such character as to require conclusion that it was likely to produce an acquittal. *G. E. Baxter v. United States* (D.C. App. 1976, 352 A.2d 383).

Bifurcated trial

In prosecution for felony-murder, robbery, second-degree burglary, and petit larceny, trial court did not abuse its discretion in denying defendant's request for different juries to try merits and insanity defense, despite contention that voir dire examination on insanity defense might have had an effect on the jury and despite contentions not raised in trial court that defendant was prejudiced by extensive testimony linking him to homosexuality, alcohol, and drugs, and that this would not have reached a second jury determining the merits of the insanity defense. *P. Shanahan v. United States* (D.C. App. 1976, 354 A.2d 524).

Cross-examination

Since store manager, the only witness to observe defendant's actions, previously gave an allegedly inconsistent account of the facts, and since his credibility was crucial to the issue of defendant's guilt of attempted petit larceny, defense counsel should have been allowed to cross-examine him concerning that prior account; furthermore, the trial court also erred in excluding defense testimony concerning the allegedly inconsistent prior account on the ground that the testimony concerned a collateral issue. *A. B. Moss v. United States* (D.C. App. 1977, 368 A.2d 1131).

In prosecution for attempted petty larceny, trial court did not abuse its discretion in refusing to allow cross-examination of prosecuting witness for bias or prejudice concerning witness' insistence that defendant be prosecuted rather than be accorded first offender treatment, which possibility was suggested to prosecuting witness by prosecutor. *S. P. Flecher v. United States* (D.C. App. 1976, 358 A.2d 322; cert. denied 97 S.Ct. 486, 429 U.S. 977).

Defendant's absence during proceedings

Defense counsel's tactical decision not to let complainant see defendant before trial at suppression hearing is binding upon defendant and waiver of his presence at hearing does not constitute reversible error. *A. L. Fludd v. United States* (D.C. App. 1975, 336 A.2d 539).

Elements of offense

As true ownership is not an element of the offense of larceny, to require firm proof that the complainant is legally capable of true ownership is both pointless and anachronistic; the Government need only allege and support with some evidence the basis for the complainant's possession of the stolen object. *A. B. Moss v. United States* (D.C. App. 1977, 368 A.2d 1131).

Evidence—Admissibility

In prosecution for felony-murder, robbery, second-degree burglary, and petit larceny, trial court did not err in excluding testimony of woman whom defendant had raped to show that thereafter defendant apologized to her, despite contention that such apology was introduced to rebut government expert testimony on defendant's lack of remorse. *P. Shanahan v. United States* (D.C. App. 1976, 354 A.2d 524).

— Hearsay

Where evidence clearly established defendant's guilt of burglary and petit larceny of grocery store, admission in evidence of hearsay testimony of proprietor of store that he had heard that defendant had stolen his keys to store was not substantial or prejudicial error. *P. T. Fredericks v. United States* (D.C. App. 1973, 306 A. 2d 268).

— Sufficiency

In prosecution for petty larceny and destruction of property, evidence that one defendant had been apprehended in automobile containing three recently stolen items and tools with which a jury could infer that thefts had been accomplished, together with evidence of common plan and concerted action arising out of inference from defendant's close relationship with his accomplices, one of whom was his brother and codefendant, and from defendant's conduct in connection with a second codefendant on morning of arrest at which time police had observed both men peering through windows of parked automobiles, was sufficient for jury on issue of defendant's culpability. *M. Childress v. United States* (D.C. App. 1977, 381 A. 2d 614).

Where the Government, in prosecution for attempted petit larceny, alleged the complainant's corporate status in the information and offered evidence that the complainant was licensed to do business in the District of Columbia, and where such facts were also of general knowledge the evidence adduced was sufficient to establish that the complainant had a greater possessory interest in its merchandise than did the defendant, and as the Government thus put some evidence of complainant's corporate status in the record, it met its burden of proving the complainant's possession as an element of the offense. *A. B. Moss v. United States* (D.C. App. 1977, 368 A.2d 1131).

In prosecution for grand larceny, evidence that original cost of stolen coat was \$150 and exhibition of such coat is insufficient to establish minimum value required for grand larceny, and cause would be remanded for entry of judgment of conviction to charge of petty larceny. *B. E. Wilson v. United States* (D.C. App. 1976, 358 A.2d 324).

Act of defendant in transferring dresses from a rack near wall to a rack near door of store and in distracting a sales employee thereafter through conversation serves to demonstrate defendant's direct involvement in larcenous offense that occurred when one of defendant's companions left store with a number of dresses similar in color to ones defendant had transferred to rack near door. *G. E. Baxter v. United States* (D.C. App. 1976, 352 A.2d 383).

Evidence was not sufficient to support conviction of petit larceny as an aider and abettor by pushing victim at the very time that pickpocket pushed the victim from the rear and removed victim's wallet from his pocket. *G. G. Quarles v. United States* (D.C. App. 1973, 308 A. 2d 773).

— Suppression

Where defendant, charged with petit larceny, made no pretrial motion to suppress allegedly stolen notebooks which were introduced at trial without objection, any objection to evidence was waived by defendant who claimed on appeal that the notebooks should have been suppressed as having been seized illegally. *T. Grennett v. United States* (D.C. App. 1974, 318 A. 2d 589).

Identification—Lineup

Record discloses that lineup identification was not tainted by any suggestive photographic identification procedure or by police officer's subsequent remark to complainant that person whose photograph he had selected had been driver of car which complainant had stated he saw suspicious person drive away in. *A. L. Fludd v. United States* (D.C. App. 1975, 336 A.2d 539).

— Photographic

Even if procedure followed in photographic identification process was suggestive because defendant's picture was placed last in a book of approximately 50 others, it was not so unduly suggestive as to raise substantial likelihood of irreparable misidentification and does not warrant reversal of conviction. *A. L. Fludd v. United States* (D.C. App. 1975, 336 A.2d 539).

Indictment

In prosecution of counterman in automobile parts store for taking racing camshaft from employer, trial court did not err in allowing petit larceny information to be dismissed and embezzlement information substituted therefor. *H. D. Wittenberg v. United States* (D.C. App. 1976, 366 A.2d 128).

Instructions

Trial court did not commit plain error by instructing jury under test of insanity which defense counsel specifically requested and which was given over the objection of the Government, despite defendant's contention on appeal that wrong test was given in instruction. *P. Shanahan v. United States* (D.C. App. 1976, 354 A.2d 524).

Jencks Act

Trial court did not err in denying defendant's motion to strike suppression hearing testimony of sole government witness, a police officer, for failure of Government to comply with Jencks Act, where neither of forms of which defendants asserted they had been improperly deprived, an arrest form and a rights card, contained a "statement" within Jencks Act and nothing written on either form was related to subject matter of officer's testimony. *M. Childress v. United States* (D.C. App. 1977, 381 A.2d 614).

Investigating officer's drawing of scene of crime does not constitute a "statement" within Jencks Act; thus no Jencks Act sanction was warranted when Government was unable to produce the drawing upon request because prosecutor, on whose request the drawing had been made, had thrown it away after deciding that a larger map would be preferable for jury display. *T. E. Tansimore, Jr. v. United States* (D.C. App. 1976, 355 A.2d 799).

In prosecution for petit larceny, failure of prosecution to provide defense counsel, who had requested all Jencks Act materials with original form on which special officer employed by store had initially recounted alleged shoplifting incident did not entitle defendant to hearing concerning existence and location of the original form and did not require that special officer's testimony be struck where, inter alia, original form was not within possession of prosecution and defense counsel had been furnished with a subsequent form which was a copy of the original with certain details added and grammatical changes made. *B. A. Johnson v. United States* (D.C. App. 1974, 322 A.2d 590).

Jury

Even if trial court was correct in concluding that jury had been prejudiced, it went too far in dismissing indictment; proper remedy for trial before presumably tainted jury is new trial before impartial one. *United States v. P. J. Harvey* (D.C. App. 1977, 377 A.2d 411).

Miranda rights

Where witness was given comprehensive warnings concerning his right to remain silent and other constitutional rights before he testified before grand jury concerning its investigation of theft of motorcycle, such grand jury testimony can properly be used against defendant in his own subsequent trial for theft of such motorcycle despite fact that he was not warned before his grand jury testimony that he himself was suspected of the wrongdoing under investigation. *United States v. G. V. Washington* (1977, 97 S.Ct. 1814, 431 U.S. 181; rev'g 328 A.2d 98).

Incriminating statement which was made by juvenile at police station after he had indicated unwillingness to answer any questions by police but which was made in response to question asked by his stepfather and not question asked by police is admissible, despite contentions that statement was elicited in violation of juvenile's Miranda rights and that statement was not voluntary. *In the Matter of C.P.D.* (D.C. App. 1976, 367 A.2d 133).

Peremptory challenges

Defendant who was charged with petit larceny, a misdemeanor for which maximum punishment was one year, was entitled to only the three peremptory charges available to defendant charged with such an offense notwithstanding fact that Government had filed notice that, if convicted, defendant would be subjected to additional penalties of the third offender statute. *C. E. Tatum v. United States* (D.C. App. 1974, 330 A.2d 522).

Probable cause

Under circumstances, police officers' good-faith reliance on radio report and the resultant reasonable belief that valid traffic warrants were outstanding provided probable cause to arrest motorist, notwithstanding that motorist had posted collateral for his outstanding traffic warrants prior to arrest in question, where warrants were valid at least until motorist had posted collateral to satisfy them and four-day delay, two days of which were attributable to the weekend, were caused by administrative delay attendant to operation of any metropolitan area police department. *M. Childress v. United States* (D.C. App. 1977, 381 A.2d 614).

Where police officers, accompanied by neighbor and owner of car from which battery had been stolen a short time before, came upon two men, immediately identified as the thieves by the passengers in the police car, working with battery cables under the raised hood of a car, the police officers had probable cause both to arrest defendant and his companion and to search the car for the stolen battery. *D. M. Robinson v. United States* (D.C. App. 1974, 322 A.2d 271).

Where officer observed accused looking or searching behind desk in room of office building and observed him depart as soon as officer's presence become known and accused answered "Nothing" when officer addressed defendant outside building and asked him what he had been doing in the office, officer had probable cause to arrest accused and fruits of larcenies seized from accused's person incident to the arrest were admissible. *W. Arrington v. United States* (D.C. App. 1973, 311 A.2d 838).

Prosecution

Had defendant, charged with misdemeanor of petit larceny, been entitled to have prosecution commenced by way of indictment, because of possible imposition of more than one year sentence under recidivist statute, failure to so prosecute would have constituted plain error requiring reversal, in absence of waiver. *E. Smith v. United States* (D.C. App. 1973, 304 A.2d 28; cert. denied 94 S. Ct. 846, 414 U.S. 1114).

Review—Record on appeal

Where there was nothing to indicate cause of delay between appointment of counsel on November 11, 1971 and status call on March 1, 1972, where there was no information concerning parole revocation proceedings involving defendant and Court of Appeals was left to speculate as to whether court-appointed counsel aided defendant in these proceedings and was therefore unable to avoid delay and where record did not indicate whether government's complaining witness, who was unavailable for March 17, 1972 trial date, was unavailable for entire period until August 31, 1972 trial, record was inadequate to determine whether defendant was denied his right to speedy trial, and record would be remanded for supplementation. *United States v. D. E. Douglas* (1973, 488 F.2d 1331, 160 U.S. App. D.C. 7).

Search and seizure

Motorist's lawful arrest legitimized the officers' presence at point of observation and under circumstances, including observation of motorist and others looking into automobiles coupled with condition of property, specifically protruding wires, and its proximity to a screwdriver, wire cutters and a hanger, police had requisite probable cause to seize the items which they observed in plain view, notwithstanding lack of search warrant. *M. Childress v. United States* (D.C. App. 1977, 381 A.2d 614).

Evidence disclosing that motorist insisted that he had purchased what he possessed, stated that he had nothing to hide and, consistent with this position, helped officers open his jammed truck lock with his own screwdriver

supported finding of consent to search trunk of automobile. *Id.*

Where police officer went to defendant's apartment in response to call that there was found property on premises, rather than to investigate criminal activity or to make arrest, and woman who met him at door invited him inside and showed him some cases of beer that she had found on back porch, there was no search within scope of Fourth Amendment; officer was legally entitled to seize beer after he then received information that beer had been stolen from a train. *United States v. J. A. Gaskin* (D.C. App. 1977, 368 A.2d 1138).

Sentence

Eighteen months' sentence for petit larceny, a misdemeanor, did not constitute punishment for the offense itself and thus did not cause the noninfamous offense, which may be prosecuted by information, to be transformed later to an infamous offense which must be prosecuted by indictment, unless waived. *E. Smith v. United States* (D.C. App. 1973, 304 A. 2d 28; cert. denied 94 S. Ct. 846, 414 U.S. 1114).

Where, at sentencing proceeding, trial court neglected to clearly inform defendant of prior convictions allegedly warranting enhancement of punishment on conviction of petit larceny or to inquire whether defendant affirmed or denied each conviction and court merely inquired of defendant regarding a prior petit larceny conviction not listed in pretrial information, which conviction she affirmed, 18 months' sentence was required to be set aside and case remanded for resentencing, notwithstanding that defendant had failed to file written answer to information. *Id.*

Trial court did not erroneously fail to sentence youth under Federal Youth Corrections Act for misdemeanors he had admitted committing, where trial court expressly found that youth, who had committed the misdemeanors in question while still awaiting sentence by United States district court for attempted robbery and who had left without permission a development center and a halfway house while awaiting determination of armed robbery charges, was unlikely to be rehabilitated by Youth Corrections Act treatment. *R. J. Hubb v. United States* (D.C. App. 1972, 298 A. 2d 512).

Severance

Denial of motion for severance in prosecution for petit larceny was not an abuse of discretion in absence of evidence demonstrating a conflict in defenses so prejudicial that a substantial possibility existed that jury inferred that conflict alone demonstrated guilt of defendant as well as his codefendant. *C. E. Baxter v. United States* (D.C. App. 1976, 352 A.2d 383).

Speedy trial

Delay of approximately 11 months between indictment and trial, which initially was caused by defendant's confusion of his counsel situation, and which thereafter was contributed to by combination of heavy calendar of the judge and the necessity of trying prior scheduled cases, the impossibility for a long period of securing attendance of complaining witness, judge's commitment to official duties, and to minor extent by the absence on vacation of defendant's counsel, was insufficient to constitute a denial of defendant's right to a speedy trial, in absence of any prejudice. *United States v. D. E. Douglas* (1974, 504 F. 2d 213, 164 U.S. App. D.C. 144).

Evaluating alleged deprivation of right to speedy trial requires a careful balancing in which conduct of both government and defendant are weighed; relevant factors include length of delay, reason for delay, defendant's assertion of his right, and prejudice to defendant. *United States v. D. E. Douglas* (1973, 488 F. 2d 1331, 160 U.S. App. D.C. 7).

Witnesses—Access by defense counsel

It is not violation of due process rights of defendant charged with shoplifting and receiving stolen goods for officer of complaining supermarket to order subordinate security police not to discuss case with defendant's counsel unless United States attorney was present. *United States v. R. N. McDougald* (D.C. App. 1976, 350 A.2d 375).

§ 22-2203. Larceny after trust.

NOTES TO DECISIONS

Inconsistent offenses

Defendant, who was charged with grand larceny, larceny after trust and false pretenses, could be convicted of both grand larceny and false pretenses for each of seven transactions set forth in indictment and inconsistency would have arisen only if he had been convicted of larceny after trust, which would have required finding that defendant's original acquisition of victim's property was legal and did not involve an unlawful taking, in addition to grand larceny or false pretenses, both of which required jury to conclude that original acquisition of property was unlawful. *S. Fowler v. United States* (D.C. App. 1977, 374 A. 2d 856).

Instructions

In prosecution under this section, giving instruction which correctly stated that evidence of similar criminal acts was admissible to prove intention but which was overly broad in further stating that evidence was admissible on general questions of motive, identity, absence of mistake or inadvertence, or to show common scheme or purpose was not prejudicial error. *J. R. Gay v. United States* (D.C. App. 1969, 259 A. 2d 593; see also 93 S. Ct. 2152, 411 U.S. 974).

Joinder

Where various offenses which congealed in indictment were all of a piece in that, taken together, they composed elements of a common scheme of deception which ultimately separated all four victims from their money, and individual fraudulent schemes were probative of each other and evidence of each would have been admissible in trial of the others had they been tried separately, trial court did not abuse its discretion in proceeding on unsevered indictment charging defendant with seven counts of grand larceny, seven counts of larceny after trust and seven counts of false pretenses. *S. Fowler v. United States* (D.C. App. 1977, 374 A. 2d 856).

§ 22-2204. Unauthorized use of vehicles.

(a) Any person who, without the consent of the owner, shall take, use, operate, or remove or cause to be taken, used, operated, or removed, from a garage, stable, or other building, or from any place or locality on a public or private highway, park, parkway, street, lot, field, enclosure, or space, a motor vehicle, and operate or drive or cause the same to be operated or driven for his own profit, use, or purpose shall be punished by a fine not exceeding \$1,000 or imprisoned not exceeding five years, or both such fine and imprisonment.

(b) (1) It shall be a violation of this subsection for any person, after renting, leasing, or using a motor vehicle under a written agreement which provides for the return of the vehicle to a particular place at a specified time, to knowingly fail to return the vehicle to such place (or to any authorized agent of the party from whom the vehicle was obtained under the agreement), within eighteen days after written demand is made for its return, if the conditions set forth in paragraph (2) are met. Any person who violates this subsection shall be fined not more than \$1,000 or imprisoned not more than three years, or both.

(2) The conditions referred to in paragraph (1) are as follows:

(A) The written agreement under which the motor vehicle is obtained contains the following statement: "WARNING—failure to return this vehicle in accordance with the terms of this rental agreement may result in a criminal penalty of up

to three years in jail". Such statement shall be clearly and conspicuously printed in a contrasting color, set off in a box, and signed by the person obtaining the motor vehicle in a space specially provided.

(B) There is clearly and conspicuously displayed on the dashboard of the motor vehicle the following notice: "NOTICE—failure to return this vehicle on time may result in serious criminal penalties."

(C) The party from whom the motor vehicle was obtained under the agreement makes a written demand for the return of the vehicle, either by actual delivery to the person who obtained the vehicle, or by deposit in the United States mails of a postpaid registered or certified letter, return receipt requested, addressed to such person at each address set forth in the written agreement or otherwise provided by such person. Such written demand shall clearly state that failure to return the vehicle may result in prosecution for violation of the criminal law of the District of Columbia punishable by up to three years in jail. Such written demand shall not be made prior to the date specified in the agreement for the return of the vehicle, except that, if the parties or their authorized agents have mutually agreed to some other date for the return of the vehicle, then such written demand shall not be made prior to such other date.

(3) This subsection shall not apply in the case of a motor vehicle obtained under a retail installment contract as defined in paragraph (9) of section 40-901.

(4) It shall be a defense in any criminal proceeding brought under this subsection that a person failed to return a motor vehicle for causes beyond his control. The burden of raising and going forward with the evidence with respect to such defense shall be on the person asserting it. In any case in which such defense is raised, evidence that the person obtained the vehicle by reason of any false statement or representation of a material fact, including a false statement or representation regarding his name, residence, employment, or operator's license, shall be admissible to determine whether the failure to return such vehicle was for causes beyond his control.

(c) For the purposes of this section the terms "motor vehicle" and "vehicle" mean any automobile, self-propelled mobile home, motorcycle, truck, truck tractor, truck tractor with semi or full trailer, or bus. (Mar. 3, 1901, ch. 854, § 826b, as added Feb. 3, 1913, 37 Stat. 656, ch. 23, § 1; and amended Oct. 17, 1976, Pub. L. 94-526, 90 Stat. 2479.)

AMENDMENT

1976—Act Oct. 17, 1976, Pub. L. 94-526, amended section generally. For prior provisions, see the 1973 edition of the Code.

NOTES TO DECISIONS

Arrest

Where, after being stopped for having run stop sign, defendant was unable to furnish officers with either driver's permit or vehicle registration and police were unable to verify ownership by other means because of computer malfunction, police had probable cause to believe that vehicle was being used without authorization and to ar-

rest defendant on that basis. *R. A. Botts v. United States* (D.C. App. 1973, 310 A.2d 237).

Construction

This section penalizing any person who, without consent of owner, shall take, use, operate or remove, etc., motor vehicle is intended to punish "joy riding." *J. T. Allen v. United States* (D.C. App. 1977, 377 A.2d 65; cert. denied 98 S. Ct. 645, — U.S.—).

Defense

Testimony by accused that he believed car in question had been abandoned is relevant to specific intent offense but such testimony is not, per se, a defense to charge of unauthorized use of motor vehicle. *C. Williams v. United States* (D.C. App. 1975, 337 A.2d 772).

Double jeopardy

Where trial court declared mistrial without defendant's consent after jury was impaneled because of defense counsel's improper remarks to jury during opening statement and because defense counsel had not talked to defendant, had not interviewed crucial and available witness, was unaware of possible inconsistent statements made by defendant at time of his arrest and had, in sum, made no preparation for trial, double jeopardy does not bar a retrial. *J. Wright v. United States* (D.C. App. 1976, 365 A.2d 365).

Juvenile, whose counsel had secured oral ruling of acquittal on charge of unauthorized use of a motor vehicle, had waived any potential double jeopardy claim when his trial counsel acquiesced in continuation of hearing and reopening of count when registered owner of vehicle appeared in courtroom. *In the Matter of J. A. H.* (D.C. App. 1974, 315 A.2d 825).

Even if double jeopardy claim had not been waived by defense counsel's failure to object to reopening following oral granting of motion for judgment of acquittal, such reopening would not have placed juvenile in double jeopardy since oral ruling was not equivalent to a final, written judgment. *Id.*

Elements of offense

This section penalizing person who, without consent of owner, shall take, use, operate or remove, etc., motor vehicle does not require notice of precise point from which vehicle is removed nor of precise point to which vehicle is removed, and, at least in absence of motion for bill of particulars, indictment charging that defendant at specified time used, operated and drove automobile of named owner, without his consent and for defendant's own profit, use, and purpose is sufficient. *J. T. Allen v. United States* (D.C. App. 1977, 377 A.2d 65; cert. denied 98 S.Ct. 645,—U.S.—).

Evidence

In delinquency proceeding where juvenile was charged with unauthorized use of a vehicle, testimony of police officer that defendant resided in Laurel, Maryland, and that one of other youths in vehicle had told officer that white shoes found in vehicle belonged to juvenile's sister and that juvenile had been wearing them was hearsay and should not have been admitted, but error in admitting testimony is not prejudicial, where juvenile's place of residence was a matter of record which could be noticed by court, and evidence in respect to shoes was probative of nothing more than that juvenile was a passenger in vehicle, a fact that was established by other admissible evidence and was not contested at trial. *In the Matter of T. T. B.* (D.C. App. 1975, 333 A.2d 671).

— Admissibility

In prosecution for unauthorized use of motor vehicle stemming from use of government motor pool car for personal purposes, admission of evidence of five prior instances of car misuse, which had not been adjudicated, nor connected through evidence with defendant, was unduly prejudicial to case, due to Government's repeated reference thereto, effect of which was to paint picture of defendant constantly misusing government vehicle, and facts that defendant was on trial for one offense and was in no position to defend against other unprosecuted crimes and that no limiting cautionary instructions were

given to jury in reference to use to be made of such evidence. *G. P. Light v. United States* (D.C. App. 1976, 360 A.2d 479).

Where witness testified at trial with full memory of what she had observed at the time of the crime, report made by police woman who had recorded what the witness had told her at the scene of the crime cannot be admitted into evidence as past recollection recorded. *J. F. Wright v. United States* (D.C. App. 1976, 360 A.2d 41).

—Hearsay

Once submitted without objection, hearsay testimony directly material to prosecution's proof of various offenses with which defendant was accused could properly be accorded full weight of all other material testimony. *L. R. Wilson v. United States* (D.C. App. 1976, 357 A.2d 861).

—Sufficiency

Evidence in delinquency proceeding, such as circumstance that juvenile, who was a passenger in a stolen automobile, fled from scene at time vehicle was halted by police and, upon apprehension after a chase of several blocks, made two attempts to free himself, establishes guilty knowledge necessary to establish offense of unauthorized use of a vehicle. *In the Matter of T. T. B.* (D.C. App. 1975, 333 A.2d 671).

Testimony by two police officers that they saw defendant take gun from his belt and replace it, that they saw defendant enter driver's side of a van, subsequently found to be stolen, that they subsequently saw three men standing near the van with defendant closest to it, and testimony by one of the two officers that he saw defendant drop the gun sustained defendant's convictions for unauthorized use of a motor vehicle and carrying a pistol without a license. *D. R. Reed v. United States* (D.C. App. 1973, 312 A. 2d 775).

Evidence that defendant drove off in car owned by another, which was parked in parking lot with keys in ignition, without permission of owner, supported conviction of defendant of grand larceny and unauthorized use of vehicle. *P. T. Fredericks v. United States* (D.C. App. 1973, 306 A. 2d 268).

Identification

Testimonial references to robbery victim's pretrial photographic identification of defendant did not unfairly prejudice defendant on theory that it suggested a history of prior difficulty with the law. *L. R. Wilson v. United States* (D.C. App. 1976, 357 A.2d 861).

Indictment

This section penalizing person who, without consent of owner, shall take, use, operate or remove, etc., motor vehicle does not require notice of precise point from which vehicle is removed nor of precise point to which vehicle is removed, and, at least in absence of motion for bill of particulars, indictment charging that defendant at specified time used, operated and drove automobile of named owner, without his consent and for defendant's own profit, use and purpose is sufficient. *J. T. Allen v. United States* (D.C. App. 1977, 377 A. 2d 65; cert. denied 98 S. Ct. 645,—U.S.—).

Inferences

In delinquency proceeding wherein juvenile was charged with unauthorized use of a vehicle, a justifiable inference of consciousness of guilt can be drawn from evidence of juvenile's initial flight from stolen vehicle and his later attempts to pull away from arresting officer and to leave police cruiser. *In the Matter of T. T. B.* (D.C. App. 1975, 333 A.2d 671).

Jury could draw an inference of guilt, in prosecution for unauthorized use of motor vehicle and for receiving stolen property, from defendant's possession of stolen vehicle approximately six weeks after it was taken, where court made it clear in its instructions that jury was not required to draw any inferences, that possession of recently stolen property did not shift the Government's burden of proof, and that the inference was forbidden if defendant's possession of the property was satisfactorily explained by independent evidence or by his own testimony. *A. Fleming, Jr. v. United States* (D.C. App. 1973, 310 A. 2d 214).

Instructions

Whatever prejudice might have followed from use of "innocence" for "not guilty" in supplemental instruction was overcome by trial court's previous unequivocal explanation of manner in which jury was to reach a decision, either favorable or unfavorable to defendant, and, in any event, use of "innocence" did not create such clear prejudice to defendant's substantial rights as to allow notice of matter which was not raised in trial court. *L. R. Wilson v. United States* (D.C. App. 1976, 357 A.2d 861).

Defendant's request that trial court submit list of charges to jury without comment was insufficient to constitute a proper objection to specific content of supplemental instruction which followed rejection of request. *Id.*

Where defendant testified that he had been employed when arrested and prosecutor was unsuccessful in his attempt on cross-examination to produce proof that defendant had told bail agencies he was unemployed at that time, a cautionary instruction is not required. *Id.*

Evidence in prosecution for unauthorized use of motor vehicle did not warrant instruction on theory that accused lacked requisite criminal intent if he believed that automobile he was using had been abandoned. *C. Williams v. United States* (D.C. App. 1975, 337 A.2d 772).

Instruction in prosecution for unauthorized use of a motor vehicle and for receiving stolen property, which stated that an act is done knowingly if it is done voluntarily and purposefully and not because of mistake, inadvertence, or accident, was consistent with defendant's defense that he was buying the vehicle, and absence of further elaboration did not amount to plain error since there would seem to be no possible way a jury could find the specific intent necessary to find defendant guilty of crime of receiving stolen property without finding the use and operation of the stolen vehicle anything but "unauthorized" as that term appeared in statute. *A. Fleming, Jr. v. United States* (D.C. App. 1973, 310 A. 2d 214).

Intent

Sanity, as distinct from intent, is not element of either grand larceny or of unauthorized use of vehicle, nor does proof of insanity negate intent; instead, lack of sanity relieves a defendant of criminal responsibility for committing offense. *United States v. A. R. Tyler* (D.C. App. 1977, 376 A. 2d 798).

Jury

Jury selection method whereby no juror from venire was allowed into box to replace juror struck until each round had been completed denied on last round defendant's right to reject jurors and hence violated defendant's statutory right to exercise ten peremptory challenges, requiring reversal of conviction of unauthorized use of motor vehicle. *T. S. Butler v. United States* (D.C. App. 1977, 377 A. 2d 54).

Where defendant charged with receiving stolen property and unauthorized use of vehicle was denied opportunity to inquire on voir dire as to whether jurors would give greater credence to testimony of police officer merely because he was police officer than to any other witness, conviction would be set aside. *B. Harvin, Jr. v. United States* (D.C. App. 1972, 297 A. 2d 774).

Jury question

Issue of guilt of defendant, who was charged with unauthorized use of a motor vehicle and of receiving stolen property, was properly submitted to jury where evidence presented, including fact that defendant was arrested while driving stolen vehicle approximately six weeks after it was taken, was such that reasonable minds might fairly have a reasonable doubt or might not have such a doubt. *A. Fleming, Jr. v. United States* (D.C. App. 1973, 310 A. 2d 214).

Review

Since juvenile's counsel, who had previously secured oral ruling of acquittal on charge of unauthorized use of a motor vehicle, did not object to reopening of such count when registered owner of vehicle appeared in courtroom, scope of review was limited to determination of whether

reopening constituted plain error. *In the Matter of J. A. H.* (D.C. App. 1974, 315 A. 2d 825).

— Record on appeal

Where there was nothing to indicate cause of delay between appointment of counsel on November 11, 1971 and status call on March 1, 1972, where there was no information concerning parole revocation proceedings involving defendant and Court of Appeals was left to speculate as to whether court-appointed counsel aided defendant in these proceedings and was therefore unable to avoid delay and where record did not indicate whether government's complaining witness, who was unavailable for March 17, 1972 trial date, was unavailable for entire period until August 31, 1972 trial, record was inadequate to determine whether defendant was denied his right to speedy trial, and record would be remanded for supplementation. *United States v. D. E. Douglas* (1973, 488 F. 2d 1331, 160 U.S. App. D.C. 7).

Search and seizure

Where arrestee requested his leather jacket from closet and stepped forward to a point within three or four feet of closet before he was stopped, he thus brought within his immediate control the area where sawed-off shotgun was concealed in partially open suitcase, even though arrestee's arms were handcuffed in front of him, and agent, as incident to arrest, was justified in conducting a warrantless search of the suitcase and in seizing sawed-off shotgun found therein. *United States v. D. C. Mason* (1975, 523 F. 2d 1122, 173 U.S. App. 173).

Sentence

Where trial judge intended to incarcerate defendant pursuant to guilty plea to unauthorized use of a motor vehicle and false pretenses and did not intend to grant probation, trial judge did not err in amending judgment and commitment orders which originally provided for commitment under section of Federal Youth Corrections Act providing for probation so as to conform written orders to sentence of incarceration which was pronounced in open court. *W. P. Rich v. United States* (D.C. App. 1976, 357 A. 2d 421).

Speedy trial

Delay of approximately 11 months between indictment and trial, which initially was caused by defendant's confusion of his counsel situation, and which thereafter was contributed to by combination of heavy calendar of the judge and the necessity of trying prior scheduled cases, the impossibility for a long period of securing attendance of complaining witness, judge's commitment to official duties, and to minor extent by the absence on vacation of defendant's counsel, was insufficient to constitute a denial of defendant's right to a speedy trial, in absence of any prejudice. *United States v. D. E. Douglas* (1974, 504 F. 2d 213, 164 U.S. App. D.C. 144).

Evaluating alleged deprivation of right to speedy trial requires a careful balancing in which conduct of both government and defendant are weighed; relevant factors include length of delay, reason for delay, defendant's assertion of his right, and prejudice to defendant. *United States v. D. E. Douglas* (1973, 488 F. 2d 1331, 160 U.S. App. D.C. 7).

§ 22-2205. Receiving stolen goods.

CROSS REFERENCE

Bringing stolen property into District, see § 22-108.

NOTES TO DECISIONS

Arrest

Plainclothes police officer had probable cause to arrest defendant for felony upon seeing defendant and companion at around 2 o'clock a.m. on deserted sidewalk of residential neighborhood carrying tape recorder, amplifier, stand, and bag containing other articles, and observing defendant and companion run as soon as he identified himself as police officer and announced that he wished to talk to them; officer's lack of knowledge then of specific crime having been committed did not preclude him from having probable cause to arrest given lateness of hour, appearance of articles being carried by defendant and

companion, and their flight when he identified himself, *G. R. Edwards v. United States* (D.C. App. 1977, 379 A. 2d 976).

Attempt

Defendant, who received a television set, which in fact had not been stolen, after having been advised that the set was a stolen set, did not commit crime of attempted receiving stolen property, since an unsuccessful attempt to do that which is not a crime cannot be held to be an attempt to commit crime specified. *United States v. F. Hair* (1973, 356 F. Supp. 339).

Corporate property

When ownership of stolen property is claimed to be in a corporation, such claim must be supported by evidence. *R. W. Atkinson v. United States* (D.C. App. 1974, 322 A. 2d 587).

The existence of a corporation, as a victim of theft, may be proven by production of a charter or certificate of incorporation, by a license to do business, or by parol evidence of incorporation or of user or reputation. *Id.*

Elements of offense

Where prosecution failed to establish the corporate existence of corporation from which pistol was allegedly stolen, it failed to establish an essential element of proof against defendant who allegedly received stolen property by taking the pistol. *R. W. Atkinson v. United States* (D.C. App. 1974, 322 A. 2d 587).

Where there was an unexplained possession of recently stolen property, it was unnecessary for government to prove amount defendant paid for property, since amount paid was not an element of crime, and hence it was not improper to refuse defendant's proposed instruction that government was required to prove specific amount of money paid in order to show knowledge and intent. *M. H. Barnes, Sr. v. United States* (D.C. App. 1973, 313 A. 2d 106).

Offense of receiving stolen property is composed essentially of four elements: (1) the property must be received, (2) at the time of its receipt the property must be stolen, (3) the receiver must have guilty knowledge that it is stolen property, (4) his intent in receiving it must be fraudulent. *L. E. Brown v. United States* (D.C. App. 1973, 304 A. 2d 21).

Evidence—Admissibility

Where defendant, being held on suspicion of driving automobile without authorization of owner, had not been informed that anything he said could be used against him or that lawyer would be provided for him if he could not afford one, false statement by defendant to officers during questioning that stolen driver's permits found in automobile belonged to his girl friend was not admissible into evidence, though defendant was allegedly "no stranger to the criminal process." *R. A. Botts v. United States* (D.C. App. 1973, 310 A. 2d 237).

— Sufficiency

Evidence is sufficient to sustain conviction of receiving stolen property. *M. E. Charles v. United States* (D.C. App. 1977, 371 A. 2d 404).

The unexplained possession of recently stolen property is sufficient to sustain conviction of receiving stolen property. *M. L. Banks v. United States* (D.C. App. 1976, 359 A. 2d 8).

In prosecution for receiving stolen property, proof of both monetary cost of stolen automobile license tags allegedly received by defendant and fact that tags were current is sufficient to establish that tags had value and to support defendant's conviction. *F. P. Jones v. United States* (D.C. App. 1975, 345 A. 2d 144).

Evidence that juvenile took possession of stolen credit card when automobile in which he was riding was stopped by the police, that he furtively attempted to conceal it under the armrest of the automobile, that he denied having credit card in his possession when asked to hand it over to police officer, that, after card was retrieved by the officer, juvenile disclaimed knowledge of who owned it, and that the credit card was in fact stolen sustains finding that juvenile feloniously possessed stolen goods with specific intent to defraud. *In the Matter of V. L. M.* (D.C. App. 1975, 340 A. 2d 818).

Since stolen property which juvenile was accused of possessing, a currently usable credit card, is of obvious monetary value to its owner and to anyone who might attempt to use it to obtain gasoline on credit and since court found juvenile to have committed only a misdemeanor by finding that the card had no value in excess of \$100, finding of delinquency is not improper on theory that government failed to show the value of the stolen credit card. *Id.*

Where Government showed that defendant had in his possession approximately 2,000 blank government identification cards but Government failed to introduce any evidence that the goods had been stolen, it did not meet its burden of proving beyond a reasonable doubt an element of offense of receiving stolen property. *L. E. Brown v. United States* (D.C. App. 1973, 304 A. 2d 21).

Fair trial

Where motion for new trial was accompanied by sworn affidavit of defense counsel that several jurors had told him that they had learned of defendant's arrest on an unrelated charge and had seen defendant being led away in handcuffs, trial court should have explored question of prejudice by examining jurors as to their knowledge, if any, of defendant's arrest and handcuffing while trial was still in progress and, in failing to do so, abused its discretion since such an occurrence was needless and may have been an impingement on defendant's right to a presumption of innocence. *D. A. Wilson v. United States et ano.* (D.C. App. 1977, 380 A. 2d 1001).

Where Government's case in prosecution for forgery, uttering and receiving stolen property rested on documents and unchallenged identification of accused, seven-month nondeliberate delay between date of such offenses and accused's arrest did not deprive accused of fair trial in violation of due process, notwithstanding contentions that if accused had been charged more promptly, he might have remembered what he was doing when he was accused of being in certain shop and could have located "former marine buddy" who assertedly accompanied accused to a second shop. *G. Hurt v. United States* (D.C. App. 1974, 314 A. 2d 489).

Indictment

District Court properly refused to dismiss indictment for distribution of cocaine and for receiving stolen property on ground that tape recording of preliminary hearing testimony had been accidentally erased by re-recording company from which magistrate's office had requested transcript, where there was no reason to believe that defense was in any way prejudiced by unavailability of the transcript. *United States v. R. R. Carpenter* (1975, 510 F.2d 738, 166 U.S. 166 U.S. App. 358).

Fact that suffix "Sr." was not affixed to defendant's name in indictment charging receiving of stolen goods was not prejudicial and fatal to indictment. *M. H. Barnes, Sr. v. United States* (D.C. App. 1973, 313 A. 2d 106).

Inferences

Where defendant was observed driving stolen taxicab 23 days after theft, presumption arising from unexplained possession of recently stolen property can be applied. *M. E. Charles v. United States* (D.C. App. 1977, 371 A.2d 404).

Jury could draw an inference of guilt, in prosecution for unauthorized use of motor vehicle and for receiving stolen property, from defendant's possession of stolen vehicle approximately six weeks after it was taken, where court made it clear in its instructions that jury was not required to draw any inferences, that possession of recently stolen property did not shift the Government's burden of proof, and that the inference was forbidden if defendant's possession of the property was satisfactorily explained by independent evidence or by his own testimony. *A. Fleming, Jr. v. United States* (D.C. App. 1973, 310 A. 2d 214).

Instructions

Trial court did not err when, in giving instruction on inferences which could be drawn from possession of recently stolen property, it failed to indicate that knowledge of defendant that property was stolen was an element of crime. *D. A. Wilson v. United States et ano.* (D.C. App. 1977, 380 A. 2d 1001).

In prosecution for, inter alia, receiving stolen property, jury charge on inference arising from unexplained possession of recently stolen property, viewed as a whole, was not inadequate, notwithstanding contentions that charge failed specifically to inform jurors that they were at liberty not to draw such inference, and that it shifted burden of proof to defendant. *M. E. Charles v. United States* (D.C. App. 1977, 371 A.2d 404).

Instruction which served purpose of warning jury against determining weight of evidence solely on basis of number of witnesses testifying on either side was not required where defense elected not to introduce any witnesses. *M. H. Barnes, Sr. v. United States* (D.C. App. 1973, 313 A. 2d 106).

Instruction in prosecution for unauthorized use of a motor vehicle and for receiving stolen property, which stated that an act is done knowingly if it is done voluntarily and purposefully and not because of mistake, inadvertence, or accident, was consistent with defendant's defense that he was buying the vehicle, and absence of further elaboration did not amount to plain error since there would seem to be no possible way a jury could find the specific intent necessary to find defendant guilty of crime of receiving stolen property without finding the use and operation of the stolen vehicle anything but "unauthorized" as that term appeared in statute. *A. Fleming, Jr. v. United States* (D.C. App. 1973, 310 A. 2d 214).

Joinder

Joinder of receiving stolen property count with forgery and uttering counts was not prejudicial misjoinder where all counts related to offenses at certain shop, where evidence on all counts was sufficient for jury and where, though evidence was elicited as to accused's use of stolen credit card at another shop, such evidence was probative as corroborative of handwriting evidence and limiting instruction was given. *G. Hurt v. United States* (D.C. App. 1974, 314 A. 2d 489).

Jury

Where defendant charged with receiving stolen property and unauthorized use of vehicle was denied opportunity to inquire on voir dire as to whether jurors would give greater credence to testimony of police officer merely because he was police officer than to any other witness, conviction would be set aside. *B. Harvin, Jr. v. United States* (D.C. App. 1972, 297 A. 2d 774).

Jury question

Issue of guilt of defendant, who was charged with unauthorized use of a motor vehicle and of receiving stolen property, was properly submitted to jury where evidence presented, including fact that defendant was arrested while driving stolen vehicle approximately six weeks after it was taken, was such that reasonable minds might fairly have a reasonable doubt or might not have such a doubt. *A. Fleming, Jr. v. United States* (D.C. App. 1973, 310 A. 2d 214).

Miranda rights

Where witness was given comprehensive warnings concerning his right to remain silent and other constitutional rights before he testified before grand jury concerning its investigation of theft of motorcycle, such grand jury testimony can properly be used against defendant in his own subsequent trial for theft of such motorcycle despite fact that he was not warned before his grand jury testimony that he himself was suspected of the wrongdoing under investigation. *United States v. G. V. Washington* (1977, 97 S.Ct. 1814, 431 U.S. 181; rev'g 328 A.2d 98).

New trial

Where there was no indication that prosecution witness' testimony at trial was perjurious, notwithstanding existence of prior inconsistent statement which was undetected or overlooked by defendant at trial, or that acquittal would necessarily follow impeachment of witness through use of said prior inconsistent statements, defendant is not entitled to new trial in interests of justice. *H. S. Huggins v. United States* (D.C. App. 1975, 333 A.2d 385).

Proof

Through indictment charged defendant with receiving as stolen goods one case of vodka one-half pints and one

case of vodka pints, whereas at trial it was shown that both cases of vodka were half-pints, variance was not fatal, absent a showing of prejudice. *M. H. Barnes, Sr. v. United States* (D.C. App. 1973, 313 A.2d 106).

Search and seizure

Where police officer had probable cause to arrest defendant who ran as soon as officer identified himself as police officer and announced that he wished to talk to them, he could properly pursue defendant to effect that arrest, and thus detective's action in arresting defendant and companion inside apartment to which they fled and seizing items they had been carrying, which were in plain view of officer in center of room at time of arrest, was lawful. *G. R. Edwards v. United States* (D.C. App. 1977, 379 A.2d 976).

Where affidavit in support of search warrant described alleged continuing criminal activity involving purchase of stolen property and where officer who sought and obtained search warrant for defendant's automobile delayed six days after verifying ownership of the suspect car before he applied for warrant to search car, situation does not involve such exigent circumstances as to justify a warrantless search of the automobile for the stolen property, even if there was probable cause to search. *N. A. Spence v. United States* (D.C. App. 1977, 370 A.2d 1351).

Warrantless search and seizure which occurred when police officer removed blanket from object which defendant had placed in public hallway while he went next door to make a telephone call and when officer copied serial number from object cannot be justified on basis of a suspicion or hunch on part of officer that a crime had been committed. *United States v. R. F. Boswell* (D.C. App. 1975, 347 A.2d 270).

Police officer's brief observation of defendant carrying a blanket-covered object on street, proximity of defendant to object once he left it unattended in a public hallway, i.e., 20 to 30 feet, and reason for leaving object, i.e., to make a telephone call in an adjacent laundromat, do not reasonably allow an inference of an intent on part of defendant to abandon object and, thus, do not operate to preclude defendant from questioning legality of search and seizure which occurred when officer removed blanket and copied serial number from object. *Id.*

Where police officers watched defendants stalk two female pedestrians at 2:00 in the morning, return to their car, depart abruptly, and lead police officers in high-speed chase, and where one occupant had been seen leaning down in the front seat, police officers were justified in stopping the car and searching under the front seat and behind the glove compartment where stolen, unlicensed pistol was found, after the occupants had been removed from the car. *United States v. J. W. Thomas and W. L. Sutton* (D.C. App. 1974, 314 A.2d 464).

Where officers had probable cause to arrest defendant for unauthorized use of motor vehicle, subsequent search of automobile at station house after defendant stated that vehicle registration must be located there was valid, and stolen driver's permits found during search were admissible in evidence in subsequent trial of defendant on charges of receiving stolen property. *R. A. Botts v. United States* (D.C. App. 1973, 310 A.2d 237).

Sentence

There is no statutory authority for imposing a fine on conviction of felonious offense of receiving stolen property having a value of \$100 or upward. *M. H. Barnes, Sr. v. United States* (D.C. App. 1973, 313 A.2d 106).

Stolen goods

Fact that two cases of stolen vodka were delivered to defendant by a private undercover agent did not mean that vodka lost its character as stolen property and was instead "recovered" property under common-law rule governing receipt of stolen-but-recovered property, where, at time of delivery, agent was acting under direction of a third party as part of that individual's general criminal design, so that delivery was performed as a form of observation and surveillance rather than as a recovery of property on behalf of rightful owner. *M. H. Barnes, Sr. v. United States* (D.C. App. 1973, 313 A.2d 106).

Witnesses—Access by defense counsel

It is not violation of due process rights of defendant charged with shoplifting and receiving stolen goods for

officer of complaining supermarket to order subordinate security police not to discuss case with defendant's counsel unless United States attorney was present. *United States v. R. N. McDougald* (D.C. App. 1976, 350 A.2d 375).

§ 22-2208. Destroying stolen property.

NOTES TO DECISIONS

Elements of offense

Under prohibition of this section of malicious destruction of stolen property, finding that accused intended actual harm which resulted from his wrongful act is not essential prerequisite to existence of "malice," but all that is required is conscious disregard of known and substantial risk of harm which section is intended to prevent. *M. E. Charles v. United States* (D.C. App. 1977, 371 A.2d 404).

Under prohibition of this section of malicious destruction of stolen property, "malice" imports absence of all elements of justification, excuse or recognized mitigation, and presence of either actual intent to cause particular harm which is produced or harm of same general nature, or wanton and wilful doing of act with awareness of plain and strong likelihood that such harm may result. *Id.*

Evidence—Sufficiency

Evidence is sufficient to sustain conviction of malicious destruction of stolen property. *M. E. Charles v. United States* (D.C. App. 1977, 371 A.2d 404).

Instructions

In prosecution for, inter alia, malicious destruction of a stolen automobile, jury instruction that Government was required to prove beyond a reasonable doubt that defendant "knew or had cause to believe that the automobile was stolen," is not plainly erroneous. *M. E. Charles v. United States* (D.C. App. 1977, 371 A.2d 404).

Chapter 23.—LIBEL—BLACKMAIL—EXTORTION

§ 22-2306. Intent to commit extortion by communication of illegal threats and demands—Penalty.

NOTES TO DECISIONS

Evidence—Admissibility

Where contents of transcript of tape recording of statement made by prosecuting witness to police officer does not constitute the observation of firsthand factual knowledge of the officer, the witness whose recollection it assertedly represents, but rather constitutes an unsworn, extrajudicial account given by the complaining witness, the transcript is not admissible under the doctrine of past recollection recorded. *D. B. Tibbs v. United States* (D.C. App. 1976, 359 A.2d 13).

Introduction of transcript of tape recording of statement made by prosecuting witness violates rule that prior consistent statements may not be used to support one's own unimpeached witness and is not harmless error as it resulted in the adding of weight to the complainant's testimony in what could be viewed as Government's standpoint. *Id.*

Jencks Act

Introduction of transcript of tape recording of statement made by prosecuting witness, which tape recording was discovered by prosecution and defense and which transcript was produced pursuant to the Jencks Act, is incompatible with the general purpose of the Act which is to allow defendant access to prior statements of government witnesses for impeachment purposes and not to permit the Government to buttress its case-in-chief. *D. B. Tibbs v. United States* (D.C. App. 1976, 359 A.2d 13).

§ 22-2307. Threatening to kidnap or injure a person or damage his property—Penalty.

NOTES TO DECISIONS

Constitutionality

Where evidence relied upon to prove a felony under this section is identical to evidence needed to show a misdemeanor under section 22-507, this section is not rendered void for vagueness or unconstitutional in any other sense. *United States v. J. Young* (D.C. App. 1977, 376 A.2d 809).

Estoppel

After accused was acquitted of a threat to do bodily harm and bribery and jury "hung" on charge of obstruction of justice, Government is not collaterally estopped from retrying accused on charge of obstruction of justice on theory that verdict of not guilty on "threats" charge determined the issue with respect to identical threats alleged in obstruction of justice charge. *United States v. L. M. Smith* (D.C. App. 1975, 337 A.2d 499).

Indictment

Indictment which follows substantially language of this section and which particularized the date of offending conduct and stated species of unlawful communication at issue, i.e., a threat, is sufficient to charge an offense under the section even though indictment did not contain actual words of alleged threat or allege that threats were made knowingly and intentionally. *United States v. J. Young* (D.C. App. 1977, 376 A.2d 809).

Prosecution

If facts show that conduct constitutes both a felony under this section and a misdemeanor under section 22-507, an election may be made to prosecute under either section; discretion to choose under which section to prosecute is broad and vested in the prosecuting attorney and grand jury. *United States v. J. Young* (D.C. App. 1977, 376 A.2d 809).

Chapter 24.—MURDER—MANSLAUGHTER**§ 22-2401. Murder in the first degree—Purposeful killing—Killing while perpetrating certain crimes.****SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 11-502, 22-2403, 23-546, 24-482.

NOTES TO DECISIONS**Abuse of discretion**

Trial court did not abuse its discretion in denying defendant's request that jury defer rendering a verdict as to him until after resolution of insanity phase of codefendant's bifurcated trial, despite contention that expert medical testimony as to codefendant's mental condition was necessary for defendant's duress defense. *P. Shanahan v. United States* (D.C. App. 1976, 354 A.2d 524).

Trial court's interventions during trial did not deny defendant fair trial where they were neither hostile nor coupled with critical remarks. *T. Turt v. United States* (D.C. App. 1975, 337 A.2d 215).

Appeal and error

Interests of justice did not require remand and retrial of homicide case following Court of Appeals' adoption of a new standard for an insanity defense, where defendant had not been prejudiced by application of the older standard and there was virtually no likelihood that a different result would have obtained had the jury been charged pursuant to the language of the new formulation. *E. Bethea, Jr. v. United States* (D.C. App. 1976, 365 A.2d 64; cert. denied 97 S. Ct. 2979, 433 U.S. 911).

Where issues are raised concerning propriety of federal convictions, and where federal convictions do not affect defendants' maximum terms of imprisonment, federal convictions and sentences may be vacated without decision on such issues. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

Even if trial court's initial ruling restricting closing arguments to deny defense counsel opportunity to argue that defendant was mere bystander at scene of murder was error, it lost aura of harmful error when court did in fact allow substantial closing argument to be made as to the identity of the individual who in fact committed the murder. *T. Peoples v. United States* (D.C. App. 1974, 329 A.2d 446).

Assistance of counsel

Defense counsel's jury summation in murder prosecution did not rise to level of ineffectiveness necessary to show that defendant was deprived of effective counsel; in light of fact that alibi witnesses had seriously contradicted each other, defense counsel's failure to discuss alibi defense could have been strategically motivated. *E. Coleman v. United States* (D.C. App. 1977, 379 A.2d 710).

Judge's effort to appoint a different attorney to case on ground that he considered counsel too inexperienced to try a first-degree murder case does not indicate bias impairing defendant's rights to a fair trial and effective assistance of counsel. *W. Baylor v. United States* (D.C. App. 1976, 360 A.2d 42; cert. denied 97 S.Ct. 643, 429 U.S. 1024).

Trial judge, when informed by attorney for defendant that he wished to withdraw because his client was going to take the stand and testify in a manner which the attorney knew to be false, should have, before certifying the case to another judge, ruled dispositively on the motion to withdraw rather than leaving that decision for the judge to whom the case was being transferred and should not have directed the second judge to refrain from inquiring into the grounds for the motion. *G. F. Thornton v. United States* (D.C. App. 1976, 357 A.2d 429; cert. denied 97 S. Ct. 644, 429 U.S. 1024).

Attorney who was fully prepared and intimately acquainted with the details of the case and who considered defendant's pro se motions but decided against them because he thought that there was no merit did not render ineffective assistance of counsel. *Id.*

Where attorney's ethical conflict, which resulted in his making motion for leave to withdraw because he knew that his client would testify falsely, arose after he considered advisability of filing certain pretrial motions, defendant was not denied effective assistance of counsel on theory that counsel's desire to withdraw obstructed presentation of a full and vigorous defense through the submission of pretrial motions. *Id.*

Defendant whose attorney knew that defendant would testify and give false testimony, who informed the court that defendant was testifying against advice of counsel, who asked defendant to state his story and thereafter assisted in its full development only by asking limited questions such as "Then what happened?" and who, in argument to the jury, did not mention defendant's story but did meticulously attack the prosecution's case did not render defendant ineffective assistance of counsel by following the procedure recommended by American Bar Association standards for counsel who find themselves in the position of defending a client who intends to testify falsely. *Id.*

Defendant was not denied his Sixth Amendment right to assistance of counsel because the court's refusal to admit defendant's statements at start of his testimony regarding what he had stated to police officer shortly after the murder made it impossible for the defendant to present his case "in the best light legally possible." *United States v. L. R. Smith* (1974, 490 F.2d 789, 160 U.S. App. D.C. 221).

Where defendant was described by companions and another on night of murder as tall man with plaid shirt and where eyewitness to murder described gunman as taller of two assailants and was wearing a plaid shirt, court's restricting defense counsel from arguing that defendant was not the gunman did not amount to denial of the effective assistance of counsel or constitute prejudicial error. *T. Peoples v. United States* (D.C. App. 1974, 329 A.2d 446).

Bifurcated trial

Defendant who did not request a second jury to hear her insanity defense and who failed to make a meritorious claim for second jury cannot claim on appeal that trial court abused its discretion in failing to impanel a new jury on its own motion. *M. E. Harris v. United States* (D.C. App. 1977, 377 A.2d 34).

In prosecution for felony-murder, robbery, second-degree burglary, and petit larceny, trial court did not abuse its discretion in denying defendant's request for different juries to try merits and insanity defense, despite contention that voir dire examination on insanity defense might have had an effect on the jury and despite contentions not raised in trial court that defendant was prejudiced by extensive testimony linking him to homosexuality, alcohol, and drugs, and that this would not have reached a second jury determining the merits of the insanity defense. *P. Shanahan v. United States* (D.C. App. 1976, 354 A.2d 524).

Change of venue

Where defendants moved for change of venue based on news articles and broadcasts appearing during jury selec-

tion, denial of request was not in error where there was then no indication an impartial jury could not be obtained. *United States v. L. D. Caldwell* (1974, 543 F. 2d 1333, 178 U.S. App. D.C. 20).

With respect to motion for change of venue which was first granted and was then withdrawn by defendant, no error was shown by contention that transfer was made contingent on relinquishment of right to effective counsel, where counsel who was preparing insanity defense was from the legal aid agency and by statute could not follow the case outside the district, and where issue of replacement counsel in transferee district was never raised since defendant insisted on retaining original counsel and accordingly chose to have case remain in District of Columbia, where his chief counsel assured trial court that defendant could get a fair trial. *United States v. B. A. Bryant* (1972, 471 F. 2d 1040, 153 U.S. App. D.C. 72; cert. denied 93 S. Ct. 923, 409 U.S. 1112).

Confession

Admission of defendant's statement in his confession that he had killed three other people constituted prejudicial error requiring reversal of conviction, where in earlier parts of his confession defendant had admitted in detail that he killed the victim pursuant to a contract "because of numbers," where exclusion of reference to three prior murders could easily have been made without impairing the confession, and where court in its charge to jury made no attempt to limit effect of the evidence concerning the commission of prior offenses. *United States v. C. E. Wiggins* (1975, 509 F.2d 454, 166 U.S. App. D.C. 121).

There is no requirement that police stop a man from talking when he voluntarily and without solicitation says he wants to confess to a crime. *Id.*

Notwithstanding defendant's contention that the trial court erred in failing to suppress his alleged confession where it was uncontested that he had made known his wish and intention to consult with an attorney, but where the Government had, nevertheless, continued to interrogate him in the absence of an attorney and eventually elicited the confession, the record showed, in support of conclusion that defendant waived his right to the presence of an attorney, that defendant simply indicated he was "undecided" about an attorney and then decided to go ahead and give a statement. *United States v. W. H. Howard* (1972, 470 F. 2d 406, 152 U.S. App. D.C. 258).

Constitutionality

That the District of Columbia felony murder statute was broader than coverage of federal felony murder statute did not deny equal protection to accused who was prosecuted under such D.C. statute for murder committed during commission of offense of rescuing a federal prisoner. *United States v. L. Greene* (1973, 489 F. 2d 1145, 160 U.S. App. D.C. 21; cert. denied 95 S. Ct. 239, 419 U.S. 977).

Construction

Under this section requiring that a homicide committed during a felony be done "purposely" unless the felony is "arson, rape, mayhem, robbery, or kidnapping," by eliminating the element of "purpose". Congress intended to apply the common-law felony-murder rule to them, that is, that a homicide committed in course of their perpetration is murder because the "malice" required for murder can be implied from commission of the felony; the doctrine of implied malice obviates the need for the Government to prove that death was "foreseeable" when homicide occurs during any of the five specified felonies. *United States v. J. R. Branic* (1974, 495 F. 2d 1066, 162 U.S. App. D.C. 10).

Felony-murder statutes do not embody a legislative purpose to deter the commission of felonies to the point of embracing the coincidence rationale. *United States v. B. J. Heinlein* (1973, 490 F. 2d 725, 160 U.S. App. D.C. 157).

National felonies, including offense of rescuing a federal prisoner, constituted "any offenses" within this section providing in effect that "Whoever, being of sound memory and discretion, kills another purposely, * * * in perpetrating or attempting to perpetrate any offense punishable by imprisonment in the penitentiary" commits felony murder. *United States v. L. Greene* (1973, 489 F. 2d 1145, 160 U.S. App. D.C. 21; cert. denied 95 S. Ct. 239, 419 U.S. 977).

Cross-examination

Even if trial court erred in refusing to allow defendant to interpose his Fifth Amendment privilege against self-incrimination in response to certain questions asked by Government on cross-examination, court's ruling and lack of subsequent cautionary instruction were harmless beyond reasonable doubt where defendant had already testified on same subject on direct examination and there was overwhelming evidence of his guilt. *E. Coleman v. United States* (D.C. App. 1977, 379 A. 2d 710).

In prosecution for felony-murder and attempted first-degree burglary while armed, trial court did not err in permitting prosecutor's cross-examination of psychiatrist called by defendants as to whether psychiatrist, in the four cases in which he had testified, had ever found any of them to be without mental disease or defect. *M. E. Harris v. United States* (D.C. App. 1977, 377 A. 2d 34).

Question asked of murder defendant by prosecutor, as to whether he told police he saw someone flee murder scene, asserted by defendant to be a violation of his constitutional right to remain silent from the time of his arrest, was not reversible error in light of the court's cautionary instructions to the jury and the overwhelming evidence of defendant's guilt. *D. E. Pittman v. United States* (D.C. App. 1977, 375 A. 2d 16).

Question asked by prosecutor of defendant in murder trial, if clearly limited to and directed at defendant's pre-arrest failure to report a murder he claimed to have witnessed, would not involve an improper inquiry into defendant's postarrest right to remain silent. *Id.*

In prosecution for first-degree premeditated murder, felony-murder and first-degree burglary, trial court did not err in sustaining state's objection, during defense counsel's cross-examination of police detective, to question which attempted to call into question the reasons and motives for defendant's arrest by police, in view of fact that such cross-examination would have led directly to hearsay testimony concerning a statement which declarant himself had denied making. *E. Blango v. United States* (D.C. App. 1977, 373 A.2d 885).

In prosecution for first-degree murder and carrying a pistol without a license, in which defendant testified on direct examination that he had not shot victim of prior shooting incident, trial court did not err in permitting prosecutor to ask defendant on cross-examination whether he had in fact shot victim of prior shooting incident and to present on rebuttal testimony from victim of such prior shooting incident and another contradicting defendant's assertion. *R. Johnson, Jr. v. United States* (D.C. App. 1977, 373 A.2d 596).

Refusal, in prosecution for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary, to permit cross-examination of accomplice, who testified for government and whose counsel had been informed that government would be willing, with regard to unrelated narcotics and robbery charges against accomplice, to accept plea of guilty to one misdemeanor, as to whether government had made any disposition of such unrelated charges was reversible error when considered in conjunction with other errors. *United States v. I. E. Leonard* (1974, 494 F. 2d 955, 161 U.S. App. D.C. 36).

Defense

Where only evidence linking defendant with homicides was testimony of confessed accessory who was granted immunity, defendant's theory that accessory committed the killings and lied about defendant to cover up his own guilt was supported by testimony of eye-witnesses who described a man fitting accessory's description as being near scene of crimes, and defense counsel's closing argument seeking to present such theory did not supplement or misstate the record but merely suggested that jury draw certain inferences, restriction of closing argument so as to prevent defense counsel from suggesting that accessory committed the murders impaired defendant's constitutional right to a closing argument in his behalf and was not harmless beyond reasonable doubt. *United States v. W. L. DeLoach, Sr.* (1974, 504 F. 2d 185, 164 U.S. App. D.C. 116; cert. denied 96 S. Ct. 2232, 426 U.S. 909).

Due process

Reindictment of defendants for first-degree murder, after their first trial on charge of second-degree murder had ended with a declaration of mistrial granted on motion of defense counsel, denied defendants due process, of law, absent any showing of justification for the increase in the degree of the crime charged. *United States v. Jamison, Jr.* (1974, 505 F. 2d 407, 164 U.S. App. D.C. 300).

Since it could not be said that defendants, whose first trial on charge of second-degree murder ended with a declaration of mistrial and who were then reindicted and found guilty on charge of first-degree murder, were not prejudiced by having to defend, on the retrial, against the higher, illegal charge, the Court of Appeals would not, under those circumstances, remand the case with directions to simply enter convictions for second-degree murder. *Id.*

Elements of offense

Government's evidence that, when arrested, shortly after strangled victim was discovered, defendant had small pen knife in his pocket is not sufficient to meet the "dangerous weapon" provision of this section. *D. A. Cooper v. United States* (D.C. App. 1977, 368 A.2d 554).

Even if at time of shooting of grocery store security guard defendants were "casing" the store preparatory to a later attempt to rob, the intent to rob requisite to felony-murder conviction would not yet have arisen since it is necessary that the felony have progressed beyond mere preparation to an indictable attempt before the homicide occurs. *United States v. J. F. Bolden* (1975, 514 F.2d 1301, 169 U.S. App. D.C. 60).

To support conviction of aiding and abetting a felony-murder, the homicide must have been committed in the course of the felony and in furtherance of the common purpose to commit the felony, rather than merely coincidental with it. *Id.*

To prove first-degree murder, Government must introduce facts which provide proof beyond a reasonable doubt that a crime was committed not merely intentionally, in sustained frenzy or heat of passion, but with premeditation and deliberation. *United States v. J. L. Peterson* (1974, 509 F.2d 408, 166 U.S. App. D.C. 75).

Elements of felony murder under this section are that a felony was attempted or being perpetrated and that during the course of action the deceased was purposely killed. *United States v. L. Greene* (1973, 489 F. 2d 1145, 160 U.S. App. D.C. 21; cert. denied 95 S. Ct. 239, 419 U.S. 977).

Murder in the first degree is intentional homicide done deliberately and with premeditation, and homicide that is intentional but "impulsive," not done after "reflection and meditation", is murder in the second degree. *United States v. A. W. Brawner* (1972, 471 F. 2d 969, 153 U.S. App. D.C. 1).

Offense of deliberated and premeditated murder requires a specific intent that cannot be satisfied merely by showing defendant failed to conform to objective standard. *Id.*

Evidence—Abnormal mental condition

The potential impact of concepts such as diminished capacity or partial insanity, however labeled, is of a scope and magnitude which precludes their proper adoption by an expedient modification of rules of evidence; if such principles are to be incorporated into law of criminal responsibility, change should lie within province of legislature. *E. Betha, Jr. v. United States* (D.C. App. 1976, 365 A. 2d 64; cert. denied 97 S. Ct. 2979, 433 U.S. 911).

Even when there is no defense of insanity, expert testimony of abnormal mental condition will be admissible when it bears on the existence of specific mental element necessary for a crime, provided trial judge determines that the testimony is grounded in sufficient scientific support, and would aid jury in reaching decision on ultimate issues; overruling *Fisher v. United States*, 80 U.S. App. D.C. 96, 149 F. 2d 28. *United States v. A. W. Brawner* (1972, 471 F. 2d 969, 153 U.S. App. D.C. 1).

A defendant who presents evidence that his abnormal condition of the mind has substantially impaired behavioral controls is exculpated if his behavioral controls were not only substantially impaired but were impaired to such extent that he lacked substantial capacity to conform his conduct to the law. *Id.*

—Admissibility

In prosecution for murder and other crimes, trial court did not err in permitting Government to introduce photograph of defendant with .45-caliber pistol in his waistband which was taken five months before alleged murders where pistol in question was of same type as that used in such murders and where picture was not so inflammatory as to show abuse of discretion. *E. Coleman v. United States* (D.C. App. 1977, 379 A. 2d 710).

Accused person's prior possession of physical means of committing crime is some evidence of probability of his guilt, and is therefore admissible. *Id.*

Where murder of cab driver was the result of third attempted robbery of a cab driver in a two hour period, evidence of the first two robberies is admissible to show modus operandi. *In the Matter of A. L. S.* (D.C. App. 1977, 377 A. 2d 1149).

Black and white photographs of fully clothed murder victim lying face down, in which blood appeared only as a small darkened area on tile floor, were not so gruesome as to create a risk of inflaming jury, and their admission was not an abuse of trial court's discretion. *D. E. Pittman v. United States* (D.C. App. 1977, 375 A. 2d 16).

Evidence that decedent made statement to police officer approximately two hours after the shooting, that his medical condition was critical when he talked to the officer as he was suffering from several gunshot wounds, at least one of which was in the chest, that he was in a great deal of pain, and that it was an effort for him to talk is sufficient to sustain determination that testimony concerning the decedent's statements is admissible as evidence of a spontaneous declaration. *E. F. Harris v. United States* (D.C. App. 1977, 373 A.2d 590).

Threatening comment made by one defendant to murder victim in presence of other defendant that defendant was going to "get him," which words are relevant in proving premeditation and deliberation for first-degree murder, does not fall within confines of Bruton rule, as it is admissible against both defendants and is not hearsay as to silent defendant. *R. C. Byrd v. United States* (D.C. App. 1976, 364 A. 2d 1215).

In prosecution for felony-murder, robbery, second-degree burglary, and petit larceny, trial court did not err in excluding testimony of woman whom defendant had raped to show that thereafter defendant apologized to her, despite contention that such apology was introduced to rebut government expert testimony on defendant's lack of remorse. *P. Shanahan v. United States* (D.C. App. 1976, 354 A.2d 524).

Statements made by defendants in casual conversation, out of the presence of police and immediately after homicide and robbery, offered to prove that defendants had recently engaged in some violent episode together, were admissible as admissions of a party opponent, each defendant adopting the other's statement. *United States v. J. F. Bolden* (1975, 514 F.2d 1301, 169 U.S. App. D.C. 60).

On trial of a defendant for one offense, evidence that he committed another is inadmissible to prove his disposition to commit crime; the jury may not be permitted to infer that the defendant is guilty of the crime charged because he committed another similar offense. *United States v. C. E. Wiggins* (1975, 509 F.2d 454, 166 U.S. App. D.C. 121).

Admission of color photograph of decedent's body is not error in homicide case, where photograph was not so gruesome as to create risk of inflaming jury and was relevant to manner in which murder occurred and therefore to issue of premeditation and deliberation and was also useful to show nature of injuries suffered by decedent, linking blood found on defendant's clothing to the crime. *J. C. Womack v. United States*. (D.C. App. 1975, 339 A.2d 37).

Testimony by accomplices as to statements which were made to them by defendant during commission of crimes charged in prosecutions for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary and which incriminated codefendants, were admissible under either exception to hearsay rule for contemporaneous declarations which partake of the event or exception for spontaneous declarations or excited utterances. *United States v. I. E. Leonard* (1974, 494 F. 2d 955, 161 U.S. App. D.C. 36).

In murder prosecution, wherein defendant proposed to take the stand first and then introduce a written state-

ment which he had made to police officer that defendant had killed victim in self-defense, for purpose of corroborating what defendant was going to state on the stand, such statement was properly excluded at that time as hearsay and as corroborating an exculpatory statement that was self-serving. *United States v. L. R. Smith* (1974, 490 F.2d 789, 160 U.S. App. D.C. 221).

In murder prosecution, trial court acted within its discretion in admitting two black and white photographs of inside of house showing where victim was standing when he was shot and where he fell, where photographs were probative of place where victim was shot, and were material on issues in the case. *Id.*

In murder prosecution, admission of testimony by decedent's wife that her marriage was trouble-free did not constitute plain error and hence was not reviewable, where no objection to its admission was made. *Id.*

Testimony concerning drugs and drug distribution was admissible in murder prosecution where it had a direct bearing on codefendant's previously being shot by the victim; such testimony was also admissible on question of defendant's motive to avenge codefendant's shooting. *J. L. Jackson v. United States* (D.C. App. 1974, 329 A.2d 782; cert. denied 96 S. Ct. 95, 423 U.S. 851).

Where, in prosecution of defendant for first-degree murder and carrying dangerous weapon, there was no claim of self-defense, suicide, accidental death or any other plausible issue that would justify inquiry into victim's state of mind, court committed prejudicial error in admitting testimony by victim's wife that victim was frightened that he might be killed by defendant. *United States v. R. W. Brown* (1973, 490 F.2d 758, 162 U.S. App. D.C. 10).

— Character

In murder prosecution, there was no error in striking testimony of one witness presented to establish deceased's reputation for violence, where such testimony was cumulative as well as vague and uncertain. *T. Hurt v. United States* (D.C. App. 1975, 337 A.2d 215).

— Disclosure to defense

In view of special circumstances of case, including overwhelming evidence of guilt, the fact that only general request for exculpatory evidence was made by defense counsel and the fact that allegedly exculpatory material was turned over to defense at midtrial but defense did not request continuance to seek use of material, preliminary nondisclosure of alleged exculpatory material was not prejudicial. *G. E. Frezzell v. United States* (D.C. App. 1977, 380 A.2d 1382).

Where there was eyewitness testimony as to altercation between victim and defendant and codefendant's giving of shotgun to defendant, expert and other testimony linking shotgun to shooting and eyewitness testimony identifying person carrying shotgun, exculpatory description given by witness who gave police name and address that could not be traced did not create reasonable doubt as to guilt for purpose of determining whether prosecutor violated duty of disclosure in not producing such description until midtrial. *Id.*

Prosecutor's failure to provide defense in advance with lineup sheets showing two misidentifications or with four bullets found on defendant after his arrest was not reversible error where the lineup sheets showed that counsel for defendant was present at the lineups and the bullets were easily available to defense counsel in the Government's property office where counsel examined the money taken from his client, *United States v. J. F. Bolden* (1975, 514 F.2d 1301, 169 U.S. App. D.C. 60).

Where defense counsel was on notice of existence of communications from much earlier reference to them at pretrial competency hearing, and neither then nor later did defendant request leave to inspect or copy the materials, there was no prejudice to defendant from their nonproduction in response to court's order. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

Evidence in proceeding on motion for new trial, or alternatively, dismissal of indictment, supported trial court's findings that the statements and testimony of witnesses whose statements were allegedly wrongfully withheld from the defense did not include evidence that was relevant or material or that would be helpful to the defense

or tend to exculpate accused and that the disclosure to accused prior to trial of the statements would not have led to evidence that was relevant or material or that would tend to be exculpatory of murder and assault with intent to rob charges. *United States v. D. J. Bowles* (1973, 488 F.2d 1307, 159 U.S. App. D.C. 407; cert. denied 94 S. Ct. 1591, 415 U.S. 991).

Where statements given by witnesses to police during murder investigation did not include evidence that was relevant or material or that would be helpful in the defense or tend to exculpate accused and the disclosure to accused prior to trial would not have led to evidence that was relevant or material or that would tend to be exculpatory, accused was not denied due process of law because the statements were withheld from the defense. *Id.*

— Expert testimony

In view of insufficient factual basis for testimony of expert, who had never examined codefendant, that defendant might have been influenced unfavorably and that codefendant was type of person who was quite capable of influencing him, such testimony was properly rejected. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

Testimony of defense's expert witness was relevant and admissible to apprise jury of the factual foundation for the witness' conclusion and as evidence as to the credibility of that diagnosis. *United States v. J. L. Peterson* (1974, 509 F.2d 408, 166 U.S. App. D.C. 75).

— Mental disease or defect

Concept of portion of standard for insanity defense that the terms "mental disease or defect," as used in such standard, do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct should not be adopted as a rule of evidence; it is preferable to treat possibility of proof's factual or scientific infirmity with a jury instruction. *E. Bethea, Jr. v. United States* (D.C. App. 1976, 365 A.2d 64; cert. denied 97 S. Ct. 2979, 433 U.S. 911).

Trial court must carefully supervise testimony and examination of expert witnesses, on issue of insanity defense, in an effort to ensure that the factual bases for their proffered conclusions are aired fully in a manner which is comprehensible to laymen. *Id.*

Following proper proof by Government, defendant must demonstrate both the existence of a cognizable mental disease or defect and the necessary relationship of such a disability to either his awareness of the requirements of society's code of behavior or his ability to conform his conduct thereto. *Id.*

In determining whether to admit evidence on issue whether a defendant's mental condition negated his ability to form the requisite mental state for first-degree murder, judge must determine whether the evidence is sufficiently grounded in scientific fact and whether it directly addresses the mental element at issue so that its introduction will not unduly distract or mislead the jury from the determination it must make. *United States v. J. L. Peterson* (1974, 509 F.2d 408, 166 U.S. App. D.C. 75).

Before admitting medical testimony on issue whether a defendant's mental condition negated his ability to form the requisite mental state for first-degree murder, court should insist on a complete proffer of the medical testimony. *Id.*

The introduction or proffer of past criminal and antisocial actions is not admissible as evidence of mental disease unless accompanied by expert testimony, supported by showing of the concordance of a responsible segment of professional opinion, that the particular characteristics of these actions constitute convincing evidence of an underlying mental disease that substantially impairs behavioral controls. *United States v. A. W. Brawner* (1972, 471 F.2d 969, 153 U.S. App. D.C. 1).

— Sufficiency

Evidence tending to establish that murder victim had been forcibly raped and that defendant had been in the victim's room at the approximate time of the events giving rise to the charges was sufficient to warrant trial court's submission to jury of questions whether defendant was guilty of felony-murder and rape. *T. W. Whalen v. United States* (D.C. App. 1977, 379 A.2d 1152).

Evidence that a spree of cab driver robberies took place from 4:30 a.m. to 6:30 a.m., that, in the first two rob-

beries, juvenile sat behind the driver while his companion sat on the right of the rear seat, that in both instances the companion pulled a gun and cab driver was robbed of his money, jewelry, and pocket chattels, that third victim was shot, that items taken during the two earlier robberies were found at the murder scene, and that the two persons seen fleeing from the murder scene were wearing clothing consistent with that described by occupant of apartment at the time that juvenile and his accomplice arrived with other loot and a bloody appearance is sufficient to sustain juvenile's convictions for felony-murder and attempted robbery. *In the Matter of A. L. S.* (D.C. App. 1977, 377 A. 2d 1149).

Evidence that homicide was committed within scope of attempted burglary while armed, and not merely coincident thereto, sustains conviction of felony-murder. *M. E. Harris v. United States* (D.C. App. 1977, 377 A. 2d 34).

Evidence that defendant expressed a desire to kill victim in liquor store and that defendant followed codefendant and victim into alley and actively assisted in fatal stabbing of victims is sufficient to sustain conviction of first-degree murder despite claim that due to intoxication defendant was incapable of forming requisite intent to kill or premeditated and deliberative homicide. *A. J. Harris v. United States* (D.C. App. 1977, 375 A. 2d 505).

In prosecution for first-degree premeditated murder, felony-murder, and first-degree burglary, evidence on issues of intent and premeditation and deliberation sustains defendant's conviction. *E. Blango v. United States* (D.C. App. 1977, 373 A.2d 885).

Testimony that decedent told police officer that he had attempted to close the door to his house "as the man pulled the gun out and started in the house" and evidence that defendants and their colleagues were out to "get" an alleged rapist and wanted to find and beat up the alleged rapist is sufficient to show an attempted burglary as the felony underlying charge of felony murder. *E. F. Harris v. United States* (D.C. App. 1977, 373 A.2d 590).

Evidence, mostly circumstantial, supports defendants' conviction for felony-murder allegedly perpetrated during robbery. *J. C. Calhoun v. United States* (D.C. App. 1977, 369 A.2d 605).

Fact that there was some evidence in first-degree murder prosecution that defendant attempted to break up earlier fight between his codefendant and murder victim and later cautioned his codefendant against shooting victim did not exonerate defendant as aider and abettor; such evidence was controverted and, in any event, did not otherwise negate account of his assisting with commission of homicide. *R. C. Byrd v. United States* (D.C. App. 1976, 364 A.2d 1215).

Direct and circumstantial evidence which included testimony of eyewitnesses and of accomplice who drove truck in which assailants departed from murder scene was sufficient to allow jury to find beyond a reasonable doubt that defendant was the short, stocky man with a .38-caliber firearm who was at the scene of a double murder and had shot the two victims. *United States v. W. L. DeLoach, Sr.* (1975, 530 F.2d 990, 174 U.S. App. D.C. 138; cert. denied 96 S. Ct. 2232, 426 U.S. 909).

Evidence supported implied finding that murder took place in course of robbery, in prosecution in which defendant contended that evidence was equally consistent with lawful possession of goods or with larceny after the homicide. *J. C. Womack v. United States* (D.C. App. 1975, 339 A.2d 37).

In light of defendant's own admission, in murder prosecution, that he retrieved a pistol after fight with deceased and returned to the scene, where he waited approximately 30 minutes and then shot deceased, on ground that he "wasn't going to take no chance at that particular time," evidence failed to present an issue on provocation such as would reduce the offense to manslaughter. *T. Hurt v. United States* (D.C. App. 1975, 337 A.2d 215).

Evidence as to circumstances surrounding and defendant's state of mind during stabbing of victim was sufficient on issue of deliberation and premeditation for submission of charge of first-degree murder. *United States v. J. L. Peterson* (1974, 509 F.2d 408, 166 U.S. App. D.C. 75).

Evidence that deceased's rings came into possession of one defendant immediately after deceased had been killed and evidence that defendant stated that she had gotten the rings from the victim and was going to keep them sustained conviction of both persons who kept the ring and person who aided in the murder for felony-murder on the basis of robbery. *United States v. M. Mackin* (1974, 502 F. 2d 429, 163 U.S. App. D.C. 427; cert. denied 95 S.Ct. 629, 419 U.S. 1052).

Evidence, including the testimony of an eyewitness involving all three defendants in the assault upon victim, was sufficient to support verdict of jury finding defendants guilty of felony-murder and assault with intent to commit rape while armed. *United States v. B. J. Heinlein* (1973, 490 F. 2d 725, 160 U.S. App. D.C. 157).

Fair trial

Factual allegations in motion for recusal that counsel had sought and had been denied in the Court of Appeals three petitions for writ of mandamus in connection with the case, that trial judge had granted certain government requests and motions and had denied or refused to consider certain defense motions, and the judge had sought to appoint new counsel are legally insufficient to warrant recusal. *W. Baylor v. United States* (D.C. App. 1976, 360 A.2d 42; cert. denied 97 S.Ct. 643, 429 U.S. 1024).

Identification

Photograph of defendant did not exhibit such distinguishing features as to make witness' identification inevitable where uncontroverted testimony of witness and officers conducting array was that witness did not inform police about scar until after identification and, moreover, witness had an uncertain identification of someone other than defendant in initial array. *A. J. Harris v. United States* (D.C. App. 1977, 375 A. 2d 505).

Although pretrial identification of defendant by witness to crime was not strong, witness' uncertainty was merely a factor for jury to consider in determining weight to be given his in-court identification and is not a basis for suppressing identification evidence. *Id.*

Where prime suspect was located near scene of the crime as result of uninterrupted search, where one-man show-up at hospital where victim was being treated was conducted as expeditiously as was reasonably possible, where defendant had no opportunity to alter his personal appearance, and where witness' identification was immediate and emphatic, risk of mistaken identification was slight and the show-up procedure did not deny due process. *G. F. Thornton v. United States* (D.C. App. 1976, 357 A.2d 429; cert. denied 97 S.Ct. 644, 429 U.S. 1024).

Knowledge on part of an eyewitness that persons on trial were arrested for crime may be taken into account for crime may be taken into account where there is other indication of suggestivity, but mere fact that suspects are included within lineup and that witnesses know or assume this to be the case is an inescapable aspect of lineup identification procedure and does not, without more, provide reason for exclusion of pretrial and in-court identifications. *United States v. C. L. Pearson* (1973, 478 F. 2d 659, 155 U.S. App. D.C. 455).

Pretrial and in-court identifications of defendant by eyewitness to crime were not subject to exclusion by reason of fact that investigating officer told witness at lineup that she had "done well," where there was no reason to suppose that officer's remark was more than a comforting gesture to witness, who was, quite naturally, on edge, and jury had before it testimony as to (slightly more tentative) lineup identification and was likely to credit this, which was uninfluenced by subsequent remark, far more than taken for granted in-court identification. *Id.*

— In court

There was no reversible error in allowing robbery victim to identify juvenile at his trial where pretrial lineup was not so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification. *In the Matter of F. D. P.* (D.C. App. 1976, 352 A.2d 378).

Impeachment

Refusal, in criminal prosecution, to admit testimony regarding effect of drug use on perception for purposes of impeaching testimony of accomplice, who testified for government and who was a heroin user, unless it was

established that accomplice had used narcotics on day of offenses was not error. *United States v. I. E. Leonard* (1974, 494 F. 2d 955, 161 U.S. App. D.C. 36).

Instructions

Whatever passion was aroused by the rape of one of defendant's prostitutes it is insufficient provocation to justify a manslaughter instruction for shooting of alleged rapist over an hour after defendant learned of the rape. *R. Dean v. United States* (D.C. App. 1977, 377 A. 2d 423).

Omission of an immediate limiting instruction after detective testified to statement by codefendant which was inconsistent with defendant's alibi was not reversible error, particularly in view of instruction given at end of trial that certain evidence could be considered only with respect to the defendant against whom it was offered. *Id.*

In prosecution for first-degree premeditated murder, felony-murder and first-degree burglary, trial court did not err in giving a deadlock-dissolving charge to jury one-half day after jury had returned its verdict against one of defendants. *E. Blango v. United States* (D.C. App. 1977, 373 A.2d 885).

There is no need in first-degree murder prosecution for instruction limiting to defendant alone consideration of testimony as to threatening comment made by him to victim after fight at service station; statement is admissible against both defendants, who were together at time threat was made and during subsequent events leading to shooting. *R. C. Byrd v. United States* (D.C. App. 1976, 364 A.2d 1215).

Fact that murder victim was positioned near parked automobile is insufficient to require instruction on self-defense in first-degree murder prosecution. *Id.*

Where homicide case presented no issue concerning possibility of mere coincidence in time and place between killing and commission of robbery and where there was no evidence or argument that robbery was afterthought to murder or that homicidal act fell outside scope of felonious crime which parties undertook to commit, felony-murder rule was inapplicable, and where jury asked if they could find particular defendant guilty of felony-murder or any other charged armed offenses if they found that he did not have possession of the gun, trial court properly declined to give supplemental instruction on theories of abetting, accessory or accomplice. *J. C. Long Jr. v. United States* (D.C. App. 1976, 364 A.2d 1174).

Defendant who was convicted of first-degree murder, thus indicating that jury found not only malice but also premeditation, and who presented no evidence of provocation but merely testified as to the emotional strain which he was under at the time of the shooting was not entitled to instruction on manslaughter. *J. Morgan, Jr. v. United States* (D.C. App. 1976, 363 A.2d 999; cert. denied 97 S. Ct. 2187, 431 U.S. 919).

Where defendant did not claim insanity or offer expert psychiatric evidence but merely testified that he was under an emotional strain at the time of the shootings, trial court did not err in refusing to instruct the jury to consider defendant's stressful state of mind in determining whether he was capable of forming specific intent and whether there was malice, deliberation and premeditation in connection with the homicides with which defendant was charged. *Id.*

In prosecution for felony-murder, trial court did not err in failing to instruct jury that in order to convict defendant of felony-murder, Government had to affirmatively prove that defendant was of "sound memory and discretion" both at the time of the underlying felony and the time of the killing. *P. Shanahan v. United States* (D.C. App. 1976, 354 A.2d 524).

Trial court did not commit plain error by instructing jury under test of insanity which defense counsel specifically requested and which was given over the objection of the Government, despite defendant's contention on appeal that wrong test was given in instruction. *Id.*

Where jury during deliberations sent questions to judge concerning felony-murder count, inquiring as to timing of formation of intent to rob, and trial court merely reread the murder statute and the standard instruction, and jury could have been left with impression that coincidence in time between murder and robbery was sufficient to support felony-murder conviction, there was error

which could not be held harmless. *United States v. J. F. Bolden* (1975, 514 F.2d 1301, 169 U.S. App. D.C. 60).

In murder prosecution, in which it appeared that defendant shot another person six times at close range during a period of a minute to a minute and one-half, instruction defining malice as a state of mind showing a heart "regardless of social duty," rather than "regardless of the life and safety of others," as suggested in prior opinion of United States Court of Appeals, is not reversible error. *T. Hurt v. United States* (D.C. App. 1975, 337 A.2d 215).

Where defendant claimed insanity and his expert witness when asked if his fee had been paid prior to his appearance in court answered in negative, better practice would have been to give cautionary instruction immediately following such improper question, but refusal does not require reversal, and with respect to request for such instruction just prior to jury's retirement for deliberations, reviewing court would defer to trial judge's evaluation that more harm might be done by dredging subject up than by instructing. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

Instruction defining premeditation as "the formation of the intent to kill" was neither prejudicial nor plain error on theory that it equated premeditation with intent to kill. *United States v. J. L. Peterson* (1974, 509 F.2d 408, 166 U.S. App. D.C. 75).

Although inclusion in standard first-degree murder charge of insanity instruction that in determining whether premeditation and deliberation has been proved beyond a reasonable doubt the jury might consider the testimony as to the defendant's abnormal mental condition, coupled with instruction on role of an expert medical witness, would have been sufficient, giving of a more elaborate instruction which had been approved by defense counsel was not prejudicial and did not constitute plain error. *Id.*

In prosecution for felony murder against defendants who during armed robbery handcuffed 75-year-old victim who died on arrival at hospital shortly thereafter, instructions on felony-murder were not deficient in not requiring jury to find that death was a foreseeable result of defendants' behavior, since under this section malice is implied from commission of the robbery. *United States v. J. R. Branic* (1974, 495 F. 2d 1066, 162 U.S. App. D.C. 10).

Failure to give an accomplice instruction with regard to accomplices who testified for government was not plain error where nonaccomplice testimony corroborated accomplice testimony to significant extent against one accused and to lesser extent against another where accomplices did not appear to have extraordinary disposition to prevaricate. *United States v. I. E. Leonard* (1974, 494 F. 2d 955, 161 U.S. App. D.C. 36).

Refusal to instruct that testimony of accomplices, who testified for government after having been granted immunity, should be considered with caution was reversible error. *Id.*

Absent waiver of instruction, failure, in prosecution for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary, to give immediate limiting instruction as to admissibility where testimony of arresting officer was admitted to impeach defendant's testimony that he had not stated that codefendant "lived across the street" was plain error requiring reversal, though general instruction on impeachment evidence was given in very long charge. *Id.*

In prosecution for first-degree murder and carrying dangerous weapon, jury instruction on sanity which stated that defendant would be immediately committed for mental examination, after which there would be another judicial determination as to whether he was suffering from mental illness at that time and whether he was dangerous to himself and others, and that if defendant was found to be suffering from mental illness but was not dangerous to himself or others he would be released from hospital, was proper. *United States v. R. W. Brown* (1973, 490 F. 2d 758, 160 U.S. App. D.C. 190).

Where hearsay statement circumstantially probative of declarant's state of mind involves extraneous factual elements, limiting instruction must always accompany its introduction into issue to insure that such factual matters are considered solely on issue of declarant's mental state and not for truth of matters contained therein. *Id.*

Felony-murder instruction which has been used in the District of Columbia jurisdiction, as well as the one proposed for use by the Junior Bar Association, reflects an understanding that the statute embraces occasions when the jury may properly be urged to find that the homicidal act fell outside the scope of the felonious crime which the parties undertook to commit; accordingly, it was error for the trial court to forbid defense counsel to argue to the jury that the fatal stabbing of the victim by one of the defendants was an unexpected response to his being slapped in the face by the victim, was independent of any common purpose to rape, and was without the scope of the felonious crime which the three defendants undertook to commit. *United States v. B. J. Heinlein* (1973, 490 F.2d 725, 160 U.S. App. D.C. 157).

Instruction that Government was required to prove that accused was of sound memory and discretion was not required in prosecution for violation of this section pertaining to felony murder. *United States v. L. Greene* (1973, 489 F.2d 1145, 160 U.S. App. D.C. 21; cert. denied 95 S. Ct. 239, 419 U.S. 977).

Aiding and abetting instruction in felony-murder prosecution, in which defendants obtained instruction on second-degree murder as lesser included offense, was not reversible error for failure to instruction that defendants should be acquitted of second degree murder unless Government proved aiding and abetting in homicide as a specific crime, separate and apart from robbery. *United States v. L. T. Robinson* (1973, 475 F.2d 376, 154 U.S. App. D.C. 265).

Court's instruction on second degree murder as lesser included offense of felony-murder was properly given where evidence so warranted and where defendants made timely request therefor. *Id.*

Evidence submitted is gauge against which propriety of lesser included offense instructions must be measured, but quantum of proof needed to justify giving instruction is but slight. *Id.*

Instruction that flight or running away does not "prove" guilt, given in preference to requested instruction that flight or concealment does not create presumption of guilt, was not prejudicial in view of instruction as whole. *Id.*

Joinder

Since separate trials on charges of murder and attempted robbery were the result of accused's own efforts to that end, accused cannot raise double jeopardy, res judicata, or collateral estoppel to bar murder trial following the robbery trial. *In the Matter of A. L. S.* (D.C. App. 1977, 377 A.2d 1149).

Failure to require election between substantive count and accessory count of indictment for murder was not prejudicial on theory that, had the Government been required to elect, and chosen the accessory counts, defendant could have testified without adversely affecting the jury's consideration of the first-degree murder count. *R. Dean v. United States* (D.C. App. 1977, 377 A.2d 423).

Charges against defendant, accused of first-degree murder, and codefendant, charged with being an accessory after the fact by threatening a material witness, were not improperly joined in a single indictment, in view of allegation that defendants jointly participated in the same act; fact that count against codefendant was subsequently dismissed for lack of evidence did not infect the joinder itself. *J. L. Jackson v. United States* (D.C. App. 1974, 329 A.2d 782; cert. denied 96 S. Ct. 95, 423 U.S. 851).

Jury

In prosecution for felony-murder and attempted first-degree burglary while armed, defendant was not denied her Sixth Amendment right to trial by impartial jury when trial court failed to voir dire the panel, sua sponte, to screen out persons prejudiced against insanity defense. *M. E. Harris v. United States* (D.C. App. 1977, 377 A.2d 34).

Where trial judge asked each prospective juror to stand as his or her name was called, gave defendant and his counsel opportunity to turn their chairs to better view panel and offered to have any panel member stand again to aid defendant in connecting faces with names, procedure for jury selection was fair to both sides, and court did not err in refusing to seat in jury box first 12 members

who had passed challenge for cause and thereby allegedly depriving defendant of opportunity to visually inspect jurors before exercising preemptory strikes. *A. R. Taylor v. United States* (D.C. App. 1977, 372 A.2d 1009).

Where individual polling of jurors followed answer by all jurors in unison confirming verdict of guilty, where one juror's recorded answer of "not guilty" during the individual polling was inaudible to the court and government counsel, where that answer was immediately corrected by the juror, and where the answer may have reflected a slip of the tongue or a mistranscription, trial court did not err in refusing to declare a mistrial or to send the jury back for further deliberation as the juror's answer did not show any likelihood of ambiguity or confusion and did not appear to be conditional. *J. Morgan, Jr. v. United States* (D.C. App. 1976, 363 A.2d 999; cert. denied 97 S. Ct. 2187, 431 U.S. 919).

In view of fact that counsel were granted full opportunity to propound their own questions for each potential juror, and substance of questions suggested by defense counsel were put to jury by judge, and in view of want of any objection to procedure, there is no plain error by trial judge in not probing more vigorously the responses of potential jurors. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

Defendant accused of murdering police officer is not entitled to jury free of policemen's relatives. *Id.*

Exclusion of several prospective jurors for cause when they stated that their opposition to capital punishment was such that they would be unable to render a fair and impartial verdict as to defendant's guilt or innocence of first-degree murder was not prejudicial absent evidence that jurors who were seated and who convicted defendant of second-degree murder were not fair and impartial. *United States v. A. L. Marshall* (1972, 471 F.2d 1051, 153 U.S. App. D.C. 83).

Lesser included offense

Where defendant failed to move at trial to have issue of second-degree murder submitted to jury only as a lesser included offense in felony-murder and where trial court's failure to do so sua sponte was not plain error affecting substantial rights, reversal of conviction for second-degree murder is not required by fact that defendant was also convicted of felony-murder; however, concurrent sentence for second-degree murder is vacated. *T. W. Whalen v. United States* (D.C. App. 1977, 379 A.2d 1152).

Malice

For purpose of felony-murder prosecution, malice, an essential element of murder, is implied from the intentional commission of the underlying felony even though the actual killing may have been accidental. *P. Shanahan v. United States* (D.C. App. 1976, 354 A.2d 524).

Malice aforethought is an element common to first and second-degree murder; the distinguishing feature between the crimes being that first-degree murder includes the elements of premeditation and deliberation while second-degree murder does not. *J. L. Butler v. United States* (D.C. App. 1974, 322 A.2d 279).

Malice may be established by either of two standards: first, a subjective standard, asking whether defendant actually intended or foresaw that death or serious bodily harm would result from his act; and second, an objective, "reasonable man" standard, asking whether defendant should have foreseen that such result was likely, and it is for jury to determine whether requisite state of mind or negligent pattern of behavior existed. *P. Belton v. United States* (1967, 382 F.2d 150, 127 U.S. App. D.C. 201).

Mental capacity

Jury may consider whether a defendant's mental condition negated his ability to form the requisite mental state for first-degree murder. *United States v. J. L. Peterson* (1974, 509 F.2d 498, 166 U.S. App. D.C. 75).

Question of defendant's mental responsibility for act of shooting another was for jury in prosecution for first-degree murder. *United States v. A. L. Marshall* (1972, 471 F.2d 1051, 153 U.S. App. D.C. 83).

On appeal from first degree murder conviction, defense of diminished responsibility, based on contention that defendant's mental condition precluded premeditation, was rejected by panel of the Court of Appeals in light of prior rejection of that doctrine by the Court en banc and

of affirmance by the Supreme Court of another judgment of the Court of Appeals rejecting such doctrine. *United States v. B. A. Bryant* (1972, 471 F. 2d 1040, 153 U.S. App. D.C. 72; cert. denied 93 S. Ct. 923, 409 U.S. 1112).

Merger of offenses

In view of different societal interests protected by the rape and felony-murder statutes and in absence of any indication that Congress intended rape to be nonprosecutable under the merger rule when a defendant is charged with felony-murder based on a rape, offense of rape does not merge into felony-murder based on the rape. *T. W. Whalen v. United States* (D.C. App. 1977, 379 A. 2d 1152).

Application of merger doctrine is unwarranted where burglary based upon assault served as predicate for felony-murder, in view of fact that this section expressly provides that even purposeless killing of another during housebreaking while armed constitutes first-degree murder, and in view of fact that societal interest served by section 22-1801 is separate and distinct from that of this section. *M. E. Harris v. United States* (D.C. App. 1977, 377 A. 2d 34).

Defendant can properly be convicted of both first-degree burglary and felony-murder, in view of fact that felony of first-degree burglary while armed and murder are separately identifiable crimes that offend multiple societal interests, and therefore, doctrine of merger is inapplicable. *E. Blango v. United States* (D.C. App. 1977, 373 A.2d 885).

Where charge of felony murder included every essential fact element of charge of rescue of a federal prisoner, there had been a merger and thus imposition of consecutive sentence for rescue offense was improper. *United States v. L. Greene* (1973, 489 F. 2d 1145, 160 U.S. App. D.C. 21; cert. denied 95 S.Ct. 239, 419 U.S. 977).

Miranda rights

Officer, who was investigating a homicide that occurred a few blocks from where defendant resided, who was looking for leads in hope that defendant might be of some assistance, and who did not suspect that defendant was implicated in murder and had no reason to do so, was not required to warn defendant about his right to counsel and to remain silent before talking to defendant at police lineup, and his failure to do so did not render all of defendant's subsequent statements to police on that day inadmissible. *United States v. C. E. Wiggins* (1975, 509 F.2d 454, 166 U.S. App. D.C. 121).

—Waiver

Evidence that juvenile was informed of his rights four times prior to making confession, that, on two of the occasions, he signed a form indicating that he was aware of his rights, that adult woman under whose care he had been for some time was present during a portion of the interrogation, and that the adult woman witnessed the reading of rights to the juvenile and his subsequent signing of the form sustains determination that confession was made after voluntary waiver of known rights. *In the Matter of A. L. S.* (D.C. App. 1977, 37 A. 2d 1149).

Although defendant had been represented by counsel in connection with prior murder charge, which was dismissed on finding of no probable cause, interrogation of defendant in connection with the murder when he was arrested some eight months later for a totally unrelated offense was not improper, notwithstanding absence of counsel, where such interrogation occurred only after defendant had been advised of and had waived his constitutional rights. *L. F. King v. United States* (D.C. App. 1977, 370 A.2d 1370).

Though coercive atmosphere of defendant's in custody interrogation compelled presence of counsel to protect his Fifth Amendment privilege against self-incrimination, despite repeated warnings which were given to him by police officers, where defendant twice acknowledged that he understood his rights and waived them in writing on a standard form, and did so again in his written statement which was prefaced by a full explanation of his rights and which he signed, and police officers testified that defendant was neither nervous nor upset and, to contrary, was cooperative and unemotional, trial court did not err in concluding that Government carried its burden of demonstrating that defendant's inculpatory statement was given voluntarily after a knowing and in-

telligent waiver of his constitutional rights. *S. S. Cooper v. United States* (D.C. App. 1976, 363 A.2d 982).

Fifteen-year-old boy knowingly and intelligently waived his Fifth and Sixth Amendment privileges under totality of circumstances test appropriate as a matter of due process and under more careful consideration of waivers appropriate in juvenile cases, and thus his oral and written statements were properly admitted at trial, though questioning continued after he asked that his sister be contacted, where he had experience in the criminal process, appeared at police station voluntarily and waived his rights, and was told that his sister would be called but confessed before she arrived. *In the Matter of F. D. P.* (D.C. App. 1976, 352 A.2d 378).

New trial

New trial requested by defendants on ground that one of Government's key witnesses had partially recanted her testimony at murder and robbery trial was not warranted under "Larrison" standard, where defendants offered no credible or admissible evidence from which court could be "reasonably satisfied" that recanting witness' trial testimony was false, defendants having only produced uncorroborated hearsay. *United States v. M. Mackin* (1977, 561 F. 2d 958, 183 U.S. App. D.C. 65; cert. denied 98 S. Ct. 490, — U.S. —).

Even assuming that hearsay evidence of Government's key witness' partial recantation of her testimony at murder and robbery trial might be offered for impeachment purposes upon retrial, "Thompson Standard" precludes grant of new trial on basis of evidence that is merely impeaching. *Id.*

Plea

Denial of presentence motion to withdraw guilty plea was abuse of discretion where defendant initially intended to rely on an insanity plea supported by hospital record and entered plea only after psychiatrist filed revised report indicating that defendant was without mental disease and in view of fact that he would soon be ineligible for Youth Corrections Act treatment but subsequent medical center report counseled against YCA treatment because of severity of defendant's mental illness; medical center report revealed new evidence of insanity, in face of which defendant should have been released from his earlier decision. *United States v. G. M. Morgan* (1977, 567 F. 2d 479, — U.S. App. D.C. —).

Denial of motion to hold in camera the hearing at which codefendant was to enter plea of guilty was proper in view of need for atmosphere of openness when an accused waives his or her constitutional right to trial. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

In considering whether to deny approval either to dismissal of cases outright or to a guilty plea to a lesser included offense, trial judge must provide reasonable exercise of discretion to justify departure from course agreed upon by prosecution and defense, and this involves fairness to the defense, such as protection against harassment, fairness to prosecution interest, as in avoiding disposition that does not serve due and legitimate prosecutorial interest, and protection of sentencing authority reserved to judge; judge's statement must identify particular interests that lead him to require defendant to go to trial. *United States v. R. L. Ammidown* (1973, 497 F. 2d 615, 162 U.S. App. D.C. 28).

Examination of record in which defendant, charged with first-degree murder and conspiracy to commit murder, reach an agreement with prosecution, to enter a plea of guilty to second-degree murder, in exchange for testifying in grand jury proceedings and pending trial of the alleged actual murderer who was believed by prosecution to be involved in another murder, showed that trial judge, who provided no statement of reasons, abused discretion by refusal to accept guilty plea to the second-degree murder charge following which defendant was convicted of the crimes of first-degree murder and felony-murder. *Id.*

Prosecution

Passage of Bank Robbery Act does not limit prosecutorial discretion to prosecute under this section for felony murder occurring in federally insured financial institution. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

Prosecutor's comments

Where, taken in context, government attorney's statement was clearly not a reference to defendant's failure to take the witness stand but referred instead to defendant's inability, on the morning of rape and murder, to reply satisfactorily to a coworker who had asked defendant where he had been, no impropriety resulted from fact that government attorney stated during closing argument, "You have a defendant who can't explain the time period or where he goes. He has no explanation as to where he was during that time." *T. W. Whalen v. United States* (D.C. App. 1977, 379 A.2d 1152).

In prosecution for felony-murder and attempted first-degree burglary while armed, prosecutor's improper statement in closing argument, implying that defendant would shortly be released if jury did not reject her insanity defense, does not rise to level of substantial prejudice mandating reversal, particularly in view of fact that effects of such error were mitigated by instruction. *M. E. Harris v. United States* (D.C. App. 1977, 377 A.2d 34).

Given the relative strength of the government's evidence of guilt, the prosecutor's "brandishing" of shotgun by mantling and dismantling it five or six times before the jury during closing argument did not rise to the level of substantial prejudice nor did it contribute to the verdict against defendant. *D. E. Pittman v. United States* (D.C. App. 1977, 375 A.2d 16).

Prosecutor's reference in first-degree murder prosecution to hypothetical defendant taking stand, which reference defendants claim constitutes improper comment on their Fifth Amendment right not to testify, is not error, since remarks were confined to rebuttal of hypothetical argument posed by defense counsel on worth of Government's evidence, there was no manifest intention on Government's part to highlight defendants' failure to take stand, and such oblique and indirect comment, when viewed in context, does not substantially suggest that jury would naturally and necessarily take remark to be reference to defendants' failure to testify. *R. C. Byrd v. United States* (D.C. App. 1976, 364 A.2d 1215).

Where it was made clear to jury, in murder prosecution, that government witness had not been able to identify defendant personally as the actual killer, but had been able to give a description of a short, stocky man he saw fire three quick shots in the street and then run away, and where Government admitted that witness had not identified defendant personally, that government attorney in closing argument stated that the witness "saw this defendant," was not a misrepresentation of the witness' testimony or an intentional misrepresentation of conclusions that were permissible from the evidence. *United States v. W. L. DeLoach, Sr.* (1975, 530 F.2d 990, 174 U.S. App. D.C. 138; cert. denied 96 S. Ct. 2232, 426 U.S. 909).

Prosecutor's argument in summation that "although [medical expert] examined only the defendant [naming him] and his testimony related to him directly, does not what he said apply, in effect, to both?" was error, but no more than harmless error where prosecutor's statement was pure argument and not factual account or recitation of phantom medical opinion. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

Prosecutor's remark in closing argument that victim had been "shot down like a dog in the street" and his characterization of the killings as "executions" and "assassinations" were improper. *United States v. W. L. DeLoach, Sr.* (1974, 504 F.2d 185, 164 U.S. App. D.C. 116; cert. denied 96 S. Ct. 2232, 426 U.S. 909).

Although evidence in homicide prosecution did not directly support prosecutor's opening assertion that victim had distributed drugs for defendant, defendant was not substantially prejudiced by such unproven allegation where the statement was not repeated in closing argument and the trial judge carefully instructed the jury that the statements of counsel were not evidence and that their recollection of the evidence controlled. *J. L. Jackson v. United States* (D.C. App. 1974, 329 A.2d 782; cert. denied 96 S. Ct. 95, 423 U.S. 851).

Prosecutor's closing statement that defendant was exploiting his position at Narcotics Treatment Administration to make contacts in furtherance of his illegal drug activities did not constitute prejudicial error, notwithstanding that no evidence was introduced in homicide prosecution that defendant was actually using his posi-

tion to make drug contacts, where considerable evidence had been introduced concerning extensive drug dealings of defendant and others and his counsel did not object to the remarks on the ground that they improperly suggested that his client was exploiting his position. *Id.*

Prosecutorial statements, in complex murder trial with numerous witnesses, to the effect that the government's version of the case was uncontested were not of such character that the jury would naturally and necessarily take them to be a comment on the failure of the accused to testify and court's allowing such statements did not amount to prejudicial error. *T. Peoples v. United States* (D.C. App. 1974, 329 A.2d 446).

Prosecutor's closing and rebuttal arguments which referred to defenses of insanity interposed by famous defendants in other cases and to actions of Hitler and Napoleon were improper and were so highly prejudicial as to require reversal. *United States v. W. E. Hawkins* (1973, 480 F.2d 1151, 156 U.S. App. D.C. 259).

Where prosecutor's improper closing and rebuttal arguments were so highly prejudicial as to require reversal of conviction of defendant who relied upon insanity as a defense and was convicted of first-degree murder and assault with intent to kill while armed, judgment of conviction of codefendant, who was charged as an aider and abettor, asserted lack of intent to commit murder, and was convicted of second-degree murder, would also be nullified. *Id.*

Publicity

Where defendants' only defense was insanity, rather than factual innocence, there was failure to show prejudice from publicity in absence of demonstration of impairment of ability or willingness of potential jurors to remain impartial on insanity issue. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

Right to counsel

Denial of accused's request for assistance of counsel in presentation of motion for new trial based upon newly discovered evidence that principal prosecution witness had been offered leniency by United States attorney in exchange for his testimony against accused was within trial judge's discretion where issue concerning whether witness' testimony had been given voluntarily had been raised and passed upon in prior appeal and accused had known at time of trial that the United States attorney and witness had struck plea bargain which had been rejected. *United States v. R. A. Lee* (1975, 513 F.2d 423, 168 U.S. App. D.C. 165; cert. denied 96 S. Ct. 225, 423 U.S. 916).

Search and seizure

In view of overwhelming evidence that defendant had committed felony-murder and rape, any error which may have been committed when trial court admitted into evidence head and pubic hair samples which had been seized from defendant without a search warrant subsequent to his arrest was harmless beyond a reasonable doubt. *T. W. Whalen v. United States* (D.C. App. 1977, 379 A.2d 1152).

Police officer who, after lawfully arresting defendant in living room, accompanied defendant's niece to back bedroom to get clothes for defendant, and who there inadvertently discovered a shotgun and leather shoulder bag similar to those used in killing was justified in seizing those items pursuant to the plain view exception to the Fourth Amendment's search warrant requirement. *D. E. Pittman v. United States* (D.C. App. 1977, 375 A.2d 16).

Police questioning defendant concerning two television sets he was carrying along street in neighborhood that had been beset by daytime burglaries was not unreasonable and, when defendant gave two versions concerning source of sets and newly arrived officer stated he had seen defendant emerge from neighboring house, looking up and down street, it was reasonable to take defendant to that house to make inquiry and such police action did not constitute "arrest"; thus defendant was not entitled to suppression of physical evidence taken from him after discovery of murder victim in house on theory that he had been arrested previously without probable cause. *D. A. Cooper v. United States* (D.C. App. 1977, 368 A.2d 554).

Seizure of gun from juvenile suspect's back yard without a warrant was lawful on ground of exigent circumstances, both because the police had reason to believe that others knew where the gun was located and might remove it and because gun was hidden near area frequented by young children so that police were justifiably concerned with danger to any child who might discover it. *In the Matter of F. D. P.* (D.C. App. 1976, 352 A.2d 378).

Seizure of work pants in defendant's apartment following his arrest in connection with rape and murder, and following inspection of pants which disclosed "what we thought to be blood" was permissible under plain view rule where pants were lying on clothes hamper at time of inspection and seizure. *United States v. W. Sheard* (1972, 473 F. 2d 139, 154 U.S. App. D.C. 9; cert. denied 93 S. Ct. 2784, 412 U.S. 943).

Sentence

Trial judge has discretionary authority to impose a sentence under Federal Youth Corrections Act against an accused who has been convicted of first-degree felony-murder. *United States v. L. J. Stokes, Jr.* (D.C. App. 1976, 365 A.2d 615).

Imposition of three consecutive sentences of from 20 years to life for three convictions of murder in the first degree was improper where the three convictions arose from same killing. *United States v. R. A. Lee* (1975, 513 F.2d 423, 168 U.S. App. D.C. 165; cert. denied 96 S. Ct. 225, 423 U.S. 916).

While dual convictions of defendant for first-degree murder and premeditated murder arising out of one killing was permissible, defendant could not be given consecutive sentences for both. *United States v. R. L. Ammidown* (1973, 497 F. 2d 615, 162 U.S. App. D.C. 28).

Severance

Denial of motion for severance did not deny defendant a fair trial and due process of law on theory that Government's "overwhelming" evidence against codefendant was highly prejudicial to defendant or on theory that defendant was prejudiced by the acrimony between codefendant and the court, codefendant and his attorney, and his attorney and the court. *R. Dean v. United States* (D.C. App. 1977, 377 A. 2d 423).

Where robbery and felony-murder, although unrelated as to place, were so closely related in time as to almost constitute continuing transaction and evidence of robbery would have been admissible in separate trial for felony-murder to show motive, intent, absence of accident and common scheme or plan to rob, trial court did not abuse its discretion in denying severance of robbery and felony-murder counts. *J. C. Calhoun v. United States* (D.C. App. 1977, 369 A.2d 605).

In first-degree murder prosecution, there is adequate evidence that defendants were acting in concert and thus severance is not required. *R. C. Byrd v. United States* (D.C. App. 1976, 364 A.2d 1215).

Where petition charged juvenile with armed robbery of one person and attempted armed robbery and felony-murder of another, and where the offenses were committed at approximately the same place, within minutes of each other, and were similar and involved a great deal of overlapping evidence, and where juvenile made no convincing showing that he had important testimony concerning one count and strong need to refrain from testifying on the other, trial court did not abuse its discretion in refusing to sever the two offenses. *In the Matter of F. D. P.* (D.C. App. 1976, 352 A.2d 378).

Grant of severance was not required on ground that defendant could have called codefendant to testify that defendants were not together when homicide and robbery occurred where there was no intimation that codefendant would have been willing to testify at defendant's trial, and if codefendant were to testify, Government's impeaching statement which was inculpatory of defendant would probably have surfaced. *United States v. J. F. Bolden* (1975, 514 F.2d 1301, 169 U.S. App. D.C. 60).

Taking into account overall considerations of judicial economy, trial judge did not abuse her discretion in denying severance, though one defendant contended that the other placed upon him chief responsibility for the crimes. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

Refusal to grant severance in prosecution for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary, was not prejudicial to defendant due to fact that evidence placing a codefendant at scene of crime was quantitatively and qualitatively greater than evidence against defendant where evidence against defendant was both substantial and compelling, jury was specifically instructed to determine guilt of each defendant by considering only his own conduct and evidence which applied to him and where verdicts demonstrated that jury fulfilled its obligation under charge. *United States v. I. E. Leonard* (1974, 494 F. 2d 955, 161 U.S. App. D.C. 36).

Fact that there was conflict in accused's defenses, in that codefendants relied on separate alibi defenses and defendant admitted his presence at scene of offenses and in that such defendant's efforts to discredit testimony that he and a codefendant knocked out victim assertedly undermined such codefendant's alibi defense and fact that defendant did not testify and thus codefendants were precluded from cross-examining him did not so prejudice codefendants as to render refusal to grant severance an abuse of discretion where damaging implications of defendant's defense were corroborated by substantial testimony. *Id.*

Admission, in criminal prosecution in which a defendant did not testify, of admissible testimony as to such defendant's hearsay statements which incriminated codefendants did not require severance on ground that admission violated codefendants' right of confrontation where, even if codefendants were tried separately, such testimony would have been admissible and defendant probably would have invoked Fifth Amendment, where there was substantial other eyewitness testimony incriminating codefendants and where, since defendant was an accomplice, reliability of his hearsay declaration was "inevitably suspect." *Id.*

Where count of indictment charging defendant with carrying pistol on day of his arrest was dismissed for failure of proof before case was submitted to jury and indictment was retyped, omitting count, defendant was not prejudiced by court's refusal to sever such properly joined count from counts charging felony murder, first-degree burglary and armed robbery. *United States v. J. M. Joyner* (1974, 492 F. 2d 650, 160 U.S. App. D.C. 384; cert. denied 95 S. Ct. 94, 419 U.S. 852).

Refusal to sever defendant's case from that of codefendant, who allegedly would not testify in behalf of defendant if severance were not granted, was not abuse of discretion where codefendant was not a witness to the shooting itself and although he could have refuted testimony of state's witness that he had discussed the crime with defendant prior to the shooting, thereby offering testimony on issue of premeditation, defendant's cross-examination cast strong doubt on such witness' credibility and defendant took the stand and denied that such discussion ever occurred. *J. L. Jackson v. United States* (D.C. App. 1974, 329 A. 2d 782; cert. denied 96 S. Ct. 95, 423 U.S. 851).

In prosecution of defendants on murder and rape charges, trial court did not abuse its discretion in denying motion of defendant brothers for a severance from codefendant, who had fatally stabbed the victim, notwithstanding defendants' claim that the evidence against the codefendant was much stronger than the evidence against them. *United States v. B. J. Heinlein* (1973, 490 F. 2d 725, 160 U.S. App. D.C. 157).

Although defendant relied on alibi defense and codefendant maintained that defendant and he had been drinking at lounge and that defendant and victim had gone into parking lot by themselves before stabbing occurred, defendants were not prejudiced by joint trials on theory of irreconcilable defenses, where such defenses were subject to scrutiny on cross-examination, alibi defense was contradicted by witness' testimony and evidence that victim's type of blood had been found on defendant's shoe and jury was instructed to consider evidence individually against defendant and codefendant. *United States v. W. C. Hurt* (1973, 476 F. 2d 1164, 155 U.S. App. D.C. 217).

Speedy trial

Dismissal of indictment charging felony-murder, second-degree murder and robbery for lack of a speedy

trial is not required, where delay caused by defendant's mental incapacity to stand trial is beyond Government's control and holding of charges in abeyance until attaining of capacity will not prejudice defendant who is unaware of pending charges and who is not incarcerated but living in the community with a relative. *United States v. J. D. Lancaster* (1976, 408 F. Supp. 225).

Witnesses

To invoke privilege against self-incrimination, it was not necessary, for witness as precondition to demonstrate that she would have been forced to admit guilt, or that incidental parts of her testimony would have sealed a future conviction, and where court could not say that possibility of further incrimination was so remote as to deprive defendant of her Fifth Amendment right, privilege was properly allowed. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

Trial court, which denied a defense motion during trial to have key prosecution witness, who was a chronic alcoholic, subjected to a psychiatric examination with respect to his competency, did not abuse its discretion in refusing to treat the witness as a person of actual or potential incompetency, notwithstanding the claims of defendants, in support of their motion, that the testimony given by the witness was highly confusing and that hospital records indicated he had a clinical history which rendered him wholly unreliable. *United States v. B. J. Heinlein* (1973, 490 F. 2d 725, 160 U.S. App. D.C. 157).

Discretion of trial court to grant pretrial physical or mental examination of prospective witnesses should not be exercised in absence of substantial factual predicate for the same and upon substantial showing of need and justification. *United States v. D. T. Butler* (1971, 325 F. Supp. 886; aff'd 481 F. 2d 531, 156 U.S. App. D.C. 356).

In absence of substantial showing of need and justification, hearing on defense motion for pretrial physical and psychiatric examination of prospective government witnesses would not be continued to allow defendant to subpoena one of the witnesses, despite allegation that such witness had told defense counsel that witness was narcotic addict. *Id.*

— Discovery

Court had power to order Government in first-degree murder prosecution to produce names of alleged eyewitnesses to crime for use by the defense, where eyewitnesses were passersby on street, defense counsel satisfied requirement of materiality by establishing that he was unable to locate eyewitnesses, such witnesses were necessary for preparation of defense, discovery of eyewitnesses was not so burdensome as to be unreasonable, Government was given opportunity to oppose discovery motion, and safeguards for witnesses were provided in conditions imposed in court's order. *United States v. W. J. Holmes* (D.C. App. 1975, 343 A.2d 272; rehearing denied 346 A.2d 517).

§ 22-2402. Murder in first degree—Placing obstructions upon or displacement of railroad.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11-502, 22-2403, 24-482.

§ 22-2403. Murder in second degree.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11-502, 23-546, 24-482.

NOTES TO DECISIONS

Assistance of counsel

In prosecution for second-degree murder, defense counsel's failure to obtain murder victim's prior criminal record, which contained convictions for carrying knives and would have arguably buttressed defendant's contention that she acted in self-defense, for reason that he believed that record was inadmissible, does not demonstrate ineffectiveness. *United States v. L. Agurs* (1976, 96 S. Ct. 2392, 427 U.S. 97; rev'g 510 F. 2d 1249, 167 U.S. App. D.C. 28).

Assistance of defense counsel was not inadequate because of refusal, on tactical and other grounds, to cross-examine the Government's principal witness who was 15

years old at time of offense and 16 at time of trial because of some of the vacillations in her testimony, some contradictions and unwillingness to testify and fear for reprisals for her testimony since such factors were apparent to jury and they went to issue of her credibility and jury was a proper tribunal to weigh and consider them. *United States v. J. Clayborne* (1974, 509 F.2d 473, 166 U.S. App. D.C. 140).

Defendant was not denied his Sixth Amendment right to assistance of counsel because the court's refusal to admit defendant's statements at start of his testimony regarding what he had stated to police officer shortly after the murder made it impossible for the defendant to present his case "in the best light legally possible." *United States v. L. R. Smith* (1974, 490 F. 2d 789, 160 U.S. App. D.C. 221).

Bifurcated trial

Where defendant who was charged with murder and carrying a dangerous weapon contended during guilt phase of bifurcated trial that his killing of victim was due to rational belief that it was necessary because victim had threatened him with serious bodily harm, likelihood of prejudice was sufficient to require that second jury hear defendant's insanity defense. *United States v. J. Taylor* (1975, 510 F.2d 1283, 167 U.S. App. D.C. 62; rehearing denied 516 F.2d 1243, 170 U.S. App. D.C. 315).

Written verdict form which was submitted to and used by jury in insanity phase of bifurcated trial and which gave jury choice of determining whether to adhere to decision previously reached, namely, that defendant was guilty of second-degree murder and carrying a dangerous weapon, or to find defendant not guilty by reason of insanity tended somewhat to confuse two distinct issues of bifurcated trial and was improper. *Id.*

Conviction of lesser offense

Where trial court, in prosecution for second-degree murder, gave full and proper instructions on self-defense and evidence was such that refusal to give manslaughter instruction constituted reversible error, case is an appropriate one for the Government to consider its consent to entry of judgment of guilty of manslaughter on remand and for the trial court to consider such a final disposition. *B. L. Pendergrast v. United States* (D.C. App. 1975, 332 A.2d 919).

Cross-examination

Irrespective of whether issue was preserved for appellate review, trial court did not abuse its discretion in second-degree murder prosecution in allowing prosecutor to cross-examine defendant's character witnesses on whether they had heard of defendant's prior arrests and convictions. *J. R. Parker, Jr. v. United States* (D.C. App. 1976, 363 A.2d 975).

Defense

In proceeding in which accused was convicted of second-degree murder and arson, trial judge did not err in refusing to admit proffered evidence that accused's voluntary ingestion of drugs induced a toxic psychosis on date of offense or err in instructing jury that voluntary taking of drugs is not a defense to the charges. *J. Barrett v. United States* (D.C. App. 1977, 377 A. 2d 62).

Where only evidence linking defendant with homicides was testimony of confessed accessory who was granted immunity, defendant's theory that accessory committed the killings and lied about defendant to cover up his own guilt was supported by testimony of eye-witnesses who described a man fitting accessory's description as being near scene of crimes, and defense counsel's closing argument seeking to present such theory did not supplement or mistate the record but merely suggested that jury draw certain inferences, restriction of closing argument so as to prevent defense counsel from suggesting that accessory committed the murders impaired defendant's constitutional right to a closing argument in his behalf and was not harmless beyond reasonable doubt. *United States v. W. L. DeLoach, Sr.* (1974, 504 F. 2d 185, 164 U.S. App. D.C. 116; cert. denied 96 S. Ct. 2232, 426 U.S. 909).

Double jeopardy

Although defendant did not affirmatively consent to Government's oral motion to dismiss original second-degree murder indictment, which motion was made after first trial was aborted and indictment for first-degree

murder filed, such dismissal does not act as an acquittal barring retrial on subsequent second-degree murder indictment, on ground that double jeopardy attached in the first trial before mistrial was declared due to defense error in opening remark; dismissal of first indictment was not an acquittal since effect of request for a mistrial nullified any attachment of jeopardy and Government was free to proceed as though no trial had ever begun. *C. Jamison, Jr. v. United States* (D.C. App. 1977, 373 A.2d 594).

Due process

Reindictment of defendants for first-degree murder, after their first trial on charge of second-degree murder had ended with a declaration of mistrial granted on motion of defense counsel, denied defendants due process of law, absent any showing of justification for the increase in the degree of the crime charged. *United States v. C. Jamison, Jr.* (1974, 505 F. 2d 407, 164 U.S. App. D.C. 300).

Since it could not be said that defendants, whose first trial on charge of second-degree murder ended with a declaration of mistrial and who were then reindicted and found guilty on charge of first-degree murder, were not prejudiced by having to defend, on the retrial, against the higher, illegal charge, the Court of Appeals would not, under those circumstances, remand the case with directions to simply enter convictions for second-degree murder. *Id.*

Elements of offense

Murder in the first degree is intentional homicide done deliberately and with premeditation, and homicide that is intentional but "impulsive," not done after "reflection and meditation", is murder in the second degree. *United States v. A. W. Brawner* (1972, 471 F. 2d 969, 153 U.S. App. D.C. 1).

Evidence—Abnormal mental condition

The potential impact of concepts such as diminished capacity or partial insanity, however labeled, is of a scope and magnitude which precludes their proper adoption by an expedient modification of rules of evidence; if such principles are to be incorporated into law of criminal responsibility, change should lie within province of legislature. *E. Bethea, Jr. v. United States* (D.C. App. 1976, 365 A.2d 64; cert. denied 97 S. Ct. 2979, 433 U.S. 911).

Even when there is no defense of insanity, expert testimony of abnormal mental condition will be admissible when it bears on the existence of specific mental element necessary for a crime, provided trial judge determines that the testimony is grounded in sufficient scientific support, and would aid jury in reaching decision on ultimate issues; overruling *Fisher v. United States*, 80 U.S. App. D.C. 96, 149 F. 2d 28. *United States v. A. W. Brawner* (1972, 471 F. 2d 969, 153 U.S. App. D.C. 1).

A defendant who presents evidence that his abnormal condition of the mind has substantially impaired behavioral controls is exculpated if his behavioral controls were not only substantially impaired but were impaired to such extent that he lacked substantial capacity to conform his conduct to the law. *Id.*

— Admissibility

In murder prosecution, testimony concerning defendant's homosexual relationship with victim was admissible, in that testimony was highly relevant to question of motive or intent, the central issue in the case, and was not presented in such way as to be unduly inflammatory. *L. Smith v. United States* (D.C. App. 1977, 381 A. 2d 258).

In murder prosecution, testimony that during course of beating, which resulted in victim's death, defendant exclaimed, "bitch, been drunk all day and haven't even tried to make no money," was admissible to prove present state of mind. *Id.*

In murder prosecution, testimony that, at time of fatal beating, witness heard someone say to defendant, "you shouldn't be carrying yourself the way you're doing," was admissible under excited utterance exception to hearsay rule. *Id.*

In proceeding in which accused was convicted of second-degree murder and arson, trial judge did not err in refusing to admit proffered evidence that accused's voluntary ingestion of drugs induced a toxic psychosis on date of offense or err in instructing jury that voluntary taking of drugs is not a defense to the charges. *J. Barrett v. United States* (D.C. App. 1977, 377 A. 2d 62).

Even assuming that jury erroneously considered testimony of homicide victim's sister concerning extrajudicial statements by victim and by defendant's sister as substantive evidence that defendant had threatened the victim rather than merely as reflecting on victim's mental state, any resulting prejudice was minimal in light of fact that Government had already proved defendant's confession and his two inculpatory statements to his neighbor on the day of the homicide; therefore, admission of testimony was not error. *H. J. Bennett v. United States* (D.C. App. 1977, 375 A.2d 499).

In homicide prosecution, testimony that victim's last words were "Irene, Irene, Irene" was admissible under spontaneous utterance exception to hearsay rule, under circumstances including the shock of the injury, its obvious severity and the fact that the victim spoke the words no more than 30 minutes after the stabbing and immediately before death. *I. J. Nicholson v. United States* (D.C. App. 1977, 368 A.2d 561).

Trial judge, at prosecution of defendant for second-degree murder, properly denied admission of certified copy of decedent's conviction for carrying pistol without license, as bare fact of proof of conviction for carrying pistol without license does not in and of itself prove a specific violent act which could be used to support defendant's claim of self-defense. *R. Carmichael v. United States* (D.C. App. 1976, 363 A.2d 302).

Government's efforts to locate critical witness were insufficient and failed to justify, on ground of witness' "unavailability," the admission of her preliminary hearing testimony, where she was physically and mentally capable of testifying and was apparently within court's jurisdiction, where the prosecution never represented that she expressed any unwillingness to testify, where the prosecution, in attempting to locate her, failed to inquire at local hospitals or area police departments, and where the Government admitted that its efforts were limited because of a shortage of available policemen. *United States v. P. Lynch* (1974, 499 F. 2d 1011, 163 U.S. App. D.C. 6).

Given trial context and lack of objection, no prejudicial error was established in trial court's refusal to admit arrest record of deceased, in homicide prosecution, there being no crime of violence on such record. *United States v. M. E. Perkins* (1974, 498 F. 2d 1054, 162 U.S. App. D.C. 321).

Given trial context and lack of objection, no prejudicial error was established in admission of testimony, in homicide prosecution, as to defendant's postarrest statement, no question having been raised at trial that statement should be paraphrased by detective rather than read. *Id.*

In murder prosecution, wherein defendant proposed to take the stand first and then introduce a written statement which he had made to police officer that defendant had killed victim in self-defense, for purpose of corroborating what defendant was going to state on the stand, such statement was properly excluded at that time as hearsay and as corroborating an exculpatory statement that was self-serving. *United States v. L. R. Smith* (1974, 490 F. 2d 789, 160 U.S. App. D.C. 221).

In murder prosecution, trial court acted within its discretion in admitting two black and white photographs of inside of house showing where victim was standing when he was shot and where he fell, where photographs were probative of place where victim was shot, and were material on issues in the case. *Id.*

In murder prosecution, admission of testimony by decedent's wife that her marriage was trouble-free did not constitute plain error and hence was not reviewable, where no objection to its admission was made. *Id.*

In view of overwhelming evidence of malice aforethought, premeditation and deliberation, error in allowing defendant's daughter to testify that she had stated to defendant, immediately following the killing, that defendant had threatened deceased before and he had meant to do it was harmless beyond a reasonable doubt. *J. L. Butler v. United States* (D.C. App. 1974, 322 A. 2d 279).

Evidence that defendant had previously beaten his child was admissible in prosecution for causing death of the child. *United States v. M. L. Grady* (1973, 481 F. 2d 1106, 157 U.S. App. D.C. 6).

Although advisability of permitting certain testimony, including descriptions of victim's neck wound, might be in doubt, taken as a whole there was no abuse of discre-

tion in permitting evidence of murder of seven-year-old girl to be introduced, where Government's proof went both to establishing elements of crime and to showing circumstantially that defendant perpetrated crime in a manner inconsistent with his defense of insanity, and its probative value thus sufficiently outweighed danger of unfair prejudice to justify its admission. *United States v. J. L. Cockerham* (1973, 476 F. 2d 542, 155 U.S. App. D.C. 97).

Handwritten statement which defendant made to a psychologist who appeared as an expert witness for defense, who used statement in court to refresh his recollection, and who acknowledged that the statement was a part of basis for his diagnosis was not inadmissible, being an appropriate subject for cross-examination and especially important for proper jury consideration of insanity defense. *Id.*

Admission of evidence of defendant's sexual assault on decedent did not constitute reversible error by reason of fact that court eventually dismissed indecent liberties charge for insufficient evidence, a claim defendant had made in his pretrial motion, where record revealed sufficient medical evidence to support decision to allow Government to proceed with its case in first instance, and testimony it brought forth merely added testimony it brought forth merely added detail to what jury was aware of generally from defendant's own admissible statement to a psychologist. *Id.*

In prosecution for murder, deceased's prior conviction based on plea of guilty to an indictment that charged that deceased did "beat, abuse and otherwise willfully maltreat" his six-year-old son was admissible to prove deceased's violent character and court's barring of the evidence was improper. *United States v. J. H. Burks* (1972, 470 F. 2d 432, 152 U.S. App. D.C. 284).

Evidence of the deceased's violent character, including evidence of specific violent acts, is admissible where a claim of self-defense is raised and such evidence is relevant on the issue of who was the aggressor and, where there is evidence that defendant knew of deceased's character, on the issue of whether or not defendant reasonably feared he was in danger of imminent great bodily injury. *Id.*

Where defense attempted to introduce evidence of deceased's violent and dangerous character, specifically evidence that deceased had killed his own six-year-old son in 1965, through testimony of deceased's wife and neither privilege of husband or wife not to testify for or against the other nor privilege not to reveal confidential marital communications was applicable, court erred in barring the testimony and where defendant's sole defense was self-defense such error was prejudicial. *Id.*

— Character

Where alleged rape of witness' wife by defendant, who was charged with second-degree murder, was already before jury, having been adduced both by prosecutor and by defense counsel, trial judge immediately instructed jury to disregard incompetent testimony of government witness called in rebuttal on issue of character as to alleged rape of witness' wife by defendant, and at close of Government's case court cautioned jury as to weight to be accorded character evidence that had been introduced, such incompetent testimony is not reversible error. *C. N. Lloyd, Jr. v. United States* (D.C. App. 1975, 333 A.2d 387).

— Circumstantial

That Government's evidence is largely circumstantial is no bar to its sufficiency. *United States v. A. Cox* (1974, 509 F.2d 390, 166 U.S. App. D.C. 57).

In view of trial context and lack of objection, no prejudicial error was established when trial court permitted prosecutor, in homicide prosecution, to ask as to character of deceased, after defense counsel had initiated this line of inquiry. *United States v. M. E. Perkins* (1974, 498 F. 2d 1054, 162 U.S. App. D.C. 321).

— Disclosure to defense

Where record was clear and undisputed that there was no intention or bad-faith loss of evidence by Government trial court did not abuse its discretion in refusing to impose sanctions after Government reported that both original and copy of note allegedly written by assailant were lost. *B. Brown v. United States* (D.C. App. 1977, 372 A.2d 557; cert. denied 98 S.Ct. 397, — U.S. —).

Prosecutor's failure to tender second-degree murder victim's criminal record to defense did not deprive defendant of fair trial where it appeared that record was not requested by defense counsel and gave no rise to inference of perjury, trial judge remained convinced of defendant's guilt beyond reasonable doubt after considering criminal record in context of entire record, and trial judge's firsthand appraisal of entire record was thorough and entirely reasonable. *United States v. L. Agurs* (1976, 96 S. Ct. 2392, 427 U.S. 97; rev'g 510 F. 2d 1249, 167 U.S. App. D.C. 28).

Rule requiring prosecutor to permit defendant to inspect and copy or photograph written or recorded statements or confessions made by him does not permit discovery of statement or confessions by accused to persons not law enforcement officers or their agents; any statement or confession of accused to such third persons is producible only after that person has testified on direct examination. *C. Robinson v. United States* (D.C. App. 1976, 361 A.2d 199).

— Expert testimony

Before copies of paintings of well-known artists could be exhibited to jury for purpose of refuting appropriateness of defense psychiatrist's use of paintings of defendant in aid of diagnosing his mental condition, paintings of defendant, if available, should have been exhibited to jury for comparison. *United States v. J. Taylor* (1975, 510 F.2d 1283, 167 U.S. App. D.C. 62; rehearing denied 516 F.2d 1243, 170 U.S. App. D.C. 315).

— Hearsay

Proffered testimony by defense witnesses, that person or persons unknown to them had stated that he had shot victim, was not supported by evidence or circumstances indicating trustworthiness and thus was properly excluded as evidence of declaration against penal interest. *T. Steadman v. United States* (D.C. App. 1976, 358 A.2d 329).

Where proffered testimony of three defense witnesses was that person unknown to them had stated that he had shot victim, utterances were not shown to have been prompted by exciting event without time to reflect, and three proffered witnesses might not have been referring to single defendant, trustworthiness of such proffered testimony was not established, and thus trial court properly refused to admit such evidence under spontaneous declaration or excited utterance exceptions to hearsay rule. *Id.*

— Insanity

Where defendant's brother and sister, through contacts with defendant over period of years prior to shooting of defendant's wife, had a proper foundation for expressing an opinion as to defendant's sanity, and from time defendant was indicted he had been continuously confined in hospital and had been diagnosed as suffering from paranoid schizophrenia, it could not be said that failure to permit brother and sister to give their lay opinions as to defendant's sanity did not seriously prejudice defendant. *United States v. G. E. Pickett* (1972, 470 F. 2d 1255, 152 U.S. App. D.C. 346).

— Mental disease or defect

Concept of portion of standard for insanity defense that the terms "mental disease or defect," as used in such standard, do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct should not be adopted as a rule of evidence; it is preferable to treat possibility of proof's factual or scientific infirmity with a jury instruction. *E. Bethea, Jr. v. United States* (D.C. App. 1976, 365 A.2d 64; cert. denied 97 S.Ct. 2979, 433 U.S. 911).

Following proper proof by Government, defendant must demonstrate both the existence of a cognizable mental disease or defect and the necessary relationship of such a disability to either his awareness of the requirements of society's code of behavior or his ability to conform his conduct thereto. *Id.*

Trial court must carefully supervise testimony and examination of expert witnesses, on issue of insanity defense, in an effort to ensure that the factual bases for their proffered conclusions are aired fully in a manner which is comprehensible to laymen. *Id.*

The introduction or proffer of past criminal and anti-social actions is not admissible as evidence of mental disease unless accompanied by expert testimony, supported by showing of the concordance of a responsible segment of professional opinion, that the particular characteristics of these actions constitute convincing evidence of an underlying mental disease that substantially impairs behavioral controls. *United States v. A. W. Brawner* (1972, 471 F. 2d 969, 153 U.S. App. D.C. 1).

— Rebuttal

Where defendant in second-degree murder prosecution himself contended in his direct testimony that he had only recently begun carrying gun, trial court did not err in allowing prosecution thereafter to introduce rebuttal testimony indicating that defendant had been carrying gun for at least three weeks prior to shooting of victim. *C. R. Curry v. United States* (D.C. App. 1974, 322 A. 2d 268).

— Sufficiency

Identification evidence was sufficient to support defendant's conviction of second-degree murder, assault with a dangerous weapon and carrying pistol without license. *B. Brown v. United States* (D.C. App. 1977, 372 A.2d 557; cert. denied 98 S.Ct. 397, — U.S. —).

Evidence, in prosecution of defendant for second-degree murder, including defendant's signed statement admitting he had stabbed his stepfather because he believed stepfather had been responsible for his being beaten and robbed night before and that, upon confronting stepfather, stepfather came toward him with soft drink bottle in his hand, was sufficient to support charge to jury of lesser included offense of involuntary manslaughter. *R. Carmichael v. United States* (D.C. App. 1976, 363 A.2d 302).

Evidence that defendant was armed and was threatening one individual with serious bodily injury, that he was aware that he was being followed by uniformed special officer and that defendant turned and shot uniformed officer was sufficient, apart from issue of mental responsibility, to support verdict finding defendant guilty of second-degree murder of the officer and of carrying a dangerous weapon. *United States v. J. Taylor* (1975, 510 F.2d 1283, 167 U.S. App. D.C. 62; rehearing denied 516 F.2d 1243, 170 U.S. App. D.C. 315).

In murder prosecution against two defendants one of whom shot the victim, evidence including showing of continuous association of codefendant with defendant who shot the victim, their furtive consultation immediately preceding the murder and codefendant's holding of bags of valuables that other defendant carried moments earlier and standing close by while the defendant fought with and shot the victim sustained conviction of second-degree murder. *United States v. J. Clayborne* (1974, 509 F.2d 473, 166 U.S. App. D.C. 140).

Evidence sustained conviction for second-degree murder, although it was largely circumstantial. *United States v. A. Coz* (1974, 509 F. 2d 390, 166 U.S. App. D.C. 57).

Impeachment

No improper impeachment of defendant in second-degree murder prosecution took place when prosecutor inquired as to previous terms of imprisonment served by defendant only after prisoner had already testified to such confinements in his direct testimony. *C. R. Curry v. United States* (D.C. App. 1974, 322 A. 2d 268).

Indictment

Except in extraordinary circumstances, an indictment is not open to challenge on ground that it was not supported by adequate evidence. *United States v. A. L. Marshall* (1972, 471 F. 2d 1051, 153 U.S. App. D.C. 83).

Inferences

In prosecution for second-degree murder arising from shooting incident, jury could consider defendant's prior aggressive behavior toward deceased during altercation which had occurred an hour prior to the shooting incident and could infer that defendant had harbored malice toward the deceased or that defendant had been more likely to have been the aggressor in the subsequent encounter and could consider such evidence in weighing defendant's testimony that deceased had instigated the fatal confrontation. *United States v. L. R. Grover* (1973, 485 F. 2d 1039, 158 U.S. App. D.C. 260).

Insanity defense

Circumstances do not warrant imposing insanity defense on criminal defendant who refuses to raise such defense himself. *United States v. T. L. Robertson* (1977, 430 F. Supp. 444).

Where the District Court had decided not to raise the insanity defense over defendant's objection but after hearing on remand it was determined that there was sufficient evidence of serious mental illness which substantially affected defendant's mental and emotional processes and behavior controls as to require determination of his criminal responsibility, and defendant then apparently desired to raise insanity defense, case would be remanded for new trial, and District Court would have discretion to decide whether to limit new trial to the criminal responsibility issue. *United States v. T. L. Robertson* (1976, 529 F.2d 879, 174 U.S. App. D.C. 125).

Evidence that, inter alia, defendant suffered from severe personality disorder that caused him on occasion to disassociate when his sexual advances were rejected, and that while defendant was in this state, he did not have capacity for choice or control, was sufficient to allow jury to reasonably infer from all evidence that defendant had necessary mental capacity for first-degree burglary when he entered victim's apartment armed with knife but that he did not have capacity for choice or control when he killed victim because of a then dissociative condition. *C. R. Harman v. United States* (D.C. App. 1976, 351 A.2d 504; cert. denied 97 S.Ct. 116, 429 U.S. 841).

Where evidence suggested that defendant might have been unable to control himself at time he committed murder and other bizarre acts, trial court characterized acts as "impulsive and frenzied" when it reduced charge from first-degree to second-degree murder, defense counsel believed insanity defense appropriate but refused to raise it only because defendant prohibited him from doing so, reason for defendant's opposition was the belief that insanity defense would impugn on the credibility of his racial and political views and testimony of two of four physicians who examined defendant expressed views supportive of insanity plea, trial court acted properly in ordering hearing to determine if insanity defense should be raised sua sponte. *United States v. T. L. Robertson* (1974, 507 F. 2d 1148, 165 U.S. App. D.C. 325; 529 F. 2d 879, 174 U.S. App. D.C. 125).

Where trial court at hearing to determine whether court should sua sponte raise insanity defense, which defendant refused to raise, heard only the conclusory medical testimony of two psychiatrists opposing imposition of defense and did not probe the basis of their conclusions as to defendant's sanity and court did not entertain testimony of other two examining psychiatrists who found defendant mentally ill and where trial court did not set forth in reasonable detail reasons for ultimate determination not to raise insanity defense, case would be remanded for court to hear testimony of psychiatrist who did not testify and make a complete statement as to reasons for determination. *Id.*

Instructions

Though testimony of homicide victim's sister as to extrajudicial statements of the victim and of defendant's sister, which was admitted to circumstantially show victim's state of mind toward defendant, should have been accompanied by an instruction admonishing jury not to consider the statements as substantive evidence of threats by defendant, where defense counsel never requested such cautionary instruction and because defense counsel might have made tactical decision that he should avoid focusing further attention on the testimony, trial court's admission of the testimony without sua sponte instructing the jury as to its limited admissibility was not plain error. *H. J. Bennett v. United States* (D.C. App. 1977, 375 A. 2d 499).

In homicide prosecution, court did not err in failing to include an intoxication instruction, since defendant herself testified that she had had only a little beer and vodka to drink during the day and evening before the stabbing. *I. J. Nicholson v. United States* (D.C. App. 1977, 368 A.2d 561).

In homicide prosecution, evidence did not require that requested manslaughter instruction be given as a lesser included offense, since defendant's claim of adequate

provocation consisted of an unsupported assertion that she suspected victim of having in the past committed adultery with her husband and, even if such claim were true, it would not amount to legal provocation since the allegation was not of a sudden discovery of adulterous conduct causing such passion as to culminate in an immediate homicide. *Id.*

Trial court properly refused tendered instruction on self-defense in murder prosecution where defendant's own testimony, if believed, indicated that he did not shoot victim at all but that victim was shot by third person. *United States v. J. L. Crowder* (1976, 543 F.2d 312, 177 U.S. App. D.C. 165; cert. denied 97 S. Ct. 788, 429 U.S. 1062).

In prosecution for murder of defendant's estranged wife, instruction on lesser included offense of manslaughter was not warranted, where only testimony as to defendant's version of shooting incident came from a defense psychiatrist and was hearsay and could provide no factual predicate for proper consideration of manslaughter by jury. *E. Bethea, Jr. v. United States* (D.C. App. 1976, 365 A.2d 64; cert. denied 97 S. Ct. 2979, 433 U.S. 911).

Trial court's instruction, that if jury found no evidence of self-defense present such finding would end jury's consideration, when read in light of instruction that prosecution had burden to disprove self-defense beyond reasonable doubt, clearly did not direct jury to render guilty verdict if jury found no evidence of self-defense to charge of second-degree murder, and was not improper. *M. F. Myles v. United States* (D.C. App. 1976, 364 A.2d 1195).

Evidence in prosecution of apartment manager for second-degree murder of tenant, which showed that killing occurred during argument over noise and that manager shot tenant in back, was insufficient to support defendant's request for instruction on lesser included offense of involuntary manslaughter. *C. Robinson v. United States* (D.C. App. 1976, 361 A.2d 199).

Where evidence introduced at trial on charges of first-degree burglary while armed, murder, and assault with intent to commit rape while armed supported a multiple-offense charge, trial court did not err in requiring jury to make a separate determination of defendant's sanity on each count for which he had been found guilty. *C. R. Harman v. United States* (D.C. App. 1976, 351 A.2d 504; cert. denied 97 S.Ct. 116, 429 U.S. 841).

Trial court's use of special verdict form did not confuse jury or prejudice defendant, in prosecution for first-degree burglary, murder, and assault with intent to commit rape while armed. *Id.*

Evidence, including defendant's testimony that he had seen victim wave his gun earlier on date of incident at issue and that he knew that victim had previously shot someone else in the neighborhood, as well as testimony that heated words were exchanged at fateful meeting of defendant and victim and that victim was moving his hand toward his pocket when defendant struck him with baseball bat, constituted some evidence that defendant lacked requisite malice for second degree murder; hence, failure to give requested instruction on lesser included offense of manslaughter is reversible error. *B. L. Pendergrast v. United States* (D.C. App. 1975, 332 A. 2d 919).

In murder prosecution, the trial court properly denied a missing witness instruction with respect to the absence of a certain person as he was not within the "peculiar" control of the Government, and the court also properly refused to allow defense to comment on his absence. *United States v. J. Clayborne* (1974, 509 F. 2d 473, 166 U.S. App. D.C. 140).

Any error in instructions on recklessness as basis for criminal responsibility for homicide was not plain error, reviewable without objection, and was not substantially prejudicial. *United States v. A. Cox* (1974, 509 F. 2d 390, 166 U.S. App. D.C. 57).

In homicide prosecution, malice instruction was incorrect insofar as instructing that wrongful act if intentionally done is done with malice aforethought, and was also erroneous in defining malice as state of mind showing a heart regardless of social duty. *United States v. M. E. Perkins* (1974, 498 F. 2d 1054, 162 U.S. App. D.C. 321).

Instructing jury that it could recommend psychiatric treatment if it returned a guilty verdict was improper in a case where sole issue was question of criminal responsibility. *United States v. S. R. Patrick* (1974, 494 F. 2d 1150, 161 U.S. App. D.C. 231).

Plain error in instructions did not occur in second-degree murder prosecution where instructions given were standard instructions on manslaughter and second-degree murder and no objection was made to charge. *C. R. Curry v. United States* (D.C. App. 1974, 322 A. 2d 268).

Trial court's instruction in second degree murder prosecution that "'malice' is a state of mind showing a heart regardless of social duty," was harmless error where death was caused by knife wound. *United States v. M. H. Hinkle* (1973, 487 F. 2d 1205, 159 U.S. App. D.C. 334).

It is improper in homicide prosecution to instruct that "'malice" is state of mind showing heart regardless of social duty, a mind deliberately bent on mischief, a generally depraved, wicked and malicious spirit. *Id.*

Evidence in second-degree murder prosecution did not warrant submission to the jury of the issue of the difference in the nature of recklessness required for second-degree murder, and that required for manslaughter. *Id.*

In prosecution for second-degree murder, trial court's omission to instruct on qualification to general rule that defense of self-defense is not available to one who provokes difficulty was not improper where there had been no request for such instruction and no testimony that defendant had been aggressor during incident and then retreated and no such version of incident should naturally have suggested itself to trial judge. *United States v. L. R. Grover* (1973, 485 F. 2d 1039, 158 U.S. App. D.C. 260).

Failure of trial court to clarify instruction that defense of self-defense is not available to one who provokes difficulty by informing jury that, in determining whether defendant had been aggressor, they were not to consider his conduct at time of earlier altercation which had taken place an hour prior to shooting was not prejudicial where earlier altercation had not loomed large at trial and possible ambiguity of instruction as given was offset by its context. *Id.*

Evidence indicating that defendant's beating of his child was not in a passion of hate and rage but with an intent to discipline that was carried to such unreasonable extremes as to involve a "gross deviation" and extreme risk of harm and death warranted instruction on manslaughter, where jury could have found that defendant indicted for murder lacked the kind of awareness of risk involved in the malice requirement of murder. *United States v. M. L. Grady* (1973, 481 F. 2d 1106, 157 U.S. App. D.C. 6).

Aiding and abetting instruction in felony-murder prosecution, in which defendants obtained instruction on second-degree murder as lesser included offense, was not reversible error for failure to instruct that defendants should be acquitted of second degree murder unless Government proved aiding and abetting in homicide as a specific crime, separate and apart from robbery. *United States v. L. T. Robinson* (1973, 475 F. 2d 376, 154 U.S. App. D.C. 265).

Court's instruction on second degree murder as lesser included offense of felony-murder was properly given where evidence so warranted and where defendants made timely request therefor. *Id.*

Evidence submitted is gauge against which propriety of lesser included offense instructions must be measured, but quantum of proof needed to justify giving instruction is but slight. *Id.*

Instruction that flight or running away does not "prove" guilt, given in preference to requested instruction that flight or concealment does not create presumption of guilt, was not prejudicial in view of instruction as whole. *Id.*

Instruction concerning distinction between manslaughter and second-degree murder and factors that will reduce offense of murder to manslaughter are appropriate only when defendant is charged with second-degree murder as well as manslaughter. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

Where there was evidence of provocation, instruction repeating that provocation must be adequate before defendant could be acquitted of second-degree murder and convicted instead of manslaughter and manslaughter in-

struction containing detailed statement of several issues which were clearly important for jury to consider when deciding whether to convict defendant of second-degree murder were confusing, but did not require reversal of conviction, where confusion might have prejudiced government as well as defendant. *Id.*

If defendant charged with second-degree murder is entitled to charge on lesser included offense of manslaughter, instructions must take a form which distinguish clearly between those factors which constitute defenses to second-degree murder and those which constitute the elements of manslaughter, and which clearly instruct jury that when defense to second-degree murder—adequate provocation, for example—is put in issue, government must prove its absence beyond a reasonable doubt. *Id.*

Court of Appeals stated sample instruction on provocation is to be given in cases in which accused is charged with second-degree murder and manslaughter and adequate provocation is put in issue. *Id.*

Where defendant is charged with second-degree murder and manslaughter, once some evidence of provocation is in the case, whether introduced by government or defense, defendant is entitled to instruction on provocation and manslaughter, burden of persuading jury of absence of provocation is on government, and jury is entitled to clear instruction to that effect. *Id.*

In prosecution for second-degree murder, wherein at first part of trial jury found that defendant had killed two people with malice, defendant, after expert witnesses testified at insanity hearing, was not entitled to instruction permitting jury to reopen question of malice and stating that mental unsoundness, although insufficient to entitle accused to acquittal under legal test of responsibility, may nevertheless be sufficient to prevent accused from forming malice aforethought and thus diminish defendant's responsibility or reduce the grade of the offense. *Id.*

In insanity hearing held in connection with prosecution for murder occurring after one of victims had made racial remark, instruction that "we are not concerned with a question of whether or not a man has a rotten social background," taken in context, amounted only to a reminder that issue was not the shortcomings of society generally, but rather defendant's criminal responsibility for illegal acts; such instruction did not require reversal on theory that it had effect of telling jury to disregard any evidence bearing upon conditions under which defendant's life had been lived. *Id.*

Jencks Act

In criminal proceeding, refusal, after in camera inspection, to order production of notes taken by prosecutor in pretrial interviews of two government witnesses is proper where such notes are merely random notations in regard to background material such as age, address and place of employment, where notes are not a substantially verbatim recital of oral statements of witnesses and where notes are not relevant, except peripherally, to subject matter of witnesses' testimony. *F. A. Brown v. United States* (D.C. App. 1976, 359 A. 2d 600).

Jury

When a judge is asked whether jury can make a recommendation of leniency or treatment, he should inform the jury that it is the jury's responsibility to determine guilt or innocence on basis of evidence that has been presented, and that jury is not to consider the question of punishment in arriving at its verdict, and that if defendant is found guilty then the court will determine the appropriate sanction. *United States v. S. R. Patrick* (1974, 494 F. 2d 1150, 161 U.S. App. D.C. 231).

Exclusion of several prospective jurors for cause when they stated that their opposition to capital punishment was such that they would be unable to render a fair and impartial verdict as to defendant's guilt or innocence of first-degree murder was not prejudicial absent evidence that jurors who were seated and who convicted defendant of second-degree murder were not fair and impartial. *United States v. A. L. Marshall* (1972, 471 F. 2d 1051, 153 U.S. App. D.C. 83).

Fact that three of the jurors in defendant's case had served on jury which two days earlier had been "castigated" by another judge for rendering a verdict of not

guilty did not result in reversible error. *United States v. W. G. Kyle* (1972, 469 F. 2d 547, 152 U.S. App. D.C. 141; cert. denied 93 S. Ct. 920, 409 U.S. 1117).

Where prosecutor who knew that three jurors in case had served on a jury which only two days earlier had been "castigated" by another judge for rendering a verdict of not guilty was concerned primarily with jurors' unfavorable attitude to the prosecution rather than with the speculative effect of the comments of the previous judge, prosecutor's failure to transmit to defense counsel his knowledge that three jurors had been members of the previous jury and that previous jury had been scolded by the other judge was not ground for reversal of conviction. *Id.*

Lesser included offense

Where defendant failed to move at trial to have issue of second-degree murder submitted to jury only as a lesser included offense in felony-murder and where trial court's failure to do so sua sponte was not plain error affecting substantial rights, reversal of conviction for second-degree murder is not required by fact that defendant was also convicted of felony-murder; however, concurrent sentence for second-degree murder is vacated. *T. W. Whalen v. United States* (D.C. App. 1977, 379 A. 2d 1152).

Malice

Even in absence of subjective intent to kill, malice may be determined by application of an objective standard, where conduct is reckless and wanton and a gross deviation from reasonable standard of care, of such nature that jury is warranted in inferring that defendant was aware of serious risk of death or serious bodily harm. *United States v. A. Cox* (1974, 509 F. 2d 390, 166 U.S. App. D.C. 57).

Malice aforethought is an element common to first and second-degree murder; the distinguishing feature between the crimes being that first-degree murder includes the elements of premeditation and deliberation while second-degree murder does not. *J. L. Butler v. United States* (D.C. App. 1974, 322 A. 2d 279).

Malice, an essential element of second-degree murder, may be inferred from use of dangerous weapon such as gun. *C. R. Curry v. United States* (D.C. App. 1974, 322 A. 2d 268).

"Malice" is state of mind showing a heart that is without regard for the life and safety of others. *United States v. M. H. Hinkle* (1973, 487 F. 2d 1205, 159 U.S. App. D.C. 334).

The term "malice" in second-degree murder includes recklessness where defendant had awareness of serious danger to life and displayed wanton disregard for human life. *United States v. A. W. Brawner* (1972, 471 F. 2d 969, 153 U.S. App. D.C. 1).

Evidence justified finding of malice warranting conviction of second-degree murder rather than manslaughter, in case arising out of shooting following one victim's racial remark, in view of testimony of surviving victims that all victims were standing motionless staring at codefendant's gun when defendant came in, drew his gun, and began firing. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

If malice is proved beyond reasonable doubt and no affirmative defense applies, defendant who kills a human being is guilty of murder; if malice is not proved, he is guilty of manslaughter. *Id.*

Malice may be established by either of two standards: first, a subjective standard, asking whether defendant actually intended or foresaw that death or serious bodily harm would result from his act; and second, an objective, "reasonable man" standard, asking whether defendant should have foreseen that such result was likely, and it is for jury to determine whether requisite state of mind or negligent pattern of behavior existed. *P. Belton v. United States* (1967, 382 F. 2d 150, 127 U.S. App. D.C. 201).

Miranda rights

Mere questioning of accused at scene of his wife's unexplained death is not a custodial interrogation so as to require that a Miranda warning be given, though numerous officers were present. *United States v. J. D. Calhoun* (D.C. App. 1976, 363 A. 2d 277).

Avowed conscious desire to cooperate with police is not the sort of compulsion that undermines voluntariness.

United States v. A. Cox (1974, 509 F. 2d 390, 166 U.S. App. D.C. 57).

— Waiver

Both waiver of rights and statement by accused, who was given Miranda warning as soon as police decided to take him into custody after investigating his wife's death and who was not subjected to any threats, cajolery or prolonged interrogation, were voluntary. *United States v. J. D. Calhoun* (D.C. App. 1976, 363 A. 2d 277).

Where accused was informed of his Miranda rights repeatedly during course of criminal investigation, he twice executed written waiver of such rights and he asserted that he was generally cognizant of such rights from previous arrests and that he had been represented by counsel on prior occasions and knew their names, accused had knowingly and intelligently waived his constitutional rights, though he made request for counsel at one point during the investigation. *F. A. Brown v. United States* (D.C. App. 1976, 359 A. 2d 600).

Defendant did not establish that he lacked capacity to make knowing and intelligent waiver of Miranda rights, despite claims that he had insufficient education to comprehend significance of warnings and lacked capacity to make knowing waiver because he was intoxicated at time of interrogation, in view of his reading and discussion of warning form before judge and lack of testimony to support assertion of intoxication. *United States v. A. Cox* (1974, 509 F. 2d 390, 166 U.S. App. D.C. 57).

Mistrial

Fact that psychologist, on staff of government hospital, was unable to give legally admissible testimony about a court-ordered commitment to the hospital for examination did not entitle defendant to mistrial, where trial court did not terminate opportunity of defense to elicit competent testimony from psychologist, most, if not all, of difficulty was due to failure of communication, ending in evident mutual exasperation, between defense counsel and witness, and prejudice was minimal, since government psychiatrist testified concerning psychological testing. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

Plea of guilty

Trial court did not abuse discretion in denying defendant's motion for withdrawal of guilty pleas to second-degree murder, attempted burglary and destruction of property where, inter alia, reasons given for defendant's change of heart did not amount to a claim of legal innocence, proffered evidence of guilt was overwhelmingly convincing, and there was no claim of coercion or incapacity. *G. R. Taylor v. United States* (D.C. App. 1976, 366 A.2d 444).

Prejudicial error

Court did not commit prejudicial error in prosecution for second-degree burglary when it made gratuitous comment during cross-examination of complaining witness to effect that there are any number of ways to open a lock without a key. *J. P. Hazel v. United States* (D.C. App. 1974, 319 A. 2d 136).

Even if trial court committed prejudicial error in making gratuitous comment during burglary prosecution that there are any number of ways to open a lock without a key, any error was cured by court's instructing jury that it should not have made statement, that jury should disregard it, and that only evidence was that coming from witnesses. *Id.*

Prosecutor's comments

In homicide prosecution, defendant was not substantially prejudiced by alleged prosecutorial misconduct in closing argument which included fact that prosecutor suggested that life meant "almost nothing" to defendant because he had been in the military and served in Vietnam. *H. J. Bennett v. United States* (D.C. App. 1977, 375 A. 2d 499).

Defendant in homicide prosecution was not denied fair trial by virtue of fact that prosecutor referred in his opening statement to alleged threat made by defendant to decedent on day before shooting, but was subsequently

unable to produce such evidence; in any case, any possible prejudice to defendant was cured by judge's instructions to jury in which he explicitly pointed out that prosecutor's opening statement regarding threat was not evidence and that statement should be removed from jury's minds. *C. Robinson v. United States* (D.C. App. 1976, 361 A. 2d 199).

Prosecutor's misstatements in summation by which prosecutor introduced a "confession" on part of defendant, an instruction by defendant to his mother to suppress evidence, and provided a basis for prosecutor to compare the murder with the crucifixion, were not corrected by general instruction that statements and arguments of counsel are not evidence and defendant is entitled to a new trial. *M. R. Villacres v. United States* (D.C. App. 1976, 357 A. 2d 423).

Statement of prosecutor during insanity phase of bifurcated trial that defendant stopped when ordered to do so by police officer and, therefore, conformed his behavior to the requirements of the law was improper. *United States v. J. Taylor* (1975, 510 F. 2d 1283, 167 U.S. App. D.C. 62; rehearing denied 516 F. 2d 1243, 170 U.S. App. D.C. 315).

In prosecution for second-degree murder, allowing prosecutor's remarks made during closing and rebuttal arguments concerning alleged purchase of bootleg liquor by defendant for his grandfather and a horse race, which were not objected to at trial, to stand unmodified is not error, let alone "plain error" noticeable for first time on appeal. *C. N. Lloyd, Jr. v. United States* (D.C. App. 1975, 333 A. 2d 387).

Prosecutor's remark in closing argument that victim had been "shot down like a dog in the street" and his characterization of the killings as "executions" and "assassinations" were improper. *United States v. W. L. DeLoach, Sr.* (1974, 504 F. 2d 185, 164 U.S. App. D.C. 116; cert. denied 96 S. Ct. 2232, 426 U.S. 909).

Prosecutor's closing and rebuttal arguments which referred to defenses of insanity interposed by famous defendants in other cases and to actions of Hitler and Napoleon were improper and were so highly prejudicial as to require reversal. *United States v. W. E. Hawkins* (1973, 480 F. 2d 1151, 156 U.S. App. D.C. 259).

Where prosecutor's improper closing and rebuttal arguments were so highly prejudicial as to require reversal of conviction of defendant who relied upon insanity as a defense and was convicted of first-degree murder and assault with intent to kill while armed, judgment of conviction of codefendant, who was charged as an aider and abettor, asserted lack of intent to commit murder, and was convicted of second-degree murder, would also be nullified. *Id.*

Where critical issue in homicide prosecution was matter of self-defense, action of government prosecutor in stating to subpoenaed defense witness, an eyewitness to killing, that such witness should see independent counsel and that if witness testified as indicated by other testimony then he could or would be prosecuted for carrying a concealed weapon, obstructing justice and as an accessory to murder was prejudicial to defendant who was entitled to have such witness put on stand without interference or intimidation by prosecutor, and interests of justice also required that the conviction of codefendant, who was convicted on theory of aiding and abetting defendant, should also be reversed. *United States v. C. L. Smith* (1973, 478 F. 2d 976, 156 U.S. App. D.C. 66).

Provocation

When defendant is charged with second-degree murder and manslaughter and defendant, or government, has introduced evidence of provocation, government must prove absence or inadequacy of provocation beyond a reasonable doubt and it should be explained to jury that provocation is not element of manslaughter, whether voluntary or involuntary, but a defense to second-degree murder. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

The government is not required to disprove provocation in its case in chief, unless its own evidence would support a finding of adequate provocation and, if defense introduces some evidence of provocation, government will have an opportunity to rebut. *Id.*

Search and seizure

Fourth Amendment rights of defendant in murder prosecution were not violated when trial court, over defendant's objection, ordered surgical removal of bullet from defendant's arm and allowed its admission in evidence; such actions are proper where evidence thus sought was relevant and could have been obtained in no other way, where operation was minor and performed by skilled surgeon, and where, before operation was performed, trial court held adversary hearing and defendant was given opportunity for appellate review. *United States v. J. L. Crowder* (1976, 543 F.2d 312, 177 U.S. App. D.C. 165; cert. denied 97 S. Ct. 788, 429 U.S. 1062).

Self-defense

Defendant who threatened one individual with bodily harm and who was being pursued by uniformed special police officer had no right of self-defense to stand his ground and mortally wound the officer; situation between defendant and officer was of defendant's creation and placed him under obligation to indicate withdrawal from or abatement of confrontation. *United States v. J. Taylor* (1975, 510 F. 2d 1283, 167 U.S. App. D.C. 62; rehearing denied 516 F. 2d 1243, 170 U.S. App. D.C. 315).

Instigator of an encounter that ultimately proves fatal may claim self-defense if, prior to fatal blow, he has attempted in good faith to disengage himself from the altercation and has communicated his desire to do so to his opponent. *United States v. L. R. Grover* (1973, 485 F. 2d 1039, 158 U.S. App. D.C. 260).

Effect of disengagement of parties from altercation which had occurred one hour prior to fatal shooting was to restore them to status quo ante, deceased's privilege of self-defense as to earlier assault by defendant had dissipated at time of fatal shooting and any attack he might have launched upon defendant would have constituted unlawful retaliation; thus, any disability of defendant due to his prior aggression had been lifted at time of the fatal shooting and he was not precluded from raising defense of self-defense with respect to the fatal shooting. *Id.*

Severance

Under circumstances including, inter alia, that crimes occurred almost six months apart, were distant in location and no motive was shown for either homicide, joint trial, under indictment charging two counts of second-degree murder, was erroneous, since asserted factors of commonality left question of identity to speculation and probative value of factors did not outweigh prejudice, where there was no concurrence of unusual or distinctive facts relating to manner in which crimes were committed as would justify a rational conclusion that defendant, to exclusion of others, was killer and potential misuse of evidence by jury was apparent. *C. E. Tinsley v. United States* (D.C. App. 1976, 368 A.2d 531).

In order to assert that statement admissible solely against codefendants prejudicially implicated defendant, he must establish that statement admissible against codefendants directly implicated him, that statement was made by one whose interest was adversely affected and who was not government informant, and that statement itself was as powerfully incriminating as a confession, and there must be no independent evidence of guilt. *M. Brabham v. United States* (D.C. App. 1974, 326 A.2d 254; cert. denied 95 S. Ct. 1993, 421 U.S. 989).

Admission of hearsay statement of codefendant that he, defendant and others were going to kill prosecution witness, did not so prejudicially affect defendant as to justify severance of his case. *Id.*

Although defendant relied on alibi defense and codefendant maintained that defendant and he had been drinking at lounge and that defendant and victim had gone into parking lot by themselves before stabbing occurred, defendants were not prejudiced by joint trials on theory of irreconcilable defenses, where such defenses were subject to scrutiny on cross-examination, alibi defense was contradicted by witness' testimony and evidence that victim's type of blood had been found on defendant's shoe and jury was instructed to consider evidence individually against defendant and codefendant. *United States v. W. C. Hurt* (1973, 476 F. 2d 1164, 155 U.S. App. D.C. 217).

Speedy trial

Where delay of year or more between arrest and trial was due mainly to litigation as to propriety of grand jury's subpoena duces tecum for certain employee time cards which were in possession of defense counsel and where defendant, who was never incarcerated, was not prejudiced in preparation of his defense on merits, prosecution would not be dismissed for violation of speedy trial right. *United States v. J. E. Clark* (D.C. App. 1977, 376 A. 2d 434).

Fourteen and one-half-month delay in second-degree murder prosecution in which accused initiated or consented to several continuances did not prejudice accused, where, though it was found that police officers could not recall exact sequence of events or exact content of interviews taken after their arrival at scene of crime, there is no indication that such delay hampered accused in either preparing or establishing his defense based on theory that victim committed suicide; accused was not denied his right to speedy trial. *United States v. J. D. Calhoun* (D.C. App. 1976, 363 A.2d 277).

Despite the 31-month delay between defendant's arrest and his trial, he was not denied his constitutional right to a speedy trial, where a major portion of the delay was caused by his own tactical maneuvering, where no intentional dilatory practices could be ascribed to the Government, where no demand for a speedy trial was made until most of the delay complained of had already occurred, and where only a tenuous demonstration of prejudice was shown. *United States v. P. Lynch* (1974, 499 F.2d 1011, 163 U.S. App. D.C. 6).

Variance

Although indictment alleged that defendant had shot another with a pistol, thereby causing injuries from which individual died, whereas proof established that fatal weapon was a sawed-off shotgun, where no suggestion was made that defendant was in any way prejudiced by mistake in indictment and, from statements of witnesses and grand jury testimony made available to him before trial, defendant knew what proof would be, variance was not fatal. *United States v. A. L. Marshall* (1972, 471 F. 2d 1051, 153 U.S. App. D.C. 83).

Witnesses

Trial court, in homicide prosecution, did not abuse its discretion in finding sole government witness competent to testify and consequently in refusing to order additional mental examination of him, even though witness had been ordered to hospital four years earlier for mental examination in connection with pending robbery charge, where witness' testimony did not inherently suggest mental abnormality, where witness had been twice determined to be competent, and where witness was eyewitness and not otherwise connected with crime; lack of further exploration of witness' mental condition did not deprive defendant of fair trial, due process, or effective assistance of counsel with respect to counsel's ability to cross-examine witness as to credibility. *H. Albany v. United States* (D.C. App. 1977, 377 A. 2d 1145).

Implicit or indirect threats, or even appearance thereof, to apprehensive witness, which may occur when witness is interviewed by defense counsel in presence of accused, are contemplated in proscription against obstructing communication between prospective witnesses and prosecutor. *J. R. Parker, Jr. v. United States* (D.C. App. 1976, 363 A.2d 975).

Trial court, which had before it allegation of a single comment on discrepancy in testimony on matter that was not central to any of issues in second-degree murder prosecution and firm denial of any inappropriate discussion, did not err, after extensively questioning defense witness who allegedly observed alleged impropriety and spectator, in refusing to call additional witnesses to explore defendant's allegations that witnesses had been discussing trial with spectator. *Id.*

The refusal of the Government to supply a list of witnesses was harmless error where the only significant witness was known to the defense. *United States v. J. Clayborne* (1974, 509 F. 2d 473, 166 U.S. App. D.C. 140).

Sequestration

Presence of prosecution witnesses in courtroom during voir dire and brief period of pretrial argument was not

shown to constitute reversible error. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

§ 22-2404. Punishment for murder in first and second degrees.

NOTES TO DECISIONS

Allocation

Where counsel and court at original sentencing of defendant were under mistaken view that defendant could not be sentenced under the Youth Corrections Act, and on remand for consideration of possibility of sentencing under the Youth Corrections Act defendant was not granted right of allocation, case would be remanded to trial court to afford defendant his right of allocation. *United States v. W. Howard* (1972, 470 F. 2d 374, 152 U.S. App. D.C. 226).

Death penalty

Sentence to death by electrocution was illegal. *United States v. R. A. Lee* (1973, 489 F. 2d 1242, 160 U.S. App. D.C. 118).

Probation

Authority of the Superior Court to grant probation in a case where a person has been convicted of a crime that is punishable by life imprisonment is not restricted by the provisions of the Federal Probation Act and is, in fact, governed by the provisions of section 16-710 granting the Superior Court discretionary authority to order probation where appropriate. *A. Sanker v. United States* (D.C. App. 1977, 374 A. 2d 304).

Youth Corrections Act

Trial judge has discretionary authority to impose a sentence under Federal Youth Corrections Act against an accused who has been convicted of first-degree felony-murder. *United States v. L. J. Stokes, Jr.* (D.C. App. 1976, 365 A.2d 615).

§ 22-2405. Punishment for manslaughter.

NOTES TO DECISIONS

Confessions

Where defendant, before being charged or arrested for any crime and without interrogation or coercion of any sort, stated, in reply to police officer's mere request that he identify himself, that he had killed person at given address, statement was voluntarily given and admissible in evidence despite fact that defendant was admittedly inebriated at time statement was made. *United States v. J. Bennett* (1974, 495 F. 2d 943, 161 U.S. App. D.C. 363).

Conviction of lesser offense

Where trial court, in prosecution for second-degree murder, gave full and proper instructions on self-defense and evidence was such that refusal to give manslaughter instruction constituted reversible error, case is an appropriate one for the Government to consider its consent to entry of judgment of guilty of manslaughter on remand and for the trial court to consider such a final disposition. *B. L. Pendergrast v. United States* (D.C. App. 1975, 332 A. 2d 919).

Defenses

Only defense to charge of causing another's death—aside from self-defense, insanity, duress and so forth—is that the homicide was inadvertent and that defendant's negligence, if any, was not sufficient to convict him of involuntary manslaughter. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

Definition of manslaughter

In absence of statutory definition, common-law definition of manslaughter is used in the District of Columbia. *United States v. C. L. Pender* (D.C. App. 1973, 309 A. 2d 492).

"Involuntary manslaughter" is a killing without justification or excuse. *Id.*

"Manslaughter" is the unlawful, that is, unexcused, killing of human being without malice. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

— Involuntary manslaughter

Carrying a pistol without a license exposes the community to such inherent risk of harm that when death results, even though an unintended consequence, defendant may nonetheless be charged with involuntary manslaughter. *United States v. E. E. Walker* (D.C. App. 1977, 380 A. 2d 1388).

"Involuntary manslaughter" is unlawful killing which is unintentionally committed, that is, there is no intent to kill or to do bodily injury, and the crime may occur as result of an unlawful act which is a misdemeanor involving danger of injury, as result of a lawful act performed in an unlawful way, or as result of omission to perform a legal duty. *United States v. D. Bradford* (D.C. App. 1975, 344 A. 2d 208).

— Voluntary manslaughter

"Voluntary manslaughter" is unlawful killing committed with general intent to do the act which caused the death, rather than a specific intent to cause death; thus, even though accused did not intend to kill, he did intend to use such force against the decedent as would endanger him. *United States v. D. Bradford* (D.C. App. 1975, 344 A. 2d 208).

Double jeopardy

Assuming that normal procedures were followed after initial sentencing hearing and that defendant was taken to cell block in court complex by deputy United States marshal to await transportation to jail, defendant had not commenced serving his sentence and trial judge's imposition of corrective sentence to term of three to nine years entered within an hour after mistakenly imposing sentence of three to six years is not barred by double jeopardy clause of the Fifth Amendment. *L. R. Green v. United States* (D.C. App. 1976, 363 A.2d 979).

Evidence—Admissibility

In homicide prosecution, trial court properly admitted into evidence extrajudicial statements which tended to show state of mind of the defendant and the victim, the defendant's wife. *K. Gezmu v. United States* (D.C. App. 1977, 375 A. 2d 520).

In homicide prosecution, trial court did not commit reversible error in admitting into evidence certificate stating that defendant had not registered pistol used in the homicide, despite basic irrelevance of certificate. *Id.*

— Sufficiency

Evidence, in prosecution of defendant for second-degree murder, including defendant's signed statement admitting he had stabbed his stepfather because he believed stepfather had been responsible for his being beaten and robbed night before and that, upon confronting stepfather, stepfather came toward him with soft drink bottle in his hand, was sufficient to support charge to jury of lesser included offense of involuntary manslaughter. *R. Carmichael v. United States* (D.C. App. 1976, 363 A.2d 302).

Eyewitness testimony of three persons that defendant had shot victim is sufficient to support defendant's conviction for manslaughter. *T. Steadman v. United States* (D.C. App. 1976, 358 A.2d 329).

Evidence, including testimony of defendant that during a heated argument with her brother she went to kitchen for a knife in order to "scare him" and that she struck her brother with her fist as she was holding knife in her hand, was sufficient to support conviction of manslaughter. *United States v. P. Dent* (1973, 477 F. 2d 447, 155 U.S. App. D.C. 278).

Indictment—Separate counts

After Government's election to proceed only on theory of involuntary manslaughter under duplicitous indictment which failed to distinguish between voluntary and involuntary manslaughter, trial suffered none of infirmities associated with one based upon duplicitous indictment, in that Government adduced no proof inconsistent with charge of involuntary manslaughter, motions for judgments of acquittal were addressed solely to that charge and to charge of negligent homicide, lesser included offense, and jury was instructed only on involuntary manslaughter; furthermore, jury acquitted motorist on charge of manslaughter as to both victims, which abrogates any question as to which crime indictment referred. *W. G. Murray v. United States and District of Columbia* (D.C. App. 1976, 358 A.2d 314).

Although defendant can properly be charged with both voluntary manslaughter and involuntary manslaughter in same indictment, duplicitous count is improper in that, upon conviction, it would not be clear to which crime guilty verdict referred and thus what penalty should be imposed, it would hamper both judge and jury in considering evidence, general verdict of guilty would not reveal whether defendant was unanimously found guilty of all offenses charged, right of protection against double jeopardy might be violated and it might deny right to notice of nature and cause of accusation. *United States v. D. Bradford* (D.C. App. 1975, 344 A. 2d 208).

— Sufficiency

Indictment which alleged that the accused "feloniously, wantonly and with gross negligence" shot the deceased charged involuntary manslaughter only and was not sufficient, as claimed by government, to also charge voluntary manslaughter. *United States v. C. L. Pender* (D.C. App. 1973, 309 A. 2d 492).

Instructions

Whatever passion was aroused by the rape of one of defendant's prostitutes it is insufficient provocation to justify a manslaughter instruction for shooting of alleged rapist over an hour after defendant learned of the rape. *R. Dean v. United States* (D.C. App. 1977, 377 A. 2d 423).

In homicide prosecution, trial court did not commit reversible error in failing to give limiting instruction concerning extrajudicial statements admitted to show state of mind of the defendant and the victim, the defendant's wife. *K. Gezmu v. United States* (D.C. App. 1977, 375 A. 2d 520).

Requested instruction on manslaughter as lesser included offense of second-degree murder was properly refused absent an evidentiary predicate for finding of adequate legal provocation on which to base such a charge. *C. Jamison, Jr. v. United States* (D.C. App. 1977, 373 A. 2d 594).

Fact that decedent, to whom defendants had wanted to talk concerning the rape of a mother of one of the defendants, tried to shut the door in defendant's face does not show sufficient provocation to entitle defendant to a manslaughter instruction. *E. F. Harris v. United States* (D.C. App. 1977, 373 A. 2d 590).

In prosecution for murder of defendant's estranged wife, instruction on lesser included offense of manslaughter was not warranted, where only testimony as to defendant's version of shooting incident came from a defense psychiatrist and was hearsay and could provide no factual predicate for proper consideration of manslaughter by jury. *E. Bethea, Jr. v. United States* (D.C. App. 1976, 365 A. 2d 64; cert. denied 97 S. Ct. 2979, 433 U.S. 911).

Where defense counsel did not object to trial judge's decision to instruct only on involuntary manslaughter and not on voluntary manslaughter, and where there is no plain error, defendant cannot on appeal question instructions given. *R. Carmichael v. United States* (D.C. App. 1976, 363 A. 2d 302).

Trial judge's reinstruction to jury on lesser included offense of involuntary manslaughter given on their request and in absence of defense counsel's objection to reinstruction was not coercive. *Id.*

Instruction, in prosecution for manslaughter, to the effect that if the Government proved beyond a reasonable doubt that the defendant did not act in self-defense he must be found guilty denied the defendant his right to a jury trial and was error. *W. A. Baker v. United States* (D.C. App. 1974, 324 A. 2d 194).

Neither fact that other instructions in prosecution for manslaughter properly stated that the Government bore the burden of proof beyond reasonable doubt on all elements of the offense nor the weakness of the self-defense claim made harmless erroneous instruction which called for a guilty verdict if the Government proved beyond a reasonable doubt that the defendant did not act in self-defense. *Id.*

Giving of instruction, which was made in response to jury request for explanation of manslaughter charge and in which jury was admonished that "they must recall all of the other instructions the court has given * * *, instructions with respect to reasonable doubt and self-

defense * * * you can assume that I have repeated all those matters to you at this time and I will simply at this time discuss the elements of manslaughter," was not plain error. *United States v. W. Jones* (1973, 482 F. 2d 747, 157 U.S. App. D.C. 158).

Giving of instruction on flight and concealment in murder prosecution was not plain error. *Id.*

Evidence indicating that defendant's beating of his child was not in a passion of hate and rage but with an intent to discipline that was carried to such unreasonable extremes as to involve a "gross deviation" and extreme risk of harm and death warranted instruction on manslaughter, where jury could have found that defendant indicted for murder lacked the kind of awareness of risk involved in the malice requirement of murder. *United States v. M. L. Grady* (1973, 481 F. 2d 1106, 157 U.S. App. D.C. 6).

Instructions providing, inter alia, that high degree of recklessness requisite to prove malice as an element of murder is distinguished from lesser recklessness constituting manslaughter by reason of quality of defendant's awareness of risk either actually or from showing of such danger that any reasonable person must have been aware of it were not prejudicially erroneous. *United States v. P. Dent* (1973, 477 F. 2d 447, 155 U.S. App. D.C. 278).

Instruction concerning distinction between manslaughter and second-degree murder and factors that will reduce offense of murder to manslaughter are appropriate only when defendant is charged with second-degree murder as well as manslaughter. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

Where there was evidence of provocation, instruction repeating that provocation must be adequate before defendant could be acquitted of second-degree murder and convicted instead of manslaughter and manslaughter instruction containing detailed statement of several issues which were clearly important for jury to consider when deciding whether to convict defendant of second-degree murder were confusing, but did not require reversal of conviction, where confusion might have prejudiced government as well as defendant. *Id.*

If defendant charged with second-degree murder is entitled to charge on lesser included offense of manslaughter, instructions must take a form which distinguish clearly between those factors which constitute defenses to second-degree murder and those which constitute the elements of manslaughter, and which clearly instruct jury that when defense to second-degree murder—adequate provocation, for example—is put in issue, government must prove its absence beyond a reasonable doubt. *Id.*

Court of Appeals stated sample instruction on provocation is to be given in cases in which accused is charged with second-degree murder and manslaughter and adequate provocation is put in issue. *Id.*

Where defendant is charged with second-degree murder and manslaughter, once some evidence of provocation is in the case, whether introduced by government or defense, defendant is entitled to instruction on provocation and manslaughter, burden of persuading jury of absence of provocation is on government, and jury is entitled to clear instruction to that effect. *Id.*

Jury question

Evidence generated jury question whether conduct of homicide defendant, who engaged in exchange of verbal aspersions on discovering victim attempting to remove windshield wipers from defendant's inoperative automobile while it was parked in alley behind defendant's house, who reentered house and immediately appeared with pistol, which he loaded in yard, and who walked to rear gate and, while displaying pistol, dared victim to come in and threatened to kill victim if he did, despite fact that victim had made preparations to depart, and who assertedly intended only to scare victim when he discharged weapon as victim came at him with lug wrench, was such an invitation to provocation of encounter as to overcome claim of self-defense. *United States v. B. L. Peterson* (1973, 483 F. 2d 1222, 157 U.S. App. D.C. 219; cert. denied 94 S.Ct. 367, 414 U.S. 1007).

Malice

If malice is proved beyond reasonable doubt and no affirmative defense applies, defendant who kills a human being is guilty of murder; if malice is not proved, he is guilty of manslaughter. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

Prejudicial error

Whether improper conduct of government counsel amounts to prejudicial error depends, in good part, on relative strength of government's evidence of guilt. *United States v. W. Jones* (1973, 482 F. 2d 747, 157 U.S. App. D.C. 158).

Cumulative effect of alleged errors in regard of failure to strike testimony of 12-year-old girl, whose testimony as to whether victim had gun was inconsistent, and with regard to prosecutor's comments as to girl's testimony, and of prosecutor's improper conduct, in calling accused an "executioner" and in expressing disbelief of accused's testimony, did not warrant reversal of manslaughter conviction. *Id.*

Provocation

When defendant is charged with second-degree murder and manslaughter and defendant, or government, has introduced evidence of provocation, government must prove absence or inadequacy of provocation beyond a reasonable doubt and it should be explained to jury that provocation is not element of manslaughter, whether voluntary or involuntary, but a defense to second-degree murder. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

The government is not required to disprove provocation in its case in chief, unless its own evidence would support a finding of adequate provocation and, if defense introduces some evidence of provocation, government will have an opportunity to rebut. *Id.*

Self-defense

In homicide prosecution, in view of absence of evidence showing defendant's belief of imminent danger and in view of fact that defendant's defense of accidental death was totally inconsistent with theory of self-defense, trial court properly rejected request for self-defense instruction. *K. Gezmu v. United States* (D.C. App. 1977, 375 A. 2d 520).

Where homicide defendant could not be found without fault in bringing conflict on, in that following prior verbal exchange he had obtained pistol from his house and, while displaying weapon by back fence, dared victim to come in and threatened to kill victim if he did, defendant, who asserted that fatal shooting was in self-defense but who did not retreat when victim came at him with lug wrench, was not so blameless that he was entitled to fall back on the "castle" doctrine of no retreat before resorting to use of deadly force in repelling attack on one in his home. *United States v. B. L. Peterson* (1973, 483 F. 2d 1222, 157 U.S. App. D.C. 219; cert. denied 94 S. Ct. 367, 414 U.S. 1007).

Sentence

Assuming that normal procedures were followed after initial sentencing hearing and that defendant was taken to cell block in court complex by deputy United States marshal to await transportation to jail, defendant had not commenced serving his sentence and trial judge's imposition of corrective sentence to term of three to nine years entered within an hour after mistakenly imposing sentence of three to six years is not barred by double jeopardy clause of the Fifth Amendment. *L. R. Green v. United States* (D.C. App. 1976, 363 A.2d 979).

Verdict

Pistiol finding defendant who allegedly shot victim with pistol, guilty of manslaughter and not guilty of carrying pistol without license is not fatally inconsistent and does not require reversal. *T. Steadman v. United States* (D.C. App. 1976, 358 A. 2d 329).

Witnesses—Sequestration

Presence of prosecution witnesses in courtroom during voir dire and brief period of pretrial argument was not shown to constitute reversible error. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152

U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

Chapter 25.—PERJURY**§ 22-2501. Perjury—Subornation of perjury.****SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 6-1821, 6-1849, 47-1203.

NOTES TO DECISIONS**Attorneys**

Counsel are not exempt from prosecution under statutes denouncing crimes of obstruction of justice and subornation of perjury. *J. Herbert, Jr. v. United States* (D.C. App. 1975, 340 A. 2d 802).

Chapter 26.—PRISON BREACH—MISPRISIONS**§ 22-2601. Prison breach.****NOTES TO DECISIONS****Abuse of discretion**

Trial court did not abuse its discretion in failing to request presentence report, in prosecution for possession of narcotics paraphernalia and possession of dangerous drug, where information developed concerning defendant was sufficient so that judge could impose appropriate sentence without use of such report. *C. E. Rosser v. United States* (D.C. App. 1974, 313 A. 2d 876).

Committed

Where defendant was released from pretrial custody on personal recognizance and on condition that he live in half-way house and participate in work release program, he was not "committed" within purview of this section. *C. E. McMillian v. United States* (D.C. App. 1974, 326 A. 2d 241).

Constitutionality

Prosecution, under this section, of prisoner who escaped from custody in District of Columbia in Superior Court rather than in District Court did not deny prisoner due process or equal protection. *L. A. Rivers v. United States* (D.C. App. 1975, 334 A. 2d 179).

Construction

This section does not apply outside District of Columbia. *L. A. Rivers v. United States* (D.C. App. 1975, 334 A. 2d 179).

Defenses—Duress

Defendant, who failed to return to custody after being issued a temporary pass, did not establish that his failure to return was involuntary and induced by duress, since his ambiguous assertion that he was a "sitting duck," when viewed in the context of an alleged threat emanating from outside defendant's halfway house, is not legally sufficient to show a nexus between the source of the coercion and the necessity to "escape" by not returning, since, even assuming he initially acted out of fear of immediate death or serious bodily injury, he did not return to custody for over a month and a half and failed to establish that the threat remained imminent, and since he failed to surrender himself after he was offered protective custody at another institution. *M. G. Stewart v. United States* (D.C. App. 1977, 370 A.2d 1374).

Guilty plea

Finding that failure to inform defendant of consecutive nature of sentence before accepting guilty plea to charge of prison breach did not constitute "manifest injustice" entitling defendant to withdraw plea is not abuse of discretion where trial court carefully ascertained that defendant entered the plea voluntarily and with an understanding of the nature of the charge, there was no dispute as to guilt and total time which defendant was required to serve did not substantially exceed the maximum he was aware he might be required to serve. *R. E. Hicks v. United States* (D.C. App. 1976, 362 A. 2d 111).

Penal institution

Defendants, who, in course of serving sentences for felonies, were transferred to a half-way house, were guilty of escape from penal institution when they left the half-way house and did not return. *United States v. M. Venable* (D.C. App. 1974, 316 A. 2d 857).

Prosecution

Misdemeanant who was placed in halfway house for participation in work release program due to administrative error rather than by court order required for valid placement, and who left and failed to return to halfway house, was properly prosecuted under this section which prescribes punishment for escape from penal institution rather than § 24-465 which prescribes punishment for violation of work release plan. *J. E. Armstead v. United States* (D.C. App. 1973, 310 A. 2d 255).

§ 22-2603. Introducing contraband into penal institution.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 27.—PROSTITUTION—PANDERING**§ 22-2701. Prostitution—Inviting for purposes of, prohibited.****NOTES TO DECISIONS****Assistance of counsel**

Court-appointed counsel's failure to raise at trial issue of constitutionality of presumptively valid statute governing solicitation of prostitution did not amount to a violation of defendant's Sixth Amendment right to effective representation, where issue in decision of Superior Court judge allegedly holding statute unconstitutional was a purely legal one and not binding precedent and such case was on appeal. *W. J. Angarano v. United States* (D.C. App. 1973, 312 A. 2d 295; reconsideration denied 329 A. 2d 453).

Constitutionality

Charges of sexual solicitation were improperly dismissed on ground that no member of general public complained, that undercover officer when approached by a defendant and asked if he was dating or sporting was deceptive in answering affirmatively, that transsexuals have an "inherent sexual dilemma" and that, for such reasons, arrests and prosecutions were shockingly unfair and cruel and unusual punishment. *United States v. J. Kenyon* (D.C. App. 1976, 354 A. 2d 861).

Proscription by this section of solicitation for the purpose of prostitution does not constitute an unconstitutional invasion of the right of privacy of defendants who were arrested upon allegedly making solicitations of police officers for prostitution, with the solicitations presumably having been made in some public place. *United States v. D. Moses et al.* (D.C. App. 1975, 339 A. 2d 46; cert. denied 96 S. Ct. 2624, 426 U.S. 920).

This section, prescribing solicitation for prostitution, deals not with speech protected by the First Amendment but with a straightforward business proposal which may be regulated under the standards applicable to "purely commercial advertising." *Id.*

Females are not denied equal protection of the law by this section which prohibits the solicitation for prostitution where the statute is sex-neutral on its face and the practice of the solicitation by one male of another male for purposes of sodomy is violative of the provision. *Id.*

Constitutionality of solicitation statute was to be upheld against assertion that it violated defendant's right of privacy, not only in situation where solicitation was for homosexual sodomy, but also in situation where solicitations were by a man of a woman. *United States v. G. Dumas* (D.C. App. 1974, 327 A.2d 826).

Statute which proscribes solicitation for the purpose of committing sodomy, defined as taking into one's mouth or anus the sexual organ of any other person, does not violate constitutional guarantee of equal protection on its face by prohibiting acts between either two men or a man and a woman but not between two women. *United States v. M. Cozart* (D.C. App. 1974, 321 A. 2d 342).

Statute in effect prohibiting solicitation for sodomy, as applied to persons accused of public solicitations of strangers for sodomy, did not impinge upon personal

rights that could be deemed fundamental or implicit in concept of ordered liberty. *United States v. L. Carson* (D.C. App. 1974, 319 A. 2d 329).

Fact that any of persons accused of public solicitations of strangers for sodomy ultimately may have contemplated a private and consensual act was no legal significance on overbreadth right of privacy issue as concerned soliciting statute. *Id.*

This section in effect prohibiting solicitation for offense of sodomy is within domain of state power and statute proscribing such conduct does not offend the First Amendment protection of freedom of expression. *J. O. Riley v. United States* (D.C. App. 1972, 298 A. 2d 228; cert. denied 94 S. Ct. 96, 414 U.S. 840).

Section proscribing solicitation for lewd and immoral purposes, limited to solicitations for sodomy, is not void for vagueness. *Id.*

Construction

This section proscribing solicitation for lewd and immoral purposes, construed as proscribing solicitations for sodomy, is sufficiently certain to inform public of conduct proscribed and is not void for vagueness amounting to a deprivation of due process of law. *J. O. Riley v. United States* (D.C. App. 1972, 298 A. 2d 228; cert. denied 94 S. Ct. 96, 414 U.S. 840).

Discriminatory enforcement

Evidence, including testimony that police department made no effort to seek out and arrest males who solicit females to engage in sexual acts with them for a price and that reason for such failure of effort was that use of women undercover officers to arrest male solicitors of prostitutes had proven infeasible, does not establish as a matter of law a conscious policy of discrimination based on sex in enforcement of statutes proscribing solicitation for prostitution. *United States v. A. C. Wilson* (D.C. App. 1975, 342 A. 2d 27).

In absence of any showing that government's policy in requiring corroboration in prosecutions involving homosexual conduct, while not requiring such corroboration in prosecutions for solicitation for prostitution, is based on distinction between sex of defendants, such policy does not result in unconstitutional sex discrimination in violation of right to due process. *J. Garrett v. United States* (D.C. App. 1975, 339 A. 2d 372).

Evidence does not support trial court's finding on motion to dismiss indictment that there was discriminatory enforcement of this section. *United States v. D. Moses et al.* (D.C. App. 1975, 339 A. 2d 46; cert. denied 96 S. Ct. 2624, 426 U.S. 920).

Evidence which showed that while some women solicited each other for sodomitic acts, only men were arrested for homosexual solicitation under statute which made solicitation for sodomitic acts a crime, where there was no indication as to whether lesbian solicitation was known to the police, showed no more than a failure to prosecute others because of a lack of knowledge and did not show discriminatory enforcement. *United States v. M. Cozart* (D.C. App. 1974, 321 A. 2d 342).

Dismissal of information

Dismissal of information, which charged solicitation for prostitution, merely on basis of determination that accused was prejudiced by fact that two police officers, who were government witnesses, heard accused say, on being asked by trial court to state her account of the facts after she indicated desire to enter guilty plea, that she did not solicit officer but that he solicited her and she refused was error. *United States v. D. J. Lester* (D.C. App. 1974, 318 A. 2d 899).

Elements of offense

Proof of specific offer to perform sex act is not element of offense of solicitation for prostitution. *United States v. M. Smith* (D.C. App. 1975, 330 A. 2d 759).

Entrapment

Where defendant who was convicted of soliciting for prostitution confirmed his encounter with morals officer, where defendant by his own testimony was conversant with jargon of solicitation bargaining process, and where defendant did not claim to be an unwary innocent with no intent to engage in the solicitation process, no basis existed on which to premise a defense of "en-

trapment" since defendant did not maintain that morals officer implanted the criminal design in his mind to solicit her for prostitution, and since officer's role was limited to her presence and to an exploration of defendant's purposes. *J. D. Williams v. United States* (D.C. App. 1975, 342 A. 2d 367).

Evidence—Sufficiency

Defendant's attire, i. e., red sweater, blue miniskirt and corduroy knee length boots, her prolonged presence on street corner, her approach to complete stranger, her extremely suggestive verbal responses to plainclothes officer, e. g., that she would do anything officer wanted her to do, her prompt discussion of financial terms and her ready arrangement for a room, were legally sufficient for fact finder to conclude beyond a reasonable doubt that she is guilty of violating this section making it unlawful to entice or address another for purpose of enticing him for the purpose of prostitution. *D. Dinkins v. United States* (D.C. App. 1977, 374 A.2d 292).

Evidence supported conviction for soliciting for prostitution despite defendant's contention that it established only a single solicitation without further proof from surrounding circumstances that defendant was indiscriminate. *J. Garrett v. United States* (D.C. App. 1975, 339 A. 2d 372).

Indictment and information

Since offense of soliciting for lewd and immoral purposes has been limited by judicial construction to solicitation for acts of sodomy, defendants charged by information in statutory language with soliciting for lewd and immoral purposes are on clear notice that they are charged with solicitation for sodomy. *United States v. F. H. Miqueli* (D.C. App. 1975, 349 A. 2d 472).

Since this section proscribes two types of sexual solicitation in the disjunctive, i.e., solicitation for prostitution or solicitation for an immoral and lewd purpose, information or indictment can charge both of the prohibited acts in the conjunctive and under such charge government can proceed to prove any one or more of the acts, and cannot properly be required to elect between the conjunctively charge solicitations. *Id.*

Prejudice to defendant

That two police officers, who were government witnesses, heard accused say, on being asked by trial court to state her account of the facts after she indicated desire to enter guilty plea, that she did not solicit officer but that he solicited her and she refused did not prejudice accused, in that accused heard officers' version of the occurrence and in that the defense commonly used in such a prosecution was that solicitation was by the officer and not by defendant. *United States v. D. J. Lester* (D.C. App. 1974, 318 A. 2d 899).

Sentence

Although a sentence of imprisonment cannot be for a greater period than six months where there is no right to a jury trial, and although the minor defendant, who pled guilty to two charges of soliciting for the purpose of prostitution, had no right to a jury trial, committing her under the Federal Youth Corrections Act to the custody of the Attorney General for an indefinite period up to six years did not exceed permissible sentence, since she was not "imprisoned" at all; rather, in the terms of the Act, she had "in lieu of the penalty of imprisonment" been sentenced "for treatment and supervision." *G. E. Austin v. United States* (D.C. App. 1973, 299 A. 2d 545).

Solicitation

Proof of particular language or conduct is not necessary to establish offense of enticing or addressing for purpose of inviting, enticing or persuading anyone for purpose of prostitution; for example, an offer to perform a specific sex act is not necessary to complete the offense; nor is it significant that the arresting officer makes the first overture. *D. Dinkins v. United States* (D.C. App. 1977, 374 A.2d 292).

Question "You want to go out for a while?" when asked of police officer in civilian clothes by defendant attired as a woman was not a "solicitation." *F. L. Shannon v. United States* (D.C. App. 1973, 311 A. 2d 501).

Affirmative response by defendant to inquiry made by police officer as to whether defendant would submit to

rectal sodomy did not constitute a "solicitation" by the defendant. *Id.*

Trial by jury

Defendant charged with soliciting for the purpose of prostitution, which is a petty offense for which the maximum penalty prescribed is a fine of \$250 or imprisonment for 90 days or both, is not entitled to a jury trial, since the Sixth Amendment does not require that a person charged with a petty offense be afforded, at his request, a jury trial, and since Congress has defined a "petty offense" in this context as any misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or fine of not more than \$500 or both. *C. F. Marshall v. United States* (D.C. App. 1973, 302 A. 2d 746).

Defendant had neither a statutory nor a constitutional right to a jury trial on charge of soliciting for the purpose of prostitution, the penalty for which offense was a fine of \$250 and/or 90 days' imprisonment. *G. E. Austin v. United States* (D.C. App. 1973, 299 A. 2d 545).

§ 22-2703. Suspension of sentence of guilty person—Conditions—Enforcement.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 22-2705. Pandering—Inducing or compelling female to become prostitute or engage in prostitution—Penalty.

NOTES TO DECISIONS

Corroboration

Trial court was not required to instruct jury on corroboration, in prosecution for inducing a female to engage in prostitution and for compelling a female to reside with defendant for purpose of prostitution, where none of the offenses for which defendant was convicted involved sexual activity between defendant and complainant. *B. F. Villines v. United States* (D.C. App. 1974, 320 A. 2d 313).

Lesser included offense

Since evidence showed that offenses arose out of separate acts no need existed to consider whether offense of inducing a female to engage in prostitution was a lesser included offense of compelling female to reside with defendant for purposes of prostitution. *B. F. Villines v. United States* (D.C. App. 1974, 320 A. 2d 313).

§ 22-2706. Compelling female to live life of prostitution against her will—Penalty.

NOTES TO DECISIONS

Corroboration

Trial court was not required to instruct jury on corroboration, in prosecution for inducing a female to engage in prostitution and for compelling a female to reside with defendant for purpose of prostitution, where none of the offenses for which defendant was convicted involved sexual activity between defendant and complainant. *B. F. Villines v. United States* (D.C. App. 1974, 320 A. 2d 313).

Lesser included offense

Since evidence showed that offenses arose out of separate acts no need existed to consider whether offense of inducing a female to engage in prostitution was a lesser included offense of compelling female to reside with defendant for purposes of prostitution. *B. F. Villines v. United States* (D.C. App. 1974, 320 A. 2d 313).

§ 22-2713. Premises occupied for lewdness, assignation, or prostitution declared nuisance.

NOTES TO DECISIONS

Nuisance per se

Bawdy house is a classic example of a nuisance per se and Government is not obliged to present a series of witnesses to testify that house disturbed them as indi-

viduals in order to procure an order of abatement. *L. T. Raleigh v. United States* (D.C. App. 1976, 351 A. 2d 510).

§ 22-2717. Order of abatement—Sale of property—Entry of closed premises punishable as contempt.

NOTES TO DECISIONS

Knowledge of use of premises

Where involvement of lessee in operation of bawdy house was conceded and acts of prostitution were open, obvious, notorious and continuing, where one of lessors' agents visited the premises often to collect rent and to deal with neighborhood complaints regarding crowds, and resident manager had earlier been arrested for operating a house of prostitution, lessors should have known early in lease's term that the property was being used for illegal purposes, and thus where resident manager was convicted of operating a bawdy house following second arrest, there was no error in issuing order of abatement despite lessors' contention that they as owners of the property, lacked "guilty knowledge" of its illegal use. *Thomas Circle Limited Partnership v. United States* (D.C. App. 1977, 372 A.2d 555).

Nuisance per se

Bawdy house is a classic example of a nuisance per se and Government is not obliged to present a series of witnesses to testify that house disturbed them as individuals in order to procure an order of abatement. *L. T. Raleigh v. United States* (D.C. App. 1976, 351 A. 2d 510).

Where defendant was found guilty of maintaining a bawdy or disorderly house in violation of section 22-2722, the house has to be deemed a nuisance per se and court is compelled to issue an order of abatement. *Id.*

§ 22-2722. Keeping bawdy or disorderly houses.

NOTES TO DECISIONS

Appeal and error

Where, on reviewing of defendant's conviction of keeping a bawdy or disorderly house, authoritative construction of disorderly house statute was rendered and earlier decision which construed the statute and which had been followed by trial court was rejected, conviction would be reversed. *D. G. Harris v. United States* (D.C. App. 1974, 315 A. 2d 569; rev'g 293 A. 2d 851).

Common law

Common-law crime of "keeping a disorderly house" was the maintenance of premises upon which activity occurred that either created a public disturbance or, though concealed from the public, constituted a nuisance per se, such as a gambling house or bawdy house. *D. G. Harris v. United States* (D.C. App. 1974, 315 A. 2d 569; rev'g 293 A. 2d 851).

Constitutionality

Defendant who was charged with keeping a bawdy or disorderly house, specifically a commercial establishment resorted to for homosexual activities, had no standing to challenge constitutionality of statutory proscription against sodomy on theory that statute was overbroad in that it could be applied to conduct within private abode between those in a familial relationship as defendant was not himself within the class whose alleged right of privacy was affected by application of the statute. *D. G. Harris v. United States* (D.C. App. 1974, 315 A. 2d 569; rev'g 293 A. 2d 851).

Elements of offense

To establish offense of keeping a bawdy or disorderly house, Government must prove that acts take place on the premises in question that disturb the public or constitute a nuisance per se in the nature of a gambling house or bawdy house, that the premises are regularly resorted to for the commission of such acts and that the proprietor knows or should know of the acts and does nothing to prevent them; Government is not required to prove a subversion of public morals. *D. G. Harris v. United States* (D.C. App. 1974, 315 A. 2d 569; rev'g 293 A. 2d 851).

Evidence—Admissibility

In prosecution for keeping a bawdy or disorderly house court properly admitted rental receipts from establishment on ground that due both to the nature of the articles themselves and to the manner in which they were

handled it was singularly unlikely that evidence had been altered, notwithstanding objection that rental receipts were improperly admitted since Government failed to establish an adequate chain of custody. *L. T. Raleigh v. United States* (D.C. App. 1976, 351 A. 2d 510).

In prosecution for keeping a bawdy or disorderly house, copy of annual report of corporate owner of premises as filed with a recorder of deeds listing defendant as president, treasurer and one of the directors of corporation was properly admitted over objection that record was not properly authenticated before admission and that the record was out of date, since it was obvious that the report was the most recent one on file and it was the burden of defendant to rebut evidence of ownership adduced. *Id.*

Sufficiency

Evidence relating to defendant's connection with corporate owner of house in which he maintained an office which he visited frequently coupled with the undisputed and recurrent use of hotel by prostitutes and customers is sufficient to show that defendant knew the nature of activities conducted on premises and that he either procured it to be done or permitted it to be done or did nothing to prevent it and was guilty of keeping a bawdy house. *L. T. Raleigh v. United States* (D.C. App. 1976, 351 A. 2d 510).

Nuisance per se

"Homosexual health club" where acts of sodomy took place was similar to a bawdy house and constituted a nuisance per se. *D. G. Harris v. United States* (D.C. App. 1974, 315 A. 2d 569; rev'g 293 A. 2d 851).

Privacy rights

Acts of sodomy which allegedly occurred at "homosexual health club" were not protected by any recognized right to privacy as the acts occurred not in a private abode but on premises of a commercial establishment open to the public. *D. G. Harris v. United States* (D.C. App. 1974, 315 A. 2d 569; rev'g 293 A. 2d 851).

Chapter 28.—RAPE

§ 22-2801. Definition and penalty.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11-502, 22-3501, 24-203, 24-482.

NOTES TO DECISIONS

Acquittal

Accused's interest in an acquittal when prosecution has failed to present sufficient evidence to go to jury is one for trial judge to vindicate in first instance, but if trial judge fails in this assignment, appellate court will exercise its discretionary authority to provide that protection even if the defendant may have moved in the alternative for a new trial. *United States v. D. A. Wiley* (1975, 517 F. 2d 1212, 170 U.S. App. D.C. 382).

Aid and abet

While vital element of carnal knowledge is merely penetration, aiding and abetting carnal knowledge requires conduct which amounts to assistance or participation in commission of underlying offense and thus, while victim's consent can have no legal bearing as to the former, it may be of relevance to existence of the latter. *In the Matter of J.W.Y.* (D.C. App. 1976, 363 A. 2d 674).

Assistance of counsel

Defendant was not denied effective assistance of counsel by defense counsel's refusal to present certain alibi witnesses that defendant wished to call, in light of fact that proposed testimony of alibi witnesses was contradictory and prosecutor indicated that he would move for grand jury indictment for perjury if witnesses took the stand and told stories they had told him. *T. A. Horton v. United States* (D.C. App. 1977, 377 A. 2d 390).

Failure of defendant's attorney to obtain handwriting analysis of note which defendant claimed was written by prosecutrix and which allegedly supported defendant's theory of consent did not constitute ineffective assistance of counsel, especially where handwriting analysis which was obtained after trial merely confirmed that the note

was not written by defendant and might possibly have been written by the victim. *R. D. Davis v. United States* (D.C. App. 1977, 370 A.2d 1337; cert. denied 98 S.Ct. 168, — U.S. —).

Denial of accused's right to call at preliminary hearing a witness whose testimony is material to issue of probable cause to hold accused for further prosecution infringes guarantee of effective assistance of counsel at every critical stage of a criminal proceeding. *United States v. T. F. King* (1973, 482 F. 2d 768, 157 U.S. App. D.C. 179).

Confessions

Totality of circumstances surrounding arrest of 18-year-old defendant, who was advised of his right to remain silent and to counsel prior to police interrogation which first focused on robbery and then shifted to rape resulting in confession by defendant who was a narcotic addict but showed no signs of withdrawal, was not such as to require finding that the confession was involuntary. *United States v. H. T. Poole* (1974, 495 F. 2d 115, 161 U.S. App. D.C. 289; cert. denied 95 S. Ct. 2667, 422 U.S. 1048).

Constitutionality

Protection from illicit sexual intercourse of underage females, in contradistinction to male children, provided by this section prohibiting carnal knowledge and abuse of female child was a reasonable classification and did not deny due process to males under age of 16 in view of fact that only members of female sex are susceptible to pregnancy. *In the Matter of W.E.P.* (D.C. App. 1974, 318 A. 2d 286).

Construction

This section prohibiting carnal knowledge or abuse of a female child under 16 years of age was not specifically limited to male offenders and did not deny due process to male youths who were convicted under the statute, despite contention that statute invidiously discriminated against male youths who were under 16 years of age and who engaged in consensual sexual intercourse with females under the age of 16 years by making the male participant alone criminally answerable. *In the Matter of W.E.P.* (D.C. App. 1974, 318 A. 2d 286).

Discovery

Even assuming arguendo that timing of defense discovery of FBI report indicating that none of defendant's pubic hair was found after combing had been taken from alleged rape victim and after examination of her bedding for hair had been made, which report was withheld until pretrial motion hearing held on first day of trial, is within scope of Brady rule and that disclosure delay amounts to exclusion of report from trial, defendant was not denied fair trial in said prosecution wherein it is clear from entire record including report, that guilt beyond reasonable doubt is reasonable conclusion. *W. Smith, Jr. v. United States* (D.C. App. 1976, 363 A. 2d 667).

With the exception of records of impeachable convictions, the criminal records and records of arrests of government witnesses were not discoverable and the suppression of the testimony of government witnesses, as sanction for disobedience of pretrial discovery order, was in excess of trial court's authority. *United States v. W. C. Engram et ano.* (D.C. App. 1975, 337 A. 2d 488; cert. denied 96 S. Ct. 793, 423 U.S. 1958).

Discretion of court

Defendant who never sought to have handwriting analysis of note allegedly written by rape victim made before trial and who had been successful in getting the note admitted into evidence at trial is not entitled to new trial on grounds of newly discovered evidence on the basis of expert handwriting analysis which indicates that the note was not written by defendant and might have been written by the victim as defendant claimed as the evidence is not newly discovered. *R. D. Davis v. United States* (D.C. App. 1977, 370 A.2d 1337; cert. denied 98 S.Ct. 168, — U.S. —).

Elements of offense

In rape prosecution, Government is not required to establish that acts of sexual intercourse were forcibly consummated; it is enough that victims are shown to have had at that time reasonable belief induced by threats that they faced death or serious bodily harm. *J. E. Arnold v. United States* (D.C. App. 1976, 358 A.2d 335).

Although penetration of victim's sexual organs is an essential element of the crime of carnal knowledge, Government need not prove full penetration since the offense is committed if the male organ enters only the labia of the female organs. *J. E. Williams v. United States* (D.C. App. 1976, 357 A.2d 865).

Specific intent is not an element of rape even though it is an element of lesser included offense of assault with intent to commit rape. *United States v. P. G. Thornton* (1974, 498 F.2d 749, 162 U.S. App. D.C. 207).

Elements of offense of carnal knowledge are penetration with a child under the age of 16. *United States v. D. A. Wiley* (1974, 492 F. 2d 547, 160 U.S. App. D.C. 281).

Where offense involves a female child under 16 years of age, only remaining element of corpus delicti is penetration, for when a child under the age of consent is involved the law conclusively presumes force and the question of consent is immaterial. *United States v. C. E. Jones* (1973, 477 F. 2d 1213, 155 U.S. App. D.C. 328).

Evidence

Absence of defendant's pubic hair at scene of alleged rape is not indicative of innocence; evidence shows that defendant had left his trousers on and simply opened his zipper to have intercourse and thus presence or absence of his pubic hair on victim's sheet, panties, or person in that context is insignificant with respect to issue of his presence on night of rape. *W. Smith, Jr. v. United States* (D.C. App. 1976, 363 A.2d 667).

— Admissibility

In rape prosecution, evidence of specific acts of sexual intercourse with defendant himself should be admitted where either there may be an issue of identity at trial or to rebut the Government's evidence that prosecutrix did not consent to sexual intercourse on the particular occasion, but testimony that complainant had engaged in sexual relations with others on prior occasions is not admissible to prove consent to sexual intercourse with the defendant. *S. R. McLean v. United States* (D.C. App. 1977, 377 A. 2d 74).

In rape prosecution, prejudicial effect of proffered testimony of two defense witnesses pertaining to prosecutrix' reputation for unchastity clearly outweighed its probative value and was properly excluded. *Id.*

Defendant was not prejudiced to such an extent that he was denied due process or fair trial when trial court allowed jury to hear evidence about complainant's rape in Maryland with which defendant was not charged, where such assault was described only briefly as part of total incident she was recounting and in order to explain circumstance of offense actually charged, where there were no questions that directly elicited such information, where the incident was not described in inflammatory terms or in any detail, and where there was substantial evidence of defendant's guilt of other offenses and challenged testimony was only minor portion of evidence adduced at trial. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S. Ct. 154, — U.S. —).

In delinquency proceeding wherein juvenile was charged with aiding and abetting act of carnal knowledge of 13-year-old girl, defense counsel was properly allowed to cross-examine complainant concerning her previous sexual experience; however, trial court properly excluded testimony from other witnesses concerning complainant's general reputation for unchastity. *In the Matter of J. W. Y.* (D.C. App. 1976, 363 A.2d 674).

Trial court, in rape prosecution, properly excluded hearsay testimony of woman living with defendant concerning beating which victim had allegedly sustained at hands of former boyfriend after he caught her in flagrante delicto with another man, despite defendant's contention on appeal that such testimony was relevant to defense of consent and to amount of violence a rapist would have to exert before victim would submit. *C. Edmondson, Jr. v. United States* (D.C. App. 1975, 346 A. 2d 515).

Where government offered into evidence two laboratory reports concerning presence of sperm in vagina of victim of sexual assault and indicated to the trial court that physician would testify concerning the testing procedures followed with respect to the specimen taken, prosecution should not have failed to develop by examination of the

physician his explanation of the relative routineness of the test and its degree of medical reliability. *T. J. Smith v. United States* (D.C. App. 1975, 337 A.2d 219).

In prosecution for carnal knowledge of female child under 16 years of age, admission of defendant's photograph identified by victim was not error, where photograph was a polaroid snapshot showing a natural frontal pose of defendant and there was absolutely nothing in picture to indicate a prior criminal record or association with police. *United States v. C. E. Jones* (1973, 477 F.2d 1213, 155 U.S. App. D.C. 328).

— Circumstantial

In prosecution for attempted carnal knowledge of female child under 16 years of age, determination that charged offense had actually been committed was supported by numerous circumstantial details in addition to complainant's testimony, including cuts on complainant's foot and hand, disheveled appearance, prompt report to police, complainant's ability to point out light string in room where incident allegedly took place and discovery in that room of girdle which complainant had left behind after incident. *In the Matter of W.E.P.* (D.C. App. 1974, 318 A.2d 286).

— Corroboration

Where corroboration rule was still in force in the District of Columbia at the time of defendant's trial for rape, the corroboration rule applied both in the trial court and on appeal. *R. D. Davis v. United States* (D.C. App. 1977, 370 A.2d 1337; cert. denied 98 S.Ct. 168, — U.S. —).

Evidence that victim was able to identify the house and apartment in which she had been raped, that shoes which she said she had thrown to the ground while escaping from the apartment were found by a police officer directly beneath the window from which the victim said that she had escaped, that victim's slacks were torn and there was a contusion in her right thigh, that the victim's boyfriend found her in a state of shock, and that intact sperm was found in a swab taken from the victim's cervix on the afternoon following the rape is sufficient to corroborate the victim's testimony. *Id.*

Evidence of prosecutrix's behavior and appearance while still in company of defendant, her emotional state when free of defendant and her prompt disclosure of rape when out of his presence, along with her subsequent visit to hospital for examination following events, constitutes sufficient independent corroborative evidence to meet sex offense corroboration requirement and support defendant's conviction for rape and sodomy. *H. L. Wallace v. United States* (D.C. App. 1976, 362 A.2d 120).

Requirement of corroboration of rape victim's testimony serves no legitimate purpose; victim of rape and other sex-related offenses is not so presumptively lacking in credence that corroboration of her testimony is required to withstand motion for judgment of acquittal. *J. E. Arnold v. United States* (D.C. App. 1976, 358 A.2d 335).

Sex offense involving children may not be established by the testimony of the victim alone. *United States v. D. A. Wiley* (1974, 492 F.2d 547, 160 U.S. App. D.C. 281).

Corroboration of a 12-year-old complainant's testimony, consisting of testimony of two officers that complainant was crying and upset, her clothing was disheveled, she had no coat even though it was a cold day, and the complainant's prompt report of the alleged incident, did not corroborate sexual intercourse and was insufficient to submit charge of carnal knowledge or of aiding and abetting co-defendant's act of carnal knowledge. *Id.*

In prosecution for sex crime, corroboration of victim's testimony by independent evidence is a prerequisite to conviction; the corroboration need not be by direct evidence but may consist of circumstances tending to support victim's testimony. *In the Matter of W.E.P.* (D.C. App. 1974, 318 A.2d 286).

In prosecution for carnal knowledge of defendant's ten-year-old daughter, testimony of victim's eight-year-old brother was sufficient to meet corroboration requirement with respect to proof of sex offenses though his responses to questions were badly garbled and generally difficult to understand, where such deficiencies were attributable to inferior language skills and emotional turmoil rather than to any fundamental inability to observe with accuracy. *United States v. W. E. Ashe* (1973, 478 F.2d 661, 155 U.S. App. D.C. 457).

In prosecution for carnal knowledge of a female child under 16 years of age, absence of any evidence tending to show a motive for fabrication coupled with maturity that victim demonstrated throughout proceedings lent inherent credence to her testimony, and while not in and of themselves corroborative, they diminished danger of falsification that was foundation of corroboration requirement. *United States v. C. E. Jones* (1973, 477 F.2d 1213, 155 U.S. App. D.C. 328).

Medical testimony that victim's condition was consistent with penetration, her emotional state when she first revealed what had happened, when she first discussed case with police, and when she first identified defendant's picture, taken in conjunction with her accurate description of scene of events, and description of automobile linked to defendant, supplied more than ample corroboration of corpus delicti. *Id.*

Independent corroborative evidence need not establish each and every material element of offense of rape, but is sufficient when it permits jury to conclude beyond reasonable doubt that victim's account of crime was not fabrication; rule is flexible, and particular quantum of proof required will necessarily vary from case to case depending upon, e.g., age and impressionability of prosecutrix and presence or absence of any apparent motive to falsify or exaggerate. *United States v. G. Gray, Jr.* (1973, 477 F.2d 444, 155 U.S. App. D.C. 275).

Evidence including testimony concerning appearance and condition of victim was sufficient to fulfill requirement of corroboration in rape prosecution, when it dovetailed perfectly with victim's account of events. *Id.*

In rape prosecution, corroboration is required for identification of assailant as well as for commission of offense, but lesser standard of proof is required, and where there is convincing identification, which minimizes danger of mistake or falsification, no further corroboration is required. *Id.*

Sex charges may not be submitted to jury simply upon testimony of alleged victim; corroboration is essential to proof of each element. *United States v. C. L. Tremble* (1972, 470 F.2d 1272, 152 U.S. App. D.C. 363).

— Examination of witnesses

Defendant is not entitled to cross-examine prosecution witnesses about \$10 witness fee received from the prosecutor, particularly since stipulation had been entered pretrial that each government witness was paid a \$10 witness fee pursuant to statute. *H. F. Wilburn, Jr. v. United States* (D.C. App. 1975, 340 A.2d 810).

— Identification

In prosecution for attempted carnal knowledge of female child under 16 years of age, complainant's identification of defendants was amply corroborated by testimony establishing that she had an adequate opportunity to observe her assailants. *In the Matter of W.E.P.* (D.C. App. 1974, 318 A.2d 286).

— Medical

Physician who examined victim properly was allowed to testify as expert medical witness in prosecution for rape, although he was not specialist in gynecology. *W. G. Grady v. United States* (D.C. App. 1977, 376 A.2d 437).

Medical evidence of sexual intercourse was not required to sustain conviction of attempted carnal knowledge of female child under 16 years of age. *In the Matter of W.E.P.* (D.C. App. 1974, 318 A.2d 286).

— Sufficiency

Evidence tending to establish that murder victim had been forcibly raped and that defendant had been in the victim's room at the approximate time of the events giving rise to the charges was sufficient to warrant trial court's submission to jury of questions whether defendant was guilty of felony-murder and rape. *T. W. Whalen v. United States* (D.C. App. 1977, 379 A.2d 1152).

In delinquency proceeding wherein juvenile was charged with aiding and abetting act of carnal knowledge, evidence is sufficient to establish penetration, a necessary element of the underlying offense. *In the Matter of J. W. Y.* (D.C. App. 1976, 363 A.2d 674).

Evidence in rape prosecution, which reveals sequence of events which established that defendant utilized physical force and threats to overcome victim's resistance and

that victim's final submission to defendant was solely result of her fear of bodily injury to herself and to her infant son, is sufficient to establish lack of consent. *W. Smith, Jr. v. United States* (D.C. App. 1976, 363 A.2d 667).

Evidence in rape prosecution is sufficient to show that rape victims submitted only after they were threatened with death or serious bodily harm. *J. E. Arnold v. United States* (D.C. App. 1976, 358 A.2d 335).

Testimony of complainant's mother that she saw defendant having intercourse with her eight-year-old daughter, that defendant was behind the girl on the bed, and that, when the complainant's mother pulled her daughter away from the defendant, she saw his erect penis emerge from someplace behind her daughter, and evidence that, a week after the incident, there was a slight amount of blood near the opening of the vagina and the girl's hymen was not intact is sufficient to sustain defendant's conviction for carnal knowledge. *J. E. Williams v. United States* (D.C. App. 1976, 357 A.2d 865).

Evidence, in rape prosecution, constituted more than ample corroboration of complainant's testimony concerning the offense, and was sufficient to permit case to go to jury. *C. Edmondson, Jr. v. United States* (D.C. App. 1975, 346 A.2d 515).

Evidence, including the testimony of an eyewitness involving all three defendants in the assault upon victim, was sufficient to support verdict of jury finding defendants guilty of felony-murder and assault with intent to commit rape while armed. *United States v. B. J. Heinlein* (1973, 490 F.2d 725, 160 U.S. App. D.C. 157).

Evidence in prosecution for assault with intent to commit rape was insufficient to establish that defendant intended to achieve sexual intercourse by force and violence and against will of prosecutrix. *United States v. C. L. Tremble* (1972, 470 F.2d 1272, 152 U.S. App. D.C. 363).

Evidence, including evidence that defendant's fingerprints were found on both sides of pane of glass removed from back door to apartment and that prints were found on surface of glass covered by molding strips which secured window in door, were sufficient to sustain determination that defendant was person who entered complainant's apartment. *United States v. J. E. Cary* (1972, 470 F.2d 469, 152 U.S. App. D.C. 321).

— Weight

Generally, sexual assault charges by mentally abnormal girl should be subjected to great scrutiny. *United States v. H. Benn, Jr.* (1973, 476 F.2d 1127, 155 U.S. App. D.C. 180).

Female offenders

Female may be charged as a principal under this section prohibiting carnal knowledge or abuse of a female child under 16 years of age if she has aided or abetted commission of the particular crime even though female is physically incapable of committing the prohibited act. *In the Matter of W.E.P.* (D.C. App. 1974, 318 A.2d 286).

Identification

Denial of motion to sever counts of indictment in proceeding in which accused was convicted of four rape offenses and other offenses was not abuse of discretion, in view of similar characteristics of such offenses, in which assailant entered through rear of apartments, awoke victims, threatened them with weapon, demanded silence and submission and committed no act of violence if there was compliance with his orders, in which, in three of the cases, he sought to prevent victims from getting good look at him and cut or threatened to cut phone lines and in which he cut off any pants worn by victims. *M. Bridges v. United States* (D.C. App. 1977, 381 A.2d 1073).

Photographic identification procedure in which victim, who had described assailant as wearing a dashiki, who had ample opportunity to observe attackers during course of abduction, who described defendant correctly and in detail, and who was unable to recall at trial whether man in photograph was wearing a dashiki, immediately and unequivocally selected defendant's photograph, which was only one in group of photographs showing man wearing dashiki, was not so impermissibly suggestive as to give rise to very substantial likelihood of irreparable misidentification and deny defendant due process of law. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S. Ct. 154, — U.S. —).

Police sketches, which are based on information communicated directly to artist by victims and which are

criticized and approved by victims before use, are reliable and useful tools which provide a more accurate model for police officers than does a verbal or written description, despite contention that all police sketches are improperly suggestive and therefore should not be used to establish probable cause. *Id.*

Because there is some degree of suggestiveness when police officer indicates to witness that suspect's picture is among photographs in array, impeachment of witness on this point is relevant factor to be considered by jury in judging weight to be given photographic identification, particularly where there is only one eyewitness. *M. A. Hampton v. United States* (D.C. App. 1974, 318 A.2d 598).

In prosecution for carnal knowledge of a female child under 16 years of age, prosecutor's use of book of photographs from which victim originally selected defendant's picture was not prejudicial error, absent a showing of some independent specific prejudice resulting from use of album warranting reversal, some prejudice substantiated by more than bare allegation that its use alone subjected jury to an impermissible inference of a prior criminal record. *United States v. C. E. Jones* (1973, 477 F.2d 1213, 155 U.S. App. D.C. 328).

Although there was no prejudice in case from prosecutor's use at trial of book of photographs from which victim originally selected defendant's picture, caution should be taken in future to determine if such action is absolutely necessary, as use of such an album is a risky prosecutorial venture, and one as to which great care should be exercised, especially where it is merely cumulative of other identification evidence. *Id.*

— In-court

Government established, in prosecution for rape while armed and armed robbery, by clear and convincing evidence that the in-court identifications of defendant by the victims were based on observation of suspect rather than on drawing of man submitted to victims for identification, and identification procedure was not improper. *United States v. R. E. Adams, Jr.* (1973, 481 F.2d 1099, 156 U.S. App. D.C. 415).

Impartial jury

Two jurors, in prosecution for first-degree burglary and forcible rape, who had previously served on jury in another case wherein, after verdict, judge remarked to jury that codefendants had absconded after release on bail and that acquitted defendant would remain in jail pending another trial for armed robbery, were not biased against defendant by judge's remarks in earlier case; remarks were relatively mild and constituted more of an allusion to problems of recidivism than direct criticism of verdict, defendant's trial judge held hearings to question the two jurors and his decision that they were not prejudiced had abundant evidentiary support, two trials were quite dissimilar, with different charges, judges, lawyers, witnesses and defendants, and evidence of defendant's guilt was undisputed. *W. G. Grady v. United States* (D.C. App. 1977, 376 A.2d 437).

Failure to excuse juror in rape case after juror stated that she knew prosecution witness constitutes an abuse of discretion, since juror had been a personal friend of mother of the witness for 30 years and had known witness while he was growing up, since credibility of witness was crucial to Government's case, and since, if juror, in assessing credibility of the witness, were to rely upon facts which she had learned through her prior relationship with witness or his mother, then defendant would be denied a fair trial. *H. F. Wilburn, Jr. v. United States* (D.C. App. 1975, 340 A.2d 810).

Impeachment

Where subject matter with respect to which defendant wished to impeach witness whom he called had already been brought out in the prosecution's direct examination of the witness when he had been called as a prosecution witness and where defendant had declined to cross-examine the witness on that basis at the time that the prosecution called him, defendant was not entitled to impeach the witness after defendant called him to the stand on theory that the witness' testimony was a surprise. *R. D. Davis v. United States* (D.C. App. 1977, 370 A.2d 1337; cert. denied 98 S.Ct. 168, — U.S. —).

Test of whether witness' statements concern collateral matters, so as not to be subject to impeachment, is

whether fact as to which statement is predicated could have been independently shown in evidence for any purpose. *M. A. Hampton v. United States* (D.C. App. 1974, 318 A. 2d 598).

Trial court erred when it precluded defendant's counsel from attempting to impeach complaining witness' testimony that she had been told that suspect had been arrested after she viewed police photographs by bringing out witness' grand jury testimony that she had viewed photographs only after being informed of suspect's arrest. *Id.*

Indictment

Grand jury indictment charging forcible rape, carnal knowledge and indecent liberties was not subject to dismissal on ground that it was based on transcript of sworn testimony before earlier grand jury which returned indictment for carnal knowledge that had been dismissed because of defendant's age, where testimony before first grand jury was not limited to carnal knowledge charge, there was no limitation of issues or offenses in presentation of evidence to first grand jury, and statement of victim, read to first grand jury in her presence and affirmed by her orally under oath, recited details of two acts of forcible rape. *United States v. S. C. Wagoner* (D.C. App. 1974, 313 A. 2d 719; rehearing denied 321 A. 2d 211; cert. denied 95 S.Ct. 630, 419 U.S. 1052).

Counts of indictment charging defendant with assaulting female persons with intent to carnally know and abuse such persons did not charge offenses under District of Columbia law where victims were females over 16 years of age. *United States v. J. Hutchinson* (1973, 478 F. 2d 997, 156 U.S. App. D.C. 87).

Instructions

Defendant was not prejudiced by trial court's instruction on corroboration, even though trial court, in response to defendant's objection that instruction which listed variety of factors that might be deemed corroborative of the corpus delicti unduly emphasized prosecution's theory of the case, stated that the instruction came out stronger than it had intended; instruction was a proper recitation of various factors jury may consider to be corroboration. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S. Ct. 154, — U.S. —).

Action of trial court in rape prosecution in refusing to give instruction on corroboration mandated by applicable case law in jurisdiction, although error, is not error of constitutional proportions in view of fact that defendant had fair and impartial trial during which corroborating evidence actually was introduced. *J. E. Arnold v. United States* (D.C. App. 1976, 358 A.2d 335).

In future, no instruction directed specifically to credibility of any mature female victim of rape or its lesser included offenses and necessity for corroboration of her testimony shall be required or given in trial of any such case in District of Columbia court system. *Id.*

Since jury found defendant guilty of carnal knowledge, no prejudicial error arose in court's giving of rape instruction in addition to carnal knowledge instruction. *J. E. Williams v. United States* (D.C. App. 1976, 357 A.2d 865).

Instruction with respect to identification in prosecution for burglary, rape, and robbery was sufficient for circumstances of case wherein complaining witness did not identify defendant but identity was established from fingerprint evidence. *United States v. J. E. Cary* (1972, 470 F. 2d 469, 152 U.S. App. D.C. 321).

Jencks Act

No foundation was laid for a Jencks Act hearing in rape prosecution where officer on cross-examination stated that, after being informed of rape, he took complainant's name and date of birth and then transported her to office of the sex squad, and where it does not appear from the record that defense counsel ever established that officer recorded a statement. *H. F. Wilburn, Jr. v. United States* (D.C. App. 1975, 340 A. 2d 810).

Joinder

Accused's claim that circumstances surrounding his identification were inadequate because of insufficient opportunities for observation available to victims is not a basis on which identification testimony could be suppressed in criminal proceeding. *M. Bridges v. United States* (D.C. App. 1977, 381 A. 2d 1073).

In prosecution for robbery, armed rape, assault with intent to commit sodomy while armed, armed kidnapping, assault with intent to commit mayhem, armed robbery, obstruction of justice and assault with dangerous weapon, trial court did not err in refusing to sever counts on basis of separate dates of alleged offenses, in view of fact that all offenses flowed each from the other, evidence of each would have been admissible in separate trials to show motive, intent and identity and evidence as to each offense was simple and direct, consisting of victim accounts corroborated by eyewitness testimony. *T. A. Horton v. United States* (D.C. App. 1977, 377 A. 2d 390).

Defendant, who contended on appeal that trial court erred in refusing to sever for trial seven offenses and 39 counts contained in indictment because cumulative effect of evidence introduced to prove all counts made fair trial impossible and that trial court's failure to sever such counts deprived him of his right to a fair trial, who made no motions for severance either before or during trial nor did he join in codefendant's motion for severance, and who was aware of all facts comprising his claim of prejudice before trial, should have raised such issue at trial rather than on appeal. *J. N. Davis v. United States* (D.C. App. 1976, 367 A. 2d 1254; cert. denied 98 S. Ct. 154, — U.S. —).

Review of record showed that the similarity of circumstances surrounding the two criminal episodes on which charges of rape while armed and armed robbery were based were sufficiently remarkable to prove that there was a reasonable probability that the same person committed the crimes and there was no prejudice in the joinder of both crimes in one trial. *United States v. R. E. Adams, Jr.* (1973, 481 F. 2d 1099, 156 U.S. App. D.C. 415).

Lesser included offense

Where armed assault was essential part of proof establishing armed rape, armed assault was lesser offense included within the armed rape, and assault conviction was vacated. *United States v. E. Edmonds, Jr.*, (1975, 524 F. 2d 62, 173 U.S. App. D.C. 241).

Merger of offenses

In view of different societal interests protected by the rape and felony-murder statutes and in absence of any indication that Congress intended rape to be nonprosecutable under the merger rule when a defendant is charged with felony-murder based on a rape, offense of rape does not merge into felony-murder based on the rape. *T. W. Whalen v. United States* (D.C. App. 1977, 379 A. 2d 1152).

Preliminary hearing

Defendant, in rape and sodomy prosecution, is not entitled to new trial on theory that he was deprived of his right to preliminary hearing when nolle prosequi was entered by Government to avoid defense questioning of complainant at preliminary hearing where indictment was thereafter secured and where defendant was later furnished complainant's signed statement concerning offense as well as her grand jury testimony. *H. L. Wallace v. United States* (D.C. App. 1976, 362 A.2d 120).

At preliminary hearing to determine whether probable cause existed to hold accused for prosecution on charge of rape, accused was entitled to examine complainant as his own witness absent presentation of any reason why, if called, complainant should not have been allowed to testify; however, accused was not entitled to have preliminary hearing reopened for failure to permit him to call complainant where indictment had been returned against him subsequent to the preliminary hearing, though trial judge could fashion appropriate remedy to suitably avert injury from the wrong suffered. *United States v. T. F. King* (1973, 482 F. 2d 768, 157 U.S. App. D.C. 179).

Probable cause

In view of violent and brutal nature of crime, strong showing of probable cause, recentness of offense and likely destruction of evidence should entry be delayed, trial court, even while giving proper consideration to seriousness of officers' nighttime intrusion into defendant's apartment, could find that warrantless forced entry was permissible and presented no grounds for suppression of evidence seized. *R. Brooks, Jr. v. United States* (D.C. App. 1976, 367 A.2d 1297).

Police officers who, after properly stopping automobile which matched description of automobile allegedly involved in series of abductions and rapes, observed that driver closely resembled composite sketches of one alleged assailant and that interior of automobile matched description of automobile allegedly involved in such crimes, and who called in superior officer who also agreed that driver's face was very similar to composite sketches, had probable cause to arrest driver, and detention, transportation to police station, and photographing of driver were lawful. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S. Ct. 154, — U.S. —).

Prosecutor's remarks

Where, taken in context, government attorney's statement was clearly not a reference to defendant's failure to take the witness stand but referred instead to defendant's inability, on the morning of rape and murder, to reply satisfactorily to a coworker who had asked defendant where he had been, no impropriety resulted from fact that government attorney stated during closing argument, "You have a defendant who can't explain the time period or where he goes. He has no explanation as to where he was during that time." *T. W. Whalen v. United States* (D.C. App. 1977, 379 A.2d 1152).

Prosecutor's statement in closing argument allegedly suggesting that defendant who was charged with, inter alia, kidnapping while armed, armed robbery, and armed rape, was looking for a new victim when, on night of his arrest, he was seen in car talking to two women on street, was not so prejudicial as to substantially sway judgment of jury and require reversal of defendant's convictions, in light of overwhelming proof against defendant, minimal reference to such occurrence at end of all the evidence, and court's instruction that statements and arguments made by counsel are not evidence, even though such statement may have been unnecessary and improper. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S. Ct. 154, — U.S. —).

Retrial

Where corroboration rule upon which defendant's first conviction of carnal knowledge was reversed was established law, and insufficiency of prosecution's case was attributable to inadequate preparation and presentation of the evidence against defendant, and not to any manifest necessity, it was not just and appropriate to subject defendant to a second trial, and resulting conviction would be set aside. *United States v. D. A. Wiley* (1975, 517 F.2d 1212, 170 U.S. App. D.C. 382).

Search and seizure

In view of overwhelming evidence that defendant had committed felony-murder and rape, any error which may have been committed when trial court admitted into evidence head and pubic hair samples which had been seized from defendant without a search warrant subsequent to his arrest was harmless beyond a reasonable doubt. *T. W. Whalen v. United States* (D.C. App. 1977, 379 A.2d 1152).

Where, even if there is sufficient basis in record for concluding that items seized were in fact within plain view, speed with which apprehension and arrest were consummated and breadth and duration of postarrest activities in defendant's apartment raise substantial possibility that some if not all of evidence was not found, as distinguished from being physically seized, until fatally remote from arrest, reviewing court cannot determine on existing record whether plain view doctrine is applicable. *R. Brooks, Jr. v. United States* (D.C. App. 1976, 367 A.2d 1297).

Seizure of work pants in defendant's apartment following his arrest in connection with rape and murder, and following inspection of pants which disclosed "what we thought to be blood" was permissible under plain view rule where pants were lying on clothes hamper at time of inspection and seizure. *United States v. W. Sheard* (1972, 473 F.2d 139, 154 U.S. App. D.C. 9; cert. denied 93 S. Ct. 2784, 412 U.S. 943).

Severance

In prosecution of two defendants who were charged in 44-count indictment with, inter alia, kidnapping while armed, armed robbery, and armed rape, reversible error resulted as to one defendant from joinder of counts

charging such defendant and codefendant jointly with counts charging codefendant alone and with others unidentified, where proof of each crime did not overlap and there was no economy and efficiency served by such joinder, and where testimony could lead to jury inference that defendant was in fact unidentified person. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S. Ct. 154, — U.S. —).

Trial court in prosecution of defendant for two rapes did not abuse its discretion in denying severance of one rape count from another where, while two rapes occurred at different times, methods employed by rapist in each case was strikingly similar. *J. E. Arnold v. United States* (D.C. App. 1976, 358 A.2d 335).

In prosecution of defendants on murder and rape charges, trial court did not abuse its discretion in denying motion of defendant brothers for a severance from codefendant, who had fatally stabbed the victim, notwithstanding defendants' claim that the evidence against the codefendant was much stronger than the evidence against them. *United States v. B. J. Heinlein* (1973, 490 F.2d 725, 160 U.S. App. D.C. 157).

Speedy trial

Fifteen-month delay between arrest and trial was such as to constitute a denial of defendant's right to a speedy trial where delay was not, at all times, attributable to defendant, who suffered personal prejudice by reason of fact that he was confined throughout period, though he continually pressed his motion for release pending trial, and where personal prejudice resulting from pretrial incarceration was exacerbated by fact that defendant was a youth being confined in an adult jail and fact that defendant was especially handicapped by his social and educational background. *United States v. W. H. Calloway* (1974, 505 F.2d 311, 164 U.S. App. D.C. 204).

Witnesses

Government's refusal to accommodate defense by employing its discretionary authority to strip proffered witness of his right to remain silent by offering him immunity from prosecution does not amount to suppression of exculpatory evidence. *In the Matter of J. W. Y.* (D.C. App. 1976, 363 A.2d 674).

Where juvenile charged with aiding and abetting act of carnal knowledge of 13-year-old girl subpoenaed several potential defense witnesses who allegedly would testify as to independent sexual experiences with complainant, government did not act improperly in suggesting to trial court that proffered testimony could result in prosecution of witnesses, which resulted in trial court's appointing independent counsel and witnesses' subsequently announcing their intentions to assert their privilege against self-incrimination with respect to their alleged independent sexual experiences with complainant. *Id.*

Where testimony of complainant's seven-year-old daughter demonstrated her ability to recollect events preceding and following her mother's rape, child was competent to testify as witness for government, in prosecution for rape. *E. Edmondson, Jr. v. United States* (D.C. App. 1975, 346 A.2d 515).

Trial court, which denied a defense motion during trial to have key prosecution witness, who was a chronic alcoholic, subjected to a psychiatric examination with respect to his competency, did not abuse its discretion in refusing to treat the witness as a person of actual or potential incompetency, notwithstanding the claims of defendants, in support of their motion, that the testimony given by the witness was highly confusing and that hospital records indicated he had a clinical history which rendered him wholly unreliable. *United States v. B. J. Heinlein* (1973, 490 F.2d 725, 160 U.S. App. D.C. 157).

Chapter 29.—ROBBERY

§ 22-2901. Robbery.

NOTES TO DECISIONS

Abuse of discretion

Where various tactical decisions and omissions cited by defendant cannot properly be characterized as "newly discovered evidence" and it is not probable, in light of strength of Government's evidence, that they would lead

to acquittal at new trial, denial of defendant's motion for new trial is not abuse of discretion. *G. R. Woody v. United States* (D.C. App. 1977, 369 A. 2d 592).

Trial court did not abuse its discretion in denying defense motion for new trial, on ground of newly discovered evidence consisting of transcript of testimony of person who had pleaded guilty to the robbery charged, where existence of transcript was known at time of trial and was mentioned when proposed testimony of such person was being discussed and there was no showing of due diligence in attempting to secure transcript at trial. *J. J. Vaughn v. United States* (D.C. App. 1976, 364 A. 2d 1187).

Trial court did not abuse its discretion in denying defendant's request that jury defer rendering a verdict as to him until after resolution of insanity phase of codefendant's bifurcated trial, despite contention that expert medical testimony as to codefendant's mental condition was necessary for defendant's duress defense. *P. Shanahan v. United States* (D.C. App. 1976, 354 A. 2d 524).

Although trial judge might have been unduly restrictive in curtailing counsel's examination of several defense witnesses, since most of the testimony as proffered was marginally relevant or cumulative its exclusion is not an abuse of discretion warranting reversal of conviction. *C. H. Randall v. United States* (D.C. App. 1976, 353 A. 2d 12).

Although police who three or four days after purse snatching found the purse should not have returned it to the complaining witness, trial court's ruling that sanctions against prosecution were unwarranted is substantially supported by record and does not constitute an abuse of discretion, even if court had authority to impose sanctions, where the wet and weathered condition of purse would in all likelihood have rendered its surfaces unsusceptible to fingerprint analysis, there was no indication that surfaces were composed of material which would take and retain prints and it was possible that a number of people had handled the abandoned purse in the interim. *T. Marshall v. United States* (D.C. App. 1975, 340 A. 2d 805).

Acquittal

In a case in which the evidence of guilt consists of an identification by a single eyewitness, the issue on motion for judgment of acquittal becomes whether the circumstances surrounding the identification can be found convincing beyond a reasonable doubt. *N. S. Williams v. United States* (D.C. App. 1976, 355 A. 2d 784).

Aider and abetter

An aider and abetter of an armed robbery is not guilty of a lesser included offense but is a principal to the robbery. *R. W. Atkinson v. United States* (D.C. App. 1974, 322 A. 2d 587).

Appeal and error

Appellate review of issue whether trial court erred in allowing in-court identifications of accused is precluded where accused did not file a pretrial motion to suppress identification evidence and no reason, which would excuse such failure, was advanced. *A. N. White v. United States* (D.C. App. 1976, 358 A. 2d 645).

Where defendant did not, within five days of trial, request hearing on her motion to suppress lineup identification as unnecessarily suggestive and did not do so on day of trial when court was reviewing and disposing of various pretrial matters, defendant cannot properly raise issue of suggestivity on appeal, unless there was plain error in allowing lineup identification in evidence. *L. Irby v. United States* (D.C. App. 1975, 342 A. 2d 33).

Where issues are raised concerning propriety of federal convictions, and where federal convictions do not affect defendants' maximum terms of imprisonment, federal convictions and sentences may be vacated without decision on such issues. *United States v. L. D. Caldwell* (1974, 543 F. 2d 1333, 178 U.S. App. D.C. 20).

Where defendant did not move for production of photographs displayed to witnesses prior to his arrest at any stage of prosecution or request that sanctions be imposed on Government for its loss of evidence, and where there was some evidence that police department had made earnest efforts to preserve the photographic arrays, failure to impose sanctions on Government for loss of evidence

did not constitute error. *United States v. R. L. Scriber* (1974, 499 F. 2d 1041, 163 U.S. App. D.C. 36).

Arrest

Totality of facts and circumstances, including information from radio report about fleeing pedestrian and pursuing citizen, and identification of pursuing citizen, justified warrantless arrest of pedestrian while he was being transported by officers to scene of reported incident, even though sum total of information available to officers when they placed pedestrian under arrest came from an unidentified victim of an undisclosed robbery and assault. *G. W. Bates v. United States* (D.C. App. 1974, 327 A. 2d 542).

Assistance of counsel

Defendant's Sixth Amendment right to counsel was not denied when store employee identified defendant from photograph of lineup, notwithstanding that defendant was not represented by counsel at the identification proceeding. *D. M. Williams v. United States* (D.C. App. 1977, 379 A. 2d 698).

Defendant was not denied effective assistance of counsel by defense counsel's refusal to present certain alibi witnesses that defendant wished to call, in light of fact that proposed testimony of alibi witnesses was contradictory and prosecutor indicated that he would move for grand jury indictment for perjury if witnesses took the stand and told stories they had told him. *T. A. Horton v. United States* (D.C. App. 1977, 377 A. 2d 390).

Failure to put defendant on the stand or call alibi witnesses did not constitute ineffective representation where Government's case fell short of overwhelming proof of guilt and to have called alibi witnesses would have placed defendant, whose alleged address was several miles from the scene, close to the scene at time of commission of the offense and, likewise, failure to call two individuals who accompanied defendant at time he was accused by complainant as having been the gunman did not constitute ineffective representation, since calling them would have involved same risk as involved in calling alibi witnesses. *L. T. Williams v. United States* (D.C. App. 1977, 374 A. 2d 885).

Defendant was not denied effective assistance of counsel because she was represented by a public defender service attorney and codefendant was represented by a PDS attorney in two unrelated matters or because proposed plea bargain contemplated pleas by the codefendant in the two unrelated cases as well as in the instant case, in the absence of any showing of prejudice. *S. L. Hooks v. United States* (D.C. App. 1977, 373 A. 2d 909).

Although counsel breached his duty in not moving to withdraw as counsel on appeal where he had represented convicted defendant at trial and, as defendant's attorney on appeal, raised issue of constitutional adequacy of his representation of defendant at trial, where issues were fully explored by both sides and appellate court carefully examined the merits, concluding that representation at trial was adequate, and where concern as to propriety of attorney's appearance before appellate court was raised for first time at oral argument on appeal, defendant's conviction would be affirmed. *M. Harling v. United States* (D.C. App. 1977, 372 A. 2d 1011).

Alleged failure of defendant's trial counsel to investigate case and make proper objections at trial does not constitute ineffective assistance of counsel but rather, objectively viewed, defendant's representation was effective and strategically prudent. *G. R. Woody v. United States* (D.C. App. 1977, 369 A. 2d 592).

Defendant was denied effective assistance of counsel as guaranteed by Sixth Amendment at a hearing on defendant's claim of ineffective assistance by trial counsel, where, at time of hearing, \$2,000,000 libel suit was pending against appointed appellate counsel in which alleged libel was appellate counsel's argument that trial counsel's performance had been constitutionally inadequate, and where it was evident from appellate counsel's strenuous efforts to be excused that he perceived conflict of interest arising out of libel suit. *United States v. G. Hurt* (1976, 543 F. 2d 162, 177 U.S. App. D.C. 15).

Failure to preserve, for appeal, the issue whether trial court erred in allowing in-court identifications of accused did not deny effective assistance of counsel where sole

ground advanced for suppression of in-court identifications is the failure of government to conduct pretrial lineups and there is no indication that on-scene confrontations between accused and government witnesses were tainted by any impermissible police procedure. *A. N. White v. United States* (D.C. App. 1976, 358 A. 2d 645).

Accused, who asserted that there had been inadequate preparation by his trial counsel, was not denied his right to effective assistance of counsel, absent any indication of any substantial defense which accused might have advanced and which was excluded as result of such alleged lack of preparation. *Id.*

Trial judge, when informed by attorney for defendant that he wished to withdraw because his client was going to take the stand and testify in a manner which the attorney knew to be false, should have, before certifying the case to another judge, ruled dispositively on the motion to withdraw rather than leaving that decision for the judge to whom the case was being transferred and should not have directed the second judge to refrain from inquiring into the grounds for the motion. *G. F. Thornton v. United States* (D.C. App. 1976, 357 A. 2d 429; cert. denied 97 S. Ct. 644, 429 U.S. 1024).

Attorney who was fully prepared and intimately acquainted with the details of the case and who considered defendant's pro se motions but decided against them because he thought that there was no merit did not render ineffective assistance of counsel. *Id.*

Where attorney's ethical conflict, which resulted in his making motion for leave to withdraw because he knew that his client would testify falsely, arose after he considered advisability of filing certain pretrial motions, defendant was not denied effective assistance of counsel on theory that counsel's desire to withdraw obstructed presentation of a full and vigorous defense through the submission of pretrial motions. *Id.*

Defendant whose attorney knew that defendant would testify and give false testimony, who informed the court that defendant was testifying against advice of counsel, who asked defendant to state his story and thereafter assisted in its full development only by asking limited questions such as "Then what happened?" and who, in argument to the jury, did not mention defendant's story but did meticulously attack the prosecution's case did not render defendant ineffective assistance of counsel by following the procedure recommended by American Bar Association standards for counsel who find themselves in the position of defending a client who intends to testify falsely. *Id.*

It is not denial of effective assistance of counsel for defendant's trial counsel to make a conscientious decision not to put on alibi testimony which, after investigation, he is convinced would be perjured. *J. Herbert, Jr. v. United States* (D.C. App. 1975, 340 A. 2d 802).

Even if pretrial identifications which resulted from one lineup and one two-man showup were improper, defendant was not denied effective assistance of counsel because of counsel's failure to move, pretrial, for suppression of the identifications where there was abundant evidence of sources independent of those pretrial identifications to support the in-court identifications. *S. S. Shelton v. United States* (D.C. App. 1974, 323 A. 2d 717).

Where an attorney has represented a convicted defendant at trial and, as defendant's attorney on appeal, concludes in good faith that a legitimate issue exists as to the constitutional adequacy of his representation of the defendant at trial, it is the duty of the attorney to move to withdraw as counsel on appeal. *Id.*

Defense counsel should be guided by American Bar Association Standards, should, *inter alia*, confer with client without delay and as often as necessary to elicit matters of defense or ascertain potential defenses, discuss potential strategies and tactical choices with client, promptly advise him of his rights and take actions necessary to preserve them, conduct investigations to determine matters of defense that can be developed, interview government witnesses if accessible, attempt to secure information in possession of prosecution and do adequate research. *United States v. W. DeCoster, Jr.* (1973, 487 F. 2d 1197, 159 U.S. App. D.C. 326).

Claim of ineffective assistance of counsel should first be presented to district court in motion for a new trial and in such proceeding, evidence dehors the record may

be submitted by affidavit, and when necessary district judge may order a hearing or otherwise allow counsel to respond; if trial court is willing to grant motion, the Court of Appeals will remand and if motion is denied, appeal therefrom will be considered with appeal from conviction and sentence. *Id.*

Bifurcated trial

In prosecution for felony-murder, robbery, second-degree burglary, and petit larceny, trial court did not abuse its discretion in denying defendant's request for different juries to try merits and insanity defense, despite contention that voir dire examination on insanity defense might have had an effect on the jury and despite contentions not raised in trial court that defendant was prejudiced by extensive testimony linking him to homosexuality, alcohol, and drugs, and that this would not have reached a second jury determining the merits of the insanity defense. *P. Shanahan v. United States* (D.C. App. 1976, 354 A. 2d 524).

Change of venue

Where defendants moved for change of venue based on news articles and broadcasts appearing during jury selection, denial of request was not in error where there was then no indication an impartial jury could not be obtained. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

Competency hearing

Where pretrial examination had resulted in certification by hospital staff of competency and Superior Court judge after hearing had reached like result, district judge was not required to direct, *sua sponte*, further hearing on competency in prosecution for assault with intent to commit rape, and for robbery. *United States v. C. L. Tremble* (1972, 470 F. 2d 1272, 152 U.S. App. D.C. 363).

Conduct of prosecuting attorney

Prosecutor's reference to defendant's "background" was impermissible where there was no evidence in record which could have supplied content to the word. *United States v. A. A. Freeman* (1975, 514 F. 2d 1314, 169 U.S. App. D.C. 73).

Confessions

Where FBI agents did not set out to interview defendant about liquor store robbery but rather purpose of interview with defendant was in relation to federal offense, the shooting of high government official, and defendant cooperated and signed Miranda waiver informing him of his right to have counsel present at interview, failure to suppress incriminatory oral statements defendant made to agents concerning liquor store robbery on ground that such statements were made in absence of, and as result of interviews conducted without notice to, defendant's court-appointed counsel did not constitute prejudicial error. *M. E. Boykins, Jr. v. United States* (D.C. App. 1976, 366 A.2d 133).

Ten day period between prior invalid confession to local police and defendant's incriminating statements to FBI agents and his execution of waiver of rights form prior to making statements sufficiently dissipated effects of prior invalid confession so as not to require suppression of statements as products of prior invalid confession. *Id.*

Totality of circumstances surrounding arrest of 18-year-old defendant, who was advised of his right to remain silent and to counsel prior to police interrogation which first focused on robbery and then shifted to rape resulting in confession by defendant who was a narcotic addict but showed no signs of withdrawal, was not such as to require finding that the confession was involuntary. *United States v. H. T. Poole* (1974, 495 F.2d 115, 161 U.S. App. D.C. 289; cert. denied 95 S. Ct. 2667, 422 U.S. 1048).

Police officer's embellishment of Miranda warning with statement that, if defendant could not afford an attorney one would be appointed in court the next day, was only one factor to be considered in determining whether defendant's subsequent confession was made after a knowing, intelligent, and voluntary waiver of his rights, and trial court erred in ruling that said embellishment necessarily rendered confession inadmissible. *United States v. J. Rawls* (D.C. App. 1974, 322 A.2d 903).

Notwithstanding defendant's contention that the trial court erred in failing to suppress his alleged confession

where it was uncontroverted that he had made known his wish and intention to consult with an attorney, but where the Government had, nevertheless, continued to interrogate him in the absence of an attorney and eventually elicited the confession, the record showed, in support of conclusion that defendant waived his right to the presence of an attorney, that defendant simply indicated he was "undecided" about an attorney and then decided to go ahead and give a statement. *United States v. W. H. Howard* (1972, 470 F. 2d 406, 152 U.S. App. D.C. 258).

Construction

Although this section does not mention specific intent, it must be read as referring to the common law crime of robbery of which a necessary element is specific intent to take property of another. *United States v. W. N. Owens et ano.* (D.C. App. 1975, 332 A.2d 752).

While larceny remains an offense against possession, robbery is basically a crime against the person. *United States v. T. B. Dixon* (1972, 469 F. 2d 940, 152 U.S. App. D.C. 200).

Cross-examination

At fact-finding hearing in a delinquency proceeding wherein defendant was found guilty of robbery, fact that prosecutor, while cross-examining defendant, asked whether defendant had been arrested and whether he had been convicted of a crime does not constitute error requiring reversal, since court immediately cut into the prosecutor's questioning, thus precluding any answer being given, and ruled the two questions to be improper. *In the Matter of K. L. H.* (D.C. App. 1977, 372 A.2d 1003).

Cross-examination of defendant's alibi witness as to her purported attempts to influence eyewitnesses to robbery was not unduly prejudicial to defendant, inasmuch as rule requiring that witness be questioned on point before contradictory statements may be admitted was satisfied by cross-examination and rebuttal testimony from witnesses called by Government was not introduced to show that in her pretrial approach to eyewitnesses, alibi witness had been acting in concert with or at direction of defendant, but merely that she was biased in defendant's favor, thereby detracting from her credibility. *R. Simmons v. United States* (D.C. App. 1976, 364 A.2d 813).

Improper prohibition on defendant from inquiring on cross-examination into federal narcotics charge pending against prosecution witness is harmless error where defendant was permitted to cross-examine witness extensively regarding his possession of narcotics paraphernalia and his possession and use of marijuana and cocaine on date of robbery, and where other evidence indicated defendant's guilt. *R. H. Rhodes v. United States* (D.C. App. 1976, 354 A.2d 863).

Defendant's silence when interrogated by police after arrest for robbery as to where he had obtained large sum in his possession was not inconsistent with his trial testimony that his wife had asked him to purchase money orders; thus, prosecutor's cross-examination concerning defendant's failure to give an explanation to police was not permissible under special rule permitting defendant to be impeached by prior inconsistent utterances made at time of arrest, especially where defendant had insisted upon his innocence at time of arrest and maintained his innocence throughout the proceedings. *United States v. F. Anderson* (1974, 498 F.2d 1038, 162 U.S. App. D.C. 305; aff'd 95 S. Ct. 2133, 422 U.S. 171).

Refusal, in prosecution for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary, to permit cross-examination of accomplice, who testified for government and whose counsel had been informed that government would be willing, with regard to unrelated narcotics and robbery charges against accomplice, to accept plea of guilty to one misdemeanor, as to whether government had made any disposition of such unrelated charges was reversible error when considered in conjunction with other errors. *United States v. I. E. Leonard* (1974, 494 F.2d 955, 161 U.S. App. D.C. 36).

Trial court misconceived test for evaluating whether defense counsel's proposed questioning of arresting officer, regarding his hitting defendant, was probative on issue of officer's alleged bias, where court ruled that the time of commission of the offense by defendant, rather than the time of officer's testimony against defendant, was

crucial; and, while defendant's proffer of the bias evidence was incomplete, that could not justify a complete curtailment of questioning; however, since the implied relation between the officer's alleged bias and robbery victim's testimony, which was critical, was highly speculative, the error was harmless. *G. A. Best v. United States* (D.C. App. 1974, 328 A.2d 378).

— Exploratory

While a defendant may put exploratory questions to a government witness based on nothing more than "slight suspicion," defendant does not have the right to conduct such probes in the presence of jury; such exploratory cross-examination may be pursued either by nonaccusatory questions in the presence of the jury or by questioning outside the presence of the jury, with the latter course permitting a less inhibited inquiry in the nature of a voir dire examination. *United States v. A. B. Knight* (1974, 509 F.2d 354, 166 U.S. App. D.C. 21).

Defendant's presence in court

Where defendant, who was at liberty on bond and therefore had duty as well as right to be present at all stages of trial, and who was advised when proceedings were to reconvene, did not appear when trial court reconvened to settle jury instructions, and defendant's counsel stated that he would waive defendant's appearance for purpose of settling jury instructions, trial court did not err in proceeding to settle jury instructions without presence of the defendant. *C. Heiligh v. United States* (D.C. App. 1977, 379 A. 2d 689).

Where it was only at beginning of trial that defendant was warned that his misconduct could lead to his exclusion and he was excluded following a single outburst on third day of trial, such misconduct did not constitute a waiver of his right to be present when proceedings were resumed; although circumstances necessitated his immediate removal and although in continuing proceedings in his absence trial judge was concerned with possibility that his return could result in further incidents to his prejudice, trial court could have addressed defendant in open court to determine whether he desired to return to the proceedings and, if so, whether he would refrain from further disrupting the trial. *B. E. Hazel v. United States* (D.C. App. 1976, 353 A.2d 280).

Although apparent strength of case against defendant and his probable inability to have actively assisted in his defense had he been present were factors that serve to lessen possibility of prejudice from his exclusion during closing arguments and jury instructions, such exclusion, which was not warranted in view of remoteness of warning concerning misconduct and defendant's express desire to return to the courtroom, is not harmless error beyond a reasonable doubt. *Id.*

Defense investigative reports

Where defendant's court-appointed counsel employed an investigator to interview potential witnesses, the investigator did so and sent to counsel a report consisting of summaries of interviews, and investigator, called as defense witness, did not use report to refresh his recollection, trial court erred in ordering investigator to turn over copy of report to the Government since the defense cannot be required to turn over to the prosecution prior statements of defense witnesses which could be used by the prosecution as evidence against the defendant. *United States v. A. F. Wright* (1973, 489 F.2d 1181, 160 U.S. App. D.C. 57).

Defenses

Even if defendant had taken money from robbery victim prior to time automobile entered District of Columbia, such a defense does not preclude conviction for robbery in District of Columbia, since robbery was not finished until robbers had accomplished by force of arms their getaway with the loot which occurred in the District of Columbia. *J. F. Jordan v. United States* (D.C. App. 1976, 350 A.2d 735).

Defendant who interposed defense of intoxication to robbery charge, who gave urine sample the day after his arrest and who sought discovery of results of test was entitled to a hearing to determine if a test were made, and if so, if the test could have afforded any significant light on defendant's degree of intoxication at the time of

the offense, and if so, for determination of sanction to be imposed upon Government for failing to produce the results. *United States v. J. L. Butler* (1974, 499 F.2d 1006, 163 U.S. App. D.C. 1).

Where defendant claimed that armed robbery victim owed him \$30 as result of defrauding him in marihuana sale, but defendant allegedly took over \$500 from offending drug dealer and dealer's companions, defendant did not establish claim of right defense, and thus trial court did not err in prohibiting defense counsel from arguing said defense to jury. *C. Smith v. United States* (D.C. App. 1974, 330 A.2d 519).

Discovery

Motion for mistrial, based upon allegation that testimony of complainant concerning inculpatory remarks made to complainant by defendant was discoverable under rule providing for inspection by defendant of written or recorded confessions, was properly denied, in that rule does not require pretrial discovery of statements made by defendant to third parties not government agents. *C. Heiligh v. United States* (D.C. App. 1977, 379 A. 2d 689).

Trial court did not err in armed robbery prosecution in refusing to require government to disclose information in its possession concerning past voting records of members of jury panel, since jury panel information was neither evidence nor was it material to guilt or punishment of defendant. *L. Britton v. United States* (D.C. App. 1976, 350 A.2d 734).

Where matter which prosecution had not disclosed prior to trial of indictment is inadmissible hearsay, i.e., a street rumor which remained unverified despite immediate investigation by police detective, and where detective did not abandon investigation until after positive identification of defendant had been made by principal victim and defendant had confessed to the crime, undisclosed information is not kind of material which prosecution should have furnished defendant in advance of trial. *United States v. A. D. Sedgwick* (D.C. App. 1975, 345 A. 2d 465; cert. denied 96 S. Ct. 1751, 425 U.S. 966).

With the exception of records of impeachable convictions, the criminal records and records of arrests of government witnesses were not discoverable and the suppression of the testimony of government witnesses, as sanction for disobedience of pretrial discovery order, was in excess of trial court's authority. *United States v. W. C. Ingram et ano.* (D.C. App. 1975, 337 A.2d 488; cert. denied 96 S. Ct. 793, 423 U.S. 1058).

Where defense counsel was on notice of existence of communications from much earlier reference to them at pretrial competency hearing, and neither then nor later did defendant request leave to inspect or copy the materials, there was no prejudice to defendant from their non-production in response to court's order. *United States v. L. D. Caldwell* (1974, 543 F. 2d 1333, 178 U.S. App. D.C. 20).

If urine test had been made upon defendant, who interposed defense of intoxication to robbery charge. Government's lack of knowledge as to bearing of the test upon defendant's condition at the time of the offense, if, in fact, the test might have shed light thereon, would not foreclose inquiry into the obligation of the Government to preserve the evidence or foreclose consideration of sanctions for failure to do so. *United States v. J. L. Butler* (1974, 499 F.2d 1006, 163 U.S. App. D.C. 1).

Double jeopardy

Where, during defendant's trial for serious criminal offenses, after selection of jury and presentation of substantial amount of prosecution's evidence, attorney in charge of prosecution revealed that highly significant exculpatory police report had not been disclosed to defense, and where defendant's motion to dismiss was denied, trial court erred in terminating prosecution by declaring mistrial over defendant's objection since other remedies existed, jeopardy attached, and there was no manifest necessity. *A. Sedgwick v. Superior Court of the District of Columbia* (1976, 417 F. Supp. 386).

Double jeopardy clause prohibits successive prosecutions in the District for violations of federal and local law arising from the same bank or savings and loan robbery, but it does not require that prosecution under the federal scheme be preferred to prosecution under local statutes, so long as only a single prosecution takes

place. *United States v. R. Shepard* (1975, 515 F.2d 1324, 169 U.S. App. D.C. 353).

Where accused was represented by same counsel both at trial, during which continuance was granted, and at second trial, where defense counsel raised issue of double jeopardy at both appearances, where judge at second trial considered the possibility of waiver of accused's defense of double jeopardy only at the insistence of defense counsel and where, after a recess for consultation between accused and defense counsel, waiver was presented to trial court in accused's presence and she was given opportunity to disavow the waiver but did not do so, accused has intelligently waived such defense. *D. Mason v. United States* (D.C. App. 1975, 346 A. 2d 250).

Where trial court, acting on good faith but erroneous belief that defendant had been entitled to certain information long before trial, first suggested continuance, which was declined by defendant, and then unsuccessfully sought defendant's consent to mistrial, and finally declared mistrial and discharged jury, without any insistence by defendant upon any right to completion of the trial by the first jury, jeopardy did not attach. *United States v. A. D. Sedgwick* (D.C. App. 1975, 345 A. 2d 465; cert. denied 96 S. Ct. 1751, 425 U.S. 966).

Where Family Division's sua sponte declaration of mistrial in fact-finding hearing on petition charging juvenile with robbery was not dictated by manifest necessity, retrial of juvenile is barred by constitutional prohibition on double jeopardy. *District of Columbia v. I. P.* (D.C. App. 1975, 335 A.2d 224).

Where the same sovereignty is involved, the double jeopardy principle bars multiple prosecutions for the same offense by different elements of that sovereignty, and under that principle, multiple prosecutions by the District of Columbia and the United States are barred. *United States v. A. B. Knight* (1974, 509 F.2d 354, 166 U.S. App. D.C. 21).

If anything, the federal mail robbery statute contemplates a single conviction, not multiple convictions, when the first tier of mail robbery is aggravated by the use of a deadly weapon. *Id.*

Fact that mistrial was declared in first prosecution of defendant for armed robbery would not, under the doctrine of collateral estoppel, preclude his conviction on one count of armed robbery in second prosecution, where jury in the first trial had made no findings, so that defendant's presence as one of the robbers was not inconsistent with these results. *United States v. R. N. Perry* (1974, 504 F. 2d 180, 164 U.S. App. D.C. 111).

Due process

Where allbl witness threatened victim of armed robbery outside courtroom, immediate arrest of witness, which resulted in witness' decision to invoke privilege against self-incrimination if asked about threat and defense's subsequent decision not to call witness, was not governmental action preventing defendant from presenting his defense, and did not result in a denial of due process. *K. W. Swann v. United States* (D.C. App. 1974, 326 A.2d 813).

Elements of offense

Under an indictment for robbery, Government must prove assault and larceny. *United States v. C. McGill* (1973, 487 F.2d 1208, 159 U.S. App. D.C. 337).

Intent to steal is material element necessary to offense of robbery. *United States v. L. T. Robinson* (1973, 475 F. 2d 376, 154 U.S. App. D.C. 265).

Evidence

Neither Fifth Amendment privilege against self-incrimination nor due process standards prevented standing of codefendants side by side before jury to assess their relative physical appearances, in prosecution for armed robbery and assault with a dangerous weapon, and it is of no consequence that defendant declined to take stand to testify on his own behalf since such physical display does not constitute "testimony." *C. S. Hill v. United States* (D.C. App. 1976, 367 A. 2d 110).

Evidence of narcotics dealing was appropriate means of establishing Government's theory that defendant had induced accomplice to commit robbery in order to obtain additional narcotics and to pay for narcotics which he had previously purchased from defendant on credit.

United States v. H. E. Lee (1974, 509 F.2d 400, 166 U.S. App. D.C. 67; cert. denied 95 S. Ct. 1451, 420 U.S. 1006).

— Admissibility

Notwithstanding dismissal of counts charging defendant with obstructing justice by corruptly endeavoring by threats of force to influence, intimidate and impede two witnesses to alleged armed robbery and assault, threat evidence introduced on the obstruction counts was probative of the other counts as evincing consciousness of guilt; thus trial court did not err in failing to instruct that such evidence was limited to impeachment. *L. Proctor v. United States* (D.C. App. 1977, 381 A. 2d 249).

Where sole purpose for which transcripts of certain police tapes were sought to be used at trial for robbery was to corroborate police officer's testimony regarding opinion he had formed as to who committed robbery, tapes were not erroneously excluded as officer's opinion had no possible probative value, in light of fact that there was no suggestion that description contained in tapes differed in any respect from descriptions later given by Government's eyewitnesses. *W. W. Grier v. United States* (D.C. App. 1977, 381 A. 2d 3).

Government established a proper foundation for the admission of a gun into evidence, where one robbery victim stated that the gun used in the robbery was identical to the one introduced at trial, where the other victim testified that the gun used was probably the same as the one introduced at trial, and where a police officer testified that one defendant's girlfriend had led them to the basement of a building where the gun in question was found. *J. S. Adams v. United States* (D.C. App. 1977, 379 A. 2d 961).

Where Government counsel conducted a very limited direct examination of certain prosecution witness, where counsel's questions were designed to elicit from the witness only the fact that the police investigating the robberies had acted on some information provided by a witness, and where it was defense counsel who questioned the witness as to another's motivation in writing down license tag number on a scrap of paper, and it was defense counsel who thereby opened the door for the witness' subsequent development of evidence related to the tag numbers, defendants cannot complain on appeal that they were prejudiced by evidence relating to the subject which they themselves opened up. *Id.*

Admission, in prosecution for armed robbery of food store, of evidence of contemporaneous armed robbery of a nearby store did not violate due process where all the jury knew was that another had been arrested for the contemporaneous robbery and that "lookout" subsequently was issued for automobile in which instant defendants eventually were found; even if it were clear that the other had somehow implicated instant defendants in the offense for which he was arrested, evidence of such other offense was both legitimate and necessary to establish sequence of events from time of food store robbery to time of arrest. *D. M. Williams v. United States* (D.C. App. 1977, 379 A. 2d 698).

Where murder of cab driver was the result of third attempted robbery of a cab driver in a two hour period, evidence of the first two robberies is admissible to show modus operandi. *In the Matter of A. L. S.* (D.C. App. 1977, 377 A. 2d 1149).

In robbery prosecution based on alleged pickpocket episode, there was no error in admitting expert testimony concerning the modus operandi of pickpocket teams, particularly in light of one defendant's protestation that he was an innocent bystander when money taken from victim's purse was thrust upon him by codefendant. *S. L. Hooks v. United States* (D.C. App. 1977, 373 A. 2d 909).

Defendant was not prejudiced to such an extent that he was denied due process or fair trial when trial court allowed jury to hear evidence about complainant's rape in Maryland with which defendant was not charged, where such assault was described only briefly as part of total incident she was recounting and in order to explain circumstances of offense actually charged, where there were no questions that directly elicited such information, where the incident was not described in inflammatory terms or in any detail, and where there was substantial evidence of defendant's guilt of other offenses and challenged testimony was only minor portion of

evidence adduced at trial. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S. Ct. 154, — U.S. —).

Admission of defendant, who was identified as second assailant in hallway of courthouse pending initial trial of his friend, that he was present in courthouse for purpose of being available to defense as alibi witness was admissible in subsequent prosecution of two parties as codefendants as relevant and probative to show that they knew each other and that original defendant had contemplated using alibi to put them together for at least part of evening in question and jury was free to consider such admission, which came in as substantive evidence, as such; there was nothing false or misleading about prosecutor's statement disclosing admission, nor was defendant prejudiced because remark was made in opening argument since testimony presented during trial supported content of opening statement. *C. S. Hill v. United States* (D.C. App. 1976, 367 A. 2d 110).

In proceeding in which accused was charged with armed robbery and burglary offenses alleged to have occurred in carryout restaurant on June 29 and July 8 and in which restaurant employee testified that she recognized accused when he entered on July 8, error in admitting employee's remark that she knew accused "From two previous robberies where he robbed us before" is harmless, in that untainted testimony overpoweringly establishes that accused committed July 8th offenses, that jury was instructed that remark was not to be considered on issue of guilt and that accused was only convicted of July 8th offenses. *C. Harris v. United States* (D.C. App. 1976, 368 A.2d 461).

Where witness testified at trial with full memory of what she had observed at the time of the crime, report made by police woman who had recorded what the witness had told her at the scene of the crime cannot be admitted into evidence as past recollection recorded. *J. F. Wright v. United States* (D.C. App. 1976, 360 A.2d 41).

Where contents of transcript of tape recording of statement made by prosecuting witness to police officer does not constitute the observation of firsthand factual knowledge of the officer, the witness whose recollection it assertedly represents, but rather constitutes an unsworn, extrajudicial account given by the complaining witness, the transcript is not admissible under the doctrine of past recollection recorded. *D. B. Tibbs v. United States* (D.C. App. 1976, 359 A.2d 13).

Introduction of transcript of tape recording of statement made by prosecuting witness violates rule that prior consistent statements may not be used to support one's own unimpeached witness and is not harmless error as it resulted in the adding of weight to the complainant's testimony in what could be viewed as government's standpoint. *Id.*

Even if accused, who elected not to testify at trial, had "testimonial privilege" at trial to don jacket he was alleged to have worn at time of the offenses, denial of request that he be permitted to put on such jacket "to make double sure" that jacket had never been seen by his wife, who had testified that she had never seen the jacket, is not error. *A. N. White v. United States* (D.C. App. 1976, 358 A.2d 645).

In armed robbery prosecution in which codefendant testified that defendant had been incapacitated by effects of narcotics withdrawal and had been oblivious to fact that robbery had occurred, officer's testimony that codefendant had made a statement implicating defendant as a participant in robbery is not admissible to prove the truth of such statement but is admissible for purpose of proving that the statement was made. *L. E. Johnson v. United States* (D.C. App. 1976, 356 A.2d 639).

In prosecution for armed robbery and robbery, no prejudicial error resulted from admission of hearsay testimony, where cautionary instruction was given to jury at time, and in addition, subsequent testimony of the then absent witness giving rise to hearsay objection served further to remove any likelihood of prejudice. *C. C. Thompson v. United States* (D.C. App. 1976, 354 A.2d 848).

In prosecution for felony-murder, robbery, second-degree burglary, and petit larceny, trial court did not err in excluding testimony of woman whom defendant had raped to show that thereafter defendant apologized to her, despite contention that such apology was intro-

duced to rebut government expert testimony on defendant's lack of remorse. *P. Shanahan v. United States* (D.C. App. 1976, 354 A.2d 524).

Statements made by defendants in casual conversation, out of the presence of police and immediately after homicide and robbery, offered to prove that defendants had recently engaged in some violent episode together, were admissible as admissions of a party opponent, each defendant adopting the other's statement. *United States v. J. F. Bolden* (1975, 514 F.2d 1301, 169 U.S. App. D.C. 60).

Where there was nothing to indicate that search warrant was issued for any offenses other than those for which defendant was on trial and testimony was simply that an officer went to the apartment to execute the warrant, found defendant there, and recovered the shotgun later identified as the weapon used during the robbery, testimony that a search warrant was executed at his apartment did not implicate him in another crime. *United States v. J. E. Jackson* (1974, 509 F.2d 499, 166 U.S. App. D.C. 166).

Where robbery victim testified that shotgun found in defendant's apartment was similar to the shotgun which one of the robbers had, informant testified that the shotgun belonged to defendant and that defendant had it when he left the apartment with another person to commit the robbery, the shotgun was properly admitted into evidence in prosecution for armed robbery. *Id.*

Permitting police officer to testify regarding direction from which shot causing bullet hole in wall was fired did not constitute an abuse of discretion in prosecution for armed robbery and for carrying a dangerous weapon. *United States v. A. E. Pierson* (1974, 503 F.2d 173, 164 U.S. App. D.C. 82).

Testimony by accomplices as to statements which were made to them by defendant during commission of crimes charged in prosecutions for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary and which incriminated codefendants, were admissible under either exception to hearsay rule for contemporaneous declarations which partake of the event or exception for spontaneous declarations or excited utterances. *United States v. I. E. Leonard* (1974, 494 F.2d 955, 161 U.S. App. D.C. 36).

In prosecution for armed robbery, sawed-off shotgun seized at time of arrest was admissible where there was evidence as to resemblance of exhibit and gun used at scene of offense and trial judge commented that the gun could not be introduced as the gun used in the crime and that the question was for jury to determine. *United States v. T. McKinley* (1973, 485 F.2d 1059, 158 U.S. App. D.C. 280).

Testimony that defendants had changed their appearance was admissible to provide basis for jury inference concerning reason that witnesses were unable to identify defendant in court. *Id.*

Court ordered lineup forms instructing each defendant not to alter his appearance prior to lineup were admissible even absent evidence that defendants had actually received notice of the orders where there was no testimony that orders had not been served or that defendants had not been informed of the provisions of the orders; prosecutor was entitled to proceed on presumption that court orders were in fact served, without adducing proof of such service. *Id.*

Testimony by police officer that he had overheard defendant threatening a witness with respect to witness' identification of him as the perpetrator of the crime and telling witness that she had been a fool to allow the policeman to trick her into identifying the defendant was admissible as evidence of an admission directly relevant to guilt and was not rendered inadmissible by the fact that it also contained evidence of another crime—obstruction of justice. *J. N. Smith v. United States* (D.C. App. 1973, 312 A.2d 781).

—Criminal record

In proceeding in which accused was convicted of armed robbery, detective's testimony that modus operandi was "where we keep pictures of men that have committed different types of crimes like rape, robbery, so on" did not require new trial on ground that it is evidence of another crime committed by accused, in view of the relatively

attenuated connection made by detective's testimony between accused's photograph and the modus operandi file and in view of instruction that the reference to modus operandi was not to be considered as an indication that accused had any record of previous crimes. *J. Dyas v. United States* (D.C. App. 1977, 376 A.2d 827; cert. denied 98 S. Ct. 529, — U.S. —).

—Disclosure to defense

Prosecutor's failure to provide defense in advance with lineup sheets showing two misidentifications or with four bullets found on defendant after his arrest was not reversible error where the lineup sheets showed that counsel for defendant was present at the lineups and the bullets were easily available to defense counsel in the Government's property office where counsel examined the money taken from his client. *United States v. J. F. Bolden* (1975, 514 F.2d 1301, 169 U.S. App. D.C. 60).

—Expert testimony

In proceeding in which accused was convicted of armed robbery, exclusion of psychology professor's proffered testimony including testimony that eyewitness identification is not as simple as it is assumed to be, that scientific literature supported conclusion that one under stress does not make as good an observation as one not under stress, that once a person publicly announced an opinion, he would be motivated to maintain it and that suggestions from a person in authority could have a considerable effect on identification process was not an abuse of discretion. *J. Dyas v. United States* (D.C. App. 1977, 376 A.2d 827; cert. denied 98 S. Ct. 529, — U.S. —).

In view of insufficient factual basis for testimony of expert, who had never examined codefendant, that defendant might have been influenced unfavorably and that codefendant was type of person who was quite capable of influencing him, such testimony was properly rejected. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

—Good character

Prosecutor cannot offer bad character evidence unless accused first introduces evidence of good character, and even then prosecutor's proof is restricted to community reputation and to trait and traits to which accused's own character evidence related. *United States v. J. A. Lewis* (1973, 482 F.2d 632, 157 U.S. App. D.C. 43).

When character witness, either for accused or for prosecution, is offered, he is subject to cross-examination as to his testimonial qualifications just like any other witness, and probe on cross-examination may extend to those matters, among others, which legitimately affect witness' knowledge of accused's community reputation for the character trait or traits which he confirms. *Id.*

Where at time judge ruled, during second trial for armed robbery and related offenses, that if defense put on good character witnesses then prosecution could cross-examine such witnesses to determine if they were aware of defendant's arrest for narcotics two weeks before commencement of second trial but ten months after the occurrence of offenses for which he was being tried, judge did not know whether witness would speak to reputation for peace and good order or as to reputation for truth and veracity, trial judge did not have essential information and ruling was error, but in view of government's case error was not prejudicial. *Id.*

—Hearsay

Once submitted without objection, hearsay testimony directly material to prosecution's proof of various offenses with which defendant was accused could properly be accorded full weight of all other material testimony. *L. R. Wilson v. United States* (D.C. App. 1976, 357 A.2d 861).

—Sufficiency

Although one of witnesses to robbery was unable to identify defendant as perpetrator, where two other witnesses made positive identification, this is sufficient evidence to support finding of guilt beyond reasonable doubt. *W. W. Grier v. United States* (D.C. App. 1977, 381 A.2d 3).

Evidence that a spree of cab driver robberies took place from 4:30 a.m. to 6:30 a.m., that, in the first two robberies, juvenile sat behind the driver while his companion

sat on the right of the rear seat, that in both instances the companion pulled a gun and cab driver was robbed of his money, jewelry, and pocket chattels, that third victim was shot, that items taken during the two earlier robberies were found at the murder scene, and that the two persons seen fleeing from the murder scene were wearing clothing consistent with that described by occupant of apartment at the time that juvenile and his accomplice arrived with other loot and a bloody appearance is sufficient to sustain juvenile's convictions for felony-murder and attempted robbery. *In the Matter of A. L. S.* (D.C. App. 1977, 377 A.2d 1149).

Evidence that defendant was driver of car in which purse snatcher fled from scene of purse snatching supported conviction for robbery. *E. McMillan v. United States* (D.C. App. 1977, 373 A.2d 912).

In robbery prosecution based on alleged pickpocketing episode, testimony of eyewitness and of expert witness, and circumstantial evidence, was sufficient to support convictions. *S. L. Hooks v. United States* (D.C. App. 1977, 373 A.2d 909).

Government's evidence, although partly circumstantial, reasonably permits findings that juvenile is guilty of mayhem and malicious disfigurement and robbery by force and violence. *In the Matter of E. G. C.* (D.C. App. 1977, 373 A.2d 903).

Testimony by two victims of robbery that defendant was one of their two assailants is sufficient to sustain defendant's conviction for armed robbery. *United States v. L. L. Alston* (1976, 551 F.2d 315, 179 U.S. App. D.C. 129).

Evidence as to defendant's identification as perpetrator of armed robbery was sufficient to create jury question despite asserted discrepancies in description of defendant given by robbery victim and his actual physical appearance. *L. J. Anderson v. United States* (D.C. App. 1976, 364 A.2d 143).

Evidence that money in cash register was taken from sales clerk as custodian for store is sufficient to establish possessory element of offense of armed robbery. *S. Jones v. United States* (D.C. App. 1976, 362 A.2d 718).

Evidence, including victim's identification of defendant, is sufficient to sustain conviction of armed robbery. *N. S. Williams v. United States* (D.C. App. 1976, 355 A.2d 784).

Evidence was sufficient to support defendants' respective convictions of armed robbery and robbery. *C. C. Thompson v. United States* (D.C. App. 1976, 354 A.2d 848).

An instruction under section 22-105 relating to aiding and abetting is not necessary in order for the acts of one principal in furtherance of a crime to be imputed to another principal; hence, fact that defendant may have only held gun during armed robbery of supermarket did not require finding that since he did not physically commit all elements of the offense he could not be held legally responsible for the acts of the other individual, who seized the cash from the safe, unless he was found to have aided and abetted such individual. *B. E. Hazel v. United States* (D.C. App. 1976, 353 A.2d 280).

Testimony by prison guards that they were locked in a cell and held as hostages, that defendant frequently checked the cell where the guards were confined, that he told the guards that he "had nothing to lose by going out looking," that defendant separated himself from a group of inmates who did not want to escape immediately before rebellious inmates clustered for breakout attempt, and that defendant thereafter came by the cell many times armed with a short piece of steel with a sharp end and threatened the hostages was sufficient to sustain defendant's convictions for attempted escape, armed kidnapping, robbery, and riot. *United States v. J. Bridgeman* (1975, 523 F.2d 1099, 173 U.S. App. D.C. 150; cert. denied 96 S. Ct. 1743, 1744, 425 U.S. 961).

Evidence, including testimony of identification witness, was sufficient to sustain conviction of armed robbery and assault with deadly weapon. *United States v. J. Jones, Jr.* (1975, 517 F.2d 176, 170 U.S. App. D.C. 362).

Evidence in robbery prosecution was sufficient to support finding that defendant participated, with companion, in robbery of liquor store during which companion produced pistol and demanded money while defendant watched customers, and that second robbery of hostage outside store was not companion's independent frolic or unrelated to general criminal scheme. *United*

States v. M. J. Belt (1975, 514 F.2d 837, 169 U.S. App. D.C. 1).

Testimony of robbery victim, who was confronted under streetlight, who was twice able to closely observe assailant as he leaned into her automobile, who described assailant and his attire in detail and who two days later identified defendant from third array of police photographs and also identified defendant at lineup and trial, is sufficient to support robbery conviction. *J. M. Russell v. United States* (D.C. App. 1975, 348 A.2d 299).

Evidence, including evidence of juvenile's close association with correspondent prior to and after purse snatching, juvenile's presence near scene of crime and his flight from scene with correspondent, is sufficient to support juvenile's conviction of robbery. *In the Matter of A. B. H.* (D.C. App. 1975, 343 A.2d 573).

Submission of robbery case to jury was warranted by evidence even though one eyewitness picked person other than defendant in lineup held approximately eight months after the incident. *T. Marshall v. United States* (D.C. App. 1975, 340 A.2d 805).

Testimony of single witness is sufficient to sustain armed robbery conviction, even though victim did not testify. *W. Strickland, Jr. v. United States* (D.C. App. 1975, 332 A.2d 746; cert. denied 96 S.Ct. 84, 423 U.S. 846).

Evidence, including testimony that shotgun shells similar to those used in gun used in armed robbery were found in defendant's automobile, is sufficient to sustain convictions of armed robbery and assault with dangerous weapon. *D. Borrero v. United States* (D.C. App. 1975, 332 A.2d 363).

Evidence that deceased's rings came into possession of one defendant immediately after deceased had been killed and evidence that defendant stated that she had gotten the rings from the victim and was going to keep them sustained conviction of both person who kept the ring and person who aided in the murder for felony-murder on the basis of robbery. *United States v. M. Mackin* (1974, 502 F.2d 429, 163 U.S. App. D.C. 427; cert. denied 95 S. Ct. 629, 419 U.S. 1052).

Evidence sustained robbery conviction of defendant whose fingerprints were found by police on a dresser drawer in a generally locked woman's bedroom. *R. Hawkins v. United States* (D.C. App. 1974, 329 A.2d 781).

The fundamental principle respecting reasonable doubt applies to fingerprint cases, but the proof need not be to a certainty or negate all inferences pointing to innocence; the evidence, however, must negate at least the most reasonable explanations consistent with innocence and must tend to show placement of the fingerprints during the offense. *Id.*

Evidence sustained robbery conviction of defendant who was one of robber's companions watched commission of robbery, and ran from scene of crime with robber and other companion. *R. F. Creek v. United States* (D.C. App. 1974, 324 A.2d 688).

Positive identification by one eyewitness and somewhat tentative identifications by two other eyewitnesses were sufficient basis for finding juvenile guilty of robbery and assault with dangerous weapon. *In the Matter of W. K.* (D.C. App. 1974, 323 A.2d 442).

Evidence that victim had \$231 in his pocket and was carrying four or five packages when he was confronted by two men who held gun on him and went through his pockets and that victim told policemen that he had been robbed was insufficient to support armed robbery conviction. *United States v. C. McGill* (1973, 487 F.2d 1208, 159 U.S. App. D.C. 337).

Evidence, including evidence that defendant's fingerprints were found on both sides of pane of glass removed from back door to apartment and that prints were found on surface of glass covered by molding strips which secured window in door, were sufficient to sustain determination that defendant was person who entered complainant's apartment. *United States v. J. E. Cary* (1972, 470 F.2d 469, 152 U.S. App. D.C. 321).

If evidence in armed robbery prosecution did not warrant findings that the \$500 involved was taken from victim's person or immediate actual possession, then jury could only have properly found defendants guilty of the lesser included offense of grand larceny. *United States v. T. B. Dixon* (1972, 469 F.2d 940, 152 U.S. App. D.C. 200).

— Suppression

Though a crime of violence with a suspect reasonably believed to be armed was involved, warrantless entry by police into motel room occupied by defendant was invalid and required suppression of evidence found in room subsequent to entry, where police possessed no evidence at all connecting defendant to crime at time of entry, defendant was not placed under arrest until police began discovering evidence of crime in room, circumstances cast doubt on assertion that police had strong reason to believe that a suspect was on premises, arguments for and against likelihood of escape without swift apprehension were of equal weight, and entry, even assuming that it was peaceful, occurred during early morning hours so as to compound possible inadequacy of showing of probable cause. *United States v. J. Lindsay, Jr.* (1974, 506 F. 2d 166, 165 U.S. App. D.C. 105).

Identification

In respect to the post-lineup identification of defendant, out of the presence of the defense counsel, by witness, who initially withheld his identification because he did not want "to get involved," there is nothing in the record to suggest that the circumstances surrounding the witness' disclosure were in any way suggestive, or that an investigating officer may have pressured the witness into making the identification, and accordingly, there is not a very substantial likelihood of irreparable misidentification. *C. Graham v. United States* (D.C. App. 1977, 377 A. 2d 1138; cert. denied 98 S. Ct. 738, — U.S. —).

Where complainant positively identified defendant as one of her attackers both at trial and at lineup, where she also identified defendant's photograph, and where she gave an in-court description of her assailant which was in agreement with that given by another witness, such identification evidence was sufficient for jury to reasonably conclude that defendant was among the complainant's attackers. *Id.*

In proceeding in which accused was convicted of armed robbery, evidence sufficiently established that complainant had an independent source of identification based on his observation of accused during the robbery and, thus, that an allegedly impermissibly suggestive photographic array did not taint his subsequent identification of accused. *J. Dyas v. United States* (D.C. App. 1977, 376 A. 2d 827; cert. denied 98 S. Ct. 529, — U.S. —).

Police sketches, which are based on information communicated directly to artist by victims and which are criticized and approved by victims before use, are reliable and useful tools which provide a more accurate model for police officers than does a verbal or written description, despite contention that all police sketches are improperly suggestive and therefore should not be used to establish probable cause. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S.Ct. 154, — U.S. —).

Testimonial references to robbery victim's pretrial photographic identification of defendant did not unfairly prejudice defendant on theory that it suggested a history of prior difficulty with the law. *L. R. Wilson v. United States* (D.C. App. 1976, 357 A.2d 861).

Where prime suspect was located near scene of the crime as result of uninterrupted search, where one-man show-up at hospital where victim was being treated was conducted as expeditiously as was reasonably possible, where defendant had no opportunity to alter his personal appearance, and where witness' identification was immediate and emphatic, risk of mistaken identification was slight and the show-up procedure did not deny due process. *G. F. Thornton v. United States* (D.C. App. 1976, 357 A.2d 429; cert. denied 97 S.Ct. 644, 429 U.S. 1024).

Discrepancy between victim's description of robber's height and defendant's actual height does not in itself indicate a substantial likelihood of misidentification in light of victim's excellent opportunity to observe robber during incident and fact that victim never waived in his identification of defendant. *N. S. Williams v. United States* (D.C. App. 1976, 355 A.2d 784).

Where victim observed robber for several minutes in well lighted area, twice encountered defendant by chance and on second occasion alerted a police officer, showing to victim of defendant in back of police car immediately after his arrest by officers who responded to lookout broadcast by officer contacted by victim and who

had not had prior connection with case is not so unnecessarily suggestive so as to require exclusion of out-of-court and in-court identification. *P. Jackson v. United States* (D.C. App. 1976, 354 A.2d 869).

Where witness observed bank robber from as close as ten feet from safety of automobile and with specific purpose of later identifying robber, witness' description of robber and his automobile matched that of defendant, in showup in bank soon after robbery, defendant was not in handcuffs or behind bars, was not clothed in way witness described robber and witness identification of defendant was from his face rather than by general appearance or build, and possibly suggestive presence of defendants' automobile where witness could see it was at instance of defendant's companion not of policy, confrontation was not impermissibly suggestive. *United States v. J. Jones, Jr.* (1975, 517 F.2d 176, 170 U.S. App. D.C. 362).

Defendant was not denied due process of law because the police utilized a photo identification procedure rather than a corporeal lineup since defendant was already in custody where the photographic display was designed to test unverified information from a paid informant that defendant was one of the robbers and there was no evidence that the photographic display was in any way suggestive. *United States v. J. E. Jackson* (1974, 509 F.2d 499, 166 U.S. App. D.C. 166).

The Government's prerogative to show testimonially pretrial photographic identifications extends to testimony of identifications based on "mug shot" photographs; however, the objectionable features of the "mug shots" should be eliminated. *Id.*

Where photographs were displayed to witnesses prior to defendant's arrest, three of eyewitnesses viewed photographs just 11 days after robbery occurred, each witness individually inspected at least six photographs, and there was no indication that the authorities who conducted photographic identifications made any suggestive comments to identifying witnesses, identification procedure was not such as to deny defendant due process of law. *United States v. R. L. Scriber* (1974, 499 F. 2d 1041, 163 U.S. App. D.C. 36).

Where complainant in armed robbery prosecution immediately recognized picture of defendant in police photograph book, and where there was identification evidence by another witness, there was no substantial likelihood of misidentification even though complainant did not announce her discovery until she found, from an index in the back of the book, that the subject's name was the same as that previously given to her by a bystander as the name of her assailant; however, in the interest of avoiding suggestiveness, police should seek procedures whereby index could be kept unavailable to witnesses until after photograph has been identified. *United States v. L. C. McBride* (1974, 499 F. 2d 525, 162 U.S. App. D.C. 389).

Testimony of operator of coin-operated laundry and dry cleaning establishment that he had seen defendant many times before robbery, that room was well lighted, and that he had opportunity to observe robber for about 30 seconds, was sufficient for jury on issue of identity in armed robbery prosecution. *United States v. E. L. Inge, Jr.* (1974, 494 F.2d 1102, 161 U.S. App. D.C. 183).

Identification procedures were not so impermissibly suggestive as to give rise to very substantial likelihood of irreparable misidentification though officer told witness that photo of suspect was included in photographic array, where in photographic identification robbery victim chose two photographs of men whom he thought resembled the robber, one of which was defendant, and in subsequent lineup, robbery victim failed to identify defendant at all. *G. S. Crawley v. United States* (D.C. App. 1974, 328 A. 2d 777).

Where armed robbery victim had previously seen defendant in her apartment building on several occasions before offense and on very day of offense, there was no danger of misidentification, and thus there was no prejudicial error in one-man showup or in inability of police officer at trial to reconstruct photographic array from which victim identified defendant. *K. W. Swann v. United States* (D.C. App. 1974, 326 A. 2d 813).

Where robbery victim was shown 12 photographs, where defendant's photograph, which victim identified, con-

tained only a full face view, while the other 11 contained both a full face and a profile view, the difference in format was not, as a matter of law, so suggestive as to violate due process. *United States v. E. L. Sherry* (D.C. App. 1974, 318 A.2d 903).

Because there is some degree of suggestiveness when police officer indicates to witness that suspect's picture is among photographs in array, impeachment of witness on this point is relevant factor to be considered by jury in judging weight to be given photographic identification, particularly where there is only one eyewitness. *M. A. Hampton v. United States* (D.C. App. 1974, 318 A.2d 598).

Confrontation in which robbery victim viewed defendant while he was lying face down on floor and was handcuffed with his arms behind his back was permissible and was not highly suggestive where confrontation took place within few minutes of robbery and almost at scene of crime in building in which it occurred. *United States v. R. J. Lee, Jr.* (1973, 485 F. 2d 1075, 158 U.S. App. D.C. 296).

Factors to be evaluated in determining whether a particular identification stems from events other than an illegal pretrial confrontation are: witness' prior opportunity to observe criminal act and party committing it, existence of any discrepancy between any description of perpetrator given by witness and accused's appearance, any identification by witness of someone other than accused, and identification of a photograph of accused, any failure by witness to identify accused prior to in-court identification, and lapse of time between criminal acts and identification. *United States v. A. Holiday* (1973, 482 F. 2d 729, 157 U.S. App. D.C. 140).

In view of fact that the eight photographs shown witnesses on day of robbery gave no indication of height and that among these photographs defendant's was only one whose facial hair was in any way comparable to initial uncertain descriptions given by witnesses, and in view of fact that at lineup defendant was only man whose picture had been shown to witnesses and defendant was the tallest man, and only heavyset, stout person who had a full mustache and full goatee, there was a very substantial likelihood of irreparable misidentification by witnesses due to suggestive identification procedures, considered with discrepancies and uncertainties in their testimony, and their in-court identifications were inadmissible. *United States v. H. Sanders* (1973, 479 F. 2d 1193, 156 U.S. App. D.C. 210).

Where there was substantial doubt as to validity of uncorroborated identification evidence, which was provided by two alleged victims in prosecution for robbery and assault with a dangerous weapon and on which conviction was based, case would be remanded to permit district court to make fresh determination as to action which should be taken in interest of justice. *United States v. L. Harris* (1973, 475 F. 2d 359, 154 U.S. App. D.C. 248).

Where defendant and companions were arrested within 30 minutes following jewelry store robbery and about 19 blocks from jewelry store with plastic bag containing two trays of the stolen rings, it was reasonable for officers to bring defendant to scene of robbery for confrontation, and in-court identification of defendant by principal victim who had opportunity to observe robber at distance of about 18 inches under excellent lighting conditions was admissible for jury consideration. *United States v. R. McCoy* (1973, 475 F. 2d 344, 154 U.S. App. D.C. 233).

In light of fact that complaining witness had a long and proximate opportunity to observe and study face of her attacker, and had previously made a prearrest photographic identification, there was enough to support finding of clear and convincing evidence of an independent source for subsequent identifications. *United States v. E. Smith* (1972, 473 F. 2d 1148, 154 U.S. App. D.C. 111).

Failure of the trial court, in absence of request, to give a special instruction on identification in robbery prosecution in which the case turned on the testimony of a single witness was not prejudicial where the witness had an adequate opportunity to observe and made a spontaneous identification and where the instructions given with respect to burden of proof, alibi, and problem of mistaken identity significantly focused attention on the issue of identity. *United States v. M. Telfaire* (1972, 469 F. 2d 552, 152 U.S. App. D.C. 146).

— In-court

Even if in-court identifications by robbery victims were causally related to defendant's unlawful arrest, such evidence was properly admitted where police misconduct consisted of arresting and detaining defendant for approximately one hour on basis of information which fell short of constituting probable cause with respect to the robberies but their suspicions as to defendant's involvement in the robberies and his possible truancy were soundly based and defendant had been released soon after he had been photographed and it was determined that he was not a truant. *K. Crews v. United States* (D.C. App. 1977, 369 A.2d 1063).

In criminal proceeding in which accused was charged with armed robbery and burglary offenses alleged to have occurred in carryout restaurant on June 29 and July 8 and in which restaurant employee testified that she recognized accused when he entered on July 8, employee's remark that she knew accused "From two previous robberies where he robbed us before" was not admissible for purpose of establishing identity, in that there was no need for reference to uncharged offense because employee could have testified that she recognized accused on basis of having seen him in restaurant on two prior occasions. *C. Harris v. United States* (D.C. App. 1976, 366 A.2d 461).

There was no reversible error in allowing robbery victim to identify juvenile at his trial where pretrial lineup was not so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification. *In the Matter of F. D. P.* (D.C. App. 1976, 352 A.2d 378).

In-court identification of defendant as robber by eyewitness who observed robber approximately 15 minutes as robber held gun at eyewitness' head had source independent of alleged tainted pretrial photographic identification and is admissible. *W. Strickland, Jr. v. United States* (D.C. App. 1975, 332 A.2d 746; cert. denied 96 S.Ct. 84, 423 U.S. 846).

Excellent opportunities that identification witnesses had to observe defendant during robbery of United States post office were sufficient to provide a solid independent basis for their in-court identifications despite any later taint created by suggestive pretrial lineups, and thus defendant was not denied due process by court's refusal to suppress eyewitnesses' in-court identifications. *United States v. R. L. Scriber* (1974, 499 F. 2d 1041, 163 U.S. App. D.C. 36).

Fact that neither of two eyewitnesses to holdup had made any pretrial identification of juvenile as one of robbers did not preclude in-court identification of him by those witnesses on theory that such in-court identification was tainted with suggestion, because confrontation occurred when he was seated at defense counsel table, rather than among several individuals of similar physique in police lineup. *In the Matter of W. K.* (D.C. App. 1974, 323 A.2d 442).

In-court identifications made of accused by two lineup witnesses were admissible, though witnesses had attended an apparently uncounseled pretrial lineup, where it was illustrated sufficiently in record that identifications were based on their observation of him during robbery. *United States v. A. Holiday* (1973, 482 F. 2d 729, 157 U.S. App. D.C. 140).

Government established, in prosecution for rape while armed and armed robbery, by clear and convincing evidence that the in-court identifications of defendant by the victims were based on observation of suspect rather than on drawing of man submitted to victims for identification, and identification procedure was not improper. *United States v. R. E. Adams, Jr.* (1973, 481 F. 2d 1099, 156 U.S. App. D.C. 415).

— Lineup

Evidence in prosecution wherein defendant was convicted of armed robbery and of carrying pistol without license was sufficient to permit finding of identification beyond reasonable doubt, even considering 18 months time lapse between offense and positive identification of defendant at lineup. *H. Tolliver v. United States* (D.C. App. 1977, 378 A.2d 679).

Where victims' identification of defendant charged with armed robbery and assault with a dangerous weapon was reliable, where photograph of lineup showed little sug-

gestivity, and where photograph of lineup was introduced into evidence at trial and defense counsel had the opportunity to, and did, argue to the jury that the lineup was suggestive, any error in attorney's failure to represent defendant at lineup due to his being informed that defendant was not in lineup and his failure to recognize defendant in lineup is harmless. *D. L. Washington v. United States* (D.C. App. 1977, 377 A. 2d 1348).

Although police officers' remarks to complainant to effect that boy whom she had previously identified by photograph as purse snatcher would be in lineup would have been better left unsaid, they do not render the lineup identification so suggestive as to give rise to substantial likelihood of misidentification. *T. Marshall v. United States* (D.C. App. 1975, 340 A.2d 805).

Even if defendant's hairstyle was in some degree suggestive, it did not so distinctively mark him as to generate a substantial likelihood of misidentification by robbery victim who selected defendant from 11-man lineup as the gunman where the victim observed the robber bearing the shotgun over period of 15 or 20 minutes, throughout which she was in close proximity to the gunman and her successive identifications of defendant were consistent and invariably emphatic. *United States v. J. E. Jackson* (1974, 509 F.2d 499, 166 U.S. App. D.C. 166).

Where defendant was lawfully in custody, police were authorized to place him in lineup in connection with unrelated offense. *United States v. J. F. Anderson* (1974, 490 F. 2d 785, 160 U.S. App. D.C. 217).

Evidence of an identification of an accused made at an invalid lineup may not be introduced by Government in first instance, though accused may, if he chooses, show events which transpired at a faulty lineup, and, if he does, Government is entitled to respond, but unless accused initiates subject, evidence of identification is per se inadmissible, and unless constitutionally harmless is reversible error. *United States v. A. Holiday* (1973, 482 F. 2d 729, 157 U.S. App. D.C. 140).

Where one eyewitness, who had been present at two robberies in question, failed to identify defendant at formal lineup held shortly after his arrest and other eyewitnesses' views of defendant had been taken under less than ideal circumstances several weeks after robberies, denial of pretrial motion by defendant for an order for a lineup was error, and such error required that conviction be set aside and that indictment be dismissed, in light of fact that holding of a lineup would no longer be a meaningful step. *United States v. G. E. Caldwell* (1973, 481 F. 2d 487, 156 U.S. App. D.C. 312).

Where there was no showing that lineup was impermissibly suggestive or that victim of crime was led by police into identification of defendant, where inconsistencies in victim's testimony were attributable solely to difficulty victim experienced in use of English language, where three other persons identified defendant, and where victim's identification of defendant in lineup was unequivocal and based upon excellent opportunity to view defendant during robbery, lineup identification by victim was properly admitted. *J. L. Skinner v. United States* (D.C. App. 1973, 310 A. 2d 231).

— Photographic

Although victim may not have been shown entire file when he picked out defendant's picture and, thus, technically, production of the "Washington" file from which victim chose defendant's picture was not production of the same array from which victim had identified defendant, where there was an inherent reliability of identification stemming from the fact that the "Washington" file was an alphabetical file of all persons in jurisdiction with last name "Washington" who had been arrested and probability that such an alphabetical file would be suggestive in any manner was realistically almost nonexistent, and where victim's testimony was that he was shown one picture at a time so that possibility of suggestivity was much less than in case in which a person is shown ten photographs at same time, there is no reversible error in trial court not imposing sanctions on Government for its failure to preserve all the arrays. *D. L. Washington v. United States* (D.C. App. 1977, 377 A. 2d 1348).

Photographic identification procedure in which victim, who had described assailant as wearing a dashiki, who had ample opportunity to observe attackers during course of abduction, who described defendant correctly and in detail, and who was unable to recall at trial whether man in photograph was wearing a dashiki, immediately and unequivocally selected defendant's photograph, which was only one in group of photographs showing man wearing dashiki, was not so impermissibly suggestive as to give rise to very substantial likelihood of irreparable misidentification and deny defendant due process of law. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S.Ct. 154, — U.S. —).

With respect to failure to suppress photographic identification of defendant, fact that photographs were temporarily misplaced by police officer is not in and of itself sufficient cause for suppression, especially when police officer was willing to vouch that array was one shown to witnesses, testified that he found pictures in desk drawer in which he had originally placed them and stated that they were still bound together with paper clip as he had left them. *C. S. Hill v. United States* (D.C. App. 1976, 367 A. 2d 110).

In presenting photographic array to witness, it was not error for police to show witness array of photographs with recent photographs of suspects substituted for substantially older photographs first displayed to witness, in view of marked difference in appearance between older and current photographs. *A. Clifton v. United States* (D.C. App. 1976, 363 A.2d 299).

Fact that defendant's clothes in photographic display somewhat resembled clothes which robbery victim said armed robber wore does not render the photographic display impermissibly suggestive in view of total number of pictures, 150, and number of men of comparable age and appearance in the array. *J. Herbert, Jr. v. United States* (D.C. App. 1975, 340 A.2d 802).

Array of photographs which was not available at trial and which was assembled by selecting from arrest files photographs of 10 to 20 individuals bearing same surname as defendant is not presumed to have been unduly suggestive so as to require exclusion of pictorial identification by robbery victim who had been informed by bystander that one robber had certain surname and who relayed such information to police, where police did not know whether defendant's photograph was in such array and did not inform robbery victim that photographs were of persons having surname relayed to them. *W. Strickland, Jr. v. United States* (D.C. App. 1975, 332 A.2d 746; cert. denied 96 S.Ct. 84, 423 U.S. 846).

Immediate actual possession

A thing is within one's "immediate actual possession" for purposes of robbery statute so long as it is within such range that such person could, if not deterred by violence or fear, retain actual physical control over it. *United States v. T. B. Dixon* (1972, 469 F. 2d 940, 152 U.S. App. D.C. 200).

Where defendants approached victim and positioned themselves on either side of him and one said, "Let me have it," while one stuck a pistol against victim's ribs, and where victim attempted to toss envelope containing money to a stranger and one of the defendants immediately picked up the envelope and ran, joined by the other defendant, defendant's act of picking up the envelope, if it did not constitute a taking from the "person" of the victim, at least constituted taking from victim's "immediate actual possession" within robbery statute. *Id.*

Impeachment

Trial court did not abuse its discretion in allowing the prosecutor to impeach an alibi witness, the mother of one defendant, by showing that she had not been truthful before the grand jury in a pending charge against her son for the unauthorized use of a motor vehicle. *J. S. Adams v. United States* (D.C. App. 1977, 379 A. 2d 961).

Defendant was properly impeached by use of prior inconsistent statement given by him to representative of District of Columbia Bail Agency in the prosecution of offense for which the Bail Agency statement was given. *J. Herbert, Jr. v. United States* (D.C. App. 1975, 340 A.2d 802).

In prosecution of two defendants for armed robbery, admission of prior inconsistent statement of one defendant which implicated second defendant in armed robbery was not error where statement was introduced for purposes of impeachment and jury was specifically instructed not to consider impeaching testimony as substantive evidence of second defendant's involvement in the armed robbery. *D. Borrero v. United States* (D.C. App. 1975, 332 A.2d 363).

Refusal, in criminal prosecution, to admit testimony regarding effect of drug use on perception for purposes of impeaching testimony of accomplice, who testified for government and who was a heroin user, unless it was established that accomplice had used narcotics on day of offenses was not error. *United States v. I. E. Leonard* (1974, 494 F. 2d 955, 161 U.S. App. D.C. 36).

Test of whether witness statements concern collateral matters, so as not to be subject to impeachment, is whether fact as to which statement is predicated could have been independently shown in evidence for any purpose. *M. A. Hampton v. United States* (D.C. App. 1974, 318 A. 2d 598).

Trial court erred when it precluded defendant's counsel from attempting to impeach complaining witness' testimony that she had been told that suspect had been arrested after she viewed police photographs by bringing out witness' grand jury testimony that she had viewed photographs only after being informed of suspect's arrest. *Id.*

Indictment

Ruling that original indictment which charged only that defendant "stole" was insufficient because of the failure to allege specific intent to steal is not a decision which went to substance of accusation or defenses to it and thus does not preclude, under doctrine of *res judicata*, subsequent grand jury indictment in same language, even absent notice of appeal by Government. *G. F. Washington v. United States* (D.C. App. 1976, 366 A.2d 457).

Dismissal of original armed robbery indictment which charged only that defendant "stole" for failure to charge specific intent to steal is not a final judgment on the merits; thus, doctrine of collateral estoppel does not make dismissal of first indictment conclusive as to sufficiency of second indictment which used identical wording. *Id.*

The Government may properly charge in the same indictment offenses against both the federal bank (savings and loan) robbery statute and the local armed robbery statute, provided defendant is not ultimately sentenced under two statutes proscribing essentially the same offense. *United States v. R. Shepard* (1975, 515 F. 2d 1324, 169 U.S. App. D.C. 353).

Robbery count charging defendants with taking money, the property of grocery store, and pistol, the property of security guard was not duplicitous but rather charged that one person, the guard, was robbed of the pistol and the money he was guarding, and, in any event, defendants waived any defect by not protesting before trial. *United States v. J. F. Bolden* (1975, 514 F. 2d 1301, 169 U.S. App. D.C. 60).

Robbery count of indictments charging that defendants by force and violence and against resistance and by putting in fear stole and took from specified person certain specified property is sufficient to charge robbery under this section, contrary to claim of defendants that it fails to allege all the material and necessary elements of robbery; use of word "stole" put defendants on notice that specific intent is an element of crime with which they were charged. *United States v. W. N. Owens et ano.* (D.C. App. 1975, 332 A.2d 752).

Refusal to amend robbery count at beginning of trial to include allegation of specific intent to steal was not prejudicial where clear, detailed, and thorough instructions were given; however, it is urged that indictment forms be updated and refined. *United States v. L. T. Robinson* (1973, 475 F. 2d 376, 154 U.S. App. D.C. 265).

Dismissal

Since, even if urine test which Government had not produced would have convinced jury that defendant, as a result of intoxication, did not have requisite intent to commit robbery, there was proof beyond reasonable doubt of lesser included offense of simple assault, which does

not require proof of specific intent, defendant would not be entitled to dismissal of indictment even if test were shown to have been made and were shown to have been of potential value to defendant. *United States v. J. L. Butler* (1974, 499 F. 2d 1006, 163 U.S. App. D.C. 1).

Inferences

From a defendant's failure to produce a witness who might reasonably have been expected to verify defendant's alibi, courts usually allow prosecutors to draw inference that testimony of such witness would not have supported the alibi. *United States v. A. A. Freeman* (1975, 514 F.2d 1314, 169 U.S. App. D.C. 73).

Where defendant's taking stand lacked probative value in itself, inferences which government sought to draw from it, such as that it was indicative of guilt, could only serve to confuse and mislead jury, and such tactic did not become prosecutor, as exemplar of fairness and justice in the criminal system. *Id.*

Inference of guilt arising from possession of recently stolen property is not an inference of one of the essential elements of the offense, but only of the identity of the perpetrator of the offense of theft independently proven. *L. Irby v. United States* (D.C. App. 1975, 342 A.2d 33).

Jury may infer from change in appearance by someone who has been called to appear in a lineup that change reflects an awareness of guilt and fear of identification. *United States v. T. McKinley* (1973, 485 F. 2d 1059, 158 U.S. App. D.C. 280).

Inference that, since defendant has violated the law in one respect, he is likely to have violated the law defining the offense charged in the indictment is not permitted lightly, except as to certain defined categories. *Id.*

Instructions

Trial court, which gave a general instruction on credibility, did not abuse its discretion in denying request of defendants, charged with robbing priests of money and other valuables at gun point while ostensibly at church rectory for purpose of arranging a baptism that special instruction be given concerning credibility of clerics. *L. Coleman v. United States* (D.C. App. 1977, 379 A. 2d 951).

In armed robbery prosecution, trial court did not commit prejudicial error by refusing defense counsel's requests for immediate instructions concerning limited use of prior convictions admitted for purposes of impeachment of defense witnesses where only persons impeached by such evidence were witnesses who were not on trial and where, at conclusion of evidence, judge properly informed jury that prior convictions should be considered only in evaluating witnesses' credibility. *S. Watkins v. United States* (D.C. App. 1977, 379 A. 2d 703).

Where indictment charged defendant with both armed robbery and robbery, but it was undisputed that perpetrators of robbery of which defendant was charged were armed, trial judge erred in instructing jury on lesser-included offense of robbery; however, conviction for robbery would not be overturned for "plain error" where defendant did not object to robbery instruction before jury retired to deliberate. *S. B. Lightfoot v. United States* (D.C. App. 1977, 378 A. 2d 670).

There was no error in instruction that jury was not bound by opinion of expert witness and should consider his testimony in connection with the other evidence in the case and give it such weight as in jury's judgment it was fairly entitled to receive. *S. L. Hooks v. United States* (D.C. App. 1977, 373 A.2d 909).

Where trial judge at prosecution of defendant for robbery at gunpoint, upon disclosure of numerical split within jury, directed a hung-jury instruction toward particular juror who was holding out and intimated that she was guilty of either perjury or negligence in her response to questions on voir dire and that she was not complying with her oath as a juror, and also failed to use any ameliorating language in his instruction to effect that any change in vote had to be a conscientious one, instruction transgressed limits of the Winters charge and, therefore, was coercive and constituted prejudicial error. *E. R. Jackson v. United States* (D.C. App. 1977, 368 A.2d 1140).

Instructions which told jury that it would have to analyze alibi testimony presented by defendant in contradistinction to testimony presented by the Government,

which did not specifically state that the burden of proof did not shift to defendant on issue of alibi, which specifically stated that Government had duty to prove the elements of the crime beyond a reasonable doubt only with respect to three of the five elements, and which told the jury that the Government had the "initial responsibility" of proof beyond a reasonable doubt did not place burden on Government with sufficient specificity; lack of specificity is plain error. *United States v. L. L. Alston* (1976, 551 F.2d 315, 179 U.S. App. D.C. 129).

Where it was apparent that jury would be inclined to construe evidence as proof that defendant had instigated an attempt to tamper with Government's case, it was incumbent upon defense counsel to draw that possibility to trial judge's attention and to request appropriate cautionary instruction; thus trial court did not err in failing sua sponte to caution jury that the evidence was not to be so construed. *R. Simmons v. United States* (D.C. App. 1976, 364 A.2d 813).

Where jury was given deadlock instruction after it indicated upon two hours deliberation that it was unable to return verdict, jury again concluded that it could not reach verdict on armed robbery count after deliberations next morning, court announced that jury would be required to deliberate further after lunch, and jury returned guilty verdict on robbery charges after one hour of further deliberation, trial court's ordering of continued deliberation was not coercive. *T. A. Johnson v. United States* (D.C. App. 1976, 360 A.2d 502).

Where instruction told jury six times that specific intent is necessary element of robbery or armed robbery, trial court defined specific intent and explained difference between specific and general intent, court subsequently made misstatement that armed robbery is crime requiring general intent, and no objection was raised, misstatement, when viewed in light of instruction as a whole, did not preclude fair deliberation by jury on elements of armed robbery charge and is not plain error. *Id.*

Whatever prejudice might have followed from use of "innocence" for "not guilty" in supplemental instruction was overcome by trial court's previous unequivocal explanation of manner in which jury was to reach a decision, either favorable or unfavorable to defendant, and, in any event, use of "innocence" did not create such clear prejudice to defendant's substantial rights as to allow notice of matter which was not raised in trial court. *L. R. Wilson v. United States* (D.C. App. 1976, 357 A.2d 861).

Defendant's request that trial court submit list of charges to jury without comment was insufficient to constitute a proper objection to specific content of supplemental instruction which followed rejection of request. *Id.*

Where defendant testified that he had been employed when arrested and prosecutor was unsuccessful in his attempt on cross-examination to produce proof that defendant had told bail agencies he was unemployed at that time, a cautionary instruction is not required. *Id.*

Failure, sua sponte, to immediately instruct jury on limited admissibility of prior inconsistent statement used to impeach codefendant, who testified in defendant's behalf in armed robbery prosecution, is plain error requiring reversal of defendant's conviction. *L. E. Johnson v. United States* (D.C. App. 1976, 356 A.2d 639).

Where prior written statement by victim was both consistent and inconsistent with victim's trial testimony and court in regard to inconsistency charged that prior statement could be used only in evaluating victim's credibility and not as establishing the truth of any fact set forth in statement, trial court did not err in not instructing as to the consistency that the prior statement could be considered by jury only in evaluating credibility and not as establishing truth of any facts set forth in it. *P. Jackson v. United States* (D.C. App. 1976, 354 A.2d 869).

Although defendant claimed that armed robbery victim owed him \$30 refund for sale of some adulterated narcotics, where defendant allegedly took over \$500 from victim, he is not entitled to instruction on "claim of right" defense. *R. H. Rhodes v. United States* (D.C. App. 1976, 354 A.2d 863).

After having given "Winters instruction" to apparently deadlocked jury in prosecution for armed robbery and

robbery, sending jury back for deliberation still another time for "a short period after lunch," following subsequent report that jury was still "hung," did not in effect coerce verdict. *C. C. Thompson v. United States* (D.C. App. 1976, 354 A.2d 848).

Trial court did not commit plain error by instructing jury under test of insanity which defense counsel specifically requested and which was given over the objection of the Government, despite defendant's contention on appeal that wrong test was given in instruction. *P. Shanahan v. United States* (D.C. App. 1976, 354 A.2d 524).

An instruction under section 22-105 relating to aiding and abetting is not necessary in order for the acts of one principal in furtherance of a crime to be imputed to another principal; hence, fact that defendant may have only held gun during armed robbery of supermarket did not require finding that since he did not physically commit all elements of the offense he could not be held legally responsible for the acts of the other individual, who seized the cash from the safe, unless he was found to have aided and abetted such individual. *B. E. Hazel v. United States* (D.C. App. 1976, 353 A.2d 280).

Trial court properly instructed jury on testimony of accomplices rather than testimony of informers with respect to testimony of witness who had pled guilty to one count of indictment under which he and defendant were charged on the day before defendant's trial and who had participated in the crime with defendant. *United States v. M. W. Thorne* (1975, 527 F.2d 840, 174 U.S. App. D.C. 57).

Communication between judge and jury in the absence of the defendant and his counsel and the trial court's refusal to give any instructions concerning one "holdout" was not prejudicial error where the defendant did not object prior to the verdict, there was no complaint that the jury had been coerced into agreement during the deliberation and no objection was raised until motion for new trial. *United States v. T. B. Diggs* (1975, 522 F.2d 1310, 173 U.S. App. D.C. 95; cert. denied 97 S.Ct. 144, 429 U.S. 852).

Where soon after retiring jury requested instruction on whether aiding and abetting instruction applied to armed robbery count of indictment as well as assault charge, trial court's charging jury that aiding and abetting instruction was applicable to both counts in absence of defendant was, at most, harmless error. *United States v. J. Jones, Jr.* (1975, 517 F.2d 176, 170 U.S. App. D.C. 362).

Omission of an instruction that voluntary narcosis could negate specific intent to commit the robbery was not plain error, where defense counsel never requested such an instruction, where he previously admitted that defendant's actions indicated that he was not under the influence of narcotics when he confessed, where counsel indicated his satisfaction with the instructions as given, and where the evidence on the issue was not sufficient to require the court to give such an instruction in the absence of a request therefor. *United States v. R. Shepard* (1975, 515 F.2d 1324, 169 U.S. App. D.C. 353).

Trial court properly denied requested instruction of defendant, who was charged with robbery, to the effect that, in the experience of many, it is more difficult to identify members of a different race than members of one's own and that if such was the jury's experience it could consider that in evaluating the witness' testimony. *J. O. Abney v. United States* (D.C. App. 1975, 347 A.2d 402).

Where defendant claimed insanity and his expert witness when asked if his fee had been paid prior to his appearance in court answered in negative, better practice would have been to give cautionary instruction immediately following such improper question, but refusal does not require reversal, and with respect to request for such instruction just prior to jury's retirement for deliberations, reviewing court would defer to trial judge's evaluation that more harm might be done by dredging subject up than by instructing. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

In view of fact that evidence of plea of guilty to charge other than that on which defendant was being tried was not highly prejudicial, and where defendant did not request "immediate cautionary instruction" and instructions to jury constituted very fair charge with respect to

use of prior conviction and evidence concerning defendant's involvement with narcotics, fact that immediate cautionary instruction was not given was not ground for relief. *United States v. H. E. Lee* (1974, 509 F.2d 400, 166 U.S. App. D.C. 67; cert. denied 95 S. Ct. 1451, 420 U.S. 1006).

Instruction on identification issue recited and approved. *United States v. E. L. Inge, Jr.* (1974, 494 F.2d 1102, 161 U.S. App. D.C. 183).

Failure to give an accomplice instruction with regard to accomplices who testified for government was not plain error where nonaccomplice testimony corroborated accomplice testimony to significant extent against one accused and to lesser extent against another and where accomplices did not appear to have extraordinary disposition to prevaricate. *United States v. I. E. Leonard* (1974, 494 F.2d 955, 161 U.S. App. D.C. 36).

Refusal to instruct that testimony of accomplices, who testified for government after having been granted immunity, should be considered with caution was reversible error. *Id.*

Absent waiver of instruction, failure, in prosecution for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary, to give immediate limiting instruction as to admissibility where testimony of arresting officer was admitted to impeach defendant's testimony that he had not stated that codefendant "lived across the street" was plain error requiring reversal, though general instruction on impeachment evidence was given in very long charge. *Id.*

Instruction that jury could infer from the unexplained or unsatisfactorily explained possession of stolen money orders that defendants were guilty of taking such money orders, that defendant's possession of the recently stolen property did not shift burden of proof and that Government always had burden of proving beyond reasonable doubt every essential element of offense did not place burden on defendants, alone, to testify and explain satisfactorily their possession of stolen money orders. *United States v. J. M. Joyner* (1974, 492 F.2d 650, 160 U.S. App. D.C. 384; cert. denied 95 S. Ct. 94, 419 U.S. 852).

Where jury had commenced its deliberations in prosecution for armed robbery, assault with a dangerous weapon, receiving stolen property, and carrying a pistol without a license, when it presented to the court a question concerning the armed robbery count, the court did not abuse its discretion by giving, in the face of defendant's objection but in the absence of a request to present argument, a supplemental instruction on aiding and abetting. *R. W. Atkinson v. United States* (D.C. App. 1974, 322 A.2d 587).

Where police officer, testifying in trial of defendants charged with armed robbery, admitted that he had previously testified under oath that there was only one witness to the crime, when he knew that there were two witnesses, and where police officer stated that he so testified in order to protect the second witness, it was not error for court, after instructing jury of the need to scrutinize with care the testimony of a witness who has previously lied under oath, to tell the jury it could take into consideration the reasons for the person's having previously lied. *J. N. Smith v. United States* (D.C. App. 1973, 312 A.2d 781).

Instruction with respect to identification in prosecution for burglary, rape, and robbery was sufficient for circumstances of case wherein complaining witness did not identify defendant but identity was established from fingerprint evidence. *United States v. J. E. Cary* (1972, 470 F.2d 469, 152 U.S. App. D.C. 321).

Jencks Act

Assistant United States attorney's notes of his interview with complainant are not a "statement" within meaning of Jencks Act, which defines a statement as including "a written statement made by said witness and signed or otherwise adopted or approved by him," where complainant did not assert that he approved or adopted that which was written down during the interview. *J. Dyas v. United States* (D.C. App. 1977, 376 A.2d 827; cert. denied 98 S. Ct. 529, —U.S.—).

Record establishes that, upon defendant's prima facie showing of possible existence of additional Jencks statements, trial judge's examination of various police report documents already produced, without calling every

investigating officer who had responded to the scene, was within trial judge's good sense and experience and was not an abuse of discretion, where trial judge did not simply rely on Government's statement that all Jencks statements had been produced. *In the Matter of K. L. H.* (D.C. App. 1977, 372 A.2d 1003).

Even assuming rough notes taken by police officer at scene of showup identification constitute Jencks Act statements, loss of the notes is harmless and does not preclude testimony as to subsequent lineup identification nor in-court identification, considering, inter alia, that defendant was arrested immediately after the crime on the basis of police radio broadcast, stolen money was found in his possession, much other material was produced for possible impeachment, and overall credibility of victim's identification of defendant was abundantly supported in the record. *D. M. Fields v. United States* (D.C. App. 1977, 368 A.2d 537).

Fact that police officer, who assertedly recopied form containing his recording of complainant's description of robbers for purpose of correcting misspellings, destroyed the original form, does not require that complainant's testimony be stricken in armed robbery prosecution, in light of fact that no issue of identification was raised and that no bad faith on part of officer was shown. *S. Jones v. United States* (D.C. App. 1976, 362 A.2d 718).

In criminal proceeding, refusal, after in camera inspection, to order production of notes taken by prosecutor in pretrial interviews of two government witnesses is proper where such notes are merely random notations in regard to background material such as age, address and place of employment, where notes are not a substantially verbatim recital of oral statements of witnesses and where notes are not relevant, except peripherally, to subject matter of witnesses' testimony. *F. A. Brown v. United States* (D.C. App. 1976, 359 A.2d 600).

Introduction of transcript of tape recording of statement made by prosecuting witness, which tape recording was discovered by prosecution and defense and which transcript was produced pursuant to the Jencks Act, is incompatible with the general purpose of the Act which is to allow defendant access to prior statements of government witnesses for impeachment purposes and not to permit the Government to buttress its case-in-chief. *D. B. Tibbs v. United States* (D.C. App. 1976, 359 A.2d 13).

Error in failing to determine whether any notes were taken by a second police officer of an interview with victim on night in question and, if so, whether they constitute a statement producible under Jencks Act is harmless, though notes may contain an initial description given by victim, where importance of notes is considerably diminished by fact that defendant was supplied with other comprehensive notes of very same interview. *N. S. Williams v. United States* (U.S. App. 1976, 355 A.2d 784).

Failure to produce at trial rough notes which were allegedly prepared on night of robbery by police officer responding to scene of crime and which allegedly contained description by victim of robber different from that given by victim at trial did not prejudice defendant so as to require striking of victim's testimony, where discrepancy between description given by victim prior to and at trial was presented to and fully developed before jury through officer's testimony and offense report prepared by officer several weeks after robbery. *P. Jackson v. United States* (D.C. App. 1976, 354 A.2d 869).

In proceeding in which juvenile was adjudged to have committed robbery, refusal to strike testimony of complaining witness when police officer was unable to produce his notes of an interview with witness is not reversible error, in that such "rough" and "almost illegible" notes do not constitute a "statement" within purview of Jencks Act. *In the Matter of A. B. H.* (D.C. App. 1975, 343 A.2d 573).

In proceeding in which juvenile was adjudged to have committed robbery, even if police officer's notes of an interview with complaining witness constitute a "statement" within purview of Jencks Act, refusal to strike such witness' testimony due to officer's inability to produce such notes was not an abuse of discretion. *Id.*

In prosecution for armed robbery, in view of extensive pretrial discovery of other Jencks material, in some of which statements made by victim to police officer who lost

notebook containing notes of initial conversation with victim were incorporated, availability of police officer to testify as to contents of his notes, and fact that defendant was not arrested as a result of any description given police officer but rather was arrested following on the scene identification by victim of defendant as participant in assault and robbery, any possibility of prejudice caused defendant by loss of notes was remote. *E. W. Jones v. United States* (D.C. App. 1975, 343 A. 2d 346).

In the process of balancing rights of accused and public interest when relevant Jencks Act material has been non-purposefully lost or destroyed, imposition of sanction less severe than striking testimony of witness involved or declaring a mistrial may be indicated, and thus in a proper case, trial judge may in lieu of any other sanction charge jury with variant of so-called missing witness instruction. *Id.*

It was error for trial court not to conduct inquiry into nature of notes taken by prosecutor when interviewing witness before determining that the notes were, as contended by prosecutor, not substantially verbatim and thus not required to be produced for defendant. *G. J. Matthews v. United States* (D.C. App. 1974, 322 A. 2d 908).

It was error for trial court not to determine whether certain police forms and radio runs, which contained initial description of robber given to police by witness and which related to robberies in which defendant, who was charged with robbery, was believed to be a suspect and to which witness who was identifying defendant in the instant case had also been an eyewitness, were producible under the Jencks Act. *Id.*

Joinder

Where assault with intent to rape committed against two women and purse snatching committed against third woman occurred within short time of each other and in approximately the same location but were not otherwise related, the mere temporal and spacial proximity cannot justify characterization of the assault and robbery as different parts of the same series of acts or transactions and joinder of the robbery count with the other charges was improper and conferred upon the District Court no jurisdiction over the alleged D.C. Code offense of robbery. *United States v. M. E. Jackson* (1977, 562 F. 2d 789, 183 U.S. App. D.C. 270).

Since separate trials on charges of murder and attempted robbery were the result of accused's own efforts to that end, accused cannot raise double jeopardy, res judicata, or collateral estoppel to bar murder trial following the robbery trial. *In the Matter of A.L.S.* (D.C. App. 1977, 377 A. 2d 1149).

In prosecution for robbery, armed rape, assault with intent to commit sodomy while armed, armed kidnapping, assault with intent to commit mayhem, armed robbery, obstruction of justice and assault with dangerous weapon, trial court did not err in refusing to sever counts on basis of separate dates of alleged offenses, in view of fact that all offenses flowed each from the other, evidence of each would have been admissible in separate trials to show motive, intent and identity and evidence as to each offense was simple and direct, consisting of victim accounts corroborated by eyewitness testimony. *T. A. Horton v. United States* (D.C. App. 1977, 377 A. 2d 390).

Defendant, who contended on appeal that trial court erred in refusing to sever for trial seven offenses and 39 counts contained in indictment because cumulative effect of evidence introduced to prove all counts made fair trial impossible and that trial court's failure to sever such counts deprived him of his right to a fair trial, who made no motions for severance either before or during trial nor did he join in codefendant's motion for severance, and who was aware of all facts comprising his claim of prejudice before trial, should have raised such issue at trial rather than on appeal. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S.Ct. 154, — U.S. —).

Even assuming that defendant and codefendant had antagonistic defenses to armed robbery charge, where independent evidence of defendant's guilt was overwhelming and defendant did not demonstrate that alleged conflict in defenses in itself created danger that jury would unjustifiably infer defendant's guilt, any possible prejudice which may have resulted from joint trial was not

such as to warrant reversal. *C. M. Clark v. United States* (D.C. App. 1976, 367 A. 2d 158).

Where each of two robberies was committed with sawed-off rifle, each involved as victim a delivery truck driver who collected money after each delivery, each driver was forced into truck and driven or made to drive to another location while the money was taken from him, the two offenses occurred within five days of each other and, when defendant was removed from police car after arrest, a revolver was found beside seat on side where he had been sitting, joinder of the two robbery charges and charge of carrying dangerous weapon is proper. *O. T. Goins v. United States* (D.C. App. 1976, 353 A. 2d 298).

Review of record showed that the similarity of circumstances surrounding the two criminal episodes on which charges of rape while armed and armed robbery were based were sufficiently remarkable to prove that there was a reasonable probability that the same person committed the crimes and there was no prejudice in the joinder of both crimes in one trial. *United States v. R. E. Adams, Jr.* (1973, 481 F. 2d 1099, 156 U.S. App. D.C. 415).

In view of fact that scene of armed robbery and assaults on January 17 was different from that of armed robbery and assault on January 11 and assaults on January 16, the victims were different, and only common factor was that in each case the offender was a man wearing a fur coat and fur hat, and that there was no evidence of a common scheme or plan embracing commission of all of the offenses, it was prejudicial error to join trial of charges relating to offenses on January 17 with trial on other counts alleging offenses on January 11 and January 16, notwithstanding Government's contention that evidence of each offense was simple and distinct so that jury could not possibly have been confused. *United States v. T. E. Carter* (1973, 475 F. 2d 349, 154 U.S. App. D.C. 238).

Judge's conduct

Trial judge's remarks during final instructions to jury, stating "it is my impression that witnesses both for the Government and for the defense lied" did not constitute reversible error where judge's comments concerning witness' credibility were distributed in even handed manner and referred both to prosecution and defense witnesses, and where judge informed jury that his statements were not evidence but merely comments which were in no way binding on jury; trial judge neither assumed role of witness nor added evidence by his comments. *S. Watkins v. United States* (D.C. App. 1977, 379 A. 2d 703).

Trial judge's remarks to defense counsel in presence of jury, stating that counsel was not familiar with "a basic principle of law that you learn in the first year of law school," although disparaging and inaccurate under circumstances, did not rise to level of prejudicial error where court did not constantly criticize, rebuke and belittle defense counsel. *Id.*

Jurisdiction

Claim of defendant that it was not he but one of his coescapers who held knife used to rob victim falls short of complete defense to charge of armed robbery, since, even assuming defendant used no weapon, the acts of his accomplice in crime can be imputed to him thus making him chargeable as a principal. *J. F. Jordan v. United States* (D.C. App. 1976, 350 A. 2d 735).

Jury

Trial court did not err in refusing to grant motion of defendants, charged with robbing priests of money and other valuables at gun point while ostensibly at church rectory for purpose of arranging a baptism, to exclude all Catholics from jury, where no member of petit jury as empaneled was member of specific church of victim priests and none of jurors knew either cleric and none lived in immediate vicinity of church. *L. Coleman v. United States* (D.C. App. 1977, 379 A. 2d 951).

Trial court did not abuse its discretion in refusing to allow defendants, charged with robbing priests of money and other valuables at gun point while ostensibly at church rectory for purpose of arranging a baptism, to ask prospective jurors during voir dire whether they could find that a priest's testimony had been untruthful if evidence suggested it and whether they had any special affection for or grudge against priests in general, in addition to questions permitted on same subject. *Id.*

Where there was no showing which would cause trial judge to inquire into possible prejudice against the defendant because he was black, the defendant did not exhaust the peremptory challenges to which he was entitled and no effort was made by detailed questions to disqualify any prospective juror, it was not error for the trial judge to decline to permit defense counsel to inquire whether the prospective jurors "have had any dealings or experience with black persons that might make it difficult for them" to sit in judgment on the case. *United States v. T. B. Diggs* (1975, 522 F. 2d 1310, 173 U.S. App. D.C. 95; cert. denied 97 S.Ct. 144, 429 U.S. 852).

In view of fact that counsel were granted full opportunity to propound their own questions for each potential juror, and substance of questions suggested by defense counsel were put to jury by judge, and in view of want of any objection to procedure, there is no plain error by trial judge in not probing more vigorously the responses of potential jurors. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

Defendant accused of murdering police officer is not entitled to jury free of policeman's relatives. *Id.*

— Disclosure of public record

Trial court did not err in armed robbery prosecution in refusing to require government to disclose information in its possession concerning past voting records of members of jury panel, since jury panel information was neither evidence nor was it material to guilt or punishment of defendant. *L. Britton v. United States* (D.C. App. 1976, 350 A. 2d 734).

— Poll

Trial court committed reversible error by continuing to poll jury after first juror had indicated she did not agree with guilty verdict on the first armed robbery count, notwithstanding government hypothesis that dissenting juror was confused by multiple-count indictment, since trial judge, rather than stopping poll and questioning juror to determine if she were confused by indictment, chose to continue the poll. *J. Kendall v. United States* (D.C. App. 1975, 349 A. 2d 464).

Lesser included offense

Where indictment charged defendant with both armed robbery and robbery, but it was undisputed that perpetrators of robbery of which defendant was charged were armed, trial judge erred in instructing jury on lesser-included offense of robbery; however, conviction for robbery would not be overturned for "plain error" where defendant did not object to robbery instruction before jury retired to deliberate. *S. B. Lightfoot v. United States* (D.C. App. 1977, 378 A. 2d 670).

Testimony of defendant, who categorically denied that he bumped or jostled either complainant or her companion, who denied that his hand was ever inside or near complainant's purse or handbag and insisted that he was never closer than one foot to either woman, not only negated essential elements of disorderly conduct but was also completely exculpatory of either offense, and thus trial court did not err in refusing to give requested lesser-included offense instruction in prosecution for attempted robbery. *P. Jones v. United States* (D.C. App. 1977, 374 A. 2d 854).

Conviction of assault with a deadly weapon would not be set aside as a lesser included offense of armed robbery, where jury's conviction of assault with a deadly weapon of necessity included finding that assault occurred after conclusion of all earlier crimes including armed robbery. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S.Ct. 154, — U.S. —).

Armed robbery can be committed without also violating section 22-3214 prohibiting possession of certain weapons; thus, possession of prohibited weapon is not lesser included offense of crime of armed robbery. *G. F. Washington v. United States* (D.C. App. 1976, 366 A.2d 457).

Assault with dangerous weapon on motel clerk was lesser included offense of armed robbery of same person, and conviction of former could not stand as conviction for another offense. *United States v. H. E. Lee* (1974, 509 F. 2d 400, 166 U.S. App. D.C. 67; cert. denied 95 S. Ct. 1451, 420 U.S. 1006).

It was improper to convict defendant both for assault with a dangerous weapon and armed robbery where the assault was a necessary part of the evidence needed to support the count of armed robbery. *R. Taylor v. United States* (D.C. App. 1974, 324 A. 2d 683).

Assault with dangerous weapon was lesser included offense of armed robbery; thus, defendants could not be convicted of both three counts of armed robbery and three counts of assault with a deadly weapon and convictions of assault would be reversed. *United States v. T. McKinley* (1973, 485 F. 2d 1059, 158 U.S. App. D.C. 280).

Under District of Columbia statute assault with a dangerous weapon is a lesser included offense of robbery while armed. *United States v. J. Johnson* (1973, 475 F. 2d 1297, 155 U.S. App. D.C. 28).

Where jury returned a verdict of guilty on each of four counts of robbery while armed involving different victims it was error to receive verdicts from the jury on the four counts of assault with a dangerous weapon, a lesser included offense, with respect to the same victims. *Id.*

Mental capacity

Record, including testimony of a private psychiatrist who examined defendant at government expense, was sufficient to support finding that criminal acts committed by defendant (armed robbery, assault with a dangerous weapon, and carrying a dangerous weapon) were not so proximately tied to defendant's mental impairment as to require his exculpation. *United States v. G. A. Wilson* (1972, 471 F. 2d 1072, 153, U.S. App. D.C. 104; cert. denied 93 S. Ct. 1431, 410 U.S. 957).

Merger of offenses

Although defendant's robbery and assault with a dangerous weapon convictions have to be vacated, defendant's conviction of possession of prohibited weapon, which requires proof of specific intent to use weapon unlawfully against another, an element not present in armed robbery, robbery, or assault with a dangerous weapon, does not merge into his armed robbery conviction. *G. R. Woody v. United States* (D.C. App. 1977, 369 A.2d 592).

Armed robbery, committed after burglary, is not lesser included offense of first-degree burglary or an offense coextensive with first-degree burglary but an offense separate and distinct from burglary so that defendant can be convicted of both offenses. *W. Strickland, Jr. v. United States* (D.C. App. 1975, 332 A. 2d 746; cert. denied 96 S.Ct. 84, 423 U.S. 846).

Where, in course of armed robbery, shotgun was pointed at two distinct individuals at different times, there was no error in entering separate judgments of conviction of armed robbery and assault with dangerous weapon. *D. Borrero v. United States* (D.C. App. 1975, 332 A. 2d 363).

Where assault with dangerous weapon offense was submitted to jury on specific instruction that it could convict on assault with dangerous weapon charge only if it found that separate and apart from pointing the gun at complaining witness, the complaining witness was beaten with the gun, and jury returned verdict of guilty, assault with dangerous weapon was not a lesser included offense within the armed robbery, offenses did not merge, and punishment for both did not constitute cumulative punishment. *C. M. Dixon, Jr. v. United States* (D.C. App. 1974, 320 A. 2d 318).

Housebreaking and robbery convictions can stand together since robbery and burglary statutes which codify common law protect distinct societal interests. *Id.*

Convictions of assault with a dangerous weapon merged with armed robbery convictions connected with same robbery of drugstore and would thus be set aside. *United States v. T. R. Toy* (1973, 482 F. 2d 741, 157 U.S. App. D.C. 152).

Where armed robberies and assaults with a dangerous weapon were committed against same persons, latter offenses merged into former, and convictions on assault charges could not stand, though a remand for resentencing was not required where defendant had been given separate sentences, and all sentences were set to run concurrently. *United States v. A. Holiday* (1973, 482 F. 2d 729, 157 U.S. App. D.C. 140).

A count charging assault with a dangerous weapon is merged with a count charging armed robbery. *J. N. Smith v. United States* (D.C. App. 1973, 312 A. 2d 781).

Miranda rights

Officer's brief detention of occupants of automobile which "generally fit" description of automobile driven from scene of purse snatching until victim of purse snatching could arrive was "investigatory" police work, and exculpatory statement made by driver of the automobile in response to question as to ownership of bag in the automobile is not the product of custodial interrogation proscribed by Miranda decision *E. McMillan v. United States* (D.C. App. 1977, 373 A.2d 912).

— Waiver

Evidence that juvenile was informed of his rights four times prior to making confession, that, on two of the occasions, he signed a form indicating that he was aware of his rights, that adult woman under whose care he had been for some time was present during a portion of the interrogation, and that the adult woman witnessed the reading of rights to the juvenile and his subsequent signing of the form sustains determination that confession was made after voluntary waiver of known rights. *In the Matter of A. L. S.* (D.C. App. 1977, 377 A.2d 1149).

Where FBI agents did not set out to interview defendant about liquor store robbery but rather purpose of interview with defendant was in relation to federal offense, the shooting of high government official, and defendant cooperated and signed Miranda waiver informing him of his right to have counsel present at interview, failure to suppress incriminatory oral statements defendant made to agents concerning liquor store robbery on ground that such statements were made in absence of, and as result of interviews conducted without notice to defendant's court-appointed counsel did not constitute prejudicial error. *M. E. Boykins, Jr. v. United States* (D.C. App. 1976, 366 A.2d 133).

Though coercive atmosphere of defendant's in custody interrogation compelled presence of counsel to protect his Fifth Amendment privilege against self-incrimination, despite repeated warnings which were given to him by police officers, where defendant twice acknowledged that he understood his rights and waived them in writing on a standard form, and did so again in his written statement which was prefaced by a full explanation of his rights and which he signed, and police officers testified that defendant was neither nervous nor upset and, to contrary, was cooperative and unemotional, trial court did not err in concluding that Government carried its burden of demonstrating that defendant's inculpatory statement was given voluntarily after a knowing and intelligent waiver of his constitutional rights. *S. S. Cooper v. United States* (D.C. App. 1976, 363 A.2d 982).

Where accused was informed of his Miranda rights repeatedly during course of criminal investigation, he twice executed written waiver of such rights and he asserted that he was generally cognizant of such rights from previous arrests and that he had been represented by counsel on prior occasions and knew their names, accused had knowingly and intelligently waived his constitutional rights, though he made request for counsel at one point during the investigation. *F. A. Brown v. United States* (D.C. App. 1976, 359 A.2d 600).

Fifteen-year-old boy knowingly and intelligently waived his Fifth and Sixth Amendment privileges under totality of circumstances test appropriate as a matter of due process and under more careful consideration of waivers appropriate in juvenile cases, and thus his oral and written statements were properly admitted at trial, though questioning continued after he asked that his sister be contacted, where he had experience in the criminal process, appeared at police station voluntarily and waived his rights, and was told that his sister would be called but confessed before she arrived. *In the Matter of F. D. P.* (D.C. App. 1976, 352 A.2d 378).

In armed robbery prosecution, in which it could have been inferred, from evidence that defendant was unwilling to have his statements recorded in writing, that defendant had mistakenly assumed that only written statements could be used against him, Government sustained its burden of establishing a knowing waiver by defendant of his right to independent legal assistance after his arrest. *United States v. E. R. Frazier* (1973, 476 F.2d 891, 155 U.S. App. D.C. 135).

It was not for police officer to place legal interpretation on language of Miranda warnings he was directed to give and to continue or suspend interview in accordance with what that interpretation might be, and even though it could be inferred from defendant's unwillingness to have his statements recorded in writing that he mistakenly assumed that only written statements could be used against him, allowing defendant to pursue his evident desire to keep on talking was neither an unreasonable nor a deceptive tactic on police officer's part which deprived defendant of due process; especially where defendant had already confessed his most serious crime before note-taking episode occurred. *Id.*

Mistrial

Defendant was not entitled to a mistrial on ground that the jury, in its request for additional instructions, had made an unsolicited disclosure of its numerical division. *United States v. T. B. Diggs* (1975, 522 F.2d 1310, 173 U.S. App. D.C. 95; cert. denied 97 S.Ct. 144, 429 U.S. 852).

New trial

New trial requested by defendants on ground that one of the Government's key witnesses had partially recanted her testimony at murder and robbery trial was not warranted under "Larrison" standard, where defendants offered no credible or admissible evidence from which court could be "reasonably satisfied" that recanting witness' trial testimony was false, defendants having only produced uncorroborated hearsay. *United States v. M. Mackin* (1977, 561 F.2d 958, 183 U.S. App. D.C. 65; cert. denied 98 S.Ct. 490, —U.S.—).

Even assuming that hearsay evidence of Government's key witness' partial recantation of her testimony at murder and robbery trial might be offered for impeachment purposes upon retrial, "Thompson Standard" precluded grant of new trial on basis of evidence that is merely impeaching. *Id.*

Plain error

In prosecution for armed robbery and possession of a prohibited weapon, neither incomplete instruction on flight nor other alleged omissions by trial counsel constitutes plain error affecting substantial rights of defendant. *G. R. Woody v. United States* (D.C. App. 1977, 369 A.2d 592).

Where foreman requested to approach bench when asked whether jury had reached verdict with respect to armed robbery charge, court denied request, foreman then announced that jury had reached guilty verdict, jury poll yielded unanimous verdicts, and no objection was raised, denial of jury foreman's request to approach bench does not constitute plain error. *T. A. Johnson v. United States* (D.C. App. 1976, 360 A.2d 502).

Failure, sua sponte, to immediately instruct jury on limited admissibility of prior inconsistent statement used to impeach codefendant, who testified in defendant's behalf in armed robbery prosecution, is plain error requiring reversal of defendant's conviction. *L. E. Johnson v. United States* (D.C. App. 1976, 356 A.2d 639).

Plea bargaining

As respects allegation of defendant, charged with armed robbery and carrying dangerous weapon, that his absence from status hearing, at which defense counsel was served with information revealing Government's intention to seek additional punishment under recidivist provision of section 22-3202, deprived him of meaningful right to participate in plea bargaining, evidence establishes that counsel fully advised his client; furthermore, there is no absolute right to bargain. *R. Smith v. United States* (D.C. App. 1976, 356 A.2d 650).

Plea of guilty

Trial court's observation of defendant's apparent rationality and comprehension is insufficient basis for denying hearing on motion to vacate plea of guilty to criminal offense on grounds of lack of competence at time plea was entered. *United States v. J. Masthers* (1976, 539 F.2d 721, 176 U.S. App. D.C. 242).

In hearing on defendant's motion to withdraw guilty plea, proof of affidavit in which defendant's cosuspect and prospective prosecution witness stated that he had deliberately given false testimony against defendant is

insufficient basis for granting defendant's postsentencing motion to withdraw guilty plea, in absence of evidence rebutting Government's independent evidence which also identified defendant as participant in crime. *R. Shepard v. United States* (D.C. App. 1976, 363 A.2d 291).

Where defendant stated no specific ground for his oral presentencing motion to withdraw guilty plea, and defendant did not appeal conviction entered pursuant to guilty plea, defendant's subsequent postsentencing motion to withdraw guilty plea cannot be considered under less restrictive standard applicable to motions submitted prior to sentencing. *Id.*

Court did not abuse its discretion in denying defendant's motion to withdraw guilty plea prior to sentencing, where neither ground for motion stated by defendant constituted a legal defense to charge of armed robbery, motion rested on those two claimed defenses alone and there was no charge of unfairness or deception. *J. F. Jordan v. United States* (D.C. App. 1976, 350 A.2d 735).

Denial of motion to hold in camera the hearing at which codefendant was to enter plea of guilty was proper in view of need for atmosphere of openness when an accused waives his or her constitutional right to trial. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

Possession

Proof of ownership of the stolen property is not required to sustain convictions of armed robbery. *S. Jones v. United States* (D.C. App. 1976, 362 A.2d 718).

"Possession" as used in robbery statute does not mean strict legal ownership, but rather "custody or control" in a colloquial sense. *United States v. T. B. Dixon* (1972, 469 F.2d 940, 152 U.S. App. D.C. 200).

Prearrest delay

Record was devoid of any indication that delay in arresting defendant, which occurred ten months after date of the offenses, was the product of any deliberate effort by police to gain an advantage, record furnished abundant evidentiary support for finding that a reasonable endeavor was made to locate defendant and, in addition, record sustained additional finding that, in any event, defendant was not harmed by the delay, in prosecution for armed robbery, assault with a dangerous weapon, and for carrying a pistol without a license. *United States v. L. Parish* (1972, 468 F.2d 1129, 152 U.S. App. D.C. 72; cert. denied 93 S.Ct. 1430, 410 U.S. 957).

Probable cause

Where gold automobile was mentioned prominently in reports of two crimes occurring in vicinity of a bar and defendants were observed driving such a vehicle near that general location shortly after the crimes were committed, and the license number of the car matched number obtained from victim of one of the crimes, circumstances constituted probable cause for arrest. *United States v. M. E. Jackson* (1977, 562 F.2d 789, 183 U.S. App. D.C. 270).

Police officers who, after properly stopping automobile which matched description of automobile allegedly involved in series of abductions and rapes, observed that driver closely resembled composite sketches of one alleged assailant and that interior of automobile matched description of automobile allegedly involved in such crimes, and who called in superior officer who also agreed that driver's face was very similar to composite sketches, had probable cause to arrest driver, and detention, transportation to police station, and photographing of driver were lawful. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S.Ct. 154, — U.S. —).

Evidence at hearing on motion to suppress discloses that police officer who spotted defendant while proceeding to scene of robbery and who had obtained a description of robber which fit defendant had probable cause to arrest defendant without a warrant. *C. H. Randall v. United States* (D.C. App. 1976, 353 A.2d 12).

Police officer who knew that armed robbery had been committed, who had a description of the robber from the victim, who had the admission of one person who appeared to be a coconspirator that it was committed by defendant, who was told that defendant could be found in a certain apartment, and who arrived at the apartment and found defendant hiding between the mattress

and box springs of a bed had probable cause to arrest defendant without a warrant. *T. Johnson v. United States* (D.C. App. 1975, 349 A.2d 458).

Where officers had received a citizen's complaint of a robbery, together with description of assailants and car in which they escaped, officers pulled a car to curb because it and its occupants substantially matched description given in radio broadcast which officers had received and one officer upon looking into car observed a coat similar to that described as taken in the robbery, there was probable cause to arrest occupants, and to seize the tangible evidence of the crime. *L. Irby v. United States* (D.C. App. 1975, 342 A.2d 33).

— Entry without warrant

Fact that police uncovered ample evidence to establish probable cause to arrest defendant once they entered motel room was of no relevance to question whether initial warrantless entry was valid. *United States v. J. Lindsay, Jr.* (1974, 506 F.2d 166, 165 U.S. App. D.C. 105).

Prosecution

It is not a denial of due process for the Government to choose to prosecute under a federal statute which imposes a greater penalty than an identical local statute; and this reasoning applies with equal force to the situation where the local statute provides greater penalties than the federal statute. *United States v. R. Shepard* (1975, 515 F.2d 1324, 169 U.S. App. D.C. 353).

Passage of Bank Robbery Act does not limit prosecutorial discretion to prosecute under section 22-2401 for felony-murder occurring in federally insured financial institution. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

Prosecutor's remarks

Prosecutor's closing remark to effect that each side in a criminal case brings forth all the evidence it considers probative bordered on the impermissible by implying that defendants did not testify or present evidence because they had nothing with which to contradict the prosecution; however, such brief and ambiguous comment did not amount to a denial of due process particularly in light of instructions on the Government's burden of proof. *D. M. Williams v. United States* (D.C. App. 1977, 379 A.2d 698).

Where prosecutor did refer in his argument-in-chief and in his rebuttal to the evidence adduced and where trial court instructed the jury that argument of counsel was not evidence, prosecution's closing argument which told the jury that it would be a sad day if a verdict other than guilty were returned and that it was the jury's duty to return a verdict of guilty in order to deter others from entering restaurants with sawed-off shotguns and brandishing them around while committing robbery does not require reversal. *A. Fernandez, Jr. v. United States* (D.C. App. 1977, 375 A.2d 484).

While prosecution should never attempt to put jury in place of victim of crime or to arouse its undue passion or sympathy during argument, opening remarks of prosecutor in which he casually mentioned, only once, and in passing, during his brief description of robbery, fact that victim suffered from multiple sclerosis were not so prejudicial as to necessitate mistrial or reversal on appeal, where there is no reason to believe that judgment of jury was substantially swayed by information; moreover, disclosure of disease was not error since jury was entitled to be informed of plausible explanation for victim's labored speech and manner during his testimony. *C. S. Hill v. United States* (D.C. App. 1976, 367 A.2d 110).

Trial court's instructions to the jury not to consider any references made by the prosecutor as to what one witness would testify to was sufficient to cure any prejudice to defendant arising from fact that prosecutor had set forth, in opening statement the testimony which he believed he would receive from witness although the witness, when called, refused to testify. *N. V. Burkley v. United States* (D.C. App. 1977, 373 A.2d 878).

In view of strength of Government's case and limiting instructions given by the trial court, prosecutor's closing argument which asked the jury to think of any reason as to why witness who had been called by the prosecution had refused to testify, which argument was made after defendant had dwelt at length on the failure of

the witness to testify and had charged that the prosecutor had "fallen flat on his face" did not rise to the level of substantial prejudice. *Id.*

Prosecutor's statement in closing argument allegedly suggesting that defendant who was charged with, inter alia, kidnapping while armed, armed robbery, and armed rape, was looking for a new victim when, on night of his arrest, he was seen in car talking to two women on street, was not so prejudicial as to substantially sway judgment of jury and require reversal of defendant's convictions, in light of overwhelming proof against defendant, minimal reference to such occurrence at end of all the evidence, and court's instruction that statements and arguments made by counsel are not evidence, even though such statement may have been unnecessary and improper. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S.Ct. 154, — U.S. —).

Examination of record shows that the protested remarks in prosecution's closing argument cannot be interpreted as an improper comment on defendant's failure to testify. *C. H. Randall v. United States* (D.C. App. 1976, 353 A.2d 12).

In prosecution for armed robbery, allegedly improper prosecutorial remarks did not affect substantial rights of defendant where such remarks were not referenced to defendant's failure to testify in his own defense and where trial court gave adequate curative instruction. *E. W. Jones v. United States* (D.C. App. 1975, 343 A.2d 346).

Prosecutor's argument in summation that "although [medical expert] examined only the defendant [naming him] and his testimony related to him directly, does not what he said apply, in effect, to both?" was error, but no more than harmless error where prosecutor's statement was pure argument and not factual account or recitation of phantom medical opinion. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

Publicity

Where defendants' only defense was insanity, rather than factual innocence, there was failure to show prejudice from publicity in absence of demonstration of impairment of ability or willingness of potential jurors to remain impartial on insanity issue. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

Reversible error

In view of narrow base on which armed robbery prosecution rested, reviewing court could not say with fair assurance that jury was not substantially swayed by combined effect of errors in admitting hearsay, in permitting prosecutor's comment thereon and in permitting other confusing and misleading comments of prosecutor including comment on defendant's taking stand; and reversal of conviction was thus necessary. *United States v. A. A. Freeman* (1975, 514 F.2d 1314, 169 U.S. App. D.C. 73).

Right to counsel

Fact that defendant was already in custody on charge of possession of a sawed-off shotgun did not preclude the police from conducting, in the absence of counsel, a photographic identification in order to link defendant with armed robbery. *United States v. J. E. Jackson* (1974, 509 F.2d 499, 166 U.S. App. D.C. 166).

Sixth Amendment does not grant an accused the right to have counsel present at government conducted post-indictment photographic display containing a picture of accused for purpose of allowing witness to attempt identification of offender in absence of accused. *United States v. C. J. Ash, Jr.* (1973, 93 S. Ct. 2568, 413 U.S. 300; rev'g and remand'g 461 F.2d 92, 149 U.S. App. D.C. 1).

Search and seizure

Fourth Amendment rights of defendant were not violated when trial court, over defendant's objection, ordered surgical removal of bullet from defendant's arm and allowed its admission in evidence; such actions are proper where evidence thus sought was relevant and could have been obtained in no other way, where operation was minor and performed by skilled surgeon, and where, before operation was performed, trial court held adversary hearing and defendant was given opportunity for appellate review. *United States v. J. L. Crowder* (1976, 543 F.2d 312, 177 U.S. App. D.C. 165; cert. denied 97 S.Ct. 788, 429 U.S. 1062).

Where detective did not know, until he reported to work, that defendant had been arrested for carrying pistol and it was entirely fortuitous that detective, who had received information that defendant had participated in robbery of gambling house, saw defendant in lineup, causal connection between photograph of defendant ordered by detective and identification testimony based on photograph was so attenuated as to dissipate taint of any illegality in search and arrest on gun charge; thus photograph and identification testimony were not subject to suppression as fruit of unlawful search. *R. Simmons v. United States* (D.C. App. 1976, 364 A.2d 813).

Seizure of gun from juvenile suspect's back yard without a warrant was lawful on ground of exigent circumstances, both because the police had reason to believe that others knew where the gun was located and might remove it and because gun was hidden near area frequented by young children so that police were justifiably concerned with danger to any child who might discover it. *In the Matter of F. D. P.* (D.C. App. 1976, 352 A.378).

Tenant who called attention of police officers, who had just arrested defendant in tenant's apartment, to a refrigerator in the outside hall consented to the search of the refrigerator so that items found therein are admissible against defendant. *T. Johnson v. United States* (D.C. App. 1975, 349 A.2d 458).

Where defendant's car fit description given by accomplice and another witness and was found in vicinity of defendant who met description given by the accomplice, and where defendant voluntarily surrendered his keys to police and they fit car, tying car to evidence of its use, there was probable cause for seizure of the car, and police could either seize and hold car or make immediate warrantless search, and where it was difficult to make detailed search of car where it was found, subsequent search at station house, 24 hours later, was reasonable; police had duty to act as quickly as possible to obtain evidence that might exonerate or incriminate, and there were thus exigent circumstances. *United States v. H. E. Lee* (1974, 509 F.2d 400, 166 U.S. App. D.C. 67; cert. denied 95 S. Ct. 1451, 420 U.S. 1006).

Search of closet, which contained partially-dressed defendant's clothing, for weapons, was incident to arrest, since closet was area from which defendant might have gained weapon at time when he was to secure additional clothing, and seizure of trousers, which fit description given by victim, was proper since they were in plain view during valid search. *J. L. Walker v. United States* (D.C. App. 1974, 318 A.2d 290).

Sentence

Where trial court did not abuse its discretion nor deny defendant any significant right by virtue of its consideration of defendant's prison records, which defendant claimed were vague and unreliable, in entertaining defendant's motion for reduction of sentence which due to administrative error was not reached for consideration until over two years after imposition of sentence, the Court of Appeals would not disturb trial court's ruling denying motion. *D. W. Walden v. United States* (D.C. App. 1976, 366 A.2d 1075).

Incident in which robbers took money in cash register from sales clerk and took money orders and food stamps from sales clerk's purse involved separate transactions on which conviction of two counts of armed robbery can be based. *S. Jones v. United States* (D.C. App. 1976, 362 A.2d 718).

Where concurrent sentences imposed on each conviction for assault with a dangerous weapon were adjudged to run concurrently with burglary and armed robbery convictions, no remand for resentencing was necessary on vacation of convictions for assault with a dangerous weapon. *United States v. S. Kearney, Jr.* (1974, 498 F.2d 61, 162 U.S. App. D.C. 110).

Where 20-year-old defendant's prior sentence was served without services of youth center, section 5010(e), 18 U.S.C., report indicated that defendant's feeling of inadequacy lay with his inability, due to lack of marketable skills, to support himself and his family, reasons suggested in report for imposition of adult sentence for robbery without a weapon were that defendant was a "rather street-wise individual" and that he had failed to prove

himself because he was on Youth Act probation when arrested and trial judge failed to state any independent reasons for imposing adult sentence, sentence was required to be vacated and case remanded for reconsideration of Youth Corrections Act treatment; section 5010(e) report failed to provide adequate reasons for denial of such treatment. *United States v. T. M. Phillips* (1973, 479 F. 2d 1200, 156 U.S. App. D.C. 217).

— Concurrent

Although a violation of the District of Columbia armed robbery statutes and a violation of the federal mail robbery statute required different elements of proof, and although, in the instant case, concurrent sentences were imposed, the conviction of defendants on both charges, arising from a single transaction, was improper, necessitating remand to the trial court with instructions to vacate the judgment on one of the counts and to resentence on the other count. *United States v. A. B. Knight* (1974, 509 F. 2d 354, 166 U.S. App. D.C. 21).

— Consecutive

Where, during course of robbery of market, defendant robbed the property of the store owners and robbed a store employee of his own property, his wallet, the episode was not a "unitary transaction" but involved two distinct offenses. *United States v. T. B. Diggs* (1975, 522 F. 2d 1310, 173 U.S. App. D.C. 95; cert. denied 97 S.Ct. 144, 429 U.S. 852).

Severance

Where robbery and felony-murder, although unrelated as to place, were so closely related in time as to almost constitute continuing transaction and evidence of robbery would have been admissible in separate trial for felony-murder to show motive, intent, absence of accident and common scheme or plan to rob, trial court did not abuse its discretion in denying severance of robbery and felony-murder counts. *J. C. Calhoun v. United States* (D.C. App. 1977, 369 A.2d 605).

In prosecution of two defendants who were charged in 44-count indictment with inter alia, kidnapping while armed, armed robbery, and armed rape, reversible error resulted as to one defendant from joinder of counts charging such defendant and codefendant jointly with counts charging codefendant alone and with others unidentified, where proof of each crime did not overlap and there was no economy and efficiency served by such joinder, and where testimony could lead to jury inference that defendant was in fact unidentified person. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S.Ct. 154, — U.S. —).

Where petition charged juvenile with armed robbery of one person and attempted armed robbery and felony-murder of another, and where the offenses were committed at approximately the same place, within minutes of each other, and were similar and involved a great deal of overlapping evidence, and where juvenile made no convincing showing that he had important testimony concerning one count and strong need to refrain from testifying on the other, trial court did not abuse its discretion in refusing to sever the two offenses. *In the Matter of F. D. P.* (D.C. App. 1976, 352 A.2d 378).

Grant of severance was not required on ground that defendant could have called codefendant to testify that defendants were not together when homicide and robbery occurred where there was no indication that codefendant would have been willing to testify at defendant's trial, and if codefendant were to testify, Government's impeaching statement which was inculpatory of defendant would probably have surfaced. *United States v. J. F. Bolden* (1975, 514 F. 2d 1301, 169 U.S. App. D.C. 60).

Where prejudice to one defendant from prior inconsistent statement made by second defendant which implicated first defendant in crime was eliminated by instruction which cautioned jury to consider inconsistent statement only for purposes of impeachment of second defendant, denial, as untimely, of first defendant's motion for severance was not abuse of discretion. *D. Borrero v. United States* (D.C. App. 1975, 332 A. 2d 363).

Taking into account overall considerations of judicial economy, trial judge did not abuse her discretion in denying severance, though one defendant contended that the other placed upon him chief responsibility for the

crimes. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

Refusal to grant severance in prosecution for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary, was not prejudicial to defendant due to fact that evidence placing a codefendant at scene of crime was quantitatively and qualitatively greater than evidence against defendant where evidence against defendant was both substantial and compelling, jury was specifically instructed to determine guilt of each defendant by considering only his own conduct and evidence which applied to him and where verdicts demonstrated that jury fulfilled its obligation under charge. *United States v. I. E. Leonard* (1974, 494 F. 2d 955, 161 U.S. App. D.C. 36).

Fact that there was conflict in accused's defenses, in that codefendants relied on separate alibi defenses and defendant admitted his presence at scene of offenses and in that such defendant's efforts to discredit testimony that he and a codefendant knocked out victim assertedly undermined such codefendant's alibi defense and fact that defendant did not testify and thus codefendants were precluded from cross-examining him did not so prejudice codefendants as to render refusal to grant severance an abuse of discretion where damaging implications of defendant's defense were corroborated by substantial testimony. *Id.*

Admission, in criminal prosecution in which a defendant did not testify, of admissible testimony as to such defendant's hearsay statements which incriminated codefendants did not require severance on ground that admission violated codefendants' right of confrontation where, even if codefendants were tried separately, such testimony would have been admissible and defendant probably would have invoked Fifth Amendment, where there was substantial other eyewitness testimony incriminating codefendants and where, since defendant was an accomplice, reliability of his hearsay declaration was "inevitably suspect." *Id.*

Where count of indictment charging defendant with carrying pistol on day of his arrest was dismissed for failure of proof before case was submitted to jury and indictment was retyped, omitting count, defendant was not prejudiced by court's refusal to sever such properly joined count from counts charging felony murder, first-degree burglary and armed robbery. *United States v. J. M. Joyner* (1974, 492 F.2d 650, 160 U.S. App. D.C. 384; cert. denied 95 S.Ct. 94, 419 U.S. 852).

Where admission of evidence concerning the close relationship between defendant and codefendant was clearly relevant to codefendant's defense of alibi and mistaken identity and there was no conflict in defenses, trial court did not err in refusing to grant defendant a severance. *G. S. Crawley v. United States* (D.C. App. 1974, 328 A. 2d 777).

Issue of whether severance should have been granted after codefendant testified in such manner as to negate planned joint defense was not preserved for appeal, where no motion was made to trial court upon which it could have exercised its discretion to grant a severance, and where defendant did not demonstrate any prejudice occasioned by his codefendant's testimony which would justify a holding of plain error in allowing the joint trial to proceed. *W. J. Edwards, Jr. v. United States* (D.C. App. 1974, 328 A. 2d 90).

Speedy trial

Defendants were not denied a speedy trial by reasons of the fact that their trial did not commence until 13 months after their arrest, where approximately eight months of the delay was occasioned by the grand jury's consideration of the evidence, where there was no inordinate delay caused by the court or by the prosecution, and where the trial was reset to an earlier date, rather than the original date, because of defendant's motions to dismiss for lack of a speedy trial. *J. S. Adams v. United States* (D.C. App. 1977, 379 A. 2d 961).

Where delay preceding indictment was reasonable use of prosecutorial discretion and was not intended to gain tactical advantage over defendant, and where defendant had been arrested within one month of offense and had been contacted by Government several times prior to his indictment, there was failure to show prejudice from asserted inability of defendant to reconstruct his activities

on day of offense. *H. Tolliver v. United States* (D.C. App. 1977, 378 A. 2d 679).

Although slightly more than one year elapsed between defendant's arrest and trial for armed robbery and assault with a dangerous weapon, where over two months of delay was directly attributable to defense counsel's request for a continuance when defendant changed counsel, and where there was no showing that defendant was prejudiced, where two months of delay was due to such routine matters as preliminary hearing, return of indictment, and arraignment, and over four months delay was due to crowded court's calendar, and where defendant did not assert his right to speedy trial until the eleventh month, defendant was not denied his Sixth Amendment right to a speedy trial. *D. L. Washington v. United States* (D.C. App. 1977, 377 A. 2d 1348).

Defendants were not denied their constitutional right to speedy trial by reason of 16-month delay between arrest and trial, where defendants joined in explicit and intelligent waiver of trial in open court in presence of counsel and after discussion with trial judge in every instance of delay beyond one year and there was no evidence of legal detriment or prejudice attributable to delay. *W. W. Chatman v. United States* (D.C. App. 1977, 377 A. 2d 1155).

Dismissal of indictment charging felony-murder, second-degree murder and robbery for lack of a speedy trial is not required, where delay caused by defendant's mental incapacity to stand trial is beyond Government's control and holding of charges in abeyance until attaining of capacity will not prejudice defendant who is unaware of pending charges and who is not incarcerated but living in the community with a relative. *United States v. J. D. Lancaster* (1976, 408 F. Supp. 225).

Although period between defendant's arrest and his trial was more than 11 months, where substantial delay was caused by defendant, defendant was released on bail during such time and Government did not engage in action to delay trial, delay is not denial of defendant's right to speedy trial. *G. F. Washington v. United States* (D.C. App. 1976, 366 A.2d 457).

Fifteen-month delay between arrest and trial was such as to constitute a denial of defendant's right to a speedy trial where delay was not, at all times, attributable to defendant, who suffered personal prejudice by reason of fact that he was confined throughout period, though he continually pressed his motion for release pending trial, and where personal prejudice resulting from pretrial incarceration was exacerbated by fact that defendant was a youth being confined in an adult jail and fact that defendant was especially handicapped by his social and educational background. *United States v. W. H. Calloway* (1974, 505 F. 2d 311, 164 U.S. App. D.C. 204).

Thirteen months' delay between arrest and trial did not deny defendants their right to speedy trial where first seven months' delay was at least partially justifiable, one defendant was incarcerated only during that portion of period between arrest and trial in which delay was justifiable and longer period that other defendant spent in pretrial detention was attributable to fact that, having been released pending trial, he violated conditions of release and was reincarcerated. *United States v. E. L. Cooper* (1974, 504 F. 2d 260, 164 U.S. App. D.C. 191).

Fifteen months' interval between defendant's arrest and trial did not deny defendant the right to a speedy trial and thus entitle defendant to have indictment dismissed, where defendant was at liberty on bond and did not seek an earlier trial until his motion directed to such issue was filed about 14 months after his arrest, and trial began on day following day on which such motion was heard and denied, and where there was no suggestion that any witnesses died or became unavailable, any prejudice to defendant as to alleged loss of memory on part of himself and his mother concerning alibi defense did not affect outcome, and defendant was identified by six witnesses. *United States v. T. R. Toy* (1973, 482 F. 2d 741, 157 U.S. App. D.C. 152).

Right to speedy trial of defendant, charged with armed robbery, assault with dangerous weapon, and of carrying a pistol without a license, was not impinged by nine-month delay extending from his indictment to his trial where, during the first two months defendant was still at large and police were doing their best to locate him, where

defendant did not press a speedy trial right until five months after he was arrested, and where record was sufficient to sustain finding that defendant suffered no prejudice to his defense which could be attributed to the delay at the postarrest stage of the prosecution. *United States v. L. Parish* (1972, 468 F. 2d 1129, 152 U.S. App. D.C. 72; cert. denied 93 S. Ct. 1430, 410 U.S. 957).

Trial procedure

In proceeding in which accused was convicted of armed robbery, trial judge's alleged facial expressions and other outward manifestations of disbelief of a defense witness was not shown to have prejudiced accused, in view of assertion that judge turned away so as to avoid revealing his facial reaction to witness' testimony. *J. Dyas v. United States* (D.C. App. 1977, 376 A. 2d 827; cert. denied. 98 S. Ct. 529, — U.S. —).

Where defendant had been permitted to change into street clothing during the first day of trial, and thus had been viewed in his prison garb by the jury for only a short time, and where there was overwhelming evidence adduced at trial to show that he had committed the robbery, error of trial court in refusing defendant permission to change into street clothes before voir dire of the jury array had begun was harmless. *A. Fernandez, Jr. v. United States* (D.C. App. 1977, 375 A. 2d 484).

Review of record of trial of three defendants for armed robbery establishes that conduct of trial, including admonitions and statements to defense counsel, did not deprive defendants of fair trial, particularly in view of trial judge's instructing jury that actions of court should not be interpreted as opinions and that, even if so interpreted, they should not influence jury's verdict. *A. Clifton v. United States* (D.C. App. 1976, 363 A.2d 299).

In prosecution of three defendants for armed robbery, trial court's failure to timely disclose to all counsel a discussion between complaining witness and trial judge in chambers concerning alleged racial slur made by one of the defense counsel to another defense counsel was error, but was not prejudicial; and trial judge did not err in not recusing himself after in-chambers discussion. *Id.*

Verdict

In prosecution for armed robbery and for assault with a dangerous weapon, trial court did not erroneously permit jury to return a separate verdict on assault with a dangerous weapon charge, where evidence disclosed that after armed robbery of cash register of store defendant forced victim at gunpoint to walk to rear of store where she was searched and on leaving defendant warned victim about possibility of being shot if she came out before defendant got out of store. *G. W. Bates v. United States* (D.C. App. 1974, 327 A. 2d 542).

Witnesses

Trial court did not commit reversible error in failing, sua sponte, to grant defendant a continuance until an alibi witness was released from a local hospital, since, if the presence of the witness was so essential to the credibility of defendant's alibi defense, it was incumbent upon counsel to draw the court's attention to the need for further delay in the proceedings. *C. Graham v. United States* (D.C. App. 1977, 377 A. 2d 1138; cert. denied 98 S. Ct. 748, — U.S. —).

Trial court, when faced with accomplice who had already been convicted of the crime and who refused to testify when called by the prosecution, acted properly in warning the accomplice, out of the presence of the jury, of the consequences of the course he was taking and adjudging him in contempt and in also instructing the jury not to draw any inference of any kind either from the witness' recalcitrance or from the prosecutor's questions. *N. V. Burkley v. United States* (D.C. App. 1977, 373 A.2d 878).

Defendant is not entitled to argue that he has been denied his Sixth Amendment right of compulsory process for obtaining witnesses in his favor, where his own counsel accepted without challenge prospective witness' asserted intention to invoke a Fifth Amendment privilege. *J. J. Vaughn v. United States* (D.C. App. 1976, 364 A. 2d 1187).

To invoke privilege against self-incrimination, it was not necessary for witness as precondition to demonstrate that she would have been forced to admit guilt, or

that incidental parts of her testimony would have sealed a future conviction, and where court could not say that possibility of further incrimination was so remote as to deprive defendant of her Fifth Amendment right, privilege was properly allowed. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

Evidence that defendant's sole defense witness had been charged with obstruction of justice for her alleged efforts to persuade complaining witness not to identify codefendant, her brother, should not have been admitted over objection, in prosecution for assault and armed robbery, to impeach witness, where testimony of complaining witness revealed to jury facts which were basis for charge; prejudicial effect of admission of arrest and charge outweighed probative substance. *United States v. C. Maynard* (1973, 476 F. 2d 1170, 155 U.S. App. D.C. 223).

Discretion of trial court to grant pretrial physical or mental examination of prospective witnesses should not be exercised in absence of substantial factual predicate for the same and upon substantial showing of need and justification. *United States v. D. T. Butler* (1971, 325 F Supp. 886; aff'd 481 F. 2d 531, 156 U.S. App. D.C. 356).

In absence of substantial showing of need and justification, hearing on defense motion for pretrial physical and psychiatric examination of prospective government witnesses would not be continued to allow defendant to subpoena one of the witnesses, despite allegation that such witness had told defense counsel that witness was narcotic addict. *Id.*

§ 22-2902. Attempt to commit robbery.

NOTES TO DECISIONS

Identification

There was no reversible error in allowing robbery victim to identify juvenile at his trial where pretrial lineup was not so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification. *In the Matter of F. D. P.* (D.C. App. 1976, 352 A.2d 378).

In prosecution for attempted robbery while armed, where complainant, at front door of his apartment building, was accosted by three men who demanded his money and wallet, where he ran across street to seek help, where the three men walked away down the street, where at that moment a police cruiser happened by and complainant reported the incident, where the officers took complainant in the cruiser and made a search of the area, where they decided to search a nearby apartment building but told complainant to remain in the cruiser, where the officers apprehended two men in the building, and where the complainant, because he was afraid to stay in the cruiser alone, came into the building and immediately identified the two men, the on-the-scene confrontation was not so unduly suggestive as to create a substantial likelihood of misidentification. *J. D. Bowler v. United States* (D.C. App. 1974, 322 A.2d 281).

Knowledge on part of an eyewitness that persons on trial were arrested for crime may be taken into account where there is other indication of suggestivity, but mere fact that suspects are included within lineup and that witnesses know or assume this to be the case is an inescapable aspect of lineup identification procedure and does not, without more, provide reason for exclusion of pretrial and in-court identifications. *United States v. C. L. Pearson* (1973, 478 F. 2d 659, 155 U.S. App. D.C. 455).

Pretrial and in-court identifications of defendant by eyewitness to crime were not subject to exclusion by reason of fact that investigating officer told witness at lineup that she had "done well," where there was no reason to suppose that officer's remark was more than a comforting gesture to witness, who was, quite naturally, on edge, and jury had before it testimony as to (slightly more tentative) lineup identification and was likely to credit this, which was uninfluenced by subsequent remark, far more than taken for granted in-court identification. *Id.*

Jury

Where trial judge asked each prospective juror to stand as his or her name was called, gave defendant and his counsel opportunity to turn their chairs to better view panel and offered to have any panel member stand again to aid defendant in connecting faces with names, procedure

for jury selection was fair to both sides, and court did not err in refusing to seat in jury box first 12 members who had passed challenge for cause and thereby allegedly depriving defendant of opportunity to visually inspect jurors before exercising peremptory strikes. *A. R. Taylor v. United States* (D.C. App. 1977, 372 A.2d 1009).

Miranda rights—Waiver

Fifteen-year-old boy knowingly and intelligently waived his Fifth and Sixth Amendment privileges under totality of circumstances test appropriate as a matter of due process and under more careful consideration of waivers appropriate in juvenile cases, and thus his oral and written statements were properly admitted at trial, though questioning continued after he asked that his sister be contacted, where he had experience in the criminal process, appeared at police station voluntarily and waived his rights, and was told that his sister would be called but confessed before she arrived. *In the Matter of F. D. P.* (D.C. App. 1976, 352 A.2d 378).

Search and seizure

Seizure of gun from juvenile suspect's back yard without a warrant was lawful on ground of exigent circumstances, both because the police had reason to believe that others knew where the gun was located and might remove it and because gun was hidden near area frequented by young children so that police were justifiably concerned with danger to any child who might discover it. *In the Matter of F. D. P.* (D.C. App. 1976, 352 A.2d 378).

Severance

Where petition charged juvenile with armed robbery of one person and attempted armed robbery and felony-murder of another, and where the offenses were committed at approximately the same place, within minutes of each other, and were similar and involved a great deal of overlapping evidence, and where juvenile made no convincing showing that he had important testimony concerning one count and strong need to refrain from testifying on the other, trial court did not abuse its discretion in refusing to sever the two offenses. *In the Matter of F. D. P.* (D.C. App. 1976, 352, A. 2d 378).

In order to assert that statement admissible solely against codefendants prejudicially implicated defendant, he must establish that statement admissible against codefendants directly implicated him, that statement was made by one whose interest was adversely affected and who was not government informant, and that statement itself was as powerfully incriminating as a confession, and there must be no independent evidence of guilt. *M. Brabham v. United States* (D.C. App. 1974, 326 A. 2d 254; cert. denied 95 S. Ct. 1993, 421 U.S. 989).

Admission of hearsay statement of codefendant that he, defendant and others were going to kill prosecution witness, did not so prejudicially affect defendant as to justify severance of his case. *Id.*

Chapter 30.—SEDUCTION

§ 22-3001. Seduction.

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 22-3002. Seduction by teacher.

CROSS REFERENCE

Age of majority, see § 21-101 note.

Chapter 31.—TRESPASS—INJURIES TO PROPERTY

§ 22-3101. Forcible entry and detainer.

NOTES TO DECISIONS

Construction

Neither the unlawful entry statute nor the forcible entry statute engrafts any additional elements on first-degree burglary statute of the District of Columbia; unlawful entry statute does not purport to amend burglary statutes and does not do so by operation of law, expressly or impliedly, nor do requirements of unlawful entry statute constitute additional elements of every second-degree burglary. *United States v. S. Kearney, Jr.* (1974, 498 F. 2d 61, 162 U.S. App. D.C. 110).

Elements of offense

While burglary does not include elements of breaking or force, offense of forcible entry does. *United States v. T. Melton, Jr.* (1973, 491 F.2d 45, 160 U.S. App. D.C. 252).

Remand

Jury's verdict, finding defendant guilty of first-degree burglary which could not stand because of lack of proof of intent to commit crime in premises, would not be taken as indicating that jury found all elements asserting to conclude that he had committed a forcible entry and therefore Court of Appeals could not authorize on remand a judgment of conviction of forcible entry even though evidence was presented at trial from which jury might have concluded that defendant had committed that offense, it was open to government to decline the unlawful entry conviction on remand and to seek instead to indict and prosecute for forcible entry. *United States v. T. Melton, Jr.* (1973, 491 F.2d 45, 160 U.S. App. D.C. 252).

§ 22-3102. Unlawful entry on property.**CROSS REFERENCE**

Burglary, see § 22-1801.

NOTES TO DECISIONS**Assistance of counsel**

Reversible error occurred when defendant was sentenced in absence of trial counsel. *G. A. Hockaday v. United States* (D.C. App. 1976, 359 A.2d 146).

Motion to withdraw as counsel on appeal asserting that trial counsel failed for nontactical reasons to request severance of counts of destroying property after trial court granted motion for judgment of acquittal on one count and denied motion as to second count did not raise question of professional incompetence; issue on appeal could be treated in terms of whether a new trial should have been granted. *W. J. Angarano v. United States* (D.C. App. 1973, 312 A.2d 295; reconsideration denied 329 A.2d 453).

Bona fide entry

Arrangement whereby defendant was occupying his girlfriend's apartment rent free, and at her indulgence, does not constitute "tenancy by sufferance," so as to preclude his conviction for unlawful entry in such apartment. *P. R. Jackson v. United States* (D.C. App. 1976, 357 A.2d 409).

Constitutional rights

Unlawful entry statute is not impermissibly vague and does not contravene principles of due process on theory that it fails to prescribe ascertainable standard for enforcement, and thereby vests unfettered discretion in law enforcement officials, or that it fails to adequately apprise potential offenders of precise nature of conduct proscribed. *J. K. Leiss v. United States* (D.C. App. 1976, 364 A.2d 803; cert. denied 97 S. Ct. 1654, 430 U.S. 970).

Where defendant was permitted to recite his statement protesting government policy no less than ten times during period of his vigil on White House grounds and no attempt would have been made to interfere with him, after White House grounds were closed, had he chosen simply to obey order to depart and continue his protest just outside the gate, some 15 feet away, there was no infringement of protected expression sufficient to countervail government's interests in limiting defendant's activity and his First Amendment rights were not violated by arresting him for unlawful entry. *Id.*

Role played by District of Columbia police officer in informing hotel security personnel of defendant's criminal record prior to time hotel ordered defendant not to return is not sufficient to convert the private action of hotel in barring defendant therefrom into essentially a governmental act, even assuming that an opposite conclusion would affect result in prosecution for unlawful entry. *M. C. Kelly v. United States* (D.C. App. 1975, 348 A.2d 884).

Construction

Neither the unlawful entry statute nor the forcible entry statute engrafts any additional elements on first-degree burglary statute of the District of Columbia; unlawful entry statute does not purport to amend burglary statutes and does not do so by operation of law, expressly

or impliedly, nor do requirements of unlawful entry statute constitute additional elements of every second-degree burglary. *United States v. S. Kearney, Jr.* (1974, 498 F.2d 61, 162 U.S. App. D.C. 110).

Conviction

Conviction for unlawful entry can be based on man's presence in ladies' bathroom. *G. A. Hockaday v. United States* (D.C. App. 1976, 359 A.2d 146).

Cross-examination

In prosecution for unlawful entry and assault with deadly weapon, trial court did not improperly limit defendant's attempts to cross-examine government witnesses as to their possible desire to protect their employer from civil suit. *J. F. Hyman v. United States* (D.C. App. 1975, 342 A.2d 43).

Elements of offense

Element that distinguishes burglary from unlawful entry is the intent to commit crime once unlawful entry has been accomplished. *United States v. T. Melton, Jr.* (1973, 491 F.2d 45, 160 U.S. App. D.C. 252).

Hotels

Where party who is not a guest in hotel was warned not to return to hotel and is subsequently found in the hotel, her subsequent entrance into hotel constitutes unlawful entry. *M. C. Kelly v. United States* (D.C. App. 1975, 348 A.2d 884).

Instructions

In prosecution based on defendants' unconsented entry into offices of chemical company and their destruction of certain property in it, instruction that Vietnam war was not issue in case and that, if government proved beyond reasonable doubt that one or more of defendants committed elements of crimes charged, law does not recognize as defense that defendants were motivated to commit their acts by sincere political, religious or moral convictions or in obedience to some higher law was not improper despite contention that instructions were coercive, tantamount to directed verdict of guilty and outside proper scope of judicial instruction. *United States v. M. R. Dougherty* (1972, 473 F.2d 1113, 154 U.S. App. D.C. 76).

Jury question

Whether there is any justification for defendant's claim in a reasonable belief in his right to remain on White House grounds after public visiting hours were over is jury question, in prosecution for unlawful entry. *J. K. Leiss v. United States* (D.C. App. 1976, 364 A.2d 803; cert. denied 97 S. Ct. 1654, 430 U.S. 970).

Lawful arrest

When restaurant patron, in presence of police officer, refused to leave on demand of restaurant manager for her shoeless condition, officer was justified in arresting patron for violation of unlawful entry statute. *S. M. Feldt v. Marriott Corporation* (D.C. App. 1974, 322 A.2d 913).

Lesser included offense

Whether unlawful entry is lesser included offense with respect to any particular crime that is charged depends not solely upon comparison of statutory requirements for respective crimes but also upon analysis of facts of offense as charged in each indictment and as proved at trial. *United States v. S. Kearney, Jr.* (1974, 498 F.2d 61, 162 U.S. App. D.C. 110).

Plea of guilty

Trial court in criminal prosecution abused its discretion in engaging in blanket refusal to hear from either prosecution or defense concerning defendant's proffered guilty pleas; judge's apparent belief that trial had been "too much trouble" presents inadequate justification for perfunctory denial of prosecutor's prerogative to negotiate plea. *G. A. Hockaday v. United States* (D.C. App. 1976, 359 A.2d 146).

Where defendant charged with first-degree burglary tendered plea of guilty to lesser-included offense of unlawful entry, and trial judge was presented with a factual basis for the plea, plea should not have been refused simply because defendant refused to accompany his plea with an admission of guilt. *United States v. T. Gaskins* (1973, 485 F.2d 1046, 158 U.S. App. D.C. 267).

Prosecution

Government is not required to refer case of defendant charged with unlawful entry into his girlfriends' apartment to director of social services for consideration as intrafamily offense, in view of fact that it is not clear that relationship between defendant and his girlfriend was close enough to come within contemplation of statute governing intrafamily offenses. *P. R. Jackson v. United States* (D.C. App. 1976, 357 A.2d 409).

In prosecution for unlawful entry, trial court did not err in refusing to dismiss charge because complaining witness no longer wished to go forward. *Id.*

Prosecutor's comments

Where, although issue of witness' credibility was salient, Government's evidence was strong, objection to improper argument was promptly made and statement stricken, and only one such statement was made over entire course of prosecutor's closing and rebuttal arguments, no prejudicial error occurred when prosecutor told jury that it could fairly conclude that defendant "almost appeared irrational" on stand. *J. F. Hyman v. United States* (D.C. App. 1975, 342 A.2d 43).

Remand

Where defendant's first-degree burglary conviction had to be set aside for lack of proof of intent to commit crime in premises entered but jury necessarily found facts required for conviction of lesser included offense of unlawful entry and the evidence was sufficient to support this determination, Court of Appeals would remand case with instructions to enter, if government consents, judgment of conviction of unlawful entry or, if court believes it in interest of justice, to grant new trial on lesser offense. *United States v. T. Melton, Jr.* (1973, 491 F.2d 45, 160, U.S. App. D.C. 252).

Jury's verdict, finding defendant guilty of first-degree burglary which could not stand because of lack of proof of intent to commit crime in premises, would not be taken as indicating that jury found all elements asserting to conclude that he had committed a forcible entry and therefore Court of Appeals could not authorize on remand a judgment of conviction of forcible entry even though evidence was presented at trial from which jury might have concluded that defendant had committed that offense, it was open to government to decline the unlawful entry conviction on remand and to seek instead to indict and prosecute for forcible entry. *Id.*

Restaurant patron

Under unlawful entry statute, one who lawfully enters may be guilty of a misdemeanor by refusing to leave after being ordered to do so by the person lawfully in charge of the premises. *S. M. Feldt v. Marriott Corporation* (D.C. App. 1974, 322 A.2d 913).

§ 22-3117. Tapping or injuring water-pipes—Tampering with water meters.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 22-3118. Maliciously making water impure.**CODIFICATION**

Section was formerly classified to 40 U.S.C. § 58.

Chapter 32.—WEAPONS**CHAPTER REFERRED TO IN OTHER SECTIONS**

This chapter is referred to in section 1-147, 6-1802.

§ 22-3201. Possession, sale, transfer, and use of dangerous weapons—Definition.**CROSS REFERENCE**

Firearms control law for District of Columbia, see §§ 6-1801 et seq.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-1802, 24-203.

§ 22-3202. Committing crime when armed—Added punishment.**NOTES TO DECISIONS****Aider and abettor**

An aider and abettor of an armed robbery is not guilty of a lesser included offense but is a principal to the robbery. *R. W. Atkinson v. United States* (D.C. App. 1974, 322 A.2d 587).

Assistance of counsel

Even if pretrial identifications which resulted from one lineup and one two-man showup were improper, defendant was not denied effective assistance of counsel because of counsel's failure to move, pretrial, for suppression of the identifications where there was abundant evidence of sources independent of those pretrial identifications to support the in-court identifications. *S. S. Shelton v. United States* (D.C. App. 1974, 323 A.2d 717).

Where an attorney has represented a convicted defendant at trial and, as defendant's attorney on appeal, concludes in good faith that a legitimate issue exists as to the constitutional adequacy of his representation of the defendant at trial, it is the duty of the attorney to move to withdraw as counsel on appeal. *Id.*

Confessions

Police officer's embellishment of Miranda warning with statement that, if defendant could not afford an attorney one would be appointed in court the next day, was only one factor to be considered in determining whether defendant's subsequent confession was made after a knowing, intelligent, and voluntary waiver of his rights, and trial court erred in ruling that said embellishment necessarily rendered confession inadmissible. *United States v. J. Rawls* (D.C. App. 1974, 322 A.2d 903).

Notwithstanding defendant's contention that the trial court erred in failing to suppress his alleged confession where it was uncontroverted that he had made known his wish and intention to consult with an attorney, but where the Government had, nevertheless, continued to interrogate him in the absence of an attorney and eventually elicited the confession, the record showed, in support of conclusion that defendant waived his right to the presence of an attorney, that defendant simply indicated he was "undecided" about an attorney and then decided to go ahead and give a statement. *United States v. W. H. Howard* (1972, 470 F.2d 406, 152 U.S. App. D.C. 258).

Constitutionality

This section is not unconstitutional because it divests the trial court of discretion concerning duration of punishment or the granting of probation. *United States v. J. Bridgeman* (1975, 523 F.2d 1099, 173 U.S. App. D.C. 150; cert. denied 96 S. Ct. 1743, 1744, 425 U.S. 961).

Statute withholding benefits of Youth Corrections Act from those twice convicted of armed crimes of violence is not unreasonable and did not deny youth twice convicted of crimes of violence equal protection of laws. *United States v. E. C. Thomas* (1973, 485 F.2d 1012, 158 U.S. App. D.C. 233).

Construction

If instrument found on defendant after arrest was not used in crime and is not per se dangerous weapon, Government must show something in addition to fact that it was found on defendant to meet requirements of this section. *D. A. Cooper v. United States* (D.C. App. 1977, 368 A.2d 554).

This section does not require that the second crime occur after sentence is adjudged in the prior crime of violence; defendant who was sentenced for second crime after he had been convicted of prior crime came within purview of this section even though sentence on the first conviction was not adjudged until after the second crime was committed. *United States v. J. Bridgeman* (1975, 523 F.2d 1099, 173 U.S. App. D.C. 150; cert. denied 96 S. Ct. 1743, 1744, 425 U.S. 961).

When Congress in 1967 amended the District of Columbia Code provision relating to armed robbery, providing a higher penalty for robberies in the District than had been provided since 1948 for federal mail robbery, it intended to provide the sentencing judge with discretion

in determining the penalty in a combined prosecution for both offenses; what is impermissible is not the joinder of both for trial but the joinder of judgments, even with concurrent sentences. *United States v. A. B. Knight* (1974, 509 F. 2d 354, 166 U.S. App. D.C. 21).

Dangerous or deadly weapon

Under this section providing for punishment of one who commits crime of violence while "armed with or having readily available any pistol or firearm (or imitation thereof) or other dangerous or deadly weapon," an "imitation" or blank pistol is a "dangerous or deadly weapon." *K. Meredith v. United States* (D.C. App. 1975, 343 A. 2d 317).

Double jeopardy

Where the same sovereignty is involved, the double jeopardy principle bars multiple prosecutions for the same offense by different elements of that sovereignty, and under that principle, multiple prosecutions by the District of Columbia and the United States are barred. *United States v. A. B. Knight* (1974, 509 F. 2d 354, 166 U.S. App. D.C. 21).

If anything, the federal mail robbery statute contemplates a single conviction, not multiple convictions, when the first tier of mail robbery is aggravated by the use of a deadly weapon. *Id.*

Fact that mistrial was declared in first prosecution of defendant for armed robbery would not, under the doctrine of collateral estoppel, preclude his conviction on one count of armed robbery in second prosecution, where jury in the first trial had made no findings, so that defendant's presence as one of the robbers was not inconsistent with these results. *United States v. R. N. Perry* (1974, 504 F. 2d 180, 164 U.S. App. D.C. 111).

Evidence—Admissibility

In prosecution on several counts arising from the robbery of a mail truck, the admission in evidence of a .38-caliber pistol was proper, where a government witness testified that the pistol belonged to one of the defendants and was carried by him during the robbery. *United States v. A. B. Knight* (1974, 509 F. 2d 354, 166 U.S. App. D.C. 21).

Even if, in prosecution on several counts arising from the robbery of a mail truck it was improper to admit in evidence a rifle and ammunition, whose only apparent connection with the crime charged was that they may have been purchased with the proceeds of the robbery, the error was harmless beyond a reasonable doubt, since there was no danger that the evidence was inflammatory and since independent evidence of the guilt of the defendant in whose apartment the rifle and ammunition was found was overwhelming. *Id.*

In prosecution for armed robbery, sawed-off shotgun seized at time of arrest was admissible where there was evidence as to resemblance of exhibit and gun used at scene of offense and trial judge commented that the gun could not be introduced as the gun used in the crime and that the question was for jury to determine. *United States v. T. McKinley* (1973, 485 F. 2d 1059, 158 U.S. App. D.C. 280).

Testimony that defendants had changed their appearance was admissible to provide basis for jury inference concerning reason that witnesses were unable to identify defendants in court. *Id.*

Court ordered lineup forms instructing each defendant not to alter his appearance prior to lineup were admissible even absent evidence that defendants had actually received notice of the orders where there was no testimony that orders had not been served or that defendants had not been informed of the provisions of the orders; prosecutor was entitled to proceed on presumption that court orders were in fact served, without adducing proof of such service. *Id.*

Testimony by police officer that he had overheard defendant threatening a witness with respect to witness' identification of him as the perpetrator of the crime and telling witness that she had been a fool to allow the policeman to trick her into identifying the defendant was admissible as evidence of an admission directly relevant to guilt and was not rendered inadmissible by the fact that it also contained evidence of another crime—obstruction of justice. *J. N. Smith v. United States* (D.C. App. 1973, 312 A. 2d 781).

— Good character

Prosecutor cannot offer bad character evidence unless accused first introduces evidence of good character, and even then prosecutor's proof is restricted to community reputation and to trait and traits to which accused's own character evidence related. *United States v. J. A. Lewis* (1973, 482 F. 2d 632, 157 U.S. App. D.C. 43).

When character witness, either for accused or for prosecution, is offered, he is subject to cross-examination as to his testimonial qualifications just like any other witness, and probe on cross-examination may extend to those matters, among others, which legitimately affect witness' knowledge of accused's community reputation for the character trait or traits which he confirms. *Id.*

Where at time judge ruled, during second trial for armed robbery and related offenses, that if defense put on good character witnesses then prosecution could cross-examine such witnesses to determine, if they were aware of defendant's arrest for narcotics two weeks before commencement of second trial but ten months after the occurrence of offenses for which he was being tried, judge did not know whether witness would speak to reputation for peace and good order or as to reputation for truth and veracity, trial judge did not have essential information and ruling was error, but in view of government's case error was not prejudicial. *Id.*

— Polygraph tests

Expert testimony based on results of defendant's polygraph examination was inadmissible. *United States v. E. Zeiger* (1972, 475 F. 2d 1280, 155 U.S. App. D.C. 11; rev'g 350 F. Supp. 685).

— Sufficiency

Testimony by prison guards that they were locked in a cell and held as hostages, that defendant frequently checked the cell where the guards were confined, that he told the guards that he "had nothing to lose by going out looking," that defendant separated himself from a group of inmates who did not want to escape immediately before rebellious inmates clustered for breakout attempt, and that defendant thereafter came by the cell many times armed with a short piece of steel with a sharp end and threatened the hostages was sufficient to sustain defendant's convictions for attempted escape, armed kidnapping, robbery, and riot. *United States v. J. Bridgeman* (1975, 523 F. 2d 1099, 173 U.S. App. D.C. 150; cert. denied 96 S. Ct. 1743, 1744, 425 U.S. 961).

In prosecution for commission of crime of violence while armed with a dangerous or deadly weapon, it is not required that Government prove that gun used in an armed offense was loaded or operable, and testimony that object which appeared to be gun was involved is sufficient to show use of dangerous weapon. *K. Meredith v. United States* (D.C. App. 1975, 343 A. 2d 317).

Evidence, including the testimony of an eyewitness involving all three defendants in the assault upon victim, was sufficient to support verdict of jury finding defendants guilty of felony-murder and assault with intent to commit rape while armed. *United States v. B. J. Heinlein* (1973, 490 F.2d 725, 160 U.S. App. D.C. 157).

Evidence that victim had \$231 in his pocket and was carrying four or five packages when he was confronted by two men who held gun on him and went through his pockets and that victim told policemen that he had been robbed was insufficient to support armed robbery conviction. *United States v. C. McGill* (1973, 487 F. 2d 1208, 159 U.S. App. D.C. 337).

Evidence was sufficient to support convictions of assault with intent to kill while armed. *United States v. J. Hill* (1972, 470 F. 2d 361, 152 U.S. App. D.C. 213).

Identification

Identification procedures were not so impermissibly suggestive as to give rise to very substantial likelihood of irreparable misidentification though officer told witness that photo of suspect was included in photographic array, where in photographic identification, robbery victim chose two photographs of men whom he thought resembled the robber, one of which was defendant, and in subsequent lineup, robbery victim failed to identify defendant at all. *G. S. Crawley v. United States* (D.C. App. 1974, 328 A. 2d 777).

In prosecution for attempted robbery while armed, where complainant, at front door of his apartment build-

ing, was accosted by three men who demanded his money and wallet, where he ran across street to seek help, where the three men walked away down the street, where at that moment a police cruiser happened by and complainant reported the incident, where the officers took complainant in the cruiser and made a search of the area, where they decided to search a nearby apartment building but told complainant to remain in the cruiser, where the officers apprehended two men in the building, and where the complainant, because he was afraid to stay in the cruiser alone, came into the building and immediately identified the two men, the on-the-scene confrontation was not so unduly suggestive as to create a substantial likelihood of misidentification. *J. D. Bowler v. United States* (D.C. App. 1974, 322 A.2d 281).

— Lineup

Where defendant was lawfully in custody, police were authorized to place him in lineup in connection with unrelated offense. *United States v. J. F. Anderson* (1974, 490 F.2d 785, 160 U.S. App. D.C. 217).

Where defendant had been lawfully arrested for assault with intent to commit robbery while armed and was in custody or on bond, no court order was required before he could be viewed at lineup by victims of prior robbery, as long as presentment before magistrate was without undue delay and presence of counsel at lineup was assured. *United States v. J. F. Anderson* (1972, 352 F. Supp. 33).

Where a suspect arrested for one offense is to be viewed by witnesses to other offenses, there need be no Government disclosure or prior judicial determination of any kind concerning whether the suspect will be required to stand in a lineup, the number of witnesses who will view the lineup, the dates, times, places, nature, number or similarity of the offenses for which the suspect will be viewed, or the conditions under which the lineup will be held. *Id.*

Indictment

Under this section providing punishment of one who commits crime of violence while armed with or having readily available any pistol or firearm (or imitation thereof) or other dangerous or deadly weapon, critical added element is that crime is committed by one armed with dangerous or deadly weapon, and list of weapons merely catalogues ways in which offense may be committed; such specific facts need not be included in indictment, and when they are included, they are surplusage. *K. Meredith v. United States* (D.C. App. 1975, 343 A. 2d 317).

Inferences

Jury may infer from change in appearance by someone who has been called to appear in a lineup that change reflects an awareness of guilt and fear of identification. *United States v. T. McKinley* (1973, 485 F. 2d 1059, 158 U.S. App. D.C. 280).

Inference that, since defendant has violated the law in one respect, he is likely to have violated the law defining the offense charged in the indictment is not permitted lightly, except as to certain defined categories. *Id.*

Instructions

Trial court properly instructed jury on testimony of accomplices rather than testimony of informers with respect to testimony of witness who had pled guilty to one count of indictment under which he and defendant were charged on the day before defendant's trial and who had participated in the crime with defendant. *United States v. M. W. Thorne* (1975, 527 F. 2d 840, 174 U.S. App. D.C. 57).

Where indictment charged defendant with robbery while armed with a dangerous weapon, and proof adduced at trial showed that he was so armed, court's instruction that defendant could be convicted if jury found that he was armed with any pistol or firearm or imitation thereof was not objectionable as amending indictment but merely explained charges contained therein more fully than did indictment itself and, absent any claim of prejudice by claimed variance, instruction is not erroneous. *K. Meredith v. United States* (D.C. App. 1975, 343 A. 2d 317).

In view of fact that evidence of plea of guilty to charge other than that on which defendant was being tried was not highly prejudicial, and where defendant did not re-

quest "immediate cautionary instruction" and instructions to jury constituted very fair charge with respect to use of prior conviction and evidence concerning defendant's involvement with narcotics, fact that immediate cautionary instruction was not given was not ground for relief. *United States v. H. E. Lee* (1974, 509 F. 2d 400, 166 U.S. App. D.C. 67; cert. denied 95 S. Ct. 1451, 420 U.S. 1006).

Where jury had commenced its deliberations in prosecution for armed robbery, assault with a dangerous weapon, receiving stolen property, and carrying a pistol without a license, when it presented to the court a question concerning the armed robbery count, the court did not abuse its discretion by giving, in the face of defendant's objection but in the absence of a request to present argument, a supplemental instruction on aiding and abetting. *R. W. Atkinson v. United States* (D.C. App. 1974, 322 A.2d 587).

"Model instruction" on mistaken identity was adequate with respect to identification testimony in case in which clerks of robbed store identified another as the armed robber at police lineup. *United States v. E. C. Thomas* (1973, 485 F. 2d 1012, 158 U.S. App. D.C. 233).

Where police officer, testifying in trial of defendants charged with armed robbery, admitted that he had previously testified under oath that there was only one witness to the crime, when he knew that there were two witnesses, and where police officer stated that he so testified in order to protect the second witness, it was not error for court, after instructing jury of the need to scrutinize with care the testimony of a witness who has previously lied under oath, to tell the jury it could take into consideration the reasons for the person's having previously lied. *J. N. Smith v. United States* (D.C. App. 1973, 312 A. 2d 781).

Intent

Assault with intent to kill while armed is a crime requiring specific intent. *United States v. G. A. Martin* (1973, 475 F. 2d 943, 154 U.S. App. D.C. 359).

In light of instructions as whole, erroneous instruction to effect that jury must find beyond reasonable doubt that defendant if he performed acts giving rise to charge of assault with intent to kill was in such a mental state that he was not capable of forming specific intent in question was harmless. *Id.*

Once defense of intoxication is interposed in prosecution on charge of assault with intent to kill while armed, burden rests with prosecution to establish that at time offense was committed defendant had capacity to form requisite specific intent. *Id.*

Jencks Act

It was error for trial court not to conduct inquiry into nature of notes taken by prosecutor when interviewing witness before determining that the notes were, as contended by prosecutor, not substantially verbatim and thus not required to be produced for defendant. *G. J. Matthews v. United States* (D.C. App. 1974, 322 A.2d 908).

It was error for trial court not to determine whether certain police forms and radio runs, which contained initial description of robber given to police by witness and which related to robberies in which defendant, who was charged with robbery, was believed to be a suspect and to which witness who was identifying defendant in the instant case had also been an eyewitness, were producible under the Jencks Act. *Id.*

Joinder

Review of record showed that the similarity of circumstances surrounding the two criminal episodes on which charges of rape while armed and armed robbery were based were sufficiently remarkable to prove that there was a reasonable probability that the same person committed the crimes and there was no prejudice in the joinder of both crimes in one trial. *United States v. R. E. Adams, Jr.* (1973, 481 F. 2d 1099, 156 U.S. App. D.C. 415).

In view of fact that scene of armed robbery and assaults of January 17 was different from that of armed robbery and assault on January 11 and assaults on January 16, the victims were different, and only common factor was that in each case the offender was a man wearing a fur coat and fur hat, and that there was no evidence

of a common scheme or plan embracing commission of all of the offenses, it was prejudicial error to join trial of charges relating to offenses on January 17 with trial on other counts alleging offenses on January 11 and January 16, notwithstanding Government's contention that evidence of each offense was simple and distinct so that jury could not possibly have been confused. *United States v. T. E. Carter* (1973, 475 F. 2d 349, 154 U.S. App. D.C. 238).

Jurisdiction

Armed kidnapping charges brought against prisoner in District of Columbia jail as result of riot and attempted escape were properly tried by federal court in the District of Columbia, as were charges of conspiracy and attempted escape from federal custody arising out of the same incident, so that this section, providing minimum sentence for certain second offenders, was properly applied. *United States v. J. Bridgeman* (1975, 523 F. 2d 1099, 173 U.S. App. D.C. 150; cert. denied 96 S. Ct. 1743, 1744, 425 U.S. 961).

Lesser included offense

Conviction of assault with a deadly weapon would not be set aside as a lesser included offense of armed robbery, where jury's conviction of assault with a deadly weapon of necessity included finding that assault occurred after conclusion of all earlier crimes including armed robbery. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S.Ct. 154, — U.S. —).

Armed robbery can be committed without also violating section 22-3214 prohibiting possession of certain weapons; thus, possession of prohibited weapon is not lesser included offense of crime of armed robbery. *G. F. Washington v. United States* (D.C. App. 1976, 366 A.2d 457).

Where armed assault was essential part of proof establishing armed rape, armed assault was lesser offense included within the armed rape, and assault conviction was vacated. *United States v. E. Edmonds, Jr.* (1975, 524 F. 2d 62, 173 U.S. App. D.C. 241).

Assault with dangerous weapon on motel clerk was lesser included offense of armed robbery of same person, and conviction of former could not stand as conviction for another offense. *United States v. H. E. Lee* (1974, 509 F. 2d 400, 166 U.S. App. D.C. 67; cert. denied 95 S. Ct. 1451, 420 U.S. 1006).

It was improper to convict defendant both for assault with a dangerous weapon and armed robbery where the assault was a necessary part of the evidence needed to support the count of armed robbery. *R. Taylor v. United States* (D.C. App. 1974, 324 A.2d 683).

Counts of assault with a dangerous weapon were lesser included offenses of offenses of assault with attempt to commit robbery and armed robbery and, therefore, defendant could not be convicted of the former offenses in addition to the latter. *E. Quick v. United States* (D.C. App. 1974, 316 A.2d 875).

Assault with dangerous weapon was lesser included offense of armed robbery; thus, defendants could not be convicted of both three counts of armed robbery and three counts of assault with a deadly weapon and convictions of assault would be reversed. *United States v. T. McKinley* (1973, 485 F. 2d 1059, 158 U.S. App. D.C. 280).

Offense of assault with dangerous weapon is included in armed robbery; thus defendant should not have been sentenced to concurrent terms of five to 15 years on counts charging armed robbery and to terms of three to ten years on counts charging assault with dangerous weapon and the sentences imposed for assault with dangerous weapon must be vacated. *United States v. E. C. Thomas* (1973, 485 F. 2d 1012, 158 U.S. App. D.C. 233).

Under District of Columbia statute assault with a dangerous weapon is a lesser included offense of robbery while armed. *United States v. J. Johnson* (1973, 475 F. 2d 1297, 155 U.S. App. D.C. 28).

Where jury returned a verdict of guilty on each of four counts of robbery while armed involving different victims it was error to receive verdicts from the jury on the four counts of assault with a dangerous weapon, a lesser included offense, with respect to the same victims. *Id.*

Mental capacity

Record, including testimony of a private psychiatrist who examined defendant at government expense, was sufficient to support finding that criminal acts committed

by defendant (armed robbery, assault with a dangerous weapon, and carrying a dangerous weapon) were not so proximately tied to defendant's mental impairment as to require his exculpation. *United States v. G. A. Wilson* (1972, 471 F. 2d 1072, 153 U.S. App. D.C. 104; cert. denied 93 S. Ct. 1431, 410 U.S. 957).

Merger of offenses

Although defendant's robbery and assault with a dangerous weapon convictions have to be vacated, defendant's conviction of possession of prohibited weapon, which requires proof of specific intent to use weapon unlawfully against another, an element not present in armed robbery, robbery, or assault with a dangerous weapon, does not merge into his armed robbery conviction. *G. R. Woody v. United States* (D.C. App. 1977, 369 A.2d 592).

Where assault with dangerous weapon offense was submitted to jury on specific instruction that it could convict on assault with dangerous weapon charge only if it found that separate and apart from pointing the gun at complaining witness, the complaining witness was beaten with the gun, and jury returned verdict of guilty, assault with dangerous weapon was not a lesser included offense within the armed robbery, offenses did not merge, and punishment for both did not constitute cumulative punishment. *C. M. Dixon, Jr. v. United States* (D.C. App. 1974, 320 A.2d 318).

Convictions of assault with a dangerous weapon merged with armed robbery convictions connected with same robbery of drugstore and would thus be set aside. *United States v. T. R. Toy* (1973, 482 F. 2d 741, 157 U.S. App. D.C. 152).

Where armed robberies and assaults with a dangerous weapon were committed against same persons, latter offenses merged into former, and convictions on assault charges could not stand, though a remand for resentencing was not required where defendant had been given separate sentences, and all sentences were set to run concurrently. *United States v. A. Holiday* (1973, 482 F. 2d 729, 157 U.S. App. D.C. 140).

Where charges of assault with intent to commit rape while armed and charges of assault with a dangerous weapon arose from the same act or transaction, the latter charge, requiring proof of two of the three elements constituting former offense, merged with and became a lesser offense to the charge of assault with intent to commit rape while armed, barring conviction on the lesser offense. *United States v. H. Benn, Jr.* (1973, 476 F. 2d 1127, 155 U.S. App. D.C. 180).

A count charging assault with a dangerous weapon is merged with a count charging armed robbery. *J. N. Smith v. United States* (D.C. App. 1973, 312 A. 2d 781).

In view of concurrent sentences imposed upon convictions for assault with intent to kill while armed and assault with a dangerous weapon, the mildness of the punishment adjudged, the trial judge's recommendation for psychiatric treatment and the necessity for conserving judicial resources, the Court of Appeals would not reach question as to whether the crime of assault with dangerous weapon merged into crime of assault with intent to kill while armed with a dangerous weapon, but would vacate the convictions on the four counts which charged assault with a dangerous weapon. *United States v. J. Hill* (1972, 470 F. 2d 361, 152 U.S. App. D.C. 213).

Miranda rights—Waiver

In armed robbery prosecution, in which it could have been inferred, from evidence that defendant was unwilling to have his statements recorded in writing that defendant had mistakenly assumed that only written statements could be used against him, Government sustained its burden of establishing a knowing waiver by defendant of his right to independent legal assistance after his arrest. *United States v. E. R. Frazier* (1973, 476 F. 2d 891, 155 U.S. App. D.C. 135).

It was not for police officer to place legal interpretation on language of Miranda warnings he was directed to give and to continue or suspend interview in accordance with what that interpretation might be, and even though it could be inferred from defendant's unwillingness to have his statements recorded in writing that he mistakenly assumed that only written statements could be used

against him, allowing defendant to pursue his evident desire to keep on talking was neither an unreasonable nor a deceptive tactic on police officer's part which deprived defendant of due process; especially where defendant had already confessed his most serious crime before note-taking episode occurred. *Id.*

New trial

Defendant, who had been convicted of assault with intent to commit robbery and armed robbery, was not entitled to new trial on ground of newly discovered evidence consisting of his posttrial information that an attempt had been made on his life by the "real" robber, whom defendant and another witness could identify, and that defendant had not given his attorney the information prior to trial because of fear for his life, as defendant had been apprehended on strength of positive identifications it was unlikely that the additional testimony, which would merely have been cumulative of defense of innocent presence, would have produced a different result. *E. Quick v. United States* (D.C. App. 1974, 316 A.2d 875).

Plea bargaining

As respects allegation of defendant, charged with armed robbery and carrying dangerous weapon, that his absence from status hearing, at which defense counsel was served with information revealing Government's intention to seek additional punishment under recidivist provision of this section, deprived him of meaningful right to participate in plea bargaining, evidence establishes that counsel fully advised his client; furthermore, there is no absolute right to bargain. *R. Smith v. United States* (D.C. App. 1976, 356 A.2d 650).

Prearrest delay

Record was devoid of any indication that delay in arresting defendant, which occurred ten months after date of the offenses, was the product of any deliberate effort by police to gain an advantage, record furnished abundant evidentiary support for finding that a reasonable endeavor was made to locate defendant and, in addition, record sustained additional finding that, in any event, defendant was not harmed by the delay, in prosecution for armed robbery, assault with a dangerous weapon, and for carrying a pistol without a license. *United States v. L. Parish* (1972, 468 F. 2d 1129, 152 U.S. App. D.C. 72; cert. denied 93 S. Ct. 1430, 410 U.S. 957).

Prosecutor's comments

Comments of prosecutor during assault trial to the effect, inter alia, that missing witness was too scared to come and testify, that defendants were killers and were dressed like gangsters, that one defendant was a "young buck," that guilty verdict would be a matter of achievement and courage, and that presumption of innocence might not apply as much to defendants as it might to others in less serious cases did not rise to the level of substantial prejudice necessary for reversal, in light of the strength of the Government's case and correcting instructions by the trial court. *R. L. Smith v. United States* (D.C. App. 1974, 315 A.2d 163; cert. denied 95 S.Ct. 174, 419 U.S. 896).

Prosecutor's closing and rebuttal arguments which referred to defenses of insanity interposed by famous defendants in other cases and to actions of Hitler and Napoleon were improper and were so highly prejudicial as to require reversal. *United States v. W. E. Hawkins* (1973, 480 F. 2d 1151, 156 U.S. App. D.C. 259).

Where prosecutor's improper closing and rebuttal arguments were so highly prejudicial as to require reversal of conviction of defendant who relied upon insanity as a defense and was convicted of first-degree murder and assault with intent to kill while armed, judgment of conviction of codefendant, who was charged as an aider and abettor, asserted lack of intent to commit murder, and was convicted of second-degree murder, would also be nullified. *Id.*

Retrial, lesser included offense

Where the evidentiary failure relating to charge of second-degree burglary while armed with Molotov cocktail concerned only circumstance of defendant being armed, retrial of defendant, mandated on other grounds, could properly include lesser charge of second-degree

burglary. *United States v. L. S. Carter* (1975, 522 F. 2d 666, 173 U.S. App. D.C. 54).

Search and seizure

Where defendant's car fit description given by accomplice and another witness and was found in vicinity of defendant who met description given by the accomplice, and where defendant voluntarily surrendered his keys to police and they fit car, tying car to evidence of its use, there was probable cause for seizure of the car, and police could either seize and hold car or make immediate warrantless search, and where it was difficult to make detailed search of car where it was found, subsequent search at station house, 24 hours later, was reasonable; police had duty to act as quickly as possible to obtain evidence that might exonerate or incriminate, and there were thus exigent circumstances. *United States v. H. E. Lee* (1974, 509 F. 2d 400, 166 U.S. App. D.C. 67; cert. denied 95 S. Ct. 1451, 420 U.S. 1006).

Sentence

Where defendant's convictions for armed robbery and assault with intent to commit robbery while armed preceded sentencing for an armed robbery committed after said offenses, mandatory minimum sentence is required though the subsequent armed robbery was committed before the conviction for the prior armed robberies and the assault. *United States v. H. H. Hilliard* (D.C. App. 1976, 366 A. 2d 437).

Where appeal was pending, trial court had no jurisdiction to amend sentence. *O. T. Goins v. United States* (D.C. App. 1976, 353 A.2d 298).

In view of provision of this section that when there is life sentence, minimum may not exceed 15 years, sentences of 20 years to life imposed on conviction of armed robbery were improper and cases would be remanded for resentencing of defendant. *Id.*

Although a violation of the District of Columbia armed robbery statutes and a violation of the federal mail robbery statute require different elements of proof, and although, in the instant case, concurrent sentences were imposed, the conviction of defendants on both charges, arising from a single transaction, was improper, necessitating remand to the trial court with instructions to vacate the judgment on one of the counts and to resentence on the other count. *United States v. A. B. Knight* (1974, 509 F. 2d 354, 166 U.S. App. D.C. 21).

Under statute precluding sentencing accused under Youth Corrections Act if he is convicted more than once of having committed crimes of violence, conviction occurring before effective date of statute is included. *United States v. E. C. Thomas* (1973, 485 F. 2d 1012, 158 U.S. App. D.C. 233).

Defendant who was convicted of armed robbery and sentenced under Youth Corrections Act, before effective date of statute precluding sentencing under the Act of any person who is convicted more than once of having committed a crime of violence in District of Columbia, and who was convicted thereafter of armed robbery and assault with a dangerous weapon was not entitled to be sentenced under the Youth Corrections Act, although he was 20 years old at time of second conviction. *Id.*

Severance

Where admission of evidence concerning the close relationship between defendant and codefendant was clearly relevant to codefendant's defense of alibi and mistaken identity and there was no conflict in defenses, trial court did not err in refusing to grant defendant a severance. *G. S. Crawley v. United States* (D.C. App. 1974, 328 A. 2d 777).

In prosecution of defendants on murder and rape charges, trial court did not abuse its discretion in denying motion of defendant brothers for a severance from codefendant, who had fatally stabbed the victim, notwithstanding defendants' claim that the evidence against the codefendant was much stronger than the evidence against them. *United States v. B. J. Heinlein* (1973, 490 F.2d 725, 160 U.S. App. D.C. 157).

Speedy trial

Right to speedy trial of defendant, charged with armed robbery, assault with dangerous weapon, and of carrying a pistol without a license, was not impinged by nine-

month delay extending from his indictment to his trial where, during the first two months defendant was still at large and police were doing their best to locate him, where defendant did not press a speedy trial right until five months after he was arrested, and where record was sufficient to sustain finding that defendant suffered no prejudice to his defense which could be attributed to the delay at the postarrest stage of the prosecution. *United States v. L. Parish* (1972, 468 F. 2d 1129, 152 U.S. App. D.C. 72; cert. denied 93 S. Ct. 1430, 410 U.S. 957).

Witnesses

Trial court, which denied a defense motion during trial to have key prosecution witness, who was a chronic alcoholic, subjected to a psychiatric examination with respect to his competency, did not abuse its discretion in refusing to treat the witness as a person of actual or potential incompetency, notwithstanding he claims of defendants, in support of their motion, that the testimony given by the witness was highly confusing and that hospital records indicated he had a clinical history which rendered him wholly unreliable. *United States v. B. J. Heinlein* (1973, 490 F.2d 725, 160 U.S. App. D.C. 157).

Evidence that defendant's sole defense witness had been charged with obstruction of justice for her alleged efforts to persuade complaining witness not to identify codefendant, her brother, should not have been admitted over objection, in prosecution for assault and armed robbery, to impeach witness, where testimony of complaining witness revealed to jury facts which were basis for charge; prejudicial effect of admission of arrest and charge outweighed probative substance. *United States v. C. Maynard* (1973, 476 F. 2d 1170, 155 U.S. App. D.C. 223).

Competency of mentally retarded 18-year-old prosecutrix to testify in prosecution for assault with intent to commit rape while armed, assault with a dangerous weapon and carrying a dangerous weapon, was a threshold question of law committed to the trial court's discretion; it remained for the jury, however, to assess credibility of the witness and the weight to be given her testimony. *United States v. H. Benn, Jr.* (1973, 476 F. 2d 1127, 155 U.S. App. D.C. 180).

§ 22-3203. Unlawful possession of a pistol.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-1813, 22-3207, 22-3208, 22-3210, 24-203.

NOTES TO DECISIONS

Prosecution

Prosecutor had authority to charge the defendant, a felon who possessed an unlicensed pistol while not in his dwelling or on his land, under felony-repeater provisions of § 22-3204 rather than under misdemeanor statute [this section] and by doing so did not deny right to equal protection. *R. F. Palmore v. United States* (D.C. App. 1972, 290 A. 2d 573; aff'd 93 S. Ct. 1670, 411 U.S. 389).

Search and seizure

Where defendant, at the time of his arrest in apartment, told police officers he wanted to change his pants and began moving toward the edge of a double bed, where one officer told him to "Hold it" and, as a precaution, the officer looked under the mattress where he found a gun, and where defendant was known to have used a gun before and was believed to be dangerous, the gun was lawfully seized; the police were not required to risk their safety on the chance that they, by a larger force, could control the situation if defendant should try to arm himself. *J. A. Haltiwanger v. United States* (D.C. App. 1977, 377 A. 2d 1142).

§ 22-3204. Carrying concealed weapons.

NOTES TO DECISIONS

Allen charge

Where Allen charge was given after jury which had not been sequestered had deliberated 2 hours and 20 minutes and announced that they had reached a verdict on charge of carrying a dangerous weapon but were deadlocked on charged of assault with deadly weapon and after court took jury verdict of acquittal on carrying charge and where jury deliberated only 25 minutes before returning

verdict of guilty on assault charge, Allen charge was not coercive to the point of requiring reversal of conviction. *F. C. Winters v. United States* (D.C. App. 1974, 317 A.2d 530).

Appeal and error

Even though police officer's specific testimony was that defendant had been looking "in the direction of the parked cars," inference drawn by trial court from totality of testimony adduced on motion to suppress is not plainly wrong or without evidence to support it and, accordingly, reviewing court would accept conclusion that defendant had been "looking into parked cars." *R. B. Sanders v. United States* (D.C. App. 1975, 339 A. 2d 373).

Where case against defendant on charges of carrying dangerous weapon was sufficiently proved by other independent evidence, fact that defendant's conviction in same trial on charges of first-degree murder was reversed because of error in trial court in admitting testimony by victim's wife that victim was afraid of being killed by defendant did not require reversal of conviction on weapons charge. *United States v. R. W. Brown* (1973, 490 F.2d 758, 160 U.S. App. D.C. 190).

Where suppression order had been reversed, defendant then waived jury trial and stipulated that officers who had testified at suppression hearing would give same testimony at trial and that defendant did not possess license to carry pistol and case was then submitted without further evidence or argument, same issue and same record was before Court of Appeals on appeal from conviction of carrying pistol without license as had been before it on appeal from the suppression order and, therefore, appeal from conviction was frivolous and would be dismissed. *W. A. Walker v. United States* (D.C. App. 1973, 304 A. 2d 290; cert. denied 94 S. Ct. 368, 414 U.S. 1007).

Arrest

Where car was validly stopped for traffic violation and, although driver's license produced by driver belonged to him and registration was for car, the license and registration were not in name of same person, brief detention of occupants while officers radioed Washington area law enforcement system computer to determine whether car was stolen was reasonable, properly limited and permissible. *M. J. Crawford v. United States* (D.C. App. 1977, 369 A.2d 595).

Should doubt as to correct identity of subject of warrant arise, arresting officer should make immediate, reasonable efforts to confirm or deny applicability of warrant to detained individual, but if, after such reasonable efforts, officer reasonably and in good faith believes that suspect is one against whom warrant is outstanding, protective frisk pursuant to arrest of that person is not in contravention of Fourth Amendment. *R. B. Sanders v. United States* (D.C. App. 1975, 339 A. 2d 373).

Evidence that six-month-old warrant which was used to arrest defendant, whose automobile was found to contain a pistol for which defendant did not have a license, was based on the complaint of a citizen, was valid on its face, and was served by an officer who was authorized to serve it and who exercised proper diligence in verifying its legality sustained finding that arrest of defendant was not a mere sham to search defendant's automobile. *R. E. Rippey v. United States* (D.C. App. 1974, 322 A.2d 276).

Assistance of counsel

Defense counsel's jury summation in murder prosecution did not rise to level of ineffectiveness necessary to show that defendant was deprived of effective counsel; in light of fact that alibi witnesses had seriously contradicted each other, defense counsel's failure to discuss alibi defense could have been strategically motivated. *E. Coleman v. United States* (D.C. App. 1977, 379 A. 2d 710).

Although counsel breached his duty in not moving to withdraw as counsel on appeal where he had represented convicted defendant at trial and, as defendant's attorney on appeal, raised issue of constitutional adequacy of his representation of defendant at trial, where issues were fully explored by both sides and appellate court carefully examined the merits, concluding that representation at trial was adequate, and where concern as to propriety of attorney's appearance before appellate court was raised for first time at oral argument on appeal, defendant's

conviction would be affirmed. *M. Harling v. United States* (D.C. App. 1977, 372 A.2d 1011).

Conviction of defendant who did not at any time make a positive demand upon trial court for leave to proceed without counsel would not be reversed on the basis of defendant's contention that court's denial of his pre-trial pro se motions requesting that his court appointed attorney be dismissed and replaced with another deprived him of the right to conduct his own defense. *G. H. Perry v. United States* (D.C. App. 1976, 364 A.2d 617).

Judge's effort to appoint a different attorney to case on ground that he considered counsel too inexperienced to try a first-degree murder case do not indicate bias impairing defendant's rights to a fair trial and effective assistance of counsel. *W. Baylor v. United States* (D.C. App. 1976, 360 A.2d 42; cert. denied 97 S. Ct. 643, 429 U.S. 1024).

Burden of proving exception

Defendant charged with carrying pistol without a license had burden of bringing himself within exception provided for person who carries weapon in his dwelling house or on other land possessed by him. *M. Hines v. United States* (D.C. App. 1974, 326 A.2d 247).

Collateral estoppel

The collateral estoppel principles enunciated by the Supreme Court's *Ashe v. Swenson* decision, and its progeny, should not be extended to govern the procedurally unique situation in which several criminal charges against the same defendant have been allocated between two triers for concurrent adjudication upon virtually identical evidence. *J. R. Copening v. United States* (D.C. App. 1976, 353 A.2d 305).

Defendant, who was simultaneously tried by a jury on statutory charge of carrying a pistol without a license and by the judge on police regulatory charges of possessing an unregistered firearm and possessing ammunition therefor, failed to establish that the judge was collaterally estopped to convict on the regulatory charges after the jury acquitted on the statutory charge, where neither the record nor the arguments of defendant established that the issue of knowledge or intent under the statute is necessarily identical to that involved in a prosecution of the regulatory offenses, or that doubt as to intent led the jury to render its verdict in favor of defendant. *Id.*

Constitutionality

Recidivist statute was not unconstitutional for permitting reliance on ten-year-old conviction. *L. D. Jones v. United States* (D.C. App. 1973, 299 A.2d 538).

Construction

In provision of this section prohibiting any person from carrying deadly weapon without license except in his dwelling house or place of business or on other land possessed by him, common understanding of "place of business" read in context with "dwelling house" or "other land possessed" is one of a protectable possessory interest; accordingly, "place of business" exception is applicable only to those who have controlling, proprietary or possessory interest in business premises in question. *J. Berkley v. United States* (D.C. App. 1977, 370 A.2d 1331).

Congress, in enacting this section prohibiting any person from carrying deadly weapon without license, except in his dwelling house or place of business or on other land possessed by him, intended drastically to limit possession of guns in District of Columbia and, in doing so, it could not be assumed that it intended, in jurisdiction where there are countless numbers of employees reporting every day to governmental agencies, to write in exception permitting every employee to carry loaded pistol while working. *Id.*

Construction with other laws

Discernment of legislative intent that there be a single conviction for federal mail or bank robbery, and assaults comprised therein, does not preclude the conviction of a defendant for carrying a dangerous weapon, in violation of the District of Columbia Code. *United States v. A. B. Knight* (509 F.2d 354, 166 U.S. App. D.C. 21).

Corrections officer

Under statutory provision excepting from prohibition against carrying pistols "jail wardens, or their deputies,

policemen or other duly appointed law enforcement officers, or to members of the Army, Navy, or Marine Corps of United States or of the National Guard or Organized Reserves when on duty," corrections officer is not prohibited from carrying pistol whether or not "on duty." *United States v. D. Pritchett, Jr.* (1972, 470 F.2d 455, 152 U.S. App. D.C. 307).

Cross-examination

Even if trial court erred in refusing to allow defendant to interpose his Fifth Amendment privilege against self-incrimination in response to certain questions asked by Government on cross-examination, court's ruling and lack of subsequent cautionary instruction were harmless beyond reasonable doubt where defendant had already testified on same subject on direct examination and there was overwhelming evidence of his guilt. *E. Coleman v. United States* (D.C. App. 1977, 379 A.2d 710).

In prosecution for first-degree murder and carrying a pistol without a license, in which defendant testified on direct examination that he had not shot victim of prior shooting incident, trial court did not err in permitting prosecutor to ask defendant on cross-examination whether he had in fact shot victim of prior shooting incident and to present on rebuttal testimony from victim of such prior shooting incident and another contradicting defendant's assertion. *R. Johnson, Jr. v. United States* (D.C. App. 1977, 373 A.2d 596).

Defense counsel, in prosecution for assault with a dangerous weapon, should have been allowed to impeach the prosecution's case by cross-examining one of the three prosecution witnesses as to his juvenile status, viz., the fact that he was on probation as a juvenile for a robbery conviction, since the three witnesses, two brothers and their cousin, were as one because of their unity of testimonial interest, to wit, their interest in keeping the one brother's probation from being revoked, and since the three may have thought that they themselves would be suspects, for any version of the shooting tending to make defendant's activities appear to have been in self-defense would concomitantly point the finger of accusation at the three witnesses. *C. L. Gillespie, Jr. v. United States* (D.C. App. 1977, 368 A.2d 1136).

Where prosecutor received only one and one-half or two hours notice of defendant's intention to call particular witness and confusion resulting from hasty check of witness' prior criminal record resulted in prosecutor asking witness whether he had been convicted of robbery in 1969, while in fact witness had been convicted of robbery in 1961 and had been convicted of petit larceny in 1969, cross-examination did not prejudice defendant, particularly in view of fact that witness testified untruthfully that he had no criminal record beyond 1961 robbery conviction. *United States v. M. L. Johnson* (1976, 527 F.2d 1381, 174 U.S. App. D.C. 72).

While defendant claims that the prosecutor improperly maneuvered him into admitting that the Army had discharged him for failure to disclose his juvenile arrest record, it appears that defendant himself precipitated discussion of his military record by wearing a national guard uniform in court, and that he volunteered the reason for his army discharge before the direct question was asked of him and before the trial judge had an opportunity to rule upon defense counsel's objection. *V. Johnson v. United States* (D.C. App. 1976, 366 A.2d 429).

While defendant claimed that the trial court curtailed to his detriment defense counsel's cross-examination of the complaining witnesses about their activities earlier in the evening before the shooting, the record discloses that reasonable latitude was afforded defense counsel in developing the setting of the criminal activity and the general background of the complaining witnesses. *Id.*

Discovery

In prosecution for assault with a deadly weapon and possession of a pistol without a license, prosecutor did not violate defendant's due process right by withholding delivery to defense counsel of an eyewitness' pretrial written statement until trial was in progress, in view of fact that prosecution did in fact give counsel the statement before defense presented its case. *J. L. Barker v. United States* (D.C. App. 1977, 373 A.2d 1215).

Due process

Defendant, who was simultaneously tried by a jury on statutory charge of carrying a pistol without a license and by the judge on police regulatory charges of possessing an unregistered firearm and possessing ammunition therefor, was not deprived of his due process rights by the very nature of the concurrent adjudication of all three charges against him, where the trial court was careful to exclude any reference to the existence of extrinsic charges and the jurors were properly guided as to the nature of their responsibilities and the evidence which they might consider. *J. R. Copening v. United States* (D.C. App. 1976, 353 A.2d 305).

Dwelling house

For defendant charged with carrying pistol without a license to bring himself within exception provided for person carrying weapon in his own dwelling or on other land possessed by him, defendant was required to show that he had exclusive control and possession of the premises. *M. Hines v. United States* (D.C. App. 1974, 326 A.2d 247).

Where porch on which defendant and his girl friend struggled over pistol allegedly found by defendant was part of apartment building in which defendant and others lived, defendant was not within exception from pistol licensing requirement provided for person who carries weapon in his dwelling house or on other land possessed by him. *Id.*

Elements of offense

For conviction for violation of this section, it is necessary only to show that defendant intended to carry pistol and that pistol was carried unlicensed in the District; it is not necessary to show specific intent to carry unlicensed pistol. *P. C. Brown v. United States* (D.C. App. 1977, 379 A.2d 708).

When defendant is charged with carrying a pistol without a license, government must prove that the weapon was operable. *C. C. Anderson v. United States* (D.C. App. 1974, 326 A.2d 807; cert. denied 95 S. Ct. 1405, 420 U.S. 978).

In view of government's failure to introduce evidence that juvenile lacked valid license to carry a pistol, he should not have been found guilty of carrying a pistol without a license. *In the Matter of W. K.* (D.C. App. 1974, 323 A.2d 442).

Proof of intent to use a weapon for an unlawful purpose is not an element of offense of carrying a pistol without a license. *F. T. Mitchell v. United States* (D.C. App. 1973, 302 A.2d 216).

All that is needed to prove violation of statute prohibiting carrying pistol without license is intent to do the proscribed act. *Id.*

Evidence—Admissibility

In proceeding in which defendants were convicted of unlawful possession of narcotic drug and carrying pistol without license, admission of coparticipant's testimony that "Initially, I believe it was [certain officer] who said we were under arrest for robbery, I believe. This was at the scene, by the truck. When we got to the station, I was told of other charges" was not plain error on ground that it involved reference to crime for which defendants were not indicted, in light of fact that reason for defendants' arrest was never again mentioned and they were impeached by prior convictions. *J. R. Lewis v. United States* (D.C. App. 1977, 379 A.2d 1168).

In prosecution for murder and other crimes, trial court did not err in permitting Government to introduce photograph of defendant with .45-caliber pistol in his waistband which was taken five months before alleged murders where pistol in question was of same type as that used in such murders and where picture was not so inflammatory as to show abuse of discretion. *E. Coleman v. United States* (D.C. App. 1977, 379 A.2d 710).

Accused person's prior possession of physical means of committing crime is some evidence of probability of his guilt, and is therefore admissible. *Id.*

In prosecution for carrying pistol without a license, trial court did not abuse its discretion in admitting into evidence four matched sets of masks and hats found in vehicle in which four defendants had been riding, in view of fact that four loaded guns were also found in vehicle so that masks and hats were probative on issue of guilty

knowledge. *R. B. Punch v. United States* (D.C. App. 1977, 377 A.2d 1353).

Though it was hearsay, testimony of defendant's employer concerning contents of alleged telephone threat against defendant, should have been admitted to show state of mind it might have induced in defendant, in prosecution for carrying pistol without license, assault with deadly weapon, and negligent homicide, but trial court's exclusion of this testimony is not reversible error, where any possible prejudice was cured by admission of other evidence, including testimony by defendant, as to the content of the threat and its effect on his state of mind. *N. L. Cooper v. United States* (D.C. App. 1975, 353 A.2d 696).

Permitting police officer to testify regarding direction from which shot causing bullet hole in wall was fired did not constitute an abuse of discretion in prosecution for armed robbery and for carrying a dangerous weapon. *United States v. A. E. Pierson* (1974, 503 F.2d 173, 164 U.S. App. D.C. 82).

Where police officers, having stopped automobile for red light violation, noted that driver's operator's permit had expired and registration was in name of another and that vehicle number on registration varied by one digit from number found on the automobile, police had legal justification to take temporary custody of the automobile, after ordering that it be driven to police station, and pistol which fell from coat of defendant passenger, ordered to alight from the vehicle, was admissible against him. *United States v. D. J. Ordway* (D.C. App. 1974, 329 A.2d 776).

Testimony of arresting officer, who apparently lost note on which he jotted down assault victim's description of assailant, was not, in prosecution for carrying a pistol without a license, inadmissible under the Jencks Act, since the Act imposes its sanction on the testimony of the witness who gave the statement rather than on the one who received it; moreover, receipt of the officer's testimony did not constitute plain error in light of his inability to produce the note, since the officer testified that the arrest of defendant was based on victim's on-the-scene identification. *M. W. Hardy v. United States* (D.C. App. 1974, 316 A.2d 867).

Where, in prosecution of defendant for first-degree murder and carrying dangerous weapon, there was no claim of self-defense, suicide, accidental death or any other plausible issue that would justify inquiry into victim's state of mind, court committed prejudicial error in admitting testimony by victim's wife that victim was frightened that he might be killed by defendant. *United States v. R. W. Brown* (1973, 490 F.2d 758, 160 U.S. App. D.C. 190).

Exclusion of arresting officer's testimony that there was no attempt to obtain fingerprints from pistol, which was found protruding from paper bag on passenger's side of transmission hump of defendant's automobile but within reach of the driver, was not error, as denying defendant the possible corroboration of his testimony that a passenger had alighted from vehicle on approach of police, had passenger's prints been found on weapon where defendant never sought to introduce fingerprint matter and did not seek to have Government perform fingerprint analysis or attempt to obtain such analysis himself. *United States v. J. D. Henson* (1973, 486 F.2d 1292, 159 U.S. App. D.C. 32).

— Erroneous transmission to jury

Inadvertent transmission of photograph exhibit not admitted in evidence to jury at trial of defendant for carrying pistol without license was not prejudicial where photograph was of interior of back entranceway and location of trash can which had been a matter of dispute with regard to codefendant who had been accused of stuffing jacket with gun and narcotics in pockets in trash can and was irrelevant as to defendant's case. *W. N. Quarles v. United States* (D.C. App. 1975, 349 A.2d 690; cert. denied 96 S. Ct. 2169, 425 U.S. 972).

— Good character

Though a defendant's reputation for truthfulness might not always be sufficiently germane to charge of violent behavior to warrant admission, where defendant's credibility may play determinative role in jury's decision, it

is error to bar competent testimony as to defendant's reputation for truthfulness, but where defendant was permitted to introduce testimony which bore on credibility, and court charged jury that character evidence alone may create reasonable doubt of guilt, error is harmless. *N. L. Cooper v. United States* (D.C. App. 1975, 353 A.2d 696).

Prosecutor cannot offer bad character evidence unless accused first introduces evidence of good character, and even then prosecutor's proof is restricted to community reputation and to trait and traits to which accused's own character evidence related. *United States v. J. A. Lewis* (1973, 482 F. 2d 632, 157 U.S. App. D.C. 43).

When character witness, either for accused or for prosecution, is offered, he is subject to cross-examination as to his testimonial qualifications just like any other witness, and probe on cross-examination may extend to those matters, among others, which legitimately affect witness' knowledge of accused's community reputation for the character trait or traits which he confirms. *Id.*

Where at time judge ruled, during second trial for armed robbery and related offenses, that if defense put on good character witnesses then prosecution could cross-examine such witnesses to determine if they were aware of defendant's arrest for narcotics two weeks before commencement of second trial but ten months after the occurrence of offenses for which he was being tried, judge did not know whether witness would speak to reputation for peace and good order or as to reputation for truth and veracity, trial judge did not have essential information and ruling was error, but in view of government's case error was not prejudicial. *Id.*

— Polygraph tests

Expert testimony based on results of defendant's polygraph examination was inadmissible. *United States v. E. Zeiger* (1972, 475 F. 2d 1280, 155 U.S. App. D.C. 11; rev'g 350 F. Supp. 685).

— Production

Where record was clear and undisputed that there was no intentional or bad-faith loss of evidence by Government trial court did not abuse its discretion in refusing to impose sanctions after Government reported that both original and copy of note allegedly written by assailant were lost. *B. Brown v. United States* (D.C. App. 1977, 372 A.2d 557; cert. denied 98 S. Ct. 397, — U.S. —).

— Sufficiency

Identification evidence was sufficient to support defendant's conviction of second-degree murder, assault with a dangerous weapon and carrying pistol without license. *B. Brown v. United States* (D.C. 1977, 372 A.2d 557; cert. denied 98 S.Ct. 397, — U.S. —).

Evidence in prosecution which resulted in conviction for carrying a pistol without a license and possession of marijuana was sufficient for jury. *G. H. Perry v. United States* (D.C. App. 1976, 364 A.2d 617).

Direct and circumstantial evidence which included testimony of eyewitnesses and of accomplice who drove truck in which assailants departed from murder scene was sufficient to allow jury to find beyond a reasonable doubt that defendant was the short, stocky man with a .38-caliber firearm who was at the scene of a double murder and had shot the two victims. *United States v. W. L. DeLoach, Sr.* (1975, 530, F. 2d 990, 174 U.S. App. D.C. 138; cert. denied 96 S. Ct. 2232, 426 U.S. 909).

Evidence that defendant was armed and was threatening one individual with serious bodily injury, that he was aware that he was being followed by uniformed special officer and that defendant turned and shot uniformed officer was sufficient, apart from issue of mental responsibility, to support verdict finding defendant guilty of second-degree murder of the officer and of carrying a dangerous weapon. *United States v. J. Taylor* (1975, 510 F. 2d 1283, 167 U.S. App. D.C. 62; rehearing denied 516 F. 2d 1243, 170 U.S. App. D.C. 315).

Evidence, including testimony of complainant and others concerning incident, reasonably permitted a finding of guilt on charges of armed kidnapping, armed assault with intent to kill, and carrying a dangerous weapon. *R. N. Wooten v. United States* (D.C. App. 1975, 343 A. 2d 281).

Evidence, including fact that searching officer found a pistol on floorboard and between and behind front bucket seats of automobile in which defendant and his companion were riding, was sufficient to sustain conviction of carrying a pistol without a license. *United States v. D. T. McDonald* (1973, 481 F. 2d 513, 156 U.S. App. D.C. 338).

Evidence which was adequate to enable jury to find that the possession of weapons, which were in a car in which defendants were riding, could be knowledgeably attributable to defendants was sufficient to sustain their convictions for possession of unregistered firearms, possession of prohibited weapons and carrying a dangerous weapon. *United States v. J. C. Matthews* (1973, 480 F. 2d 1191, 156 U.S. App. D.C. 299).

Testimony by two police officers that they saw defendant take gun from his belt and replace it, that they saw defendant enter driver's side of a van, subsequently found to be stolen, that they subsequently saw three men standing near the van with defendant closest to it, and testimony by one of the two officers that he saw defendant drop the gun sustained defendant's convictions for unauthorized use of a motor vehicle and carrying a pistol without a license. *D. R. Reed v. United States* (D.C. App. 1973, 312 A. 2d 775).

Evidence sustained conviction of defendant, a passenger in rear seat of car, for carrying without a license a pistol which was found on the passenger side of front seat. *H. B. Johnson v. United States* (D.C. App. 1973, 309 A. 2d 497; cert. denied 94 S. Ct. 1960, 416 U.S. 951).

Notwithstanding defendant's claim that Government had failed to prove essential element of possession of gun at time of offense, evidence sustained conviction of carrying a pistol without a license. *N. Hawkins v. United States* (D.C. App. 1973, 304 A. 2d 279).

Evidence was sufficient to support conviction of carrying a pistol without a license, possessing an unregistered firearm and unlawfully possessing ammunition against defendant who was driving vehicle which had been loaned to him by his employer and had been previously driven by numerous employees and customers of employer, and in glove compartment of which police officer found a pistol. *P. Patterson v. United States and District of Columbia* (D.C. App. 1973, 301 A. 2d 67).

Evidence was sufficient to support conviction as a repeat offender of carrying a pistol without a license against defendant who was pointed out to police officers after officers heard a gunshot and who was found in automobile which had operable pistol, which had fresh smell of gunpowder and contained five live rounds of ammunition and one expended round, lying on the front seat. *A. Ragland v. United States* (D.C. App. 1973, 299 A. 2d 141).

— Suppression

Where, even according to defendant's testimony at trial, there was no valid issue as to whether police officer had constitutional right to seize gun and arrest defendant for possessing pistol without a license, it was unnecessary to remand for hearing to determine whether defense counsel's failure to assert at trial defendant's right to have been present at suppression hearing was a deliberate choice, in which case the right was forfeited, or was an oversight, in which case failure to cure defect in suppression hearing was rendered harmless to defendant in view of his testimony establishing valid arrest and seizure. *J. E. Poteat v. United States* (D.C. App. 1974, 330 A. 2d 229).

Where both written motion to suppress gun and defendant's trial testimony supported gun's admissibility, defendant could not argue that his presence at suppression hearing was required to aid counsel in cross-examination regardless of whether he would also testify. *Id.*

Fair trial

Factual allegations in motion for recusal that counsel had sought and had been denied in the Court of Appeals three petitions for writ of mandamus in connection with the case, that trial judge had granted certain government requests and motions and had denied or refused to consider certain defense motions, and that judge had sought to appoint new counsel are legally insufficient to warrant recusal. *W. Baylor v. United States* (D.C. App. 1976, 360 A.2d 42; cert. denied 97 S. Ct. 643, 429 U.S. 1024).

Fingerprint tests, duty to make

Government's failure to perform fingerprint analysis on pistol found in paper bag on passenger's side of transmission hump of defendant's automobile and within reach of driver could not be found to have denied defendant due process by keeping from defendant, who police officers said was alone in vehicle at time of arrest but who asserted that a passenger had alighted on approach of police, evidence material to guilt where defendant never sought to introduce fingerprint matter at trial and did not seek to have Government perform a fingerprint analysis or attempt to obtain such analysis himself. *United States v. J. D. Henson* (1973, 486 F. 2d 1292, 159 U.S. App. D.C. 32).

Frisk

Where police saw defendant pull to the curb in rented automobile, get out and begin walking down street, where one officer recognized defendant and also remembered that, about two weeks earlier, at a roll call, he had heard an announcement that there was a warrant for defendant's arrest for unauthorized use of a motor vehicle, where the officers drove up to defendant and questioned him about the vehicle, where defendant suggested that they drive him back to his automobile and he would show them the rental contract, and where the officers, as defendant was about to enter the patrol car, frisked him and discovered he was carrying a pistol without a license, the frisk could not, in view of the government's failure to establish the existence of a validly issued arrest warrant, be justified as incidental to a lawful arrest. *I. Gilchrist v. United States* (D.C. App. 1973, 300 A. 2d 453).

Guilty plea

Trial judge's abuse of discretion in refusing to accept tendered plea of guilty to charge of possession of marijuana in prosecution for carrying pistol without license and possession of marijuana did not constitute prejudicial error, in view of fact that evidence of guilt of carrying pistol without license was overwhelming and in view of fact that evidence of admitted possession of marijuana might have been admissible at trial even if defendant's guilty plea had been accepted. *R. B. Punch v. United States* (D.C. App. 1977, 377 A. 2d 1353).

While plea to one count of indictment, leaving to be tried legally unrelated count, may involve tactical advantage to one side or the other, it is not actually characterized as a "plea bargain." *Id.*

Harmless error

In prosecution for carrying pistol without a license, any error resulting from testimony indicating that pistol in question was owned by one other than defendant was harmless where trial judge immediately cautioned jury that defendant was not charged with stealing pistol but only with possession of it without a license. *C. C. Anderson v. United States* (D.C. App. 1974, 326 A. 2d 807; cert. denied 95 S. Ct. 1405, 420 U.S. 978).

In light of adoption of preponderance standard for determining voluntariness of a confession, any error in admitting defendant's statement while entertaining a reasonable doubt about voluntariness was at best harmless error which the Court of Appeals was required to ignore. *N. Hawkins v. United States* (D.C. App. 1973, 304 A. 2d 279).

Identification

Evidence in prosecution wherein defendant was convicted of armed robbery and of carrying pistol without license was sufficient to permit finding of identification beyond reasonable doubt, even considering 18 months time lapse between offense and positive identification of defendant at lineup. *H. Tolliver v. United States* (D.C. App. 1977, 378 A. 2d 679).

Identification procedure whereby occupants of car were returned in police van to site of gunshots where witness identified defendant from five persons in van, without any assistance from police, was not unduly suggestive. *G. S. Crawley v. United States* (D.C. App. 1974, 314 A. 2d 487).

Impeachment

Defendant was properly impeached with information concerning prior conviction for uttering even though his admission of the prior conviction was made on a form prepared for bail agency. *J. Anderson v. United States* (D.C. App. 1976, 352 A.2d 392).

Indictment

Notice of prior conviction need not be included in an indictment for offense of carrying pistol without a license to be sentenced as a felony, since fact of a prior conviction is neither an element of the offense charged nor necessary to double jeopardy protection. *R. B. Punch v. United States* (D.C. App. 1977, 377 A. 2d 1353).

Joinder in indictment of counts charging both defendants with assault with a dangerous weapon and charging each defendant respectively with possession of a pistol without a license was proper, since each count was directed to a different facet of one continuous occurrence, and thus constituted a "series of acts" in meaning of rule governing joinder of offenses. *J. L. Barker v. United States* (D.C. App. 1977, 373 A.2d 1215).

Any infirmity in grand jury proceedings because of failure of complainant and one of police officers to state that pistol used in shooting was victim's, that victim had informed grand jury that one defendant's job was that of a robber and that during the proceedings the prosecutor referred to another case against one defendant, is not of such a nature as to warrant dismissal since there was ample other evidence on which the grand jury could have returned the indictment. *E. Blango v. United States* (D.C. App. 1975, 335 A. 2d 230).

Pendency of grand jury indictment charging assault with a dangerous weapon did not prohibit a second grand jury from considering and returning indictment charging not only the same count of assault with a dangerous weapon but the additional count of carrying a dangerous weapon, regardless of whether prior grand jury refused to return a bill charging the offense of carrying a dangerous weapon or simply did not consider such offense. *United States v. C. Johnson* (D.C. App. 1974, 328 A. 2d 769).

Inferences

In prosecution against a passenger in rear set of car for carrying without a license a pistol which was found under passenger side of front seat, it was not necessary for Government to show the existence of an aperture in bottom rear of front seat in order to lay a basis for inference of convenient access, in light of fact that it was common knowledge that such an aperture was present in ordinary passenger cars of kind in which defendant was riding. *H. B. Johnson v. United States* (D.C. App. 1973, 309 A. 2d 497; cert. denied 94 S. Ct. 1960, 416 U.S. 951).

Instructions

In prosecution for assault with a deadly weapon and possession of a pistol without a license, evidence was sufficient to warrant trial court's "mere presence" jury instruction. *J. L. Barker v. United States* (D.C. App. 1977, 373 A.2d 1215).

Evidence in prosecution for assault with a deadly weapon and possession of a pistol without a license was insufficient to require jury instruction on defendant's alleged right to use reasonable force to prevent interference with his property and freedom of movement. *Id.*

On the record presented, there is no substantial likelihood that the verdict of the jury was significantly affected by the trial court's failure to give, sua sponte, any kind of cautionary instruction on the use of defendant's record of prior arrests, considering, inter alia, that the prosecutor's cross-examination, which elicited the arrest evidence, was on a subject which had been injected into the case by defendant. *V. Johnson v. United States* (D.C. App. 1976, 366 A.2d 429).

Trial court erred in including equally balanced mind concept in jury charge on Government's burden of proof in prosecution for illegal possession of pistol but error was harmless where only issue in case was whether pistol was found in defendant's automobile and resolution of issue depended upon whether defendant's or police officer's testimony was to be believed and where objectionable language in charge was interspersed among detailed and repeated references to Government's burden to prove guilt beyond reasonable doubt. *J. Hughes, Jr. v. United States* (D.C. App. 1976, 363 A.2d 284).

Where, during prosecution for assault with dangerous weapon and carrying pistol without license, defendant testified that he did not act at all, repudiating his initial admission to police that he shot complainant in self-

defense, evidence of self-defense was absent and trial court properly refused instruction on that subject. *W. G. Hale v. United States* (D.C. App. 1976, 361 A.2d 212).

Trial court acted properly in giving missing witness instruction where witness in question was defendant's girl friend and where, because of testimony given by such witness before grand jury, inference of unfavorable testimony from such witness was natural and reasonable and grand jury testimony eliminated possibility that she would be "unavailable" by reason of invoking her Fifth Amendment privilege against self-incrimination. *Id.*

Where defendant was acquainted with potential witness and made no effort to locate him or call him as a witness, trial court properly refused to give a missing witness instruction upon failure of the Government to call the potential witness to rebut defendant's claim that the potential witness had given defendant the gun which defendant was charged with carrying without a license. *J. Anderson v. United States* (D.C. App. 1976, 352 A.2d 392).

If potential witness would have claimed his Fifth Amendment privilege against self-incrimination when called to testify, he would not have been available as a witness to either party so that neither party would be entitled to missing witness instruction. *Id.*

Giving of instruction that jury must acquit unless prosecution proved each element beyond a reasonable doubt is not plain error on ground that instruction compelled jury to find defendant guilty. *R. S. Hammond v. United States* (D.C. App. 1975, 345 A.2d 140).

Where missing witness was not present when officers found the defendant in a stairway behind an apartment across the street from witness' house in possession of a gun in a paper bag so that witness could not have elucidated the transaction on crucial issue of whether defendant was in possession of a gun and the "missing witness" instruction and Government's comments thereon might have damaged defendant's credibility with the jury, giving of "missing witness" instruction was reversible error in prosecution for carrying a concealed weapon without a license. *E. L. Haynes v. United States* (D.C. App. 1974, 318 A.2d 901).

In prosecution for first-degree murder and carrying dangerous weapon, jury instruction on sanity which stated that defendant would be immediately committed for mental examination, after which there would be another judicial determination as to whether he was suffering from mental illness at that time and whether he was dangerous to himself and others, and that if defendant was found to be suffering from mental illness but was not dangerous to himself or others he would be released from hospital, was proper. *United States v. R. W. Brown* (1973, 490 F.2d 758, 160 U.S. App. D.C. 190).

Where hearsay statement circumstantially probative of declarant's state of mind involves extraneous factual elements, limiting instruction must always accompany its introduction into issue to insure that such factual matters are considered solely on issue of declarant's mental state and not for truth of matters contained therein. *Id.*

In prosecution for carrying pistol without a license, defendant's proffered testimony indicating that he picked up pistol which he found on ground and put in in his waistband to prevent it from being used by others in hostile crowd intending to turn it over to police when opportunity arose, that he then walked into area of crowd and that he was in immediate fear of attack when he found the pistol was insufficient to raise issue of self-defense and was inadmissible. *F. T. Mitchell v. United States* (D.C. App. 1973, 302 A.2d 216).

Jencks Act

In criminal proceeding, refusal, after in camera inspection, to order production of notes taken by prosecutor in pretrial interviews of two government witnesses is proper where such notes are merely random notations in regard to background material such as age, address and place of employment, where notes are not a substantially verbatim recital of oral statements of witnesses and where notes are not relevant, except peripherally, to subject matter of witnesses' testimony. *F. A. Brown v. United States* (D.C. App. 1976, 359 A.2d 600).

Refusal to strike testimony of witnesses on account of prosecution's failure to preserve and produce their grand jury testimony was not error where it appeared that their testimony was not recorded due to a malfunction of a recording device, without negligence or bad faith on Government's part. *D. L. Washington v. United States* (D.C. App. 1975, 343 A.2d 560).

Joinder

Joinder of defendants, one charged with a misdemeanor and the other with a felony in connection with carrying a deadly weapon, could be accomplished by filing an information against the former and, upon indictment of his codefendant, moving for joinder. *T. Freeman v. Honorable D. S. Smith* (D.C. App. 1973, 301 A.2d 217).

Judge's comments

In prosecution for, *inter alia*, carrying a dangerous weapon, where comment by the court that if there was any believable evidence in the case, it was to effect that pistol was carried outside defendants' home or place of business was sustained by uncontradicted evidence and judge explicitly charged that all matters of fact were to be determined by the jury, no harm could result to defendants, who, in any event, failed to object. *United States v. T. B. Dixon* (1972, 469 F.2d 940, 152 U.S. App. D.C. 200).

Jury

Where defendant's second trial was conducted with jury chosen from same jury panel as his first trial, trial court's questioning of second jury concerning possible prior knowledge about case served to eliminate any remaining possibility of bias or prejudice on part of such jury. *W. G. Hale v. United States* (D.C. App. 1976, 361 A.2d 212).

Fact that three of the jurors in defendant's case had served on jury which two days earlier had been "castigated" by another judge for rendering a verdict of not guilty did not result in reversible error. *United States v. W. G. Kyle* (1972, 469 F.2d 547, 152 U.S. App. D.C. 141; cert. denied 93 S. Ct. 920, 409 U.S. 1117).

Where prosecutor who knew that three jurors in case had served on a jury which only two days earlier had been "castigated" by another judge for rendering a verdict of not guilty was concerned primarily with jurors' unfavorable attitude to the prosecution rather than with the speculative effect of the comments of the previous judge, prosecutor's failure to transmit to defense counsel his knowledge that three jurors had been members of the previous jury and that previous jury had been scolded by the other judge was not ground for reversal of conviction. *Id.*

Where, at first trial, juror commented that she had observed defendant going through jury list containing name, age, address and business of all jurors, prohibiting examination of jurors' list by defendant at retrial did not prejudice defendant who heard names of all jurors as they were called to box during selection, who was able to determine from his own observation their sex and approximate age, whose counsel examined prospective jurors on voir dire and exercised peremptory challenges against some of them and who had opportunity during selection process to confer with his counsel. *J. D. Maxwell v. United States* (D.C. App. 1972, 297 A.2d 771; cert. denied 93 S. Ct. 2740, 412 U.S. 921).

Poll

Trial court committed reversible error by continuing to poll jury after first juror had indicated she did not agree with guilty verdict on the first armed robbery count, notwithstanding government hypothesis that dissenting juror was confused by multiple-count indictment, since trial judge, rather than stopping poll and questioning juror to determine if she were confused by indictment, chose to continue the poll. *J. Kendall v. United States* (D.C. App. 1975, 349 A.2d 464).

Knowledge

In prosecution for carrying a pistol without a license, it is not necessary that Government offer direct proof of knowledge of presence of the pistol. *H. B. Johnson v. United States* (D.C. App. 1973, 309 A.2d 497; cert. denied 94 S. Ct. 1960, 416 U.S. 951).

Fact that there were three persons and three pistols in car, together with suspicious activity of occupants prior to their car being halted, provided sufficient grounds for

jury, in prosecution for carrying a pistol without a license, to conclude that defendant knew of presence of the pistol. *Id.*

Manslaughter

Carrying a pistol without a license exposes the community to such inherent risk of harm that when death results, even though an unintended consequence, defendant may nonetheless be charged with involuntary manslaughter. *United States v. E. E. Walker* (D.C. App. 1977, 380 A. 2d 1388).

Mental capacity

Record, including testimony of a private psychiatrist who examined defendant at government expense, was sufficient to support finding that criminal acts committed by defendant (armed robbery, assault with a dangerous weapon, and carrying a dangerous weapon) were not so proximately tied to defendant's mental impairment as to require his exculpation. *United States v. G. A. Wilson* (1972, 471 F. 2d 1072, 153 U.S. App. D.C. 104; cert. denied 93 S. Ct. 1431, 410 U.S. 957).

Miranda rights—Waiver

Where accused was informed of his Miranda rights repeatedly during course of criminal investigation, he twice executed written waiver of such rights and he asserted that he was generally cognizant of such rights from previous arrests and that he had been represented by counsel on prior occasions and knew their names, accused had knowingly and intelligently waived his constitutional rights, though he made request for counsel at one point during the investigation. *F. A. Brown v. United States* (D.C. App. 1976, 359 A. 2d 600).

Mistrial

Refusal to declare a mistrial, on ground that disturbance which occurred outside the courtroom but in jury's presence, which involved defendant and his father and which was prompted by removal of the father for creating a disturbance in the courtroom, is not abuse of discretion where after full hearing trial judge found that incident was prompted by defendant, without provocation from prosecution, and court fully instructed jury to disregard incident and reach a verdict based solely on evidence presented in the courtroom. *R. S. Hammond v. United States* (D.C. App. 1975, 345 A. 2d 140).

Place of business

In provision of this section prohibiting any person from carrying deadly weapon without license except in his dwelling house or place of business or on other land possessed by him, common understanding of "place of business" read in context with "dwelling house" or "other land possessed" is one of a protectable possessory interest; accordingly, "place of business" exception is applicable only to those who have controlling, proprietary or possessory interest in business premises in question. *J. Berkley v. United States* (D.C. App. 1977, 370 A. 2d 1331).

Lab technician in blood unit of local hospital, who was arrested at his place of employment for offense for which he was ultimately found not guilty by jury but who was subsequently charged with violation of this section based on his possession at time of prior arrest of loaded pistol for which he had no license did not fall within "place of business" exception of this section. *Id.*

Plain error

Where defendant failed to request argument on motion at suppression hearing and instead allowed court to adjourn without objection, and defendant's legal arguments were fully presented in his written motion and accompanying memorandum, absence of oral argument on motion, if prejudicial, does not constitute plain error. *M. E. Hemsley v. United States* (D.C. App. 1976, 353 A.2d 14).

In prosecution for carrying a dangerous weapon, assaulting a police officer, and unlawful possession of narcotic drug, sustaining as valid Fifth Amendment privilege claimed by defense witness called to corroborate testimony of defendant, who did not claim infringement of his own Fifth Amendment privilege against self-incrimination, was not plain error, on theory that he was denied a fair trial, where there was no pretense the record would support an inference of prosecutorial misconduct or that Government's case was buttressed by the witness' exercise of the privilege against self-incrimina-

tion, and where witness was called by defense counsel with full prior knowledge that privilege would be invoked. *R. W. Mack v. United States* (D.C. App. 1973, 310 A. 2d 234).

The identification of defendant's photograph by assault victim, the two lineup identifications, the composite drawing, defendant's presence in the area of the attack, the two in-court identifications of him, and the clothing recovered from his home left so small a probability that probable cause was lacking in the case that the discretion of the Court of Appeals to consider plain error would not be wisely exercised by entertaining unraised issue regarding the trial court's alleged error in not suppressing identifications flowing from photographs taken of defendant when he was allegedly taken to police station without probable cause. *R. E. Adams, Jr. v. United States* (D.C. App. 1973, 302 A. 2d 232).

Plea bargaining

As respects allegation of defendant, charged with armed robbery and carrying dangerous weapon, that his absence from status hearing, at which defense counsel was served with information revealing Government's intention to seek additional punishment under recidivist provision of section 22-3202, deprived him of meaningful right to participate in plea bargaining, evidence establishes that counsel fully advised his client; furthermore, there is no absolute right to bargain. *R. Smith v. United States* (D.C. App. 1976, 356 A.2d 650).

Possession of firearms

Defendant on a public street found standing near a gun partially concealed beneath an auto, without more, can not be deemed to have sufficient knowledge and control of the weapon so as to be criminally responsible for its possession. *R. Outzs v. United States* (D.C. App. 1973, 306 A. 2d 664).

Fact of constructive possession does not depend upon ownership. *L. D. Jones v. United States* (D.C. App. 1973, 299 A. 2d 538).

Evidence that pistol was located on console between driver and defendant passenger and that passenger had ammunition in his coat pocket of same caliber as pistol was sufficient to establish constructive possession in passenger. *Id.*

Innocent or momentary

Where, with full knowledge that possession of pistol was illegal, defendant retained it for more than 12 hours and then carried it still loaded on the street, his claim that he was merely returning the pistol, which he claimed he had found in his apartment after a burglary of that apartment, to the police is insufficient to support claim of innocent possession. *R. A. Carey v. United States* (D.C. App. 1977, 377 A. 2d 40).

In order to assert defense of innocent or momentary possession of pistol as defense to charge of carrying pistol without a license, accused must show not only an absence of criminal purpose, but also that his possession was excused and justified as stemming from an affirmative effort to aid and enhance social policy underlying law enforcement. *M. Hines v. United States* (D.C. App. 1974, 326 A. 2d 247).

Pearrest delay

Record was devoid of any indication that delay in arresting defendant, which occurred ten months after date of the offenses, was the product of any deliberate effort by police to gain an advantage, record furnished abundant evidentiary support for finding that a reasonable endeavor was made to locate defendant and, in addition, record sustained additional finding that, in any event, defendant was not harmed by the delay, in prosecution for armed robbery, assault with a dangerous weapon, and for carrying a pistol without a license. *United States v. L. Parish* (1972, 468 F. 2d 1129, 152 U.S. App. D.C. 72; cert. denied 93 S. Ct. 1430, 410 U.S. 957).

Probable cause

Where police officer knew that defendant was driving car with altered temporary tags and that defendant had previously been arrested for carrying a pistol without a license, where police officer had seen front seat passenger reach forward or lean down and then sit upright after car had passed officer's marked police cruiser and come to a stop at a traffic light, and where police officer had prob-

able cause to arrest defendant for driving without an operator's permit, officer was justified in examining under driver's seat of vehicle, seat closest to defendant, to look for weapons, especially when three other persons were seated in vehicle. *R. B. Punch v. United States* (D.C. App. 1977, 377 A. 2d 1353).

Where Government failed to reveal any circumstances at all underlying unidentified informant's conclusion that defendant was selling narcotics, where tip did not contain details concerning defendant's criminal activity, and where prosecution failed to show that informant's allegation of criminal conduct was based on something more substantial than a casual rumor or defendant's general reputation, Government failed to show informant's basis of knowledge for his tip, and thus arrest and subsequent search were unlawful, even though police were able to confirm details contained in tip concerning defendant's clothing and location. *J. E. Nance v. United States* (D.C. App. 1977, 377 A. 2d 384).

Arrest of defendant, who was walking with two companions within 25 minutes of robbery approximately 15 minutes after receipt by arresting officer of broadcast of description of the robbers, who was walking in a direction away from and within seven blocks of the crime scene, and who was wearing a jacket similar to that described by the victims, and whose companions fit the general descriptions given by the victims was based on probable cause. *R. A. Carey v. United States* (D.C. App. 1977, 377 A. 2d 40).

Fact that victims did not ultimately identify apprehended individuals as perpetrators is irrelevant to question of valid arrest; warrantless arrest must be judged as of the time it was made. *Id.*

Where officers knew that stopped car was wanted in connection with earlier armed robbery and sodomy involving four or five men and one officer, based on his experience, concluded that four men in car could have been the armed robbery and sodomy suspects, while it might have been preferable for officers to inquire further about identification of wanted suspects, officers who ordered men out of car did not act unreasonably, minimum probable cause requirements were met and arrest and seizure of gun in plain view on the seat were valid. *M. J. Crawford v. United States* (D.C. App. 1977, 369 A. 2d 595).

Police officer who possessed information that police officer in neighboring county had personally observed two black men selling narcotics from automobile and who observed automobile matching description given by fellow officer had probable cause to arrest automobile's occupants who matched description of narcotics sellers, was justified in opening automobile door, and had right to seize gun in plain view on floor of automobile. *J. Hughes, Jr. v. United States* (D.C. App. 1976, 363 A.2d 284).

Officer, who received over his radio a "flash lookout" for car of a specifically described make, color and license tag proceeding in certain direction with two people with a pistol, who was informed as to the identity of police officer being advised by citizen that occupants of car had gun, who was advised that such officer had seen such car and had verified both its description and number of its occupants and who observed car within 20 minutes of receiving the lookout, had probable cause to stop and search car for pistol. *C. H. Galloway v. United States* (D.C. App. 1974, 326 A. 2d 803; cert. denied 95 S. Ct. 1981, 421 U.S. 979).

Defendant's actions in hastily applying brakes upon seeing police officers, in switching places with his passenger, and in then leaning forward as if to hide something under his seat gave officer, when coupled with his discovery of suspected narcotics, probable cause to search for contraband under the seat where defendant had been sitting. *C. H. Spencer v. United States* (D.C. App. 1974, 316 A. 2d 331).

Where patrolling officer observed defendant drive by and observed on dashboard of defendant's automobile a box similar to those used to commercially package ammunition, officer had right to stop vehicle to inquire whether defendant in fact possessed a gun and, if so, whether there was compliance with local licensing statute; failure of defendant, who stated that he was carrying a weapon, to produce license constituted probable cause for arrest and authorized protective search; pistol seized in search was

admissible. *J. Gordon v. United States* (D.C. App. 1973, 305 A. 2d 522).

Discrepancy between name on license and registration, defendant's failure to know who owned vehicle, defendant's inherently incredible explanation of how he came to be driving vehicle, defendant's "furtive movement" on being honked at by officers after he had seen them following him, and mutilated inspection sticker on vehicle constituted probable cause for a reasonably prudent officer to arrest defendant for unauthorized use of a vehicle, and subsequent search of vehicle and defendant's person, with consequent discovery of a pistol, was lawful. *K. L. Williams v. United States* (D.C. App. 1973, 304 A. 2d 287).

Proof

In prosecution for carrying a pistol without a license, Government must prove that the pistol was conveniently accessible to defendant, and that he knew of its presence. *H. B. Johnson v. United States* (D.C. App. 1973, 309 A. 2d 497; cert. denied 94 S. Ct. 1960, 416 U.S. 951).

Prosecution

In view of 1972 letter from corporation counsel granting standing permission for United States attorney to prosecute violations of police regulations prohibiting possession of unregistered firearms and possession of ammunition therefor if such charges accompany a charge of violating statute prohibiting the carrying of a pistol without a license, the corporation counsel is not required in each case to give formal consent on the record for the United States attorney to prosecute on the regulatory charges. *J. R. Copening v. United States* (D.C. App. 1976, 353 A.2d 305).

Defendant could be properly charged and convicted of not only federal bank robbery but also under this section of the D.C. Code relating to carrying of a dangerous weapon, since federal bank robbery statute is unconcerned with the type of weapon person might use or with his right under local law to carry such weapon. *United States v. C. L. Canty* (1972, 469 F. 2d 114, 152 U.S. App. D.C. 103).

Prosecutor had authority to charge the defendant, a felon who possessed an unlicensed pistol while not in his dwelling or on his land, under felony-repeater provisions of this section, rather than under misdemeanor statute [§ 22-3203] and by doing so did not deny right to equal protection. *R. F. Palmore v. United States* (D.C. App. 1972, 290 A. 2d 573; aff'd 93 S. Ct. 1670, 411 U.S. 389).

Prosecutor's comments

In prosecution for possession of narcotics for distribution and carrying pistol without license, prosecutor's statements in rebuttal concerning present and future generations of citizens in city, whether conscientious jury could be "conned" into rendering verdict of not guilty and concerning defense witness who was "conjured up" an hour and a half before trial, were not impermissibly prejudicial. *United States v. M. L. Johnson* (1976, 527 F.2d 1381, 174 U.S. App. D.C. 72).

Where it was made clear to jury, in murder prosecution, that government witness had not been able to identify defendant personally as the actual killer, but had been able to give a description of a short, stocky man he saw fire three quick shots in the street and then run away, and where Government admitted that witness had not identified defendant personally, that government attorney in closing argument stated that the witness "saw this defendant," was not a misrepresentation of the witness' testimony or an intentional misrepresentation of conclusions that were permissible from the evidence. *United States v. W. L. DeLoach, Sr.* (1975, 530 F.2d 990, 174 U.S. App. D.C. 138; cert. denied 96 S.Ct. 2232, 426 U.S. 909).

Comments of prosecutor during assault trial to the effect, inter alia, that missing witness was too scared to come and testify, that defendants were killers and were dressed like gangsters, that one defendant was a "young buck," that guilty verdict would be a matter of achievement and courage, and that presumption of innocence might not apply as much to defendants as it might to others in less serious cases did not rise to the level of substantial prejudice necessary for reversal, in light of the strength of the Government's case and correcting instructions by the trial court. *R. L. Smith v. United States*

(D.C. App. 1974, 315 A. 2d 163; cert. denied 95 S.Ct. 174, 419 U.S. 896).

Where critical issue in homicide prosecution was matter of self-defense, action of government prosecutor in stating to subpoenaed defense witness, an eyewitness to killing, that such witness should see independent counsel and that if witness testified as indicated by other testimony then he could or would be prosecuted for carrying a concealed weapon, obstructing justice and as an accessory to murder was prejudicial to defendant who was entitled to have such witness put on stand without interference or intimidation by prosecutor, and interests of justice also required that the conviction of codefendant, who was convicted on theory of aiding and abetting defendant, should also be reversed. *United States v. C. L. Smith* (1973, 478 F. 2d 976, 156 U.S. App. D.C. 66).

Prosecutor's remarks to jury

Reference in Government's rebuttal argument to lack of corroboration of defendant's testimony concerning alleged passenger in defendant's automobile did not constitute improper comment on a missing witness since remarks did not directly, or in a meaningful indirect manner, ask the jury to draw an impermissible inference from absence of alleged passenger; to extent that existence of passenger was challenged it was clearly in context of his existence as a passenger of defendant, charged with carrying a pistol without a license, on evening of arrest rather than as possessor of pistol, which was found in defendant's automobile. *United States v. J. D. Henson* (1973, 486 F. 2d 1292, 159 U.S. App. D.C. 32).

Government's suggestion, during its summation, of corroboration of nature of gun placement within reach of defendant, charged with carrying a pistol without a license, was not improper since it was supported at least by one arresting officer's discovery of bag, which was located on passenger's side of transmission hump of defendant's automobile but within reach of driver and from which butt of loaded gun was protruding; however, any error in such regard would not have amounted to reversible error. *Id.*

In prosecution for carrying a dangerous weapon, prosecutor's reference to defendant during argument to jury as a "burglar, thief, robber" was improper but did not prejudice defendant in view of fact that prosecutor ceased his argument immediately upon using the objectionable words, that trial court clearly instructed jury shortly before prosecutor's improper remark that evidence of defendant's prior convictions was introduced solely for a limited purpose and that both prosecutor and defense counsel repeated and reemphasized the limited purpose for which evidence of prior convictions had been introduced. *J. D. Maxwell v. United States* (D.C. App. 1972, 297 A. 2d 771; cert. denied 93 S. Ct. 2740, 412 U.S. 921).

Purpose of carrying weapon

Defendant's purpose of showing new found pistol to his girl friend did not amount to innocent or momentary possession such as would be a defense to charge of carrying pistol without a license. *M. Hines v. United States* (D.C. App. 1974, 326 A. 2d 247).

Search and seizure

Where police officers who stopped defendant's car assertedly to check possession and validity of defendant's driver's permit and automobile registration had not observed defendant violate any traffic laws and had no adverse prior information about defendant or his vehicle before making the stop and where officers acknowledged that defendant had aroused their suspicions by driving around in a residential area and by the fact that he appeared to be watching the officers in his rear view mirror, defendant's acts as reported by the officers were too innocuous to warrant temporary seizure for questioning and where stop was not based on articulable suspicion of criminal behavior or justified as part of systematic, random program of traffic stops, defendant was entitled to suppression of .38-caliber revolver and unregistered sawed-off shot gun found in search of defendant's vehicle incident to defendant's arrest on an outstanding traffic warrant. *United States v. K. L. Montgomery* (1977, 561 F. 2d 875, 182 U.S. App. D.C. 426).

Where three policemen alighted from two squad cars near where defendant was standing and one demanded

identification from him, this was show of authority sufficient to restrain his liberty and was "seizure." *W. J. Crowder v. United States* (D.C. App. 1977, 379 A. 2d 1183).

Defendant's presence at scene of observed crime constituted sufficient basis for making further inquiry, and in view of police officer's testimony concerning conditions at that time and place, officer could fairly conclude from defendant's nervous manner and attempt to shield newspaper from view that weapon was enclosed therein, and whether officer then squeezed newspaper while it was in defendant's hands or took paper from him, intrusion was limited to examination of "very object of hazardous concern" and as such was reasonable under Fourth Amendment. *Id.*

Seizure of handgun and dollar bill after officer observed butt end of handgun on floor of pickup truck when he approached open passenger door and observed that neatly folded dollar bill was lodged between armrest and the open door was valid under plain view exception to warrant requirement. *J. R. Lewis v. United States* (D.C. App. 1977, 379 A. 2d 1168).

Where all occupants of vehicle were under arrest and vehicle lacked valid tags, it was proper to impound vehicle. Once vehicle was properly impounded, inventory of its contents leading to discovery of hats and masks was proper. *R. B. Punch v. United States* (D.C. App. 1977, 377 A. 2d 1353).

Fourth Amendment rights of defendant were not violated when trial court, over defendant's objection, ordered surgical removal of bullet from defendant's arm and allowed its admission in evidence; such actions proper where evidence thus sought was relevant and could have been obtained in no other way, where operation was minor and performed by skilled surgeon, and where, before operation was performed, trial court held adversary hearing and defendant was given opportunity for appellate review. *United States v. J. L. Crowder* (1976, 543 F. 2d 312, 177 U.S. App. D.C. 165; cert. denied 97 S. Ct. 788, 429 U.S. 1062).

Inasmuch as suitcase containing shoulder holster in immediate area of premises used by defendant cannot be carved out of Fourth Amendment protection afforded defendant in area even if he did not know of suitcase or consciously thought he had no interest in it, conviction of assault with a dangerous weapon and of carrying a pistol without a license is subject to being reversed, case is subject to being remanded for new trial, and issues of credibility have to be resolved without corroborative weight afforded shoulder holster and identification by victim of assault. *H. S. Ward v. United States* (D.C. App. 1976, 365 A.2d 378).

Where police received telephone tip from unknown informant indicating that grey bearded man wearing blue denim pants was standing in certain phone booth and had illegal pistol on his person, police arrived minutes later and found defendant in phone booth with grey beard and mustache and wearing blue denim pants, and defendant appeared to conceal something as police approached, reliability of informant's information was established, and thus police had reason to fear that defendant was carrying firearm on his person and were entitled for their own protection to conduct limited search of defendant for weapons. *P. W. Lawson v. United States* (D.C. App. 1976, 360 A.2d 38).

Where police officers stopped defendant, confronted defendant while he was behind wheel of automobile, asked for identification, arrested defendant pursuant to warrant, and as such arrest was being effected, friend of defendant approached car and began to speak to defendant, who was at that time standing next to driver's door of automobile, and while defendant was standing next to door and defendant's friend was walking around behind the automobile, police officer put his head inside automobile window and saw a pistol stuck between driver's seat and console, seizure of pistol is lawful, in that it was in area in which defendant or his friend might have gained possession of it. *E. H. Pinkney v. United States* (D.C. App. 1976, 360 A. 2d 35).

Frisk of suspect was lawful where it occurred after officer received radio report of citizen's complaint of "man exposing himself and Peeping Tom," where officer sighted suspect, who generally matched description given, within one hour and only one block from location of reported offense, and where suspect reacted evasively upon seeing

police cruiser. *T. W. Robinson v. United States* (D.C. App. 1976, 355 A.2d 567).

Where demand for defendant's license and registration was made in legitimate investigation of speeding offense which police officers had earlier witnessed, pistol, butt end of which was protruding from paper bag resting between car seat and open door and which was in plain view during police officer's investigation, was subject to seizure and can properly be introduced into evidence. *M. E. Hemsley v. United States* (D.C. App. 1976, 353 A.2d 14).

Even though evidence was seized pursuant to arrest based on warrant which called for arrest of another man, suppression of evidence is not required where arrest was made pursuant to presumably valid warrant and, although arrest was mistaken, it was carried out by police officers acting reasonably and in good faith. *R. B. Sanders v. United States* (D.C. App. 1975, 339 A.2d 373).

Where alleged assault victim informed police that her husband had threatened to shoot her with a gun and, after husband was frisked and apartment searched without result, stated that gun must be in certain automobile, which was accurately described, and police frisked husband and defendant who were then both sitting in described automobile, exigent circumstances existed for warrantless search of automobile, which belonged to defendant, and thus pistol and ammunition which were found in search of automobile are not fruits or illegal search so as to be inadmissible in subsequent prosecution of defendant. *United States v. W. F. Wilkerson* (D.C. App. 1975, 338 A.2d 441).

Even though police officer who observed two men at 10 p.m. knocking on front door of house located in area having numerous burglaries and observed men hurriedly walk from front door upon seeing him was justified in stopping men to inquire if they resided at house, where men produced identification upon officer's request and further inquiry of occupant of house while men were detained failed to develop articulable facts that they had committed or were about to commit a crime, continued detention of men and frisk of their persons while their identifications were checked out constitutes unreasonable seizure, precluding admission of items discovered during frisk. *G. Coleman v. United States* (D.C. App. 1975, 337 A.2d 767).

Where pretrial motion to suppress has been denied and, realistically, only available issue in "possession of contraband" case is search or seizure, approved procedure is to stipulate the facts as alleged in information and have court render verdict thereon in order to preserve Fourth Amendment issue on appeal. *United States v. J. L. Allen* (D.C. App. 1975, 337 A.2d 512).

Where defendant, who had been stopped while operating his motor vehicle, had been placed under valid arrest, defendant's passenger was not in possession of a valid permit and police officers, being aware that recent crowd violence had resulted in injury to policeman, placed defendant and his passenger in one of the squad cars to transport them to nearby police station, one of the arresting officers rightfully entered defendant's automobile, which was blocking traffic, and, thus, pistol which such officer observed in plain view as he glanced at an area near clutch and brake pedal was properly seized, even if the passenger had been illegally arrested. *G. H. Jones v. United States* (D.C. App. 1974, 330 A.2d 248).

Where passenger-owner of automobile told police officer that defendant driver had a gun, police officer had constitutional justification for seizing gun and arresting defendant for carrying pistol without a license even if gun was seized from automobile seat as defendant exposed it to officer's view, as claimed by defendant, rather than from defendant's person, as claimed by officer. *J. E. Poteat v. United States* (D.C. App. 1974, 330 A.2d 229).

Where police officer stopped defendant on basis of six-month-old warrant for assault, where defendant, after being arrested, asked if his passenger could drive the automobile home, where police officer went to automobile to see if passenger had a driver's license, where officer searched under the front seat of the automobile for a weapon, and, after completing that search, observed gun under front seat armrest while he was standing outside the automobile, the weapon was in plain view so that there was no search or unlawful seizure, even though the

search under the seat may not have been reasonable and regardless of whether the arrest on the six-month-old warrant was a sham. *R. E. Rippey v. United States* (D.C. App. 1974, 322 A.2d 276).

Facts known to police officer, including his observation of assault victim and the victim's spontaneous positive identification of defendant, unquestionably gave officer probable cause to arrest, and the ensuing search of defendant which uncovered pistol was therefore valid as incidental to the arrest. *M. W. Hardy v. United States* (D.C. App. 1974, 316 A.2d 867).

Even if police officer did not have probable cause to arrest defendant when he approached him, a protective frisk of defendant's outer clothing was justified by fact that assault victim had positively identified defendant as his assailant and had told the officer that defendant was armed, and by fact that, as the officer approached defendant, he saw defendant start to reach in his pocket. *Id.*

Where first officer, believing that defendant was a major narcotics violator, stopped his cruiser and confronted defendant, who satisfied officer that defendant was not wanted on bench warrant, and where second officer saw defendant reaching several times to put his hand on his back pocket, belief of second officer that defendant might have been armed and dangerous was reasonable, so as to justify search which revealed pistol, in view of fact that second officer had not been able to hear conversation between first officer and defendant and did not speak to first officer before second officer reached into defendant's pocket and discovered pistol. *W. H. Lyons v. United States* (D.C. App. 1974, 315 A.2d 561).

Where police officers watched defendants stalk two were heard, where they were told "they went down the street in a red car," where officers observed red car traveling without lights within three or four blocks of such location, and where they observed occupants acting as if they were hiding something, officers acted properly in stopping car and ordering occupants out of it, thereby giving one officer opportunity to be in position to obtain plain view of shotgun and pistol. *G. S. Crawley v. United States* (D.C. App. 1974, 314 A.2d 487).

Where police officers watched defendants stalk two female pedestrians at 2:00 in the morning, return to their car, depart abruptly, and lead police officers in high-speed chase, and where one occupant had been seen leaning down in the front seat, police officers were justified in stopping the car and searching under the front seat and behind the glove compartment where stolen, unlicensed pistol was found, after the occupants had been removed from the car. *United States v. J. W. Thomas and W. L. Sutton* (D.C. App. 1974, 314 A.2d 464).

Police officers, after properly stopping car and frisking passenger, who was found to be carrying a loaded pistol, had probable cause to infer that some joint criminal enterprise was planned and to make a warrantless search of the car, resulting in the discovery of another revolver under driver's seat. *R. W. Jeffreys, Jr., et al. v. United States* (D.C. App. 1973, 312 A.2d 308).

Although defendant was seated in a car parked in an alley in a high crime area at approximately 3:30 A.M., and although it appeared that defendant, upon investigation by officers, began to get nervous and fumbled with something in area of his seat, it was not reasonable for officers to open car door, and search of car did not come within plain view or within any of other exceptions to warrant requirement, where there was no police report accusing defendant of having a gun, and there was no reason to believe that a crime other than a parking offense had been committed. *J. A. Tyler v. United States* (D.C. App. 1973, 302 A.2d 748).

Where there had been no report of a crime in area, police officer at time of search was not investigating any criminal act, defendant's actions were not suspicious and incident occurred in afternoon, police officer did not have reason to believe that defendant was possessed of a weapon or that crime had been committed or was in process of commission, stop and frisk of defendant and seizure of pistol from defendant's person was not reasonable and pistol was inadmissible in prosecution for carrying a pistol without a license. *T. Kenion v. United States* (D.C. App. 1973, 302 A.2d 723).

Where police officer was trying to ascertain the name of owner of an automobile he had ample reason to believe was stolen when officer inadvertently came upon pistol in glove compartment at police station parking lot where defendant and vehicle had been taken following arrest, the warrantless search and the seizure of the pistol, which served as basis for subsequent prosecution of carrying pistol without a license and possessing an unregistered firearm and unlawfully possessing ammunition, was not unreasonable. *P. Patterson v. United States and District of Columbia* (D.C. App. 1973, 301 A. 2d 67).

Putative police regulation requiring a frisk of anyone getting into a patrol car whom the police don't know or believe to have committed a crime did not justify the frisk of defendant, resulting in discovery that he was carrying an unlicensed pistol, where one police officer candidly testified that in his own mind defendant was free to go before the frisk took place, and where, clearly, the frisk occurred in spite of the fact that police officers were not even suspicious that defendant was armed or dangerous. *I. Gilchrist v. United States* (D.C. App. 1973, 300 A. 2d 453).

Where police officer, in investigating gunshot, approached parked automobile and asked driver, who had been pointed out, by other persons, to step from the vehicle, officer possessed right under the circumstances to be in position to have view of pistol lying on front seat, and seizure of the pistol, which was within plain view of officer, was proper and was not objectionable as product of a search, illegal or otherwise. *A. Ragland v. United States* (D.C. App. 1973, 299 A. 2d 141).

Where police officer heard the squeal of tires as defendant's car turned corner, observed car back into driveway across street from squad car, approached defendant's car to ascertain registration and permit, was warned by second officer that defendant was "bent over, inside the car," observed defendant's furtive movements, and observed defendant get out of car and lock door, no justification for warrantless search was presented. *R. C. Watts v. United States* (D.C. App. 1972, 297 A. 2d 790).

Actions of police officers in stopping rented vehicle in order to determine if the defendant had proper license and rental agreement was reasonable, and seizure of pistol that was in plain view of officer who was looking at interior of car with flashlight while other officer was engaged in conversation with defendant did not violate the Fourth Amendment. *R. F. Palmore v. United States* (D.C. App. 1972, 290 A. 2d 573; aff'd 93 S. Ct. 1670, 411 U.S. 389).

Self-defense

In prosecution for carrying a pistol without a license, even if defendant had showed facts sufficient to justify instruction on possession of weapon for self-defense, requested instruction requiring acquittal if jury found possession of pistol was for an innocent purpose was too broad and was properly refused. *F. T. Mitchell v. United States* (D.C. App. 1973, 302 A. 2d 216).

Sentences

Trial court's imposition of a condition of restitution as part of sentence imposed upon defendant convicted of assault with a deadly weapon and possession of a pistol without a license is not contrary to statute nor an abuse of trial court's sentencing discretion. *J. L. Barker v. United States* (D.C. App. 1977, 373 A. 2d 1215).

Where trial court did not abuse its discretion nor deny defendant any significant right by virtue of its consideration of defendant's prison records, which defendant claimed were vague and unreliable, in entertaining defendant's motion for reduction of sentence which due to administrative error was not reached for consideration until over two years after imposition of sentence, the Court of Appeals would not disturb trial court's ruling denying motion. *D. W. Walden v. United States* (D.C. App. 1976, 366 A.2d 1075).

In view of defendant's arrest and conviction record as a whole, fact that sentencing judging mentioned in passing that defendant had been convicted as adult for petit larceny whereas he had only been arrested for that offense does not invalidate court's action in finding that defendant would derive no benefit from sentence under Federal Youth Corrections Act and in imposing three to nine-year adult sentence, made to run consecutively to term of 15 to

45 years imposed in another case. *D. A. Forbes v. United States* (D.C. App. 1976, 366 A.2d 144).

Imposition of consecutive sentences for assault with a dangerous weapon and carrying a dangerous weapon is proper, notwithstanding that offenses arose out of the same transaction, since offense of carrying a dangerous weapon requires proof that the weapon was unlicensed while offense of assault with a dangerous weapon does not. *R. S. Hammond v. United States* (D.C. App. 1975, 345 A. 2d 140).

Convictions arising from separate indictment handed down on same date can not be relied on to enhance punishment as third offender. *D. L. Washington v. United States* (D.C. App. 1975, 343 A. 2d 560).

Fact that jury made no finding as to prior felony convictions did not preclude sentencing under repeat offender provision. *C. C. Anderson v. United States* (D.C. App. 1974, 326 A. 2d 807; cert. denied 95 S. Ct. 1405, 420 U.S. 978).

Where enhanced penalty provisions for conviction of carrying a dangerous weapon were not properly invoked, sentence imposed must be vacated and case remanded for resentencing. *C. Savage v. United States* (D.C. App. 1974, 313 A. 2d 880).

Where defendant had been convicted of assault with intent to kill armed with dangerous weapon, with sentence of from three to nine years, for assault with dangerous weapon, with concurrent two to six-year sentence, and carrying pistol without license, with concurrent one-year sentence, two to six-year sentence would be vacated on appeal, without remand. *United States v. E. T. Wimbush* (1973, 475 F. 2d 347, 154 U.S. App. D.C. 236).

Trial judge's statement that it was almost inconceivable that youth, who had been convicted of two counts of assault with a dangerous weapon and one count of carrying a dangerous weapon, could be handled under Federal Youth Corrections Act in view of his prior convictions of armed robbery and assault with dangerous weapon, his extensive juvenile record and fact that he had repeatedly absconded from juvenile correctional facilities constituted a sufficient affirmative on-the-record finding that youth would not benefit from treatment under the Act and trial judge's refusal to sentence youth under the Act was within his discretion. *L. T. Paul v. United States* (D.C. App. 1973, 301 A. 2d 226).

Speedy trial

Where delay preceding indictment was reasonable use of prosecutorial discretion and was not intended to gain tactical advantage over defendant, and where defendant had been arrested within one month of offense and had been contacted by Government several times prior to his indictment, there was failure to show prejudice from asserted inability of defendant to reconstruct his activities on day of offense. *H. Tolliver v. United States* (D.C. App. 1977, 378 A. 2d 679).

Forty-nine-week interim between arrest and trial did not deny defendant a speedy trial since although demand for trial was timely made and defendant was ready for trial on all trial dates except during brief change of counsel, there was a clear lack of prejudice in that, among other things, defendant was not incarcerated and there were no identification or alibi issues that could have been eroded by the delay, at least two months' delay was of defendant's own making and 20 days before dismissal of the information for want of a speedy trial the same trial judge had found no speedy trial violation. *United States v. R. A. Perkins* (D.C. App. 1977, 374 A. 2d 882).

Right to speedy trial of defendant, charged with armed robbery, assault with dangerous weapon, and of carrying a pistol without a license, was not impinged by nine-month delay extending from his indictment to his trial where, during the first two months defendant was still at large and police were doing their best to locate him, where defendant did not press a speedy trial right until five months after he was arrested, and where record was sufficient to sustain finding that defendant suffered no prejudice to his defense which could be attributed to the delay at the postarrest stage of the prosecution. *United States v. L. Parish* (1972, 468 F. 2d 1129, 152 U.S. App. D.C. 72; cert. denied 93 S. Ct. 1430, 410 U.S. 957).

Verdict

Verdict finding defendant who allegedly shot victim with pistol, guilty of manslaughter and not guilty of carrying pistol without license is not fatally inconsistent and does not require reversal. *T. Steadman v. United States* (D.C. App. 1976, 358 A. 2d 329).

Fact that jury acquitted defendant on charge of carrying a dangerous weapon did not require them to find defendant not guilty on charge of assault with deadly weapon. *F. C. Winters v. United States* (D.C. App. 1974, 317 A. 2d 530).

Witnesses

Failure of trial court to admit into evidence prior inconsistent statement of a witness, after witness did not deny its truth, was error, but such error was not prejudicial where the inconsistent statement was read in whole by the witness to the jury and was used extensively by defense counsel in cross-examination. *C. A. Jefferson v. United States* (D.C. App. 1974, 328 A. 2d 85).

Prior inconsistent statement is admissible only to impeach credibility of a witness and may not be used as affirmative proof of its contents. *Id.*

Competency of mentally retarded 18-year-old prosecutrix to testify in prosecution for assault with intent to commit rape while armed, assault with a dangerous weapon and carrying a dangerous weapon, was a threshold question of law committed to the trial court's discretion; it remained for the jury, however, to assess credibility of the witness and the weight to be given her testimony. *United States v. H. Benn, Jr.* (1973, 476 F. 2d 1127, 155 U.S. App. D.C. 180).

§ 22-3205. Exceptions to section 22-3204.

NOTES TO DECISIONS

Burden of proving exception

Where a defendant interposes an affirmative defense such as an exception in a statute, it is his burden to bring himself within the exception rather than that of the prosecutor to negative it. *R. W. Middleton v. United States* (D.C. App. 1973, 305 A. 2d 259).

Corrections officer

Under statutory provision excepting from prohibition against carrying pistols "jail wardens, or their deputies, policemen or other duly appointed law enforcement officers, or to members of the Army, Navy, or Marine Corps of United States or of the National Guard or Organized Reserves when on duty," corrections officer is not prohibited from carrying pistol whether or not "on duty." *United States v. D. Pritchett, Jr.* (1972, 470 F. 2d 455, 152 U.S. App. D.C. 307).

Federal protective officer

Defendant, who was a federal protective officer within the general services administration, was not, for purposes of statute prohibiting carrying a pistol without a license, within the exemption which applies to "policemen and other duly appointed law-enforcement officers," where there was no authorization for federal protective service officers to carry firearms other than while on duty or in a travel status to and from duty assignments, while defendant at the time of his arrest was returning from a personal trip to Baltimore totally unrelated to his duties as a federal protective service officer, though, as such officer, he had the same civil service classification as applied to members of the metropolitan police department. *R. W. Middleton v. United States* (D.C. App. 1973, 305 A. 2d 259).

§ 22-3206. Issue of licenses to carry pistol.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Application for license

Applications for licenses to carry concealed weapons should be treated under proper regulatory criteria duly adopted. *A. F. Jordan, Jr. v. District of Columbia Board of Appeals and Review* (D.C. App. 1974, 315 A. 2d 153).

Petitioner's 1972 application for license to carry concealed weapon could not be considered merely an extension of his 1969 application, which contained answers to various questions relevant to licensing requirement, since petitioner's change of position respecting his willingness to furnish such information on 1972 application could give rise to inference that his qualifications or status had changed. *Id.*

Construction

This section authorizing superintendent of police of District of Columbia to issue a license to carry a concealed weapon when it appears that the applicant has good reason to fear injury to his person or property or has any other proper reason for carrying a pistol and that he is a suitable person to be so licensed did not preempt field of gun legislation and preclude chief of police from adopting additional license information requirements and criteria, specifically requirement that applicant present substantial evidence of a specific threat to his life that cannot be alleviated by use of conventional methods; such additional information is relevant to licensing decision and failure to furnish it forms an adequate basis for denial of the license. *A. F. Jordan, Jr. v. District of Columbia Board of Appeals and Review* (D.C. App. 1974, 315 A. 2d 153).

Denial of license—Burden of proof

Where application for license to carry concealed pistol made no allegations of threats to applicant's person or property and he had not made any timely reports of any alleged threats and where the pistol, for which a license was applied, was an automatic pistol, application was fatally defective under regulations in effect; applicant, who was given opportunity to correct such infirmities in his application but did not do so, is not entitled to relief from denial of application on theory that he need only allege suitability and that police then have burden of going forward to disprove applicant's claims. *A. F. Jordan, Jr. v. District of Columbia et al.* (D.C. App. 1976, 362 A. 2d 114).

— Procedural requirements

Deliberative process incident to Board of Appeals and Review's final orders in regard to application for license to carry concealed pistol is not covered by "Sunshine Act"; thus, Board's orders, which affirmed Metropolitan Police Department's denial of application, are not defective either because Board members arrived at their decision at nonpublic conference after public hearing in which applicant and others testified or because no transcript of such conference was made. *A. F. Jordan, Jr. v. District of Columbia et al.* (D.C. App. 1976, 326 A. 2d 114).

Regulations—Publication

Whatever rule is used in District of Columbia to determine eligibility for a license to carry a handgun, it must be adopted, published, and applied according to law, and remain consistent with congressional policy. *A. F. Jordan, Jr. v. District of Columbia Board of Appeals and Review* (D.C. App. 1974, 315 A. 2d 153).

Fact that certain of the police regulations governing applications for license to carry concealed weapon in District of Columbia had not been compiled and published as required by statute did not require blind issuance of such a license to petitioner, who failed to satisfy such regulations. *Id.*

— Reasonable limitations

Limitation placed on categories of licensable weapons by regulation, which prohibits granting licenses for automatic or semiautomatic pistols, is reasonable. *A. F. Jordan, Jr. v. District of Columbia et al.* (D.C. App. 1976, 362 A. 2d 114).

§ 22-3210. Licenses of dealers of weapons—Records—By whom granted—Conditions thereof.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 22-3214. Possession of certain dangerous weapons prohibited—Exceptions.

NOTES TO DECISIONS

Abuse of discretion

Where various tactical decisions and omissions cited by defendant cannot properly be characterized as "newly discovered evidence" and it is not probable, in light of strength of Government's evidence, that they would lead to acquittal at new trial, denial of defendant's motion for new trial is not abuse of discretion. *G. R. Woody v. United States* (D.C. App. 1977, 369 A.2d 592).

Appeal and error

Appellate review of issue whether trial court erred in allowing in-court identifications of accused is precluded where accused did not file a pretrial motion to suppress identification evidence and no reason, which would excuse such failure, was advanced. *A. N. White v. United States* (D.C. App. 1976, 358 A.2d 645).

Assistance of counsel

Alleged failure of defendant's trial counsel to investigate case and make proper objections at trial does not constitute ineffective assistance of counsel but rather, objectively viewed, defendant's representation was effective and strategically prudent. *G. R. Woody v. United States* (D.C. App. 1977, 369 A.2d 592).

Failure to preserve, for appeal, the issue whether trial court erred in allowing in-court identifications of accused did not deny effective assistance of counsel where sole ground advanced for suppression of in-court identifications is the failure of government to conduct pretrial lineups and there is no indication that on-scene confrontations between accused and government witnesses were tainted by any impermissible police procedure. *A. N. White v. United States* (D.C. App. 1976, 358 A.2d 645).

Accused, who asserted that there had been inadequate preparation by his trial counsel, was not denied his right to effective assistance of counsel, absent any indication of any substantial defense which accused might have advanced and which was excluded as result of such alleged lack of preparation. *Id.*

Burden of proof

In a prosecution for possession of certain prohibited articles, including dangerous weapons, once Government alleges possession of prohibited article, burden does not shift to accused to establish innocence of possession but burden rests on Government to prove beyond reasonable doubt all elements of offense. *United States v. V. B. Brooks* (D.C. App. 1974, 330 A.2d 245).

Constitutionality

Statute which prohibits a person from possessing, with intent to use unlawfully against another, an imitation pistol or dagger, dirk, razor, stiletto, or knife with a blade longer than three inches or other dangerous weapon is not void for vagueness on ground that term "dangerous weapon" is not defined with sufficient particularity. *United States v. V. B. Brooks* (D.C. App. 1974, 330 A.2d 245).

Cross-examination

Where defendant, charged with possession of prohibited weapon and with assault with a dangerous weapon, called as a character witness his employer who testified that defendant had a good reputation in the community of keeping the peace and good order, cross-examination of employer as to whether he had heard that defendant had been convicted of the crime of false pretenses was proper. *S. M. Darden v. United States* (D.C. App. 1975, 342 A.2d 24).

Double jeopardy

Defendant's conviction of assault and of possession of prohibited weapon, both offenses arising out of same incident, does not result in double jeopardy, since each offense demanded proof of essential element not needed in other. *J. E. Walden v. United States* (D.C. App. 1976, 351 A.2d 515).

Elements of offense

In a prosecution for possession of certain prohibited articles, including dangerous weapons, Government must establish not only that accused possessed a proscribed article but also that accused possessed it with intent to use it unlawfully against another. *United States v. V. B. Brooks* (D.C. App. 1974, 330 A.2d 245).

Intent to use unlawfully is a required element in both the offense of assault with a dangerous weapon and the offense of possession of a dangerous weapon with intent to use unlawfully against another. *Id.*

Evidence—Admissibility

Testimony of source relied upon in affidavit in support of search warrant, given at prior prosecution of defendant, is not admissible at hearing on defendant's motion for return of evidence seized pursuant to warrant to prove that affidavit did not contain requisite probable cause, where testimony was elicited at criminal prosecution in attempt to attack source's credibility and not to attack validity of search warrant and government at prior prosecution did not question source as to validity of affidavit. *D. D. Epstein v. United States* (D.C. App. 1976, 359 A.2d 274).

Even if accused, who elected not to testify at trial, had "testimonial privilege" at trial to don jacket he was alleged to have worn at time of the offenses, denial of request that he be permitted to put on such jacket "to make double sure" that jacket had never been seen by his wife, who had testified that she had never seen the jacket, is not error. *A. N. White v. United States* (D.C. App. 1976, 358 A.2d 645).

—Disclosure to defense

In view of special circumstances of case, including overwhelming evidence of guilt, the fact that only general request for exculpatory evidence was made by defense counsel and the fact that allegedly exculpatory material was turned over to defense at midtrial but defense did not request continuance to seek use of material, preliminary nondisclosure of alleged exculpatory material was not prejudicial. *G. E. Frezzell v. United States* (D.C. App. 1977, 380 A.2d 1382).

Where there was eyewitness testimony as to altercation between victim and defendant and codefendant's giving of shotgun to defendant, expert and other testimony linking shotgun to shooting and eyewitness testimony identifying person carrying shotgun, exculpatory description given by witness who gave police name and address that could not be traced did not create reasonable doubt as to guilt for purpose of determining whether prosecutor violated duty of disclosure in not producing such description until midtrial. *Id.*

—Sufficiency

Evidence which was adequate to enable jury to find that the possession of weapons, which were in a car in which defendants were riding, could be knowledgeably attributable to defendants was sufficient to sustain their convictions for possession of unregistered firearms, possession of prohibited weapons and carrying a dangerous weapon. *United States v. J. C. Matthews* (1973, 480 F.2d 1191, 156 U.S. App. D.C. 299).

Instructions

Trial court properly instructed jury on testimony of accomplices rather than testimony of informers with respect to testimony of witness who had pled guilty to one count of indictment under which he and defendant were charged on the day before defendant's trial and who had participated in the crime with defendant. *United States v. M. W. Thorne* (1975, 527 F.2d 840, 174 U.S. App. D.C. 57).

Promptly corrected misstatement of instruction by court to effect no specific intent and only general intent need be found for conviction on count charging possession of a prohibited weapon was not so confusing as to prevent fair deliberation of defendant's innocence by jury

which convicted him of the greater offense of assault with a dangerous weapon, the general intent crime, and reached no verdict, as it was instructed, on lesser included offense of possession of a prohibited weapon. *S. M. Darden v. United States* (D.C. App. 1975, 342 A.2d 24).

Jury question

Question whether wooden table leg which was approximately two inches thick and two and one-half feet long and which was thrown at mailman was a "dangerous weapon" within meaning of statute prohibiting the possession of a dangerous weapon with intent to use unlawfully against another was for jury. *United States v. V. B. Brooks* (D.C. App. 1974, 330 A.2d 245).

Lesser included offense

Although defendant's robbery and assault with a dangerous weapon convictions have to be vacated, defendant's conviction of possession of prohibited weapon, which requires proof of specific intent to use weapon unlawfully against another, an element not present in armed robbery, robbery, or assault with a dangerous weapon, does not merge into his armed robbery conviction. *G. R. Woody v. United States* (D.C. App. 1977, 369 A.2d 592).

Armed robbery can be committed without also violating this section prohibiting possession of certain weapons; thus, possession of prohibited weapon is not lesser included offense of crime of armed robbery. *G. F. Washington v. United States* (D.C. App. 1976, 366 A.2d 457).

Miranda rights

Evidence, including testimony of police officer, is sufficient to support trial judge's finding that defendant charged with assault and possession of prohibited weapon knowingly and intelligently waived his constitutional rights, despite fact that police officer failed to secure defendant's signature on standard police form which acknowledged that arrestee understood his rights and chose to waive them. *J. E. Walden v. United States* (D.C. App. 1976, 351 A.2d 515).

Contention that police did not give Miranda warnings immediately after arrest and before incriminating statements were made gives rise to credibility question of sort which is to be determined by trier of fact, and his determination is not subject to review nor will it be set aside on appeal. *Id.*

Plain error

In prosecution for armed robbery and possession of a prohibited weapon, neither incomplete instruction on flight nor other alleged omissions by trial counsel constitutes plain error affecting substantial rights of defendant. *G. R. Woody v. United States* (D.C. App. 1977, 369 A.2d 592).

Search and seizure

Police officer who, after lawfully arresting defendant in living room, accompanied defendant's niece to back bedroom to get clothes for defendant, and who there inadvertently discovered a shotgun and leather shoulder bag similar to those used in killing, was justified in seizing those items pursuant to the plain view exception to the Fourth Amendment's search warrant requirement. *D. E. Pittman v. United States* (D.C. App. 1977, 375 A.2d 16).

Where defendant was alone and out of automobile, either handcuffed or seated in police cruiser, at time of search and arresting officer, even with knowledge of defendant's bending movement in automobile as observed by another officer, had no reason to fear destruction of evidence in connection with arrest of defendant for driving without a permit after stopping him for a routine traffic spot check at 11:15 a.m., search of automobile, which was not of area searched "within his reach" and which uncovered a blackjack, exceeded permissible scope of search incident to lawful arrest. *L. Jacobs v. United States* (D.C. App. 1977, 374 A.2d 850).

Federal government agents who were on premises pursuant to lawfully issued search warrant for seizure of pornographic material were authorized to seize weapons which were inadvertently discovered in their plain view after determining that possession of one such weapon, a modified carbine, is a violation of this section and that other weapons were unregistered in violation of police regulations. *D. D. Epstein v. United States* (D.C. App. 1976, 359 A.2d 274).

Police officer, upon encountering defendant at 8:30 P.M. on stairs between third and fourth floors of hotel whose owner had requested special police attention because of the high crime rate in the hotel, did not place defendant under arrest in simply telling him to "hold it" after defendant had made a quick move to go back up the stairs, and the district court therefore erroneously measured the action of the officer, including a search of defendant's person and seizure of a sawed-off shotgun and shotgun shells, against the probable-cause-to-arrest standard, rather than against the standard of "reasonableness" appropriate for a temporary detention. *United States v. W. J. Coates* (1974, 495 F.2d 160, 161 U.S. App. D.C. 334).

Entry of hotel room without warrant and seizure of sawed-off shotgun was valid, where shotgun had first been observed on table by member of hotel staff, entry by the police was peaceful and during the daytime, and occupant was a nonresident who had recently checked into a transient hotel, since the sawed-off shotgun posed ominous threat to the community. *United States v. E. C. McKinney* (1973, 477 F.2d 1184, 155 U.S. App. D.C. 299).

Speedy trial

After trial judge, who recused himself six days after accepting defendant's guilty plea, offered defendant option of either certifying case to another judge for sentencing or vacating his guilty plea, defendant's decision to vacate his guilty plea did not necessarily allow "clock to be turned back to zero" for purposes of timing delay, and thus Government had to satisfactorily explain 13-month delay between defendant's arrest and dismissal of indictment. *United States v. J. A. Bolden, Jr.* (D.C. App. 1977, 381 A.2d 624).

Government successfully rebutted presumption that any prejudice resulted from excessive delay of 13 months between defendant's arrest and dismissal of indictment, where defendant was not incarcerated except for six-day period and defendant's anxiety and concern over pendency of misdemeanor charge was diluted by felony charge pending for eight of 13 months complained of and defendant's anxiety and concern over pendency of misdemeanor charge alone for five months following dismissal of felony charge was minimal and defendant conceded that delay in no way impaired his defense. *Id.*

Forty-nine-week interim between arrest and trial did not deny defendant a speedy trial since although demand for trial was timely made and defendant was ready for trial on all trial dates except during brief change of counsel, there was a clear lack of prejudice in that, among other things, defendant was not incarcerated and there were no identification or alibi issues that could have been eroded by the delay, at least two months' delay was of defendant's own making and 20 days before dismissal of the information for want of a speedy trial the same trial judge had found no speedy trial violation. *United States v. R. A. Perkins* (D.C. App. 1977, 374 A.2d 882).

Although period between defendant's arrest and his trial was more than 11 months, where substantial delay was caused by defendant, defendant was released on bail during such time and Government did not engage in action to delay trial, delay is not denial of defendant's right to speedy trial. *G. F. Washington v. United States* (D.C. App. 1976, 366 A.2d 457).

§ 22-3215a. Manufacture, transfer, use, possession or transportation of molotov cocktails, or other explosives for unlawful purposes, prohibited—Definitions—Penalties.

NOTES TO DECISIONS

Construction

Mere fact that Congress in enacting District of Columbia Code provision which expressly prohibits possession of "Molotov cocktails" within District apparently desired to legislate against "Molotov cocktails" and other explosive devices directly under District of Columbia power where it was available did not mean that "Molotov cocktails" were not included within term destructive devices under the National Firearms Act in which Congress chose to resort to registration under taxing power for nationwide applicability. *United States v. J. T. Cruz et al.* (1974, 492 F.2d 217, 2nd Cir.; cert. denied 94 S.Ct. 2649, 417 U.S. 935).

Evidence—Sufficiency

Evidence was not sufficient to support convictions for arson, second-degree burglary while armed with a Molotov cocktail and possession of a Molotov cocktail. *United States v. L. S. Carter* (1975, 522 F. 2d 666, 173 U.S. App. D.C. 54).

Inferences

Giving of instruction that jurors were permitted to infer that second defendant was "guilty of the crimes charged," if they determined, beyond a reasonable doubt, that he was found in unexplained, exclusive possession of recently stolen property was reversible error where the presumed fact of guilt of arson, possession of a Molotov cocktail and second-degree burglary while armed with a Molotov cocktail did not flow from possession of recently stolen military rifles. *United States v. L. S. Carter* (1975, 522 F. 2d 666, 173 U.S. App. D.C. 54).

§ 22-3217. Dangerous articles—Definition—Taking and destruction—Procedure.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 33.—VAGRANCY

§ 22-3302. "Vagrants" defined.

NOTES TO DECISIONS**Constitutionality**

Because of backdrop of changing law and practice in the last five years during which part of this section was declared unconstitutional followed by a plethora of police regulations pertaining to street investigations, record which contained only two incidents involving plaintiff more than five years previously under the then effective vagrancy procedures was insufficient basis upon which to grant relief to plaintiff in his request for class action and a declaration of unconstitutionality of the remaining subsections of this section. *M. J. Gomez v. J. V. Wilson, Chief of Police, et al.* (1973, 477 F. 2d 411, 155 U.S. App. D.C. 243; remanding 323 F. Supp. 87).

Policy vagrancy observation practices

Alleged improper vagrancy observation practices by the District of Columbia police furnished no basis for federal jurisdiction by virtue of the civil rights statute giving rise to cause of action for deprivation of rights under color of law. *M. J. Gomez v. J. V. Wilson, Chief of Police, et al.* (1973, 477 F. 2d 411, 155 U.S. App. D.C. 243; remanding 323 F. Supp. 87).

Remand

Since record based on two five-year-old incidents involving plaintiff and District of Columbia vagrancy procedures was insufficient, due to new police regulations and court decisions, to authorize Court of Appeals to adjudicate question of constitutionality of remaining provisions of this section, or the propriety of class action injunctive relief against a pattern of police misconduct, but new information arising after case had left district court was sufficient to entitle plaintiff to an opportunity to update lawsuit as predicate for possible further relief, Court of Appeals would remand cause for purpose of renovating pleadings. *M. J. Gomez v. J. V. Wilson, Chief of Police, et al.* (1973, 477 F. 2d 411, 155 U.S. App. D.C. 243; remanding 323 F. Supp. 87).

Chapter 34.—MISCELLANEOUS

§ 22-3409. Mislabelling potatoes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 22-3419. Council to make rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 22-3425. Prosecutions for violations of section 22-3423—Corporation Counsel defined.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 22-3427. Breaking and entering vending machines and similar devices—Penalties.

NOTES TO DECISIONS**Indictment**

Indictment charging that defendant "broke open, opened, and entered without right a juke box, with intent to carry away a part of such device, and something contained therein" was insufficient for failure to aver that property belonged to someone other than defendant. *United States v. W. E. Pendergrast* (D.C. App. 1973, 313 A. 2d 103).

Chapter 35.—SEXUAL PSYCHOPATHS

§ 22-3501. Indecent acts—Children.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24-482.

NOTES TO DECISIONS**Abuse of discretion**

Testimony in prosecution for taking indecent liberties with a minor that complainant had a reputation both for unchastity and as an agitator would have been irrelevant and its exclusion did not constitute an abuse of discretion. *A. R. Springs v. United States* (D.C. App. 1973, 311 A. 2d 499).

Constitutionality

Child molestation statute, prohibiting enticing a minor child to a place for purposes of taking immoral, improper or indecent liberties with the child, described with reasonable specificity the conduct which was proscribed and was not void for vagueness. *V. J. Moore v. United States* (D.C. App. 1973, 306 A. 2d 278).

Corroboration

In prosecution for taking indecent liberties with six-year-old child, there was adequate corroboration of complainant's testimony to warrant submission of case to jury and evidence was sufficient to enable jury to conclude beyond reasonable doubt that complainant's account of the incident was not a fabrication. *C. R. Robinson v. United States* (D.C. App. 1976, 357 A. 2d 412).

Uncorroborated testimony of the complaining witness is insufficient to establish corpus delicti in a child molestation case. *V. J. Moore v. United States* (D.C. App. 1973, 306 A. 2d 278).

Where defendant, who was charged with enticing a minor child to a place for purposes of taking immoral, improper or indecent liberties with the child, admitted that the ten-year-old female complainant was in his apartment at the time in question, where the girl's presence in the apartment was consistent with her version of what took place there, and where, in addition, police officer testified that the building door had been locked, thus corroborating girl's testimony that someone had opened the door for her, those factors, coupled with the girl's "excited" state when she promptly reported the

incident to her mother, enabled fact finder to conclude beyond a reasonable doubt that the girl's account of the crime was not a fabrication. *Id.*

Testimony of complaining witnesses in prosecution for taking indecent liberties with minor as to specific acts of defendant was adequately corroborated by defendant's admissions as to "massages," appearance of girls upon returning home from defendant's apartment, and fact that offense was reported to police on the following day. *C. L. Evans v. United States* (D.C. App. 1973, 299 A. 2d 136).

Counsel—Assistance of

In prosecution for taking indecent liberties with a minor child, in which defendant's available defenses were fully developed during trial and complaining witness was questioned at length during cross-examination, fact that defense counsel was cited for contempt and thereafter declined to question complaining witness further on recross-examination did not deprive defendant of effective assistance of counsel, since decision not to subject witness to recross-examination was a tactical decision prompted by justifiable apprehension that further examination would engender sympathy for witness. *O. R. Johnson v. United States* (D.C. App. 1976, 364 A.2d 1198).

Criminal sentencing

Where trial judge had a uniform policy of refusing disclosure of presentence reports, and where at outset of the sentencing proceeding defense counsel requested permission to inspect the presentence report, at which point judge responded "It's not my policy. Denied," trial judge failed to exercise his discretion under rule providing that "The court before pronouncing sentence may disclose to the defendant's counsel all or part of the material contained in the report of the presentence investigation * * *," which required vacating of sentence and remand of the case for resentencing. *A. R. Springs v. United States* (D.C. App. 1973, 311 A. 2d 499).

Discovery

Refusal, in criminal prosecution which accused was convicted of sodomy, taking indecent liberties with a minor and assault with a deadly weapon and in which three potential government witnesses were of tender age, to grant accused discovery of names and addresses of government witnesses was not abuse of discretion. *J. C. Davis v. United States* (D.C. App. 1974, 315 A. 2d 157).

Refusal to grant accused access to complaining witness' subpoenaed school records which reflected no prior homosexual or other serious behavioral problems, was not reversible error. *Id.*

Evidence—Sufficiency

In prosecution for taking indecent liberties with six-year-old child, there was adequate corroboration of complainant's testimony to warrant submission of case to jury and evidence was sufficient to enable jury to conclude beyond reasonable doubt that complainant's account of the incident was not a fabrication. *C. R. Robinson v. United States* (D.C. App. 1976, 357 A.2d 412).

Evidence, in prosecution for taking indecent liberties with minors, including evidence that defendant inserted his hands in pants of complainant around pubic area, inserted his finger in their vaginas, and massaged their breasts, was sufficient to give rise to inference that there was specific intent to arouse his lust, passion or sexual desires. *C. L. Evans v. United States* (D.C. App. 1973, 299 A. 2d 136).

Indictment

Where indictment charging offense of taking indecent liberties with a minor child erroneously named "Oliver R. Johnson" as defendant, but there was never any question as to true identity of defendant, and indictment apprised defendant of charges against him so that he could adequately prepare his defense, trial court did not err in permitting indictment to be amended to name "Oliver Jolley" as defendant. *O. R. Johnson v. United States* (D.C. App. 1976, 364 A.2d 1198).

Grand jury indictment charging forcible rape, carnal knowledge and indecent liberties was not subject to dismissal on ground that it was based on transcript of sworn testimony before earlier grand jury which returned indictment for carnal knowledge that had been dismissed because of defendant's age, where testimony before first

grand jury was not limited to carnal knowledge charge, there was no limitation of issues or offenses in presentation of evidence to first grand jury, and statement of victim, read to first grand jury in her presence and affirmed by her orally under oath, recited details of two acts of forcible rape. *United States v. S. C. Wagoner* (D.C. App. 1974, 313 A. 2d 719; rehearing denied 321 A. 2d 211; cert. denied 95 S.Ct. 630, 419 U.S. 1052).

Instructions

Instruction in prosecution for taking indecent liberties with minors referring to alternative method of committing offense, whereas only one method was charged in indictment, was not, taken as a whole, such as to authorize jury to convict on grounds not charged. *C. L. Evans v. United States* (D.C. App. 1973, 299 A. 2d 136).

Sentence

Notwithstanding claim that failure to grant credit for time served in pretrial and presentence confinement was a violation of petitioner's guarantee to equal protection as well as the law and public policy of the District of Columbia, conclusive presumption arose that credit was given so as to preclude petitioner from obtaining relief, where petitioner was sentenced to two concurrent three to 10-year sentences on counts charging sodomy and an indecent act on a minor child, although petitioner faced a possible 20-year sentence on sodomy count in that victim was under 16 years of age. *L. A. Arrington v. A. McGruder, et al.* (1974, 490 F. 2d 795, 160 U.S. App. D.C. 227).

Sexual purpose

Aborted attempt to expose child's genitals, as evidenced by removing her pants, fairly could be said to demonstrate a sexual purpose within the terms of child molestation statute proscribing enticing a minor child to a place for purposes of taking immoral, improper or indecent liberties with the child. *V. J. Moore v. United States* (D.C. App. 1973, 306 A. 2d 278).

Specific intent

In prosecution for taking indecent liberties with minor, specific intent to arouse accused may be inferred from accused's actions. *C. L. Evans v. United States* (D.C. App. 1973, 299 A. 2d 136).

Voir dire questions

Refusal, in prosecution for sodomy and taking indecent liberties with a child, to permit accused to ask on voir dire "Is there anyone here who feels" that "sexual acts with a minor are either immoral, illegal or indecent" was not error, in that question was inherently vague and invaded function of trial court by inquiring with regard to proposition of law and in that question asked by judge overcame such later objection and properly focused on potential juror prejudice. *J. C. Davis v. United States* (D.C. App. 1974, 315 A. 2d 157).

Witnesses

In prosecution for taking indecent liberties with a minor child, in which testimony of five- or six-year-old complaining witness was a comprehensible and internally consistent account of what happened, admission of such testimony was not abuse of trial court's discretion, notwithstanding fact that testimony of such witness during voir dire was at times confused and inconsistent. *O. R. Johnson v. United States* (D.C. App. 1976, 364 A.2d 1198).

Where trial court found that six-year-old complainant in indecent liberties case demonstrated an understanding of her duty to tell the truth and a capability to observe and remember, weight to be given her testimony was matter for determination by jury. *C. R. Robinson v. United States* (D.C. App. 1976, 357 A. 2d 412).

§ 22-3502. Sodomy.

NOTES TO DECISIONS

Arrest, search and seizure

In view of violent and brutal nature of crime, strong showing of probable cause, recentness of offense and likely destruction of evidence should entry be delayed, trial court, even while giving proper consideration to seriousness of officers' nighttime intrusion into defendant's apartment, could find that warrantless forced entry was permissible and presented no grounds for suppression of

evidence seized. *R. Brooks, Jr. v. United States* (D.C. App. 1976, 367 A.2d 1297).

Where, even if there is sufficient basis in record for concluding that items seized were in fact within plain view, speed with which apprehension and arrest were consummated and breadth and duration of postarrest activities in defendant's apartment raise substantial possibility that some if not all of evidence was not found, as distinguished from being physically seized, until fatally remote from arrest, reviewing court cannot determine on existing record whether plain view doctrine is applicable. *Id.*

Bill of particulars

Government delinquency in failing to provide accused with bill of particulars was harmless error where complete and formal discovery was afforded and where there was no indication that defense counsel was surprised by trial evidence or was denied necessary information which would have been contained within a bill. *J. C. Davis v. United States* (D.C. App. 1974, 315 A. 2d 157).

Constitutionality

Since defendant's sodomitic act occurred in a public area, he did not have standing to raise potential overbreadth of this section's prohibition of sodomy on grounds that it potentially invades the zone of personal privacy. *J. V. Stewart v. United States* (D.C. App. 1976, 364 A.2d 1205).

This section, by its very terms, proscribes specific conduct and does not single out any particular group of persons; section applies to acts between men, between women, and between a man and a woman and makes no distinction between acts committed by homosexuals, heterosexuals, or bisexuals and thus does not deny equal protection on its face. *Id.*

This section does not violate the establishment clause of the First Amendment on theory that the prohibition against sodomy is a direct and unbroken legacy of the Christian Church. *Id.*

Statute which proscribes solicitation for the purpose of committing sodomy, defined as taking into one's mouth or anus the sexual organ of any other person, does not violate constitutional guarantee of equal protection on its face by prohibiting acts between either two men or a man and a woman but not between two women. *United States v. M. Cozart* (D.C. App. 1974, 321 A. 2d 342).

Defendant who was charged with keeping a bawdy or disorderly house, specifically a commercial establishment resorted to for homosexual activities, had no standing to challenge constitutionality of statutory proscription against sodomy on theory that statute was overbroad in that it could be applied to conduct within private abode between those in a familial relationship as defendant was not himself within the class whose alleged right of privacy was affected by application of the statute. *D. G. Harris v. United States* (D.C. App. 1974, 315 A. 2d 569; rev'g 293 A. 2d 851).

Construction

Cunnilingus is a sodomitic act within purview of statute which defines such act as taking into one's mouth or anus the sexual organ of any other person. *United States v. M. Cozart* (D.C. App. 1974, 321 A. 2d 342).

Cross-examination

In prosecution for sodomy and assault with intent to commit rape, trial court's rulings limiting inquiry into events occurring on day of accused's apprehension are not improper on theory that they restricted his impeachment of certain witness' in-court identification of accused, in light of fact that the limitations were imposed in response to accused's own pretrial motions, that accused was given reasonable opportunity to test witness' in-court identifications and that there was a sufficient inquiry into the matter to provide trier with satisfactory basis for evaluating the truth. *V. A. March v. United States* (D.C. App. 1976, 362 A.2d 691).

Discovery

Where, in prosecution for sodomy and assault with intent to commit rape, inconsistencies in identification testimony of government witnesses were trivial, were fully explored, and stood dwarfed beside positive and detailed identification testimony, detective's missing notations, which were made during initial interview of complainant and others and which assertedly would have substantiated

the alleged inconsistencies, do not rise to level of materiality contemplated by *Brady v. Maryland* that suppression of evidence favorable to accused denies due process if it is material to guilt or punishment. *V. A. March v. United States* (D.C. App. 1976, 362 A. 2d 691).

In proceeding in which accused was convicted of sodomy and assault with intent to commit rape and in which complainant gave positive identification of accused, failure to produce photographs, which were shown to other witnesses during initial investigation and were abandoned following unrelated apprehension of accused, did not deny due process, notwithstanding contention that photographs of person, whom such other witnesses identified as having similarity to perpetrator of offenses, may have revealed image so dissimilar to accused as to discredit such witnesses' identification testimony. *Id.*

Refusal, in criminal prosecution in which accused was convicted of sodomy, taking indecent liberties with a minor and assault with a deadly weapon and in which three potential government witnesses were of tender age, to grant accused discovery of names and addresses of government witnesses was not abuse of discretion. *J. C. Davis v. United States* (D.C. App. 1974, 315 A. 2d 157).

Refusal to grant accused access to complaining witness' subpoenaed school records, which reflected no prior homosexual or other serious behavioral problems, was not reversible error. *Id.*

Discriminatory enforcement

Evidence is insufficient to demonstrate alleged discriminatory enforcement of this section solely against homosexuals especially in view of evidence that the higher incidence of arrests of homosexuals under the section is due to the lack of knowledge by the police concerning heterosexual sodomitic acts. *J. V. Stewart v. United States* (D.C. App. 1976, 364 A.2d 1205).

Evidence which showed that while some women solicited each other for sodomitic acts, only men were arrested for homosexual solicitation under statute which made solicitation for sodomitic acts a crime, where there was no indication as to whether lesbian solicitation was known to the police, showed no more than a failure to prosecute others because of a lack of knowledge and did not show discriminatory enforcement. *United States v. M. Cozart* (D.C. App. 1974, 321 A. 2d 342).

Evidence—Admissibility

In prosecution for sodomy and assault with intent to commit rape, fact that the lighting revealed in several photographs of general scene of the assault differed from lighting on night in question does not render admission of photographs an abuse of discretion, in light of fact that complainant provided minutely detailed explanation of differences in lighting conditions and trial court properly cautioned jury concerning the variance. *V. A. March v. United States* (D.C. App. 1976, 362 A.2d 691).

— Corroboration

Evidence of prosecutrix's behavior and appearance while still in company of defendant, her emotional state when free of defendant and her prompt disclosure of rape when out of his presence, along with her subsequent visit to hospital for examination following events, constituted sufficient independent corroborative evidence to meet sex offense corroboration requirement and support defendant's conviction for rape and sodomy. *H. L. Wallace v. United States* (D.C. App. 1976, 362 A.2d 120).

Identification

In view of complainant's fairly detailed description of her assailant and the reasonableness of photographic array, identification procedure as a whole was not impermissibly suggestive despite detective's statement before showing the photographs that he had included a picture of suspect arrested for another offense whom he believed to have been the man who assaulted complainant or by his alleged statement after complainant selected defendant's photograph that defendant had raped other women in the neighborhood, despite contention that the latter remark increased the likelihood that complainant would pick the same person in a lineup. *R. Harley v. United States* (D.C. App. 1977, 373 A. 2d 898).

Insanity defense

Where defendant, indicted for sodomy, assault with dangerous weapon and mayhem, neither raised defense

of insanity prior to return of jury verdict of guilty nor brought to court's attention prior imprisonment for sex-related crime or attempted suicide while in prison and confinement there for psychiatric treatment, defendant had not been improperly deprived of defense of insanity during trial. *E. T. Hughes v. United States* (D.C. App. 1973, 308 A. 2d 238).

Jencks Act

In prosecution for sodomy and assault with intent to commit rape, detective's notations, which were made during initial interviews of complainant and others and assertedly consisted of words "Negro male, 16-25 years of age. Slim build, 5'8" to 5'9". Black leather three-quarter length jacket and dark trousers," are not a "substantially verbatim recital" of a witness' statement within meaning of Jencks Act. *V. A. March v. United States* (D.C. App. 1976, 362 A. 2d 691).

Preliminary hearing

Defendant, in rape and sodomy prosecution, is not entitled to new trial on theory that he was deprived of his right to preliminary hearing when nolle prosequi was entered by Government to avoid defense questioning of complainant at preliminary hearing where indictment was thereafter secured and where defendant was later furnished complainant's signed statement concerning offense as well as her grand jury testimony. *H. L. Wallace v. United States* (D.C. App. 1976, 362 A. 2d 120).

Privacy rights

Participants in a sodomitic act performed in a public wooded area cannot invoke a right to privacy even though they may have believed that because of the hour of the night and the density of the foliage, their behavior would go unobserved. *United States v. C. A. Buck* (D.C. App. 1975, 342 A. 2d 48).

Where membership in "Health Club" could be obtained by public with minimum formality and for a modest fee, club was public in nature; thus, whether or not club's cubicles, in which sodomitic activity was alleged to have taken place between consenting adults, were secluded, such adults did not have the right to or reasonable expectation of privacy which would render the sodomitic activity outside proscription of sodomy statute. *United States v. J. L. McKean et al.* (D.C. App. 1975, 338 A. 2d 439).

Acts of sodomy which allegedly occurred at "homosexual health club" were not protected by any recognized right to privacy as the acts occurred not in a private abode but on premises of a commercial establishment open to the public. *D. G. Harris v. United States* (D.C. App. 1974, 315 A. 2d 569; rev'g 293 A. 2d 851).

Sentence

Notwithstanding claim that failure to grant credit for time served in pretrial and presentence confinement was a violation of petitioner's guarantee to equal protection as well as the law and public policy of the District of Columbia, conclusive presumption arose that credit was given so as to preclude petitioner from obtaining relief, where petitioner was sentenced to two concurrent three to 10-year sentences on counts charging sodomy and an indecent act on a minor child, although petitioner faced a possible 20-year sentence on sodomy count in that victim was under 16 years of age. *L. A. Arrington v. A. McGruder, et al.* (1974, 490 F. 2d 795, 160 U.S. App. D.C. 227).

Sentence of ten years' imprisonment, and refusal to commit defendant to institution for treatment of sexual psychopathy, did not constitute cruel and unusual punishment of defendant after conviction of sodomy and assault with dangerous weapon. *E. T. Hughes v. United States* (D.C. App. 1973, 308 A. 2d 238).

Voir dire questions

Refusal, in prosecution for sodomy and taking indecent liberties with a child, to permit accused to ask on voir dire "Is there anyone here who feels" that "sexual acts with a minor are either immoral, illegal or indecent" was not error, in that question was inherently vague and invaded function of trial court by inquiring with regard to proposition of law and in that question asked by judge overcame such latter objection and properly focused on potential juror prejudice. *J. C. Davis v. United States* (D.C. App. 1974, 315 A. 2d 157).

In prosecution for sodomy, refusal to permit accused to ask on voir dire "Do any of you ladies and gentlemen have any question with the theory of law that the penis must penetrate the anus" was not error, in that question focused on question of law for court and could have confused jurors as to their duty to follow court's instructions on the law. *Id.*

§ 22-3508. Hearing—Commitment to Saint Elizabeths Hospital.

NOTES TO DECISIONS

Confinement

Where psychiatric reports, filed with court after defendant's conviction, although denominating defendant a sexual psychopath, also stated that defendant was suffering from a mental disorder and that the alleged offenses, if committed by him, were products of his illness, trial court correctly determined that defendant was not at that time eligible for commitment as sexual psychopath. *E. T. Hughes v. United States* (D.C. App. 1973, 308 A. 2d 238).

Chapter 36.—IMPLEMENTS OF CRIME

§ 22-3601. Possession of implements of crime—Penalty.

NOTES TO DECISIONS

Assistance of counsel

Reversible error occurred when defendant was sentenced in absence of trial counsel. *G. A. Hockaday v. United States* (D.C. App. 1976, 359 A. 2d 146).

Constitutionality

Since burden of proof beyond reasonable doubt of every element of crime is still on prosecution, this section which places upon defendant burden of showing innocent nature of his possession of narcotics paraphernalia does violate due process. *C. James v. United States* (D.C. App. 1976, 350 A. 2d 748; cert. denied 97 S. Ct. 186, 429 U.S. 872).

In view of narrowing interpretation to which this section has been subjected by the courts, this section under which defendant was convicted of possession of narcotics implements is not, as applied to his case, vague and overbroad. *Id.*

Defense of addiction

Even if Court of Appeals is not statutorily precluded from permitting criminal defendant charged with possession of heroin for personal use or possession of narcotics paraphernalia to raise affirmative defense of lack of common-law criminal responsibility due to heroin addiction, Court would not upset balance of multipronged effort to reduce heroin addiction through law enforcement and treatment. *L. F. Gorham v. United States* (D.C. App. 1975, 339 A. 2d 401).

Congress' avowed intent to prosecute and convict drug users where indicated for all crime nullifies authority of Court of Appeals to formulate a new common-law rule of criminal responsibility which would insulate those same drug users from criminal punishment. *Id.*

Decision permitting a defendant charged with possession of narcotics and narcotics paraphernalia to raise affirmative defense that he lacked capacity to refrain from using narcotics by reason of drug addiction cannot be rested on trial court record which does not disclose basis for expert witness' conclusion that defendant had an overwhelming compulsion psychologically to use heroin and there was no showing whether finding of addiction related to criminal responsibility or only to habitual use. *W. R. Franklin v. United States* (D.C. App. 1975, 339 A. 2d 398).

Evidence—Admissibility

Where officers, when they arrived to execute search warrant, expected another person to be residing at address, and instead discovered that premises were occupied by defendant, who was not then there, and when defendant arrived he was asked to accompany officers to a bedroom, and there he was confronted with narcotics and paraphernalia and asked if he recognized the items and if they were his, there was no custodial interrogation of kind limited in *Miranda* decision, and inculpatory state-

ments made by defendant were admissible. *J. B. N. Tyler v. United States* (D.C. App. 1972, 298 A. 2d 224).

— Sufficiency

In prosecution for possession of a dangerous drug and possession of narcotics paraphernalia, evidence was sufficient to support finding that defendant had knowing dominion and control over dangerous drugs found in bedside stand located a few feet from dresser in bedroom in which police also found defendant's army uniforms and military papers bearing defendant's name, personal papers on which defendant's name appeared, and items of men's clothing. *H. D. Hooker v. United States* (D.C. App. 1977, 372 A. 2d 996).

Evidence sustained conviction of possession of narcotics paraphernalia, even though no traces of heroin were found in defendant's department, in which substances shown to be used in "cutting" and injecting heroin were found. *C. E. Rosser v. United States* (D.C. App. 1974, 313 A. 2d 876).

In prosecution for possession of narcotics paraphernalia and possession of dangerous drug, desoxyn, government established unbroken chain of custody as matter of reasonable probability, in view of testimony showing that envelopes had not been tampered with and sufficiently explaining any reason for delay in delivery. *Id.*

Defendant's possession of a small wooden pipe, without further evidence as to its shape and size and absent evidence as to nature and significance of marijuana residue in pipe, did not have the "sinister" implication that possession of the "implements" and "tools" of a crime raises and was not sufficient to support conviction of possessing implement of crime, to wit, narcotics paraphernalia. *K. L. Williams v. United States* (D.C. App. 1973, 304 A. 2d 287).

— Suppression

Failure of trial court to consider tardy oral motion to suppress evidence did not vitiate conviction where court permitted counsel to develop point respecting validity of seizure and there was no showing that seizure was invalid. *G. F. Thompson v. United States* (D.C. App. 1973, 307 A. 2d 764).

Informants

In prosecution for possession of a dangerous drug and possession of narcotics paraphernalia, trial court did not abuse its discretion in refusing to direct disclosure of identity of informant who was not a witness to the offense charged, in view of fact that search warrant was based on sales of heroin from defendant's home by a woman and in view of fact that drugs possessed by defendant were barbiturates. *H. D. Hooker v. United States* (D.C. App. 1977, 372 A. 2d 996).

Instructions

Court did not err in refusing to give missing witness instruction where evidence showed that witness was friend of defendant and was equally available to both sides. *C. James v. United States* (D.C. App. 1976, 350 A. 2d 748; cert. denied 97 S. Ct. 186, 429 U.S. 872).

Inability to form intent is not defense to possession of narcotics implements, and court properly denied instruction as to defense of intoxication. *Id.*

Instruments, tools, or implements

Lactose, dextrose, quinine and gelatin capsules, even though possessing special properties for providing bulk to heroin, were not "instruments," "tools" or "implements" within statute prohibiting possessions of any instrument, tool or other implement which is usually employed or may reasonably be employed in the commission of any crime, and possession of large quantities of such materials by owner of retail drugstore was not a criminal act under statute. *R. P. Rosenberg v. United States* (D.C. App. 1972, 297 A. 2d 763).

Intent

Proof of intent to possess narcotics paraphernalia may be inferred from possession of "sinister" items. *C. E. Rosser v. United States* (D.C. App. 1974, 313 A. 2d 876).

Miranda rights

Where police officer who knew defendant asked him, within context of valid traffic stop, about outstanding fugitive warrant and if he was still using drugs and defend-

ant answered in negative, adding that all he had on his person was "works" and then defendant displayed narcotics paraphernalia and was promptly arrested, officer's questions were investigative based on aroused suspicion in officer's mind brought on by defendant's previously admitted narcotics use coupled with his presence at location where narcotics were known by officer to be readily obtainable and were not part of custodial interrogation requiring Miranda warnings; thus narcotics paraphernalia seized following traffic stop and defendant's admission that he possessed such contraband were admissible in prosecution for possession of narcotics paraphernalia. *H. L. Ford v. United States* (D.C. App. 1977, 376 A. 2d 439).

Plea of guilty

Trial court in criminal prosecution abused its discretion in engaging in blanket refusal to hear from either prosecution or defense concerning defendant's proffered guilty pleas; judge's apparent belief that trial had been "too much trouble" presents inadequate justification for perfunctory denial of prosecutor's prerogative to negotiate plea. *G. A. Hockaday v. United States* (D.C. App. 1976, 359 A. 2d 146).

Probable cause

Where a concededly reliable informer gave tip based on personal knowledge which described defendant in great detail, and he gave defendant's alias and his present location and before arrest officers were able to corroborate the informant's tip in every detail with the exception of actual possession of narcotics, probable cause was established and narcotics and implement seized from defendant at time of arrest did not need to be suppressed. *R. Banks v. United States* (D.C. App. 1973, 305 A. 2d 256).

Officer's observations of defendant, who was standing beside sink in his employer's restroom and appeared startled upon seeing policeman, who had entered in order to use the restroom, of defendant's freezing against the wall and of coin purse located on sink and similar to those in which officer had found narcotics in the past did not constitute probable cause for officer, who admitted that he had no reason to believe a crime was being committed when he looked into coin purse, to arrest defendant prior to the search, and search, which revealed narcotics paraphernalia and heroin, was therefore invalid. *L. D. McWilliams v. United States* (D.C. App. 1972, 298 A. 2d 38).

Search and seizure

Where defendant, at the time of his arrest in apartment, told police officers he wanted to change his pants and began moving toward the edge of a double bed, where one officer told him to "Hold it" and as a precaution, the officer looked under the mattress where he found a gun, and where defendant was known to have used a gun before and was believed to be dangerous, the gun was lawfully seized; the police were not required to risk their safety on the chance that they, by a larger force, could control the situation if defendant should try to arm himself. *J. A. Haliwanger v. United States* (D.C. App. 1977, 377 A. 2d 1142).

Where police officer who knew defendant asked him, within context of valid traffic stop, about outstanding fugitive warrant and if he was still using drugs and defendant answered in negative, adding that all he had on his person was "works" and then defendant displayed narcotics paraphernalia and was promptly arrested, officer's questions were investigative based on aroused suspicion in officer's mind brought on by defendant's previously admitted narcotics use, coupled with his presence at location where narcotics were known by officer to be readily obtainable and were not part of custodial interrogation requiring Miranda warnings; thus narcotics paraphernalia seized following traffic stop and defendant's admission that he possessed such contraband were admissible in prosecution for possession of narcotics, paraphernalia. *H. L. Ford v. United States* (D.C. App. 1977, 376 A. 2d 439).

Where officers making routine check, at hotel owner's invitation, noticed readily apparent and accessible crack in door of guest room, officers' act of looking through crack was not an unreasonable search, and narcotics paraphernalia observed through crack in door and in officers' plain view provided officers with probable cause for ensuing rooftop surveillance and subsequent arrests.

H. L. Borum v. United States (D.C. App. 1974, 318 A. 2d 590).

Where officers making routine check, at hotel owner's invitation, noticed readily apparent and accessible crack in door of guest room and looked through crack and observed narcotics paraphernalia and defendant and others, officers' warrantless entry into room was justified by exigencies of situation. *Id.*

If narcotics paraphernalia was visible from doorway which was open when officers knocked, officer had right to seize it under the plain view doctrine. *J. E. Wheeler v. United States* (D.C. App. 1973, 300 A. 2d 713).

Where police officer who had heard radio broadcast stating that three subjects were using narcotics in automobile parked at rear of warehouse went to the location and saw three persons seated in automobile matching description which had been broadcast, officer had justification for further affirmative action and his determination to identify himself as police officer and open the car's door simultaneously, while directing the occupants

to get out, was permissible, and upon observing bottle-top cooker and full syringe on floor of the car, seizure of the evidence and arrest of the subjects became appropriate and there was no violation of constitutional right to be protected against unreasonable search and seizure. *United States v. E. Mitchell* (D.C. App. 1973, 299 A. 2d 540).

Where police officer was told by another that defendant, whom officer had questioned, had a syringe under wig, officer's momentary stopping of defendant, inquiry about wig, and request to defendant to remove her hat were reasonable, and defendant's denial of wearing a wig and its obvious presence furnished independent observation and corroboration which gave rise to a reasonable basis to arrest defendant and seize contents of her hand, which she had removed from beneath wig and which contained syringe and a bag of methadone, and to seize tinfoil pack, which apparently contained heroin, from starch box from which defendant began to eat at police station. *United States v. S. P. Oliver* (D.C. App. 1972, 297 A. 2d 778).

TITLE 23.—CRIMINAL PROCEDURE

This title was enacted by Pub. L. 91-358, Title II, § 210(a), July 29, 1970, 84 Stat. 604

Chapter 1.—GENERAL PROVISIONS

§ 23-101. Conduct of prosecutions

CROSS REFERENCES

Representation of indigents, see §§ 2-2222, 11-2601.

NOTES TO DECISIONS

Certification

Question of whether corporation counsel or United States attorney should conduct proceedings charging juvenile with act of delinquency was not properly certifiable since juvenile was not involved in criminal prosecution. *In the Matter of M. W. F.* (D.C. App. 1973, 312 A. 2d 302).

Construction

The Court of Appeals has duty to make every effort to reconcile allegedly conflicting statutes and to give effect to language and intent of both, as long as doing so does not deprive one of statutes of its essential meaning. *District of Columbia v. R. E. Smith et ano.* (D.C. App. 1974, 329 A. 2d 128).

Prosecution by Corporation Counsel

Corporation Counsel, rather than United States attorney, was appropriate authority for prosecution of defendants for tampering with a parked vehicle in violation of police regulations of the District of Columbia. *District of Columbia v. R. E. Smith et ano.* (D.C. App. 1974, 329 A. 2d 128).

Statute, which provides that Corporation Counsel shall conduct prosecutions for violations of all police or municipal ordinances or regulations and for violations of all penal statutes in nature of police or municipal regulations, where maximum authority to the Corporation Counsel as to all municipal ordinances and regulations, punishment is a fine only, or imprisonment not exceeding one year, gives prosecutorial irrespective of the prescribed punishment. *Id.*

United States Attorney

In view of 1972 letter from corporation counsel granting standing permission for United States attorney to prosecute violations of police regulations prohibiting possession of unregistered firearms and possession of ammunition therefor if such charges accompany a charge of violating statute prohibiting the carrying of a pistol without a license, the corporation counsel is not required in each case to give formal consent on the record for the United States attorney to prosecute on the regulatory charges. *J. R. Copening v. United States* (D.C. App. 1976, 353 A.2d 305).

§ 23-103. Statements prior to sentence

NOTES TO DECISIONS

Plea bargaining

Where Government as part of plea bargaining only agreed to waive its statutory right of allocution at time of imposing of sentence for burglary, defendant did not have right to reasonably expect that Government's agreement not to allocute would extend to a hearing on his subsequent request that the imposed sentence be reduced and Government was entitled to submit information in opposition to motion to reduce. *M. L. Braxton v. United States* (D.C. App. 1974, 328 A. 2d 385).

Purpose

Provisions of this section that "at any time when the defendant or his counsel addresses the court on the sentence to be imposed * * *" prosecuting attorney may address court as to sentence was intended to prohibit ex parte representations by the defense counsel to trial judge concerning sentencing and to permit prosecutor to

rebut defendant's evidence of mitigating factors in sentencing or to present his recommendations on sentencing and does not prohibit government from allocuting as to sentencing even if defendant chooses not to make a statement. *W. N. Quarles v. United States* (D.C. App. 1975, 349 A. 2d 690; cert. denied 96 S. Ct. 2169, 425 U.S. 972).

§ 23-104. Appeals by United States and District of Columbia

NOTES TO DECISIONS

Appeal by District of Columbia

Government's appeal from order suppressing confessions of juvenile who was alleged to be delinquent was required to be filed within ten-day period provided for appeals in criminal cases rather than within the 30-day period provided for appeals of civil cases. *District of Columbia v. M. A. C.* (D.C. App. 1974, 328 A. 2d 375).

Appeal by United States

Motions judge erred in dismissing prosecutions for possession of narcotics with prejudice for want of prosecution after arresting officer failed to appear at hearing on accused's motion to suppress following dismissal of prior prosecution for want of prosecution because of officer's failure to appear at trial where accused made no proffer of evidence that he had been prejudiced by delay and advanced no claim that he had been denied a speedy trial and less than one year had elapsed between date of arrest and hearing on motion to suppress. *United States v. R. W. Mack* (D.C. App. 1972, 298 A. 2d 509).

Dismissal of information for want of prosecution, after denial of government's request for a continuance, sought to permit an appeal from suppression order, because of failure of government to comply with rules requiring written motion for continuance, service on opposite party, a hearing and request for continuance at least two days before trial, could not be entered to defeat jurisdiction of District of Columbia Court of Appeals on a timely appeal taken pursuant to statute allowing appeal by government from suppression order. *United States v. S. P. Oliver* (D.C. App. 1972, 297 A. 2d 778).

Where order of suppression of evidence, if lawful, effectively terminated the prosecution, trial date became academic, rule requiring written motion for a continuance and request for a continuance at least two days before trial became subordinate to government's statutory right to appeal during time when appeal could be noted and oral continuance request by government to permit an appeal from suppression order could not justify dismissal order on ground of government's failure to comply with rules. *Id.*

Where underlying rationale for dismissal of information was an erroneous belief that defendant would be incarcerated because of government's appeal from suppression order and a preoccupying disagreement with government's announced determination to proceed with the appeal, order of dismissal was without authority and void. *Id.*

Appealable orders

Pretrial evidentiary ruling that evidence concerning one alleged rape would not be admissible in separate trial involving another to show a "common scheme or plan" is not appealable, inasmuch as it would not have law-of-the-case effect at subsequent trial and trial court in so ruling did nothing more than express an advisory opinion on admissibility of evidence if offered at trial. *United States v. M. J. Shields* (D.C. App. 1976, 366 A.2d 454).

Although government cannot appeal sentencing order pursuant to section 11-721 giving Court of Appeals jurisdiction of appeals from final orders and judgments of Superior Court, government's brief on appeal from order imposing a sentence under Federal Youth Correction Act

would be treated as a petition for a writ of mandamus. *United States v. L. J. Stokes, Jr.* (D.C. App. 1976, 365 A.2d 615).

Trial court's order that the United States would not be permitted to call any person as a witness in criminal case unless, with respect to that witness, the government had fully complied with a prior order that the United States furnish pretrial to defense counsel the arrest and criminal records of prosecution witnesses is final and appealable where the government refused to comply with the order to produce and thus the order precluding the calling of the witnesses effectively terminated the prosecution. *United States v. W. C. Engram et ano.* (D.C. App. 1975, 337 A.2d 488; cert. denied 96 S. Ct. 793, 423 U.S. 1058).

Dismissal of an information without prejudice is an appealable order. *United States v. T. L. Cummings* (D.C. App. 1973, 301 A.2d 229).

That dismissal of indictment without prejudice created no bar to seeking a new indictment did not render dismissal order nonreviewable. *United States v. M. M. Hector* (D.C. App. 1972, 298 A.2d 504).

Construction

Words "charged with a criminal offense" as used in this section providing that District of Columbia may appeal a suppression order entered before trial of a person charged with a criminal offense includes the term "delinquent act." *District of Columbia v. M. E. H.* (D.C. App. 1973, 312 A.2d 561).

Double jeopardy

Government appeal after jeopardy has attached is ordinarily barred if further proceedings of some sort, devoted to resolution of factual issues going to elements of offense charged, would be required upon reversal and remand; mistrial which has been sought by defendant does not, however, bar retrial, unless it is a result of bad faith prosecutorial or judicial conduct which is designed to give more favorable opportunity for conviction. *United States v. P. J. Harvey* (D.C. App. 1977, 377 A.2d 411).

Since defendant's plea of guilty is equivalent of jury verdict of guilt on all issues save responsibility, and should Government prevail on its appeal, issue of insanity would be resubmitted to jury but no new trial would be required on issue of guilt or innocence since plea would stand, double jeopardy clause does not bar Government's appeal contending that trial judge committed reversible error in directing verdict of not guilty by reason of insanity. *United States v. A. R. Tyler* (D.C. App. 1977, 376 A.2d 798).

Evidence—Suppression

While action of one officer in grabbing arm of one defendant constituted an investigatory stop, officers, who sought to maintain status quo momentarily while obtaining more information, had a reasonable, articulable suspicion on which to base their action in that they were experienced and on patrol in an area in which burglary and larceny were commonplace, and sight of two men carrying a television set through an alley late at night sufficed to arouse suspicion, particularly when men did not take set to a building backing onto alley but instead continued walking through alley. *United States v. M. F. Childs* (D.C. App. 1977, 379 A.2d 1188).

Where Government granted defendant immunity with respect to information he provided in connection with several homicides and also promised him immunity with respect to any other incidental offenses that he might mention, and both grants of immunity were made on condition that information provided be truthful and accurate, defendant is entitled to immunity from prosecution on basis of truthful information provided by him concerning incidental offenses, even though defendant breached agreement to provide truthful information on the homicides. *United States v. M. J. Warren* (D.C. App. 1977, 373 A.2d 874).

Where officer performed valid investigative stop of automobile whose driver was suspected of carrying loaded 45 automatic and continued to detain automobile when driver volunteered that he had toy gun in trunk, and where second officer then saw real gun through open car door and seized it, driver's right to be free from unreasonable seizure of person was not violated. *United States v. F. R. Cousar* (D.C. App. 1975, 349 A.2d 454).

District of Columbia had right to appeal order of Family Division of Superior Court, entered at prehearing stage of juvenile delinquency proceeding, suppressing as evidence unregistered pistol and suppressing certain statements made by subject child prior to his arrest. *District of Columbia v. M. E. H.* (D.C. App. 1973, 312 A.2d 561).

Motion to suppress evidence

Where pretrial motion to suppress has been denied and, realistically, only available issue in "possession of contraband" case is search or seizure, approved procedure is to stipulate the facts as alleged in information and have court render verdict thereon in order to preserve Fourth Amendment issue on appeal. *United States v. J. L. Allen* (D.C. App. 1975, 337 A.2d 512).

Trial court erred in determining sua sponte to rehear motion to suppress, which had previously been considered and denied pretrial, where no newly discovered grounds were presented. *Id.*

First trial judge's refusal to permit defense counsel to be heard as to whether there was valid basis for excusing him from normal requirement of filing motion to suppress evidence prior to trial was harmless where first judge did not again reach case and second trial judge, in refusing to rehear the motion to suppress independently concluded that situation did not present an appropriate exception to the requirement. *C. C. Anderson v. United States* (D.C. App. 1974, 326 A.2d 807).

Trial court's refusal to hear motion to suppress evidence filed at time of trial was within his discretion where defense counsel did not claim that motion was based upon newly learned information but acknowledged that belated effort to move to suppress was tactical response to nonappearance of two witnesses *Id.*

Where defendant, charged with petit larceny, made no pretrial motion to suppress allegedly stolen notebooks which were introduced at trial without objection, any objection to evidence was waived by defendant who claimed on appeal that the notebooks should have been suppressed as having been seized illegally. *T. Grennett v. United States* (D.C. App. 1974, 318 A.2d 589).

When pretrial motion to suppress has been heard and decided as required by the Superior Court Criminal Rule in District of Columbia Code, that decision becomes law of the case and only if new grounds, including new facts, are advanced which defendant could not reasonably have been aware of may a trial judge entertain a renewed motion to suppress. *J. E. Wheeler v. United States* (D.C. App. 1973, 300 A.2d 713).

Where, at time motions to suppress were heard, government was not obligated to provide defense with police department forms indicating that narcotics paraphernalia had not been seen until after arresting officers had entered defendants' room, but forms because available at trial in which officer testified he had observed paraphernalia before entering room, the inconsistency constituted ground for new suppression hearing and, in absence of lower court ruling that forms were not in conflict with testimony and in light of other inconsistencies in officer's testimony and critical importance of officer's credibility, remand for fresh determination of suppression issue was necessary. *Id.*

Trial court's grant of suppression motion insofar as it related to property not covered by warrant, while deferring decision on question of validity of warrant on ground that criminal prosecution had not yet been instituted, was improper; court should have determined all of motion. *United States v. G. A. Farmer* (D.C. App. 1972, 297 A.2d 783).

Speedy trial

After trial judge, who recused himself six days after accepting defendant's guilty plea, offered defendant option of either certifying case to another judge for sentencing or vacating his guilty plea, defendant's decision to vacate his guilty plea did not necessarily allow "clock to be turned back to zero" for purposes of timing delay, and thus Government had to satisfactorily explain 13-month delay between defendant's arrest and dismissal of indictment. *United States v. J. A. Bolden, Jr.* (D.C. App. 1977, 381 A.2d 624).

Government successfully rebutted presumption that any prejudice resulted from excessive delay of 13 months between defendant's arrest and dismissal of indictment,

where defendant was not incarcerated except for six-day period and defendant's anxiety and concern over pendency of misdemeanor charge was diluted by felony charge pending for eight of 13 months complained of and defendant's anxiety and concern over pendency of misdemeanor charge alone for five months following dismissal of felony charge was minimal and defendant conceded that delay in no way impaired his defense. *Id.*

§ 23-105. Challenges to jurors

NOTES TO DECISIONS

Equal number of challenges

Where trial court announced that each side would have three peremptory challenges and that a pass would count as a challenge, where, after first two rounds of challenges and after trial court requested Government to exercise its final challenge first, prosecutor replied that Government was satisfied and defense counsel then exercised his last challenge, trial court committed reversible error in departing from procedure it established to allow prosecutor to subsequently make another challenge, thus allowing Government to make more challenges than the defense. *L. D. Armwood v. United States* (D.C. App. 1977, 373 A.2d 895).

Selection procedure

Jury selection method whereby no juror from venire was allowed into box to replace juror struck until each round had been completed denied on last round defendant's right to reject jurors and hence violated defendant's statutory right to exercise ten peremptory challenges, requiring reversal of conviction of unauthorized use of motor vehicle. *T. S. Butler v. United States* (D.C. App. 1977, 377 A.2d 54).

§ 23-110. Remedies on motion attacking sentence

CROSS REFERENCE

Representation of indigents, see §§ 2-2222, 11-2601

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-2601.

NOTES TO DECISIONS

Appeal and error

Court of Appeals' prior affirmance of convictions of armed robbery, assault with dangerous weapon, and carrying pistol without license ended any controversy respecting identification procedures and sufficiency of evidence, and thus on appeal from order denying motion for relief from sentences the Court would only consider constitutional claim that defendant was denied effective assistance of counsel. *R. W. Atkinson v. United States* (D.C. App. 1976, 366 A.2d 450).

Constitutionality

This section generally prohibiting District Court from entertaining application for writ of habeas corpus brought by prisoner in custody pursuant to sentence imposed by Superior Court, which allows District Court to entertain habeas corpus application if it appears that remedy by motion is inadequate or ineffective to test legality of prisoner's detention, does not suspend privilege of writ of habeas corpus in violation of Constitution. *C. L. Swain, Superintendent, etc. v. J. C. Pressley* (1977, 97 S.Ct. 1224, 430 U.S. 372; rev'g 515 F.2d 1290, 169 U.S. App. D.C. 319).

Construction

Subsection of this section providing that application for writ of habeas corpus in behalf of prisoner who is authorized to apply for relief by motion pursuant to the section shall not be entertained by the Superior Court or by any federal court if it appears the applicant has failed to make motion for relief under the section or that Superior Court has denied him relief is not intended to and does not affect the jurisdiction of United States District Court for the District of Columbia to entertain post-conviction habeas petitions from local prisons but rather is an exhaustion of remedies statute, requiring initial submission of claims to the local courts and marking the terminal point for proceedings in the local court system. *R. F. Palmore v. Superior Court of the District of Colum-*

bia et al. (1975, 515 F.2d 1294, 169 U.S. App. D.C. 323; rem'd 97 S. Ct. 305, 429 U.S. 915).

Effective assistance of counsel

Defendant was entitled to hearing on his posttrial motion for new trial based on allegations of deprivation of effective assistance of counsel, in that motion was supported by factual allegations relating primarily to purported occurrences on which record could cast no real light and which trial judge could not completely resolve by drawing on his own personal knowledge or recollection, so that motion and files and records of the case did not conclusively show that defendant was entitled to no relief. *A. D. Session v. United States* (D.C. App. 1977, 381 A.2d 1).

Convicted criminal defendant failed to bear his burden of showing gross ineptitude in counsel in advising him of his rights of appeal where it appeared that counsel did advise of right to appeal, and that there was mere failure of communication, not failure to perform duties communicated. *H. Hargett v. United States* (D.C. App. 1977, 380 A.2d 1005).

Where movant seeking vacation of sentence had testified in support of his self-defense claim, thus judicially admitting his presence at scene of offense, and there was no plausible explanation given for inconsistency of that claim with the claim he asserted on appeal from denial of his motion that his trial counsel had been ineffective in failing to investigate a possible alibi defense, movant was not entitled to hearing on issue. *T. Hurt v. St. Elizabeths Hospital* (D.C. App. 1976, 366 A.2d 780).

Trial court did not err in denying without hearing motion to vacate sentence on contention that defendant was denied effective assistance of counsel by trial counsel's failure to bring to attention of trial court fact that security guard pointed defendant out to victim "minutes prior to trial," and failure to cross-examine in regard to such incident; alleged incident would have affected only weight of identification testimony and not admissibility and, since identification and sufficiency of evidence issues were resolved on direct appeal, further appellate review is foreclosed. *R. W. Atkinson v. United States* (D.C. App. 1976, 366 A.2d 450).

Trial court did not err in denying without hearing motion to vacate sentence on contention that defendant was denied effective assistance of counsel by trial counsel's failure to make proper investigation, which allegedly would have disclosed that defendant was present at robbed store for purpose of filling prescription for medicated soap; any such explanation, even if established, would fall short of meeting required showing of a substantial defense, in view of evidence of defendant's participation in robbery, flight and exchange of gunfire. *Id.*

If in a collateral attack based on allegations of ineffectiveness of appointed counsel the trial court concludes that a hearing should be held a non-Public Defender Service attorney should be appointed if the original trial was with that agency. *W. J. Angarano v. United States* (D.C. App. 1974, 329 A.2d 453).

An adequate specific showing that prima facie ineffectiveness exists is required before the District of Columbia Court of Appeals will grant the Public Defender Service leave to withdraw and appoint new counsel to determine whether to assert such an issue in the reviewing court or to seek collateral relief in the trial court. *Id.*

Exceptional circumstances

Collateral relief from criminal conviction, in form of vacation of conviction under "exceptional circumstances" doctrine, was not justified on showing that, although defendant was informed by counsel of his right to appeal, he failed specifically to ask whether defendant wanted appeal filed. *H. Hargett v. United States* (D.C. App. 1977, 380 A.2d 1005).

Exhaustion of remedies

District Court is prohibited by this section from entertaining application for a writ of habeas corpus filed by prisoner in custody pursuant to sentence imposed by Superior Court, and section does not merely require exhaustion of local remedies. *C. L. Swain, Superintendent, etc. v. J. C. Pressley* (1977, 97 S.Ct. 1224, 430 U.S. 372; rev'g 515 F.2d 1290, 169 U.S. App. D.C. 319).

Habeas corpus petitioner who had been convicted in Superior Court for carrying a pistol without a license and who had presented Fourth Amendment claim by pretrial

motion to suppress evidence and again on appeal from conviction to the District of Columbia Court of Appeals had exhausted his local remedies despite not having made a motion for postconviction relief under this section. *R. F. Palmore v. Superior Court of the District of Columbia et al.* (1975, 515 F.2d 1294, 169 U.S. App. D.C. 323; rem'd 97 S. Ct. 305, 429 U.S. 915).

Habeas corpus

District Court is prohibited by this section from entertaining application for a writ of habeas corpus filed by prisoner in custody pursuant to sentence imposed by Superior Court, and section does not merely require exhaustion of local remedies. *C. L. Swain, Superintendent, v. J. C. Pressley* (1977, 97 S.Ct. 1224, 430 U.S. 372; rev'g 515 F.2d 1290, 169 U.S. App. D.C. 319).

For purpose of this section which prohibits District Court from entertaining application for a writ of habeas corpus brought by prisoner in custody pursuant to sentence imposed by Superior Court and relegating such prisoners to collateral relief available in Superior Court, the collateral relief is neither ineffective, nor inadequate simply because judges of that Court lack protections of Article III judges, in that Superior Court judges must be presumed competent to decide all constitutional and other issues that routinely arise in criminal cases. *Id.*

Hearing

Defendant was entitled to hearing on his posttrial motion for new trial based on allegations of deprivation of effective assistance of counsel, in that motion was supported by factual allegations relating primarily to purported occurrences on which record could cast no real light and which trial judge could not completely resolve by drawing on his own personal knowledge or recollection, so that motion and files and records of the case did not conclusively show that defendant was entitled to no relief. *A. D. Session v. United States* (D.C. App. 1977, 381 A. 2d 1).

To extent that allegations in motion to have sentence vacated merely repeated previously rejected contentions in habeas corpus petition, they need not have been considered by trial court judge. *T. Hurt v. St. Elizabeths Hospital* (D.C. App. 1976, 366 A.2d 780).

On motion to vacate sentence, trial court is not required to hold hearing on issue of whether movant's trial counsel had been unconstitutionally ineffective, in absence of exact nature of asserted ineffectiveness being explained in motion. *Id.*

It was not error for trial court to deny, without a hearing, defendant's petition for postconviction relief based on alleged ineffectiveness of counsel where the motion was vague and conclusory with no facial validity, where there was no claim of innocence or claim that plea of guilty was not entered voluntarily, and where defendant's attorney had filed numerous pretrial motions on defendant's behalf. *J. V. Bettis v. United States* (D.C. App. 1974, 325 A. 2d 190).

Record on appeal

Where defendant contends that trial court should have raised issue of his sanity and competence to stand trial sua sponte, such contention should be advanced by a motion for new trial rather than on appeal. *A. W. Clyburn, Jr. v. United States* (D.C. App. 1977, 381 A. 2d 260).

Although not required for any claim of ineffectiveness of counsel, raising of claim in motion for new trial or in motion attacking sentence is likely to be more productive than direct appeal, because proceeding will not be limited to evidence in the trial record. *L. Proctor v. United States* (D.C. App. 1977, 381 A. 2d 249).

§ 23-111. Proceedings to establish previous convictions

CROSS REFERENCE

Increased sentences for previous offenders, see §§ 22-104, 22-104a.

NOTES TO DECISIONS

Challenge

A defendant can challenge prior convictions, sought to be used to enhance sentence under recidivist statute, at any time before sentencing. *E. Smith v. United States* (D.C. App. 1973, 304 A. 2d 28; cert. denied 94 S. Ct. 846, 414 U.S. 1114).

Failure of defendant to file written response to service of notice of prior offense to be used to enhance punishment did not constitute waiver of her right to dispute convictions alleged in Notice of Additional Penalties. *Id.*

Statutory procedure for filing a written response to Notice of Additional Penalties is mandatory when possible challenges to prior convictions, sought to enhance punishment, are available; failure to follow that procedure when challenges are known or should be known could be a violation of counsel's duty to his client. *Id.*

Construction

Requirement that before court can sentence individuals subject to increased punishment on basis of information as to prior convictions the defendant must affirm that he has been previously convicted as alleged is mandatory and requires an affirmative statement by the defendant and was not satisfied by a concession by defense counsel. *United States v. J. F. Bolden* (1975, 514 F.2d 1301, 169 U.S. App. D.C. 60).

Provision of recidivist statute that failure of defendant to respond to pretrial information or Notice of Additional Penalties shall constitute a waiver of any challenge the defendant may have to prior convictions does not mean there is a waiver on failure to file a written response to the information; it is necessary only that the challenge be raised by response to the information before an increased sentence is imposed. *E. Smith v. United States* (D.C. App. 1973, 304 A. 2d 28; cert. denied 94 S. Ct. 846, 414 U.S. 1114).

Provision of recidivist statute that, on defendant's failure to file written response to Notice of Additional Penalties, the court shall proceed to impose sentence as provided by law means that on such failure the court shall make inquiry whether defendant affirms or denies previous convictions, alleged in the information and shall inform defendant that any challenge not made before sentence is imposed may not thereafter be raised to attack sentence; such requirements are mandatory and cannot be avoided by merely granting to defendant, whether represented by counsel or not, an opportunity to say something to the court. *Id.*

Indictment

Notice of prior conviction need not be included in an indictment for offense of carrying pistol without a license to be sentenced as a felony, since fact of a prior conviction is neither an element of the offense charged nor necessary to double jeopardy protection. *R. B. Punch v. United States* (D.C. App. 1977, 377 A. 2d 1353).

Information—Filing

An enhanced sentence could not be imposed upon defendant, found guilty of grand larceny, where the information as to the prior felony convictions was not filed with clerk of court prior to trial as required by this section. *J. A. Bond v. United States* (D.C. App. 1973, 310 A.2d 221).

— Service

As respects defendant's contention that he was not "directly apprised" prior to trial on charges of armed robbery and carrying dangerous weapon, of Government's intention to seek additional punishment under recidivist provision of section 22-3202, notice requirement was met when information was served upon defense counsel pursuant to this section at status hearing. *R. Smith v. United States* (D.C. App. 1976, 356 A.2d 650).

Notice

Sentence imposed on defendant, pursuant to "armed repeat offender" provision of section 22-3202, upon his conviction of armed robbery and carrying dangerous weapon, is invalid, where trial court failed to inform defendant, as required by this section, that he was required to challenge his prior convictions before sentencing, or opportunity to do so would be lost. *R. Smith v. United States* (D.C. App. 1976, 356 A.2d 650).

Plea bargaining

As respects allegation of defendant, charged with armed robbery and carrying dangerous weapon, that his absence from status hearing, at which defense counsel was served with information revealing Government's intention to seek additional punishment under recidivist provision of section 22-3202, deprived him of meaningful right to

participate in plea bargaining, evidence establishes that counsel fully advised his client; furthermore, there is no absolute right to bargain. *R. Smith v. United States* (D.C. App. 1976, 356 A.2d 650).

Procedure

Trial judge's failure to inquire of defendant whether he affirmed or denied previous convictions contained in government's information invalidates sentence for carrying a pistol without a license imposed under the recidivist sentencing procedure. *L. Irby v. United States* (D.C. App. 1975, 342 A.2d 33).

Sentence

A sentence under the recidivist statute is not a part of the offense itself; it is the possible punishment for the latter which determines whether the prosecution must be by indictment; recidivist statute comes into play after the trial and after accused has been found guilty and proceedings thereunder do not involve inquiry into guilt or innocence. *E. Smith v. United States* (D.C. App. 1973, 304 A.2d 28; cert. denied 94 S. Ct. 846, 414 U.S. 1114).

Where, at sentencing proceeding, trial court neglected to clearly inform defendant of prior convictions allegedly warranting enhancement of punishment on conviction of petit larceny or to inquire whether defendant affirmed or denied each conviction and court merely inquired of defendant regarding a prior petit larceny conviction not listed in pretrial information, which conviction she affirmed, 18 months' sentence was required to be set aside and case remanded for resentencing, notwithstanding that defendant had failed to file written answer to information. *Id.*

§ 23-112. Consecutive and concurrent sentences

NOTES TO DECISIONS

Consecutive sentences

Test is whether offenses for which sentences are levied to run consecutively are separate criminal acts. *S. L. Banks v. United States* (D.C. App. 1973, 307 A.2d 767).

Where there was no indication that sentence being served by defendant pursuant to conviction in federal district court arose out of same occurrence or acts as subsequent burglary and petit larceny convictions, and Congress intended sentences to run consecutively unless specified otherwise, denial of defendant's motion to have consecutive sentences on burglary and petit larceny convictions run concurrently with federal district court conviction was not abuse of discretion. *Id.*

Separate offenses

False pretenses merely requires proof of intent to defraud at time possession of property is obtained, while larceny requires proof of conversion after possession is obtained with intent to appropriate property to use inconsistent with owner's rights, and thus imposition of consecutive sentences upon defendant, who was convicted of five counts of grand larceny and five counts of false pretenses, who was shown not only to have defrauded complainant but also to have entertained specific intent to steal from very outset and who consummated his purpose by later converting funds he received to his own use, was not beyond trial court's authority since, although offenses arose out of same transaction, one required proof of a fact which the other did not. *S. Fowler v. United States* (D.C. App. 1977, 374 A.2d 856).

Imposition of consecutive sentences for assault with a dangerous weapon and carrying a dangerous weapon is proper, notwithstanding that offenses arose out of the same transaction, since offense of carrying a dangerous weapon requires proof that the weapon was unlicensed while offense of assault with a dangerous weapon does not. *R. S. Hammond v. United States* (D.C. App. 1975, 345 A.2d 140).

In prosecution for armed robbery and for assault with a dangerous weapon, trial court did not erroneously permit jury to return a separate verdict on assault with a dangerous weapon charge where evidence disclosed that after armed robbery of cash register of store defendant forced victim at gunpoint to walk to rear of store where she was searched and on leaving defendant warned victim about possibility of being shot if she came out before defendant got out of store. *G. W. Bates v. United States* (D.C. App. 1974, 327 A.2d 542).

Premeditated murder and felony murder were not separate "offenses" within the meaning of this section statute relating to sentences which are deemed to run consecutive to each other. *United States v. R. L. Ammidown* (1973, 497 F.2d 615, 162 U.S. App. D.C. 28).

Chapter 3.—INDICTMENTS AND INFORMATIONS

SUBCHAPTER I.—GENERAL PROVISIONS

§ 23-301. Prosecution by indictment or information

NOTES TO DECISIONS

Amendment

Where count of indictment charging first-degree burglary alleged in the conjunctive that defendant had entered the dwelling of another "with intent to steal the property of another and to commit an assault," count presented an unseverable, unitary charge and where Government's evidence of theft was legally insufficient, it was error for trial court to permit Government at the close of its case-in-chief to amend count to delete words "to steal the property of another", because it was at best speculative that grand jury would have returned a true bill on the count if the indictment had been presented to it as it appeared after the amendment, trial court's action intruded impermissibly on defendant's Fifth Amendment right to be charged for serious crimes only by grand jury indictment. *T. W. Whalen v. United States* (D.C. App. 1977, 379 A.2d 1152).

Where an indictment charges several offenses or the commission of one offense in several ways, withdrawal from jury's consideration of one offense or one alleged method of committing it would not constitute a forbidden amendment of the indictment. *Id.*

Dismissal

Where defendant did not assert that indictment was defective but court granted motion to dismiss, filed more than four months after preliminary hearing, solely on ground that judge handling hearing abused discretion in denying defendant's request to compel testimony of complaining witness and that trial judge at status hearing erred in denying second request for such testimony from witness who died after status hearing and where dismissal was taken as alternative to ordering preliminary hearing and as device to get appellate resolution of case, dismissal of indictment is reversible error. *United States v. W. B. Davis* (D.C. App. 1975, 330 A.2d 751).

Although all counsel should obey, whenever possible, rule providing for calendar management, dismissal of indictment without prejudice for defense counsel's failure to give required two-day notice of unpreparedness before trial, and for government's unpreparedness at trial as result of defense counsel's telling prosecutor day before trial that defense counsel was going to request continuance, was improper. *United States v. J. B. Douglas* (D.C. App. 1974, 330 A.2d 243).

— Subsequent indictment

Ruling that original indictment which charged only that defendant "stole" was insufficient because of the failure to allege specific intent to steal is not a decision which went to substance of accusation or defenses to it and thus does not preclude, under doctrine of res judicata, subsequent grand jury indictment in same language, even absent notice of appeal by Government. *G. F. Washington v. United States* (D.C. App. 1976, 366 A.2d 457).

Dismissal of original armed robbery indictment which charged only that defendant "stole" for failure to charge specific intent to steal is not a final judgment on the merits; thus, doctrine of collateral estoppel does not make dismissal of first indictment conclusive as to sufficiency of second indictment which used identical wording. *Id.*

Grand jury proceedings—Subpena

Grand jury subpena duces tecum seeking production of attendance records of murder suspect's employer for six-day period bridging the day of the killing was not unreasonable or oppressive, and Superior Court's quashing the subpena as unreasonable and oppressive constitutes a usurpation of power. *United States v. The Honorable H. C. Moultrie, Associate Judge, etc.* (D.C. App. 1975, 340 A.2d 828).

Indictment

Pendency of grand jury indictment charging assault with a dangerous weapon did not prohibit a second grand jury from considering and returning indictment charging not only the same count of assault with a dangerous weapon but the additional count of carrying a dangerous weapon, regardless of whether prior grand jury refused to return a bill charging the offense of carrying a dangerous weapon or simply did not consider such offense. *United States v. C. Johnson* (D.C. App. 1974, 328 A. 2d 769).

Though denominated a misdemeanor by § 22-1506, prescribed penalty of up to five years imprisonment made offense of "three-card monte and confidence games" prosecutable only by indictment. *United States v. D. L. Brown et ano.* (D.C. App. 1973, 309 A. 2d 256).

Sufficiency

Indictment which follows substantially language of section 22-2307 making it a felony to threaten to injure person and property of another, which particularized the date of offending conduct and stated species of unlawful communication at issue, i.e., a threat, is sufficient to charge an offense under that section even though indictment did not contain actual words of alleged threat or allege that threats were made knowingly and intentionally. *United States v. J. Young* (D.C. App. 1977, 376 A. 2d 809).

SUBCHAPTER II.—JOINDER**§ 23-311. Joinder of offenses and of defendants****NOTES TO DECISIONS****Abuse of discretion**

Trial court did not abuse its discretion in refusing to require a separate trial of two offenses in light of facts that the offenses were similar in character, that evidence of the two crimes was simple and distinct and that the jury was clearly instructed as to each, despite defendant's contention that but for the joinder defendant would have taken the stand to testify as to how he had come by the stolen property relevant to one offense. *M. H. Roldan v. United States* (D.C. App. 1976, 353 A.2d 292).

Joinder—Defendants

Where prosecution of juvenile in juvenile court proceeded before judge without jury, court did not commit reversible error when it refused to grant juvenile separate trial after hearing witness testify that juvenile's correspondent had implicated him in correspondent's statements about burglary for which juvenile was being tried. *In the Matter of L. J. W.* (D.C. App. 1977, 370 A.2d 1333).

In prosecution of two defendants who were charged in 44-count indictment with, inter alia, kidnapping while armed, armed robbery, and armed rape, reversible error resulted as to one defendant from joinder of counts charging such defendant and co-defendant jointly with counts charging co-defendant alone and with others unidentified, where proof of each crime did not overlap and there was no economy and efficiency served by such joinder, and where testimony could lead to jury inference that defendant was in fact unidentified person. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S. Ct. 154, — U.S. —).

Even assuming that defendant and codefendant had antagonistic defenses to armed robbery charges, where independent evidence of defendant's guilt was overwhelming and defendant did not demonstrate that alleged conflict in defenses in itself created danger that jury would unjustifiably infer defendant's guilt, any possible prejudice which may have resulted from joint trial was not such as to warrant reversal. *C. M. Clark v. United States* (D.C. App. 1976, 367 A. 2d 158).

Taking into account overall considerations of judicial economy, trial judge did not abuse her discretion in denying severance, though one defendant contended that the other placed upon him chief responsibility for the crimes. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

Joinder of defendants, one charged with a misdemeanor and the other with a felony in connection with carrying a deadly weapon, could be accomplished by filing an information against the former and, upon indictment

of his codefendant, moving for joinder. *T. Freeman v. Honorable D. S. Smith* (D.C. App. 1973, 301 A. 2d 217).

— Offenses

Although there was no one unique characteristic common to four rape offenses, the circumstances common to four offenses are sufficiently similar that denial of motion to sever offenses was not abuse of discretion. *M. Bridges v. United States* (D.C. App. 1977, 381 A. 2d 1073).

Joinder in indictment of counts charging both defendants with assault with a dangerous weapon and charging each defendant respectively with possession of a pistol without a license was proper, since each count was directed to a different facet of one continuous occurrence, and thus constituted a "series of acts" within meaning of rule governing joinder of offenses. *J. L. Barker v. United States* (D.C. App. 1977, 373 A.2d 1215).

Where robbery and felony-murder, although unrelated as to place, were so closely related in time as to almost constitute continuing transaction and evidence of robbery would have been admissible in separate trial for felony-murder to show motive, intent, absence of accident and common scheme or plan to rob, trial court did not abuse its discretion in denying severance of robbery and felony-murder counts. *J. C. Calhoun v. United States* (D.C. App. 1977, 369 A.2d 605).

Under circumstances including, inter alia, that crimes occurred almost six months apart, were distant in location and no motive was shown for either homicide, joint trial, under indictment charging two counts of second-degree murder, was erroneous, since asserted factors of commonality left question of identity to speculation and probative value of factors did not outweigh prejudice, where there was no concurrence of unusual or distinctive facts relating to manner in which crimes were committed as would justify a rational conclusion that defendant, to exclusion of others, was killer and potential misuse of evidence by jury was apparent. *C. E. Tinsley v. United States* (D.C. App. 1976, 368 A.2d 531).

Defendant, who contended on appeal that trial court erred in refusing to sever for trial seven offenses and 39 counts contained in indictment because cumulative effect of evidence introduced to prove all counts made fair trial impossible and that trial court's failure to sever such counts deprived him of his rights to a fair trial, who made no motions for severance either before or during trial nor did he join in codefendant's motion for severance, and who was aware of all facts comprising his claim of prejudice before trial, should have raised such issue at trial rather than on appeal. *J. N. Davis v. United States* (D.C. App. 1976, 367 A.2d 1254; cert. denied 98 S. Ct. 154, — U.S. —).

Trial court in prosecution of defendant for two rapes did not abuse its discretion in denying severance of one rape count from another where, while two rapes occurred at different times, methods employed by rapist in each case was strikingly similar. *J. E. Arnold v. United States* (D.C. App. 1976, 358 A.2d 335).

The Government may properly charge in the same indictment offenses against both the federal bank (savings and loan) robbery statute and the local armed robbery statute, provided defendant is not ultimately sentenced under two statutes proscribing essentially the same offense. *United States v. R. Shepard* (1975, 515 F. 2d 1324, 169 U.S. App. D.C. 353).

Separate counts

After Government's election to proceed only on theory of involuntary manslaughter under duplicitous indictment which failed to distinguish between voluntary and involuntary manslaughter, trial suffered none of infirmities associated with one based upon duplicitous indictment, in that Government adduced no proof inconsistent with charge of involuntary manslaughter, motions for judgments of acquittal were addressed solely to that charge and to charge of negligent homicide, lesser included offense, and jury was instructed only on involuntary manslaughter; furthermore, jury acquitted motorist on charge of manslaughter as to both victims, which abrogates any question as to which crime indictment referred. *W. G. Murray v. United States and District of Columbia* (D.C. App. 1976, 358 A.2d 314).

Although defendant can properly be charged with both voluntary manslaughter and involuntary manslaughter

in same indictment, duplicitous count is improper in that, upon conviction, it would not be clear to which crime guilty verdict referred and thus what penalty should be imposed, it would hamper both judge and jury in considering evidence, general verdict of guilty would not reveal whether defendant was unanimously found guilty of all offenses charged, right of protection against double jeopardy might be violated and it might deny right to notice of nature and cause of accusation. *United States v. D. Bradford* (D.C. App. 1975, 344 A. 2d 208).

§ 23-312. Joinder of indictments or informations for trial

NOTES TO DECISIONS

Plain error

Where defendant himself moved for joinder of indictments, where defendant did not object to admission of evidence of other crimes at trial for strategic reasons in order to prove defense of insanity, where much of evidence of other crimes would have been introduced regardless of joinder, and where possibility of prejudice was not enlarged by factor of joinder alone, trial court's failure to order a severance, sua sponte, was not plain error requiring reversal. *M. Bell v. United States* (D.C. App. 1975, 332 A. 2d 351).

Chapter 5.—WARRANTS AND ARRESTS

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SUBCHAPTER IV.—ARREST WARRANT AND SUMMONS

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23-581. Arrests without warrant by law enforcement officers.

23-582. Arrests without warrant by other persons.

AMENDMENT

1974—Section 4(a) of Act Oct. 26, 1974, Pub. L. 93-481, 88 Stat. 1455, as amended Jan. 3, 1975, Pub. L. 93-635, § 16, 88 Stat. 2178, provided in part that the analysis of chapter 5 of title 23 of the District of Columbia Code is amended by striking out the item relating to subchapter VI.

SUBCHAPTER II.—SEARCH WARRANTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 23-501.

§ 23-521. Nature and issuance of search warrants

* * * * *

(f) A search warrant shall contain—

(1) the name of the issuing court, the name and signature of the issuing judicial officer, and the date of issuance;

(2) if the warrant is addressed to a specific officer, the name of that officer, otherwise, the classifications of officers to whom the warrant is addressed;

(3) a designation of the premises, vehicles, objects, or persons to be searched, sufficient for certainty of identification;

(4) a description of the property whose seizure is the object of the warrant;

(5) a direction that the warrant be executed during the hours of daylight or, where the judicial officers has found cause therefor, including one of the grounds set forth in section 23-522(c) (1), an authorization for execution at any time of day or night; and

(6) a direction that the warrant and an inventory of any property seized pursuant thereto be returned to the court on the next court day after its execution.

(As amended Oct. 26, 1974, Pub. L. 93-481, § 4(b), 88 Stat. 1455.)

AMENDMENT

1974—Act Oct. 26, 1974, Pub. L. 93-481, amended subsec. (f) by inserting "and" at the end of par. (5); by striking out par. (6) relating to "no knock" entry and search; and redesignating par. (7) as par. (6).

NOTES TO DECISIONS

Construction

General provision relating to search warrants found in the District of Columbia Code and then incorporated in similar form into the new Superior Court Rules was intended to be a counterpart to comparable Federal Rules of Criminal Procedure. *L. Gooding v. United States* (1974, 94 S.Ct. 1780, 416 U.S. 430; aff'g 477 F.2d 428, 155 U.S. App. D.C. 359).

Federal offenses

Operative facts surrounding search for narcotics indicated that standards for issuance of search warrant were governed by federal statute rather than local laws of District of Columbia, where, inter alia, a United States attorney filed warrant application with a federal magistrate, alleging violations of United States Code for which defendant was later indicated, and neither application nor supporting affidavits contained any mention of local narcotics laws; failure of Congress to include in federal statute a special provision authorizing District of Columbia police officers to obtain search warrants for investigating federal offenses could not be taken as a deliberate exclusion in view of the overall statutory framework. *L. Gooding v. United States* (1974, 94 S. Ct. 1780, 416 U.S. 430; aff'g 477 F.2d 428, 155 U.S. App. D.C. 259).

Nighttime searches

Where affidavit in support of search warrant stated that automobile to be searched had specific District of Columbia license tag and was registered to a District resident with a known address and where alleged criminal

¹ Section 252 of Act Oct. 15, 1970, Pub. L. 91-452, repealed § 23-545 without amending the chapter analysis.

activity described in affidavit was ongoing and officer who sought search warrant delayed six days after verifying ownership of car before applying for the warrant, it cannot be reasonably inferred that a daytime execution of the warrant was impossible and in absence of showing that warrant cannot be executed during the day or that stolen property which was allegedly in car is likely to be removed unless seized forthwith or would be in car only at certain times of day, allegations do not support issuance of nighttime search warrant. *N. A. Spence v. United States* (D.C. App. 1977, 370 A.2d 1351).

Federal statute providing that a search warrant relating to offenses involving controlled substances may be served at any time of day or night if a judge or United States Magistrate is satisfied that probable cause exists for warrant and for its service at such time provides relevant tests by which to judge validity of search warrants executed at nighttime in connection with violations of federal narcotics laws, rather than District of Columbia statutes or Federal Rule of Criminal Procedure. *United States v. L. Gooding* (1973, 477 F. 2d 428, 155 U.S. App. D.C. 259, rev'g 328 F. Supp. 1005; aff'd 94 S. Ct. 1780, 416 U.S. 430).

Scope of warrant

Where search warrant was issued for apartment on affidavit which recited that within preceding two weeks information had come to police from reliable informant that narcotics were being sold in apartment and that agent had purchased narcotics at apartment, and officers after announcing their purpose heard noise followed by sound of window breaking and upon entry found party attempting to escape through window, search of purse which belonged to defendant who was in apartment and which was sitting on table was proper. *United States v. G. E. Johnson* (1973, 475 F. 2d 977, 154 U.S. App. D.C. 393).

Where search warrant authorized officers to search entire apartment for narcotics, apartment visitor's purse which was sitting on table could properly be searched in pursuit of items for which warrant had issued. *Id.*

Search and seizure

Where defendant's wife told police that guns were in home of defendant and his wife, a warrant was issued for search of the home and the guns were found in it after they had been returned from an undisclosed location, the guns were properly seized and defendant is not entitled to have them suppressed on theory that his wife and sister-in-law had been coerced by police to return them from his mother's home. *L. Budd v. United States* (D.C. App. 1976, 350 A. 2d 742; cert. denied 97 S. Ct. 113, 429 U.S. 840).

Sufficiency of warrant

Warrant for search of premises at designated street address was sufficient to include back room of shop which had formerly had separate entrance on another street and which could be entered only through the apparel shop address. *E. A. Short v. District of Columbia* (D.C. App. 1973, 300 A. 2d 450).

§ 23-522. Applications for search warrants

* * * * *

(c) The application may also contain a request that the search warrant be made executable at any hour of the day or night upon the ground that there is probable cause to believe that (1) it cannot be executed during the hours of daylight, (2) the property sought is likely to be removed or destroyed if not seized forthwith, or (3) the property sought is not likely to be found except at certain times or in certain circumstances. Any request made pursuant to this subsection must be accompanied and supported by allegations of fact supporting such request. (As amended Oct. 26, 1974, Pub. L. 93-481, § 4(c), 88 Stat. 1455.)

AMENDMENT

1974—Oct. 26, 1974, Pub. L. 93-481, amended subsec. (c) generally, thereby eliminating "no knock" entry and search provisions formerly contained in par. (2) of subsec. (c).

NOTES TO DECISIONS

Affidavit—Sufficiency

Affidavit, which stated that attesting officer watched front door of apartment building, a multistoried structure with many units, after giving informant money to purchase narcotics from defendant rather than watching defendant's door does not, on theory that officer could not attest to informant's entry into defendant's apartment, thereby render search warrant based on such affidavit invalid. *J. T. Jones v. United States* (D.C. App. 1975, 336 A.2d 535; cert. denied 96 S. Ct. 427, 423 U.S. 997).

There was no need to demonstrate, in affidavit in support of a search warrant, reliability of informant who merely aided in initial contact with person from whom agent purchased heroin, where thereafter investigation proceeded independently, and since affidavit contained observations of agent accompanying such person to address respect a purchase of heroin and presence of heroin in premises, affidavit reflected sufficient probable cause to issue search warrant. *J. B. N. Tyler v. United States* (D.C. App. 1972, 298 A. 2d 224).

Alleged fact that there was no evidence to show that person from whom undercover agent purchased heroin obtained the heroin from within defendant's residence because such person was not searched by undercover agent prior to his entry did not render affidavit in support of search warrant inadequate, where affidavit demonstrated that agent's covert status was unknown to person from whom he purchased the heroin and therefore he was in no position to search such person without compromising his status, and there was no reason to assume false dealings. *Id.*

Construction

General provision relating to search warrants found in the District of Columbia Code and then incorporated in similar form into the new Superior Court Rules was intended to be a counterpart to comparable Federal Rules of Criminal Procedure. *L. Gooding v. United States* (1974, 94 S.Ct. 1780, 416 U.S. 430; aff'g 477 F.2d 428, 155 U.S. App. D.C. 259).

Federal offenses

Operative facts surrounding search for narcotics indicated that standards for issuance of search warrant were governed by federal statute rather than local laws of District of Columbia, where, inter alia, a United States attorney filed warrant application with a federal magistrate, alleging violations of United States Code for which defendant was later indicted, and neither application nor supporting affidavits contained any mention of local narcotics laws; failure of Congress to include in federal statute a special provision authorizing District of Columbia police officers to obtain search warrants for investigating federal offenses could not be taken as a deliberate exclusion in view of the overall statutory framework. *L. Gooding v. United States* (1974, 94 S. Ct. 1780, 416 U.S. 430; aff'g 477 F. 2d 428, 155 U.S. App. D.C. 259).

Nighttime searches

Where affidavit in support of search warrant stated that automobile to be searched had specific District of Columbia license tag and was registered to a District resident with a known address and where alleged criminal activity described in affidavit was ongoing and officer who sought search warrant delayed six days after verifying ownership of car before applying for the warrant, it cannot be reasonably inferred that a daytime execution of the warrant was impossible and in absence of showing that warrant cannot be executed during the day or that stolen property which was allegedly in car is likely to be removed unless seized forthwith or would be in car only at certain times of day, allegations do not support issuance of nighttime search warrant. *N. A. Spence v. United States* (D.C. App. 1977, 370 A. 2d 1351).

Where judge issuing warrant for nighttime search of juvenile's home must have known that search was to be executed at night, warrant authorized nighttime search on its face, and judge was orally informed that property sought was likely to be removed or destroyed if not seized forthwith, warrant was not defective because application for it did not contain, in writing, any of grounds for au-

thorizing nighttime search. *In the Matter of L. J. W.* (D.C. App. 1977, 370 A.2d 1333).

Federal statute providing that a search warrant relating to offenses involving controlled substances may be served at any time of day or night if a judge or United States Magistrate is satisfied that probable cause exists for warrant and for its service at such time provides relevant tests by which to judge validity of search warrants executed at nighttime in connection with violations of federal narcotics laws, rather than District of Columbia statutes or Federal Rule of Criminal Procedure. *United States v. L. Gooding* (1973, 477 F.2d 428, 155 U.S. App. D.C. 259, rev'g 328 F. Supp. 1005; aff'd 94 S. Ct. 1780, 416 U.S. 430).

Probable cause

In determining whether probable cause exists for magistrate to issue search warrant, so long as magistrate is sufficiently informed of underlying circumstances which justify belief in informer's reliability and underlying circumstances upon which informer concluded that contraband was where he claimed it was, informer's allegations require no independent corroboration. *J. T. Jones v. United States* (D.C. App. 1975, 336 A.2d 535; cert. denied 96 S. Ct. 427, 423 U.S. 997).

§ 23-523. Time of execution of search warrants

NOTES TO DECISIONS

Construction

General provision relating to search warrants found in the District of Columbia Code and then incorporated in similar form into the new Superior Court Rules was intended to be a counterpart to comparable Federal Rules of Criminal Procedure. *L. Gooding v. United States* (1974, 94 S.Ct. 1780, 416 U.S. 430; aff'g 477 F.2d 428, 155 U.S. App. D.C. 259).

Delay

Where warrant authorized search of delicatessen within ten days of date of issuance of warrant for gambling paraphernalia, fact that police permitted eight days to elapse before executing the warrant after receiving tip from informant that people were inside that had numbers slips on them did not render search unlawful. *United States v. J. R. Graves et ano.* (D.C. App. 1974, 315 A. 2d 559).

Execution at night

Federal statute providing that a search warrant relating to offenses involving controlled substances may be served at any time of day or night if a judge or United States Magistrate is satisfied that probable cause exists for warrant and for its service at such time provides relevant tests by which to judge validity of search warrants executed at nighttime in connection with violations of federal narcotics laws, rather than District of Columbia statutes or Federal Rule of Criminal Procedure. *United States v. L. Gooding* (1973, 477 F.2d 428, 155 U.S. App. D.C. 259, rev'g 328 F. Supp. 1005; aff'd 94 S. Ct. 1780, 416 U.S. 430).

Federal offenses

Operative facts surrounding search for narcotics indicated that standards for issuance of search warrant were governed by federal statute rather than local laws of District of Columbia, where, inter alia, a United States attorney filed warrant application with a federal magistrate, alleging violations of United States Code for which defendant was later indicted, and neither application nor supporting affidavits contained any mention of local narcotics laws; failure of Congress to include in federal statute a special provision authorizing District of Columbia police officers to obtain search warrants for investigating federal offenses could not be taken as a deliberate exclusion in view of the overall statutory framework. *L. Gooding v. United States* (1974, 94 S.Ct. 1780, 416 U.S. 430; aff'g 477 F.2d 428, 155 U.S. App. D.C. 259).

§ 23-524. Execution of search warrants

(a) An officer executing a warrant directing a search of a dwelling house or other building or a vehicle shall execute such warrant in accordance with section 3109 of title 18, United States Code.

(As amended Oct. 26, 1974, Pub. L. 93-481, § 4(d), 88 Stat. 1456.)

AMENDMENT

1974—Act Oct. 26, 1974, Pub. L. 93-481, amended subsec. (a) by substituting "section 3109 of title 18, United States Code" for "section 23-591".

NOTES TO DECISIONS

Motion to suppress evidence

Trial court's grant of suppression motion insofar as it related to property not covered by warrant, while deferring decision on question of validity of warrant on ground that criminal prosecution had not yet been instituted, was improper; court should have determined all of motion. *United States v. G. A. Farmer* (D.C. App. 1972, 297 A. 2d 783).

Search and seizure

Warrantless search of defendant found on premises named in search warrant was proper in view of this section which allows officer executing search warrant to search any person on premises to extent reasonably necessary to find property enumerated in warrant which may be concealed upon the person, and in view of officer's knowledge of information from informant that person fitting defendant's general description had been seen selling narcotics on named premises. *A. L. Thomas v. United States* (D.C. App. 1976, 352 A.2d 390).

Where defendant's wife told police that guns were in home of defendant and his wife, a warrant was issued for search of the home and the guns were found in it after they had been returned from an undisclosed location, the guns were properly seized and defendant is not entitled to have them suppressed on theory that his wife and sister-in-law had been coerced by police to return them from his mother's home. *L. Budd v. United States* (D.C. App. 1976, 350 A. 2d 742; cert. denied 97 S. Ct. 113, 429 U.S. 840).

Officers executing warrant for search of delicatessen for gambling paraphernalia, having received tip from informant that people were inside that had numbers slips on them, had sufficient grounds to search the five or six persons on the premises when the warrant was executed. *United States v. J. R. Graves et ano.* (D.C. App. 1974, 315 A.2d 559).

Where on executing warrant authorizing search of after-hours club or bar for a "gaming table and other related gambling paraphernalia," police officers knocked twice and announced they were police officers with a search warrant, after hearing someone run away from the door, officers waited approximately 30 seconds and then forced door open and from previous observations police had probable cause to believe that extensive gambling was being carried on, police had sufficient grounds to search the individuals present and tinfoil packet found on in-depth search of an occupant was properly seized and would be admissible in prosecution for possession of heroin; officers had reasonable cause to believe that occupants possessed, concealed and were about to remove or destroy evidence for which they had a search warrant. *United States v. W. Miller* (D.C. App. 1972, 298 A. 2d 34).

§ 23-525. Disposition of property

NOTES TO DECISIONS

Return of property

District Court in criminal case has jurisdiction and duty to return to defendant property seized from him in the investigation but which was not alleged to be stolen or contraband and which was not needed or is no longer needed as evidence, and return of which had been sought before sentencing, despite contention that Court lacks ancillary jurisdiction to dispose of the property after sentencing. *United States v. L. R. Wilson, Jr.* (1976, 540 F.2d 1100, 176 U.S. App. D.C. 321).

Once a court's need for property seized from defendant terminates, it has both jurisdiction and duty to return the property, which was not alleged to be stolen or contraband, regardless and independently of the validity or invalidity of the underlying search and seizure, and thus despite any waiver by plea of guilty of claim of unlawfulness of the search and seizure. *Id.*

Claim by owner for return of property cannot be successfully resisted by the Government by asserting that the property is subject to forfeiture; if the Government seeks to forfeit the property, a proper proceeding should be instituted to accomplish that purpose. *Id.*

SUBCHAPTER III.—WIRE INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

§ 23-543. Possession, sale, distribution, manufacture, assembly, and advertising of wire or oral communication intercepting devices prohibited

NOTES TO DECISIONS

Plea of guilty

Where prosecution in its opening statement had outlined overwhelming case against defendants, charged with burglary of political party headquarters and illegal electronic surveillance, pleas were accepted only after extraordinarily elaborate procedure, stretching over four days, conducted largely in camera, and involving two competent attorneys, and neither counsel, prosecutor, nor judge exerted the slightest pressure on defendants to induce them to plead guilty, withdrawal of pleas would substantially prejudice legitimate prosecution interests, defendants were granted "use immunity" so that they might testify before grand jury and congressional committees and, at time of plea, defendants had denied employment by government intelligence agencies, defendants would not be entitled, eight months after pleading guilty, to withdraw their pleas because they honestly, though mistakenly, believed that "national security" considerations required their silence. *United States v. B. L. Barker* (1975, 514 F.2d 208, 168 U.S. App. D.C. 312; cert. denied 95 S. Ct. 2420, 421 U.S. 1013).

§ 23-544. Confiscation of wire or oral communication intercepting devices

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 23-547. Procedure for authorization or approval of interception of wire or oral communications

NOTES TO DECISIONS

Disclosure of prior applications

Government attorneys who sought authorization for wiretaps of certain individuals in connection with investigation of gambling activities were required to disclose to court fact that prior authorization for interception of communications of one of the persons under investigation had been granted, even though the prior authorization had been in connection with an unrelated narcotics investigation. *United States v. J. A. Bellosi* (1974, 501 F. 2d 833, 163 U.S. App. D.C. 273).

Identification of "known" person

Mere fact of association with person engaged in illegal activities is insufficient to support finding of probable cause for purpose of including name as target of wiretap in application and court order approving wiretap. *United States v. M. Johnson, Sr.* (1976, 539 F. 2d 181, 176 U.S. App. D.C. 179; cert. denied 97 S. Ct. 784, 429 U.S. 1061).

Under both federal and District of Columbia wiretapping statutes, wiretapping authorization would be defective for failure to make further conventional investigations only where such investigations might obviate wiretap itself. *Id.*

Interception of unrelated evidence

There is obligation on part of judges and investigators to make reasonable efforts to minimize interception of conversation unrelated to original purpose of wiretap; however, this obligation does not extend to shutting off tape recorder in midst of properly authorized and conducted intercept when unexpected evidence of another crime presents itself. *United States v. M. Johnson, Sr.*

(1976, 539 F. 2d 181, 176 U.S. App. D.C. 179; cert. denied 97 S. Ct. 784, 429 U.S. 1061).

Scope of warrant

A warrant for wire interception of oral communications must be specific and, if more than one entry is involved, each intrusion must be treated formally and approved in advance so that judge or magistrate can supervise when and how entry is to be accomplished and a separate determination of probable cause and reasonableness is required as to each intrusion upon private premises. *United States v. C. D. Ford et al.* (1976, 414 F. Supp. 879; aff'd 553 F. 2d 146, 180 U.S. App. D.C. 1).

Although it may be necessary to place "bugging" devices on private premises, such "bugging" is to be accomplished with court's authorization limited to narrowest precise point necessary to accomplish law enforcement purpose and reasons for intrusion must be included in public record ultimately available for further court review whenever prosecution results. *Id.*

That judge in fact approved each entry of private premises for electronic surveillance in advance and knew that, contrary to broad terms of warrant, police were planning to enter at a reasonable time, for valid reasons each time and by what appeared to be a wholly proper ruse, does not avoid consequences of overbreadth of the warrant itself, where the discussions that led to the judicial approval of each entry were not transcribed or presented by affidavits so that there is no supporting record to review; thus the warrant as written is binding and exclusive. *Id.*

§ 23-548. Additional procedure for approval of interception of wire or oral communications

NOTES TO DECISIONS

Construction

Provisions of this section concerning prior approval for use of other crimes evidence resulting from wiretap do not apply where prior wiretap was authorized under federal law. *United States v. M. Johnson, Sr.* (1976, 539 F. 2d 181, 176 U.S. App. D.C. 179; cert. denied 97 S. Ct. 784, U.S. —).

Interception of unrelated evidence

There is obligation on part of judges and investigators to make reasonable efforts to minimize interception of conversation unrelated to original purpose of wiretap; however, this obligation does not extend to shutting off tape recorder in midst of properly authorized and conducted interception when unexpected evidence of another crime presents itself. *United States v. M. Johnson, Sr.* (1976, 539 F. 2d 181, 176 U.S. App. D.C. 179; cert. denied 97 S. Ct. 784, 429 U.S. 1061).

§ 23-550. Inventory

NOTES TO DECISIONS

Notice—Service

Defendants' receipt of actual notice of wiretap is bar to any suppression argument based on noncompliance with inventory requirement of this section, at least where failure to give formal notice was not deliberate act of either court or Government. *United States v. M. Johnson, Sr.* (1976, 539 F. 2d 181, 176 U.S. App. D.C. 179; cert. denied 97 S. Ct. 784, 429 U.S. 1061).

§ 23-551. Procedure for disclosure and suppression of intercepted wire or oral communications

NOTES TO DECISIONS

Motion to suppress

Under federal and District of Columbia wiretapping statutes, failure to raise objection before trial to admission of wiretap communications waives right to object to admission of such evidence, in absence of evidence that defendants had no opportunity to make suppression motion or that they were not aware of grounds of motion. *United States v. M. Johnson, Sr.* (1976, 539 F. 2d 181, 176 U.S. App. D.C. 179; cert. denied 97 S. Ct. 784, 429 U.S. 1061).

Standing

All persons whose telephone conversations were intercepted pursuant to wiretap which was authorized on

basis of application which failed to disclose that one of the persons under investigation had previously been the subject of a wiretap had standing to seek suppression of the intercepted communication. *United States v. J. A. Bellosi* (1974, 501 F. 2d 833, 163 U.S. App. D.C. 273).

Suppression

Communications which were intercepted pursuant to wiretap which was authorized on basis of application which failed to disclose previous wiretap authorization directed against one of the individuals under investigation were "unlawfully intercepted" within meaning of statute which provides for suppression of communications which are unlawfully intercepted. *United States v. J. A. Bellosi* (1974, 501 F. 2d 833, 163 U.S. App. D.C. 273).

SUBCHAPTER IV.—ARREST WARRANT AND SUMMONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 23-501.

§ 23-561. Issuance, form, and contents

(b) (1) An arrest warrant shall be signed by the judicial officer and shall state or contain the name of the issuing court, the date of issuance of the warrant, a description of the offense charged, and the name of the person to be arrested or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall command that the person be arrested and brought before the issuing court or officer.

(As amended Oct. 26, 1974, Pub. L. 93-481, § 4(e), 88 Stat. 1456.)

AMENDMENT

1974—Act Oct. 26, 1974, Pub. L. 93-481, repealed the last sentence of subsec. (b) (1) which read: "If the complaint establishes probable cause to believe that one of the conditions set out in subparagraphs (A) through (D) of section 23-591(c)(2) is likely to exist at the time and place at which such warrant is to be executed, the warrant may contain an authorization that it be executed as provided in section 23-591."

§ 23-562. Execution and return

NOTES TO DECISIONS

Processing arrestees

Mass arrests of demonstrators by police officers were not invalid for failure to contemporaneously complete field arrest forms or other procedures for recording information necessary to establish probable cause; if all members of a group are arrested the prosecutor may be able to prove, by testimony of on-the-scene policemen, that there was probable cause to believe that the group as a whole was violating the law by violence or obstruction or by remaining on the scene after reasonable notice and opportunity to disperse. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1977, 566 F. 2d 107, 184 U.S. App. D.C. —).

It was error to order District of Columbia police officials to formulate a comprehensive manual of policies to be followed in dealing with mass demonstrations absent showing that police officials directed, authorized or approved use of excessive force, any showing that it was department policy to detain prisoners an unreasonable time or deny them adequate medical treatment or that delay in booking was due to anything other than a great number of arrests in prior demonstrations, notwithstanding that in individual cases mistakes may have been made. *Id.*

Where persons taken into custody during Vietnam war demonstrations were told by police that they were under arrest and, if they asked, were informed that they were charged with disorderly conduct there was no violation of due process, on ground that statement of the charges was not sufficiently specific, i.e., whether arrest was for

violation of failure-to-move-on statute or violation of order issued under police line regulations. *Id.*

Right to counsel

Miranda warnings are required at commencement of questioning initiated by law enforcement officers after a person has been taken into custody; such warnings are not required at time of arrest, absent showing of any improper question of prisoner at scene of the arrest. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1977, 566 F. 2d 107, 184 U.S. App. D.C. —).

SUBCHAPTER V.—ARREST WITHOUT WARRANT

§ 23-581. Arrests without warrant by law enforcement officers

NOTES TO DECISIONS

Arrest

Where officer, acting on radio report of citizen's complaint of "man exposing himself and Peeping Tom" detained suspect for only a moment before suspect admitted possessing gun, and officer's frisk of suspect was only of his top coat, circumstances indicate stop, not arrest. *T. W. Robinson v. United States* (D.C. App. 1976, 355 A. 2d 567).

Arrest records—Expungement

Persons who were unlawfully arrested while participating in peaceful Quaker vigil of prayer on White House sidewalk in 1971 are entitled to full expungement of their arrest records, including entry of court order declaring that the seizures should be deemed not to have been "arrests." *L. Tatum et al. v. R. C. B. Morton et al.* (1977, 562 F. 2d 1279, 183 U.S. App. D.C. 331; rem'd 402 F. Supp. 719).

Class-wide injunctive relief ordering police department to expunge records of persons who had been arrested during mass demonstrations without probable cause is inappropriate; persons arrested should present request for expungement of their records to the police department, which should not continue to assert that it is barred by statute from expunging arrest records and that amplification is the sole remedy. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1975, 400 F. Supp. 186; rev'd on other grounds 566 F. 2d 107, 184 U.S. App. D.C. —).

On failure of showing of probable cause for arrests, in action to declare certain acts with respect to arrests and prosecutions unconstitutional and to enjoin further prosecutions in connection with disorderly conduct type offenses related to antiwar demonstrations in District of Columbia during week of May 3, 1971, defendant officials were ordered to convey to counsel for plaintiffs for destruction all specified records that would in any way relate, inform or reflect that any member of class had been arrested or charged with an offense from and including May 3 through May 6, 1971, and it was ordered that seizures of members of class from and including May 3, 1971, through May 6, 1971, would be deemed to have been "detentions" rather than "arrests." *N. Sullivan et al. v. C. F. Murphy et al.* (1974, 380 F. Supp. 867).

Damages

District Court, in awarding damages to persons unlawfully arrested while participating in peaceful Quaker vigil of prayer on White House sidewalk in 1971, erred in limiting recoverable damages on grounds that plaintiffs had sought notoriety by participating in demonstration and that some plaintiffs had chosen not to post \$10 collateral when they were given opportunity to do so in order to procure their release. *L. Tatum et al. v. R. C. B. Morton et al.* (1977, 562 F. 2d 1279, 183 U.S. App. D.C. 331; rem'd 402 F. Supp. 719).

District Court acted properly in denying punitive damages to persons who were unlawfully arrested while participating in peaceful Quaker vigil of prayer on White House sidewalk in 1971 as part of protest against government's war policies in Vietnam. *Id.*

Liability for improper arrest

District of Columbia police inspector is individually liable for unlawful and unreasonable arrests of members of religious group, who were conducting peaceful prayer vigil near White House, where inspector had established

police lines due to claimed danger of property damage and personal injury created by influx of "outsiders" into the vigil lines, but there was no evidence to suggest possibility of violence or property damage at scene of the vigil other than simple fact that "outsiders" who joined vigil had same appearance as persons who were present at monument grounds when "unknown" persons destroyed property. *L. Tatum et al. v. R. C. B. Morton et al.* (1974, 402 F. Supp. 719; rem'd 562 F. 2d 1279, 183 U.S. App. D.C. 331).

District of Columbia under common-law theory of respondent superior, is liable for actions of police inspector who was operating within scope of his duties as senior police officer at scene of unlawful arrests of members of religious group who were conducting peaceful prayer vigil near White House. *Id.*

Mass arrests

Mass arrests of demonstrators by police officers were not invalid for failure to contemporaneously complete field arrest forms or other procedures for recording information necessary to establish probable cause; if all members of a group are arrested the prosecutor may be able to prove, by testimony of on-the-scene policemen, that there was probable cause to believe that the group as a whole was violating the law by violence or obstruction or by remaining on the scene after reasonable notice and opportunity to disperse. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1977, 566 F. 2d 107, 184 U.S. App. D.C. —).

Although one who has violated no law is not to be arrested for the offenses of those who have been violent or obstructive, the police may validly order violent or obstructive demonstrators to disperse or clear the streets and if any demonstrator or bystander refuses to obey such an order after fair notice and opportunity to comply, his arrest does not violate the Constitution even though he has not previously been violent or obstructive; nonviolent demonstrators may be properly arrested for failure to obey a valid dispersal order. *Id.*

It was error to order District of Columbia police officials to formulate a comprehensive manual of policies to be followed in dealing with mass demonstrations absent showing that police officials directed, authorized or approved use of excessive force, any showing that it was department policy to detain prisoners an unreasonable time or deny them adequate medical treatment or that delay in booking was due to anything other than a great number of arrests in prior demonstrations, notwithstanding that in individual cases mistakes may have been made. *Id.*

Miranda warnings

Miranda warnings, are required at commencement of questioning initiated by law enforcement officers after a person has been taken into custody, such warnings are not required at time of arrest, absent showing of any improper question of prisoner at scene of the arrest. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1977, 566 F. 2d 107, 184 U.S. App. D.C. —).

Mode of arrest

Whether or not police officer who made warrantless arrest verbally characterized the particular crime for which he made his arrest at the time of making same was immaterial, since the description given by officer did not go to the question of probable cause and only question was whether officer had reasonable ground to believe a felony had been committed. *J. A. Bond v. United States* (D.C. App. 1973, 310 A. 2d 221).

Probable cause

Mass arrests of demonstrators by police officers were not invalid for failure to contemporaneously complete field arrest forms or other procedures for recording information necessary to establish probable cause; if all members of a group are arrested the prosecutor may be able to prove, by testimony of on-the-scene policemen, that there was probable cause to believe that the group as a whole was violating the law by violence or obstruction or by remaining on the scene after reasonable notice and opportunity to disperse. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1977, 566 F. 2d 107, 184 U.S. App. D.C. —).

Where police officer looked into hotel room after door was opened and saw people injecting some substance into themselves, officer had probable cause to believe that individuals inside were injecting narcotics, thereby violating the law, and he had both right and duty to seize contraband and place individuals under arrest. *R. E. Matthews v. United States* (D.C. App. 1975, 335 A.2d 251).

Where informant supplied police officer with detailed information relating to possession of marijuana by defendant and every aspect of such information, including place, time, and physical appearance, was checked and verified by police officer, police officer had probable cause for arrest. *United States v. R. D. Malcolm* (D.C. App. 1975, 331 A.2d 329).

Police officer who had interviewed alleged assault victim and concluded that his complaint, to the effect that accused had pointed a gun at him and threatened to kill him, was genuine, had probable cause to believe that an armed assault had taken place and that accused had committed it, and in light of the exigent nature of the circumstances had probable cause to arrest accused without an arrest warrant. *United States v. H. Simpson* (D.C. App. 1975, 330 A.2d 756).

Even though Florida police officers relied principally on offenses committed in District of Columbia in arresting defendant and stated that fact to him at time of arrest, where Florida officers also believed that defendant's possession and negotiation in Florida of money orders stolen in District of Columbia constituted violations of Florida law, police officers had probable cause to arrest defendant without a warrant. *United States v. J. M. Joyner* (1974, 492 F. 2d 655, 160 U.S. App. D.C. 389).

Where defendant on police officer's request, after fourth encounter with defendant and codefendant displayed an automobile radio he was carrying and codefendant denied knowing defendant, which was highly improbable on basis of officer's prior observations indicating that codefendant was acting some how as a lookout, officer was possessed of sufficient facts and circumstances warranting belief that offense had been committed and justifying arrest, even though officer had received no report of crime of automobile radio theft. *J. E. Wray v. United States* (D.C. App. 1974, 315 A.2d 843).

The Constitution does not permit arrest at the scene of a demonstration, without probable cause at the time of the arrest, in the hope that evidence uncovered during the process of detention may serve as basis for prosecuting at least some of those arrested. *N. Sullivan et al. v. C. F. Murphy, Corporation Counsel, et al.* (1973, 478 F. 2d 938, 156 U.S. App. D.C. 28; cert. denied 94 S. Ct. 162, 414 U.S. 880).

When the public authorities take action that must stand or fall on basis of an underlying arrest and when the validity of that arrest is questioned in an appropriate proceeding, the burden of establishing probable cause rests entirely upon the government. *Id.*

Where large numbers of persons were arrested during May, 1971, civil disorders, many of arrests were made without probable cause, arrestees were not given judicial hearing on probable cause, and possibility existed that many of the persons who obtained their release by posting bond were misled by erroneous information as to nature and consequences of posting bail and circumstances under which the bond could be recovered, federal court had jurisdiction to invalidate the forfeitures of the bonds. *Id.*

Where officer observed accused looking or searching behind desk in room of office building and observed him depart as soon as officer's presence became known and accused answered "Nothing" when officer addressed defendant outside building and asked him what he had been doing in the office, officer had probable cause to arrest accused and fruits of larcenies seized from accused's person incident to the arrest were admissible. *W. Arrington v. United States* (D.C. App. 1973, 311 A. 2d 838).

Officer who observed defendant, a high school student outside school building, trying to stuff some money into envelope similar to those used in other narcotics transactions at the school and who saw a known narcotics addict approach defendant who started to run when officer reached for the envelope and tore a portion of the en-

velope from defendant's hand did not have probable cause to arrest defendant at the moment the envelope was seized, and heroin found in the envelope should have been suppressed. *F. L. Waters v. United States* (D.C. App. 1973, 311 A. 2d 835).

Police officers who were admitted to defendant's apartment with defendant's consent during course of investigation of death of five-year-old girl and who observed scratches on defendant's face, presence of candy, general disarray of room, and indications of recent bathing by defendant had probable cause for arrest. *United States v. W. Sheard* (1972, 473 F. 2d 139, 154 U.S. App. D.C. 9; cert. denied 93 S. Ct. 2784, 412 U.S. 943).

Where defendant, who had been questioned by officer on another matter, was still in view, three blocks away, when officer, who had been told that defendant had syringe under wig, called for scout car and stopped defendant and asked if she was wearing a wig, defendant had not left officer's presence in such a way as to make inoperative statute permitting arrest without a warrant if officer has probable cause to believe person has committed or is committing an offense in his presence. *United States v. S. P. Oliver* (D.C. App. 1972, 297 A. 2d 778).

Where police officer was told by another that defendant, whom officer had questioned, had a syringe under wig, officer's momentary stopping of defendant, inquiry about wig, and request to defendant to remove her hat were reasonable, and defendant's denial of wearing a wig and its obvious presence furnished independent observation and corroboration which gave rise to a reasonable basis to arrest defendant and seize contents of her hand, which she had removed from beneath wig and which contained syringe and a bag of methadone, and to seize tinfoil pack, which apparently contained heroin, from starch box from which defendant began to eat at police station. *Id.*

Processing arrestees

It was error to order District of Columbia police officials to formulate a comprehensive manual of policies to be followed in dealing with mass demonstrations absent showing that police officials directed, authorized or approved use of excessive force, any showing that it was department policy to detain prisoners an unreasonable time or deny them adequate medical treatment or that delay in booking was due to anything other than a great number of arrests in prior demonstrations, notwithstanding that in individual cases mistakes may have been made. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1977, 566 F. 2d 107, 184 U.S. App. D.C. —).

Where persons taken into custody during Vietnam war demonstrations were told by police that they were under arrest and, if they asked, were informed that they were charged with disorderly conduct there was no violation of due process, on ground that statement of the charges was not sufficiently specific, i.e., whether arrest was for violation of failure-to-move-on statute or violation of order issued under police line regulations. *Id.*

Search and seizure

Police, who had learned of armed assault committed by accused, and, who, before entering accused's apartment, heard close of squeaky door, were entitled to make an arrest and effect a limited search for weapons incident thereto, for their own safety, and .38 revolver found in stove which was readily accessible to the three people in the room was admissible against the accused, subsequently identified by the victim, even though the accused was a functional cripple and was not arrested until the pistol had been seized. *United States v. H. Simpson* (D.C. App. 1975, 330 A.2d 756).

Where officer had probable cause to arrest defendant for operating a motor vehicle after revocation of his operator's permit and effected a full custody arrest, search of defendant's person without search warrant, inspection of crumpled cigarette package found on defendant's person and seizure of heroin capsules found in the package were permissible even though officer did not indicate any subjective fear of defendant and did not suspect that defendant was armed. *United States v. W. Robinson, Jr.* (1973, 94 S.Ct. 467, 414 U.S. 218; rev'g 471 F. 2d 1082, 153 U.S. App. D.C. 114).

Following arrest of defendant under warrant for operating motor vehicle after revocation of operator's permit, police officer was authorized to conduct "full field search" of defendant, remove envelope from pocket inside coat and open it to determine if it contained narcotics. *United States v. K. C. Simmons* (D.C. App. 1973, 302 A. 2d 728).

Where defendant was arrested for the petty offense of driving with a learner's permit while unaccompanied by a licensed driver and was frisked at scene and no weapons were found, arresting officer who then took defendant to the station and instead of informing defendant, who had \$171 cash in his pockets, of his right to post \$50 collateral, as prescribed for the petty offense, and leave the precinct station, required defendant as a booking inventory procedure to empty his pockets, conducted an unreasonable search rendering narcotics seized from pocket inadmissible. *United States v. H. E. Mills* (1972, 472 F. 2d 1231, 153 U.S. App. D.C. 156).

Informing person arrested for petty offense of his option to post collateral and giving him an opportunity to exercise that option is a necessary condition to a thorough and complete search that is conducted only as incident to needs of stationhouse detention. *Id.*

When person is charged with a collateral-type petty offense under which he rightfully has opportunity to post collateral and avoid further detention and there is no probable cause to believe that he committed a more serious crime, police may not engage in an inventory search of offender or an equivalent direction that he empty his pockets and seek to support it on ground of holding him in further confinement, unless at a minimum he was notified of his opportunity to post collateral and refused or was unable to do so. *Id.*

Absent "special circumstances," a police officer has no right to search either the person or the vehicle incident to a lawful arrest for violation of a mere motor vehicle regulation. *United States v. W. Robinson, Jr.* (1972, 471 F. 2d 1082, 153 U.S. App. D.C. 114; rev'd 94 S. Ct. 467, 414 U.S. 218).

Arresting officers did not have reasonable grounds to search a passenger in back seat of an automobile stopped during "rush hour" for speeding even if after automobile stopped they observed passenger move his right arm and shoulder as if to hide something or put something away, and a gun and heroin found in such search should have been suppressed pursuant to defendant's motions. *United States v. L. N. Page* (D.C. App. 1972, 298 A. 2d 233).

Validity of arrest

Where officer had victim point out suspects, officer took victim to office of prosecutor for protection and upon returning was unable to find defendant and another and then went to motel at which defendant was reportedly staying and arrested defendant and his companion as they were about to leave the city, arrest without a warrant, effectuated by unconsented to entry into motel room, for not only violation of the three-card monte statute but grand larceny was valid and paraphernalia seized as incident to arrest were admissible. *J. A. Bond v. United States* (D.C. App. 1973, 310 A. 2d 221).

§ 23-582. Arrests without warrant by other persons

NOTES TO DECISIONS

Probable cause

Evidence in false imprisonment action by former store employee against his former employer shows, as matter of law, that employer had probable cause to detain employee for investigation as to possible discrepancies in employee's department. *Lansburgh's, Inc. v. S. Ruffin* (D.C. App. 1977, 372 A. 2d 561).

SUBCHAPTER VI.—AUTHORITY TO BREAK AND ENTER UNDER CERTAIN CONDITIONS

REPEAL OF SUBCHAPTER

Section 4(a) of Act Oct. 26, 1974, Pub. L. 93-481, 88 Stat. 1455, as amended Jan. 3, 1975, Pub. L. 93-635, § 16, 88 Stat. 2178, provided in part that subchapter VI of chapter 5 of title 23 of the District of Columbia Code is repealed.

§ 23-591. Repealed. Oct. 26, 1974, Pub. L. 93-481, § 4(a), 88 Stat. 1455; Jan. 3, 1975, Pub. L. 93-635, § 16, 88 Stat. 2178

Section, Act July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 630, related to authority to break and enter under certain conditions.

NOTES TO DECISIONS UNDER PRIOR LAW

Announcement of identity

Where experienced police officer, familiar with narcotics and extent of narcotics abuse at hotel, knocked on door of hotel room of woman who was known to him, male voice asked who was there and officer responded "police", door was opened and officer saw group of people in process of injecting presumed narcotics, officer was familiar with layout of room and knew that it contained a sink which would have permitted easy disposal of narcotics, and officer was in uniform and could be certain that doorman and any others who saw him would recognize him as police officer, any further announcement by officer before entering would have been a useless gesture, and thus he was not required to state his identity and purpose before entering. *R. E. Matthews v. United States* (D.C. App. 1975, 335 A.2d 251).

Breaking and entering

Where following execution of search warrant, several police officers went to defendant's apartment, knocked on defendant's door, policewoman in response to question "Who is it?" said "Sheryl. Is John there?", defendant then opened door several inches, police officer pushed it open rest of way and defendant stepped aside and all entered to execute warrant, and officer who led the way announced "Police officers; search warrant," defendant, by stepping away from door on seeing police permitted entry and thus police did not break and enter apartment in violation of this section by illegally announcing their identity and purpose as or after they entered rather than before. *J. T. Jones v. United States* (D.C. App. 1975, 336 A.2d 535; cert. denied 96 S. Ct. 427, 423 U.S. 997).

Where police officer's entrance into hotel room was gained by overcoming some momentary resistance from doorman, notwithstanding fact that officer had responded "police" when asked who was at the door, the entry constitutes a "breaking" within meaning of this section which requires that breaking and entry shall not be made until after police officer makes announcement of his identity and purpose. *R. E. Matthews v. United States* (D.C. App. 1975, 335 A.2d 251).

Probable cause

Where before officers entered hotel room officers knew (1) that occupants of room appeared to be on verge of injecting narcotics, (2) that at least one of them was aware of nearby police presence, (3) that there was a sink in room, and (4) that door had been braced shut with a board, and officers had made numerous prior narcotics arrests at hotel, officers had probable cause to believe that prior announcement would have been useless gesture and likely to have resulted in destruction of evidence, and no-knock entry was lawful. *H. L. Borum v. United States* (D.C. App. 1974, 318 A.2d 590).

Chapter 7.—EXTRADITION AND FUGITIVES FROM JUSTICE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 11-2601.

§ 23-704. Extradition

CROSS REFERENCE

Representation of indigents, see § 11-2601.

NOTES TO DECISIONS

Evidence

Deficient showing of substantial charge in papers of demanding state can be supplemented by testimony of person possessing necessary information in order to make sufficient showing. *R. Tucker v. Commonwealth of Virginia* (D.C. App. 1973, 308 A.2d 783).

Evidence at extradition hearing, including testimony of affiant as to basis for Virginia warrant, was sufficient to establish probable cause to support rendition. *Id.*

Return of juveniles

District's consent to rendition of juvenile to another state under Interstate Compact on Juveniles cannot properly be exercised by assistant corporation counsel absent express delegation of such power, nor by trial judge; instead, remand is required to enable trial court to identify "compact administrator" under Compact and to solicit his grant or denial of District's consent to rendition. *In the Matter of G. C. S.* (D.C. App. 1976, 360 A.2d 498).

Chapter 9.—FRESH PURSUIT

§ 23-901. Arrests in the District of Columbia by officers of other States

NOTES TO DECISIONS

Probable cause for arrest

Defendant was legally arrested in District of Columbia by Montgomery County, Maryland, police officer, who did not have probable cause for arrest at time of entry into District, following defendant's car as a result of suspicious activity observed in Maryland, but who had probable cause at time of arrest from radio broadcasts received within District. *A. Hutchinson, Jr. v. State of Maryland* (Md. Sp. App. 1977, 380 A.2d 232).

§ 23-902. Hearing; commitment; discharge

NOTES TO DECISIONS

Waiver of extradition

In homicide prosecution, trial court's finding that defendant's consent to accompany Maryland officers from District of Columbia where he was arrested back to Maryland without extradition hearing was not voluntary under all circumstances was not clearly erroneous. *United States v. E. J. Holmes* (D.C. App. 1977, 380 A.2d 598).

Chapter 11.—PROFESSIONAL BONDSMEN

§ 23-1110. Designation of official to take bail or collateral when court is not in session; issuance of citations

NOTES TO DECISIONS

Processing arrestees

It was error to order District of Columbia police officials to formulate a comprehensive manual of policies to be followed in dealing with mass demonstrations absent showing that police officials directed, authorized or approved use of excessive force, any showing that it was department policy to detain prisoners an unreasonable time or deny them adequate medical treatment or that delay in booking was due to anything other than a great number of arrests in prior demonstrations, notwithstanding that in individual cases mistakes may have been made. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1977, 566 F.2d 107, 184 U.S. App. D.C. —).

Right to counsel

Miranda warnings are required at commencement of questioning initiated by law enforcement officers after a person has been taken into custody, such warnings are not required at time of arrest, absent showing of any improper question of prisoner at scene of the arrest. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1977, 566 F.2d 107, 184 U.S. App. D.C. —).

Search and seizure

The official who is called upon to make the determinations involved in decision on incarceration—the arrangements for bail, the possibility of a citation issued at the stationhouse—must make that decision before it may be used to justify an intrusion on privacy as one permissible under the Fourth Amendment; the mere possibility that such a search might later be justified cannot serve to eliminate accused's rights under the Fourth Amendment at time of arrest. *United States v. W. Robinson, Jr.* (1972, 471 F.2d 1082, 153 U.S. App. D.C. 114; rev'd 94 S. Ct. 467, 414 U.S. 218).

Stationhouse clerks

Ordinarily a person arrested for an offense for which he may post bond or collateral is brought immediately to the Superior Court for that purpose, and if Superior Court is not in session, the stationhouse clerks who have the func-

tion of "booking" offenders serve also as acting clerks of the Superior Court and are therefore authorized to accept collateral or bond, but such stationhouse clerks have no discretion to either increase or decrease the amount of bond or collateral required by court rules. *United States v. W. Robinson, Jr.* (1972, 471 F. 2d 1082, 153 U.S. App. D.C. 114; rev'd on other grounds 94 S. Ct. 467, 414 U.S. 218).

Chapter 13.—BAIL AGENCY AND PRETRIAL DETENTION

SUBCHAPTER I.—DISTRICT OF COLUMBIA BAIL AGENCY

§ 23-1303. Interviews with detainees; investigations and reports; information as confidential; consideration and use of reports in making bail determinations

NOTES TO DECISIONS

Construction

"Confidentiality provision" of this section providing in part that "Any information contained in the agency's files, presented in its report, or divulged during the course of any hearing shall not be admissible on the issue of guilt in any judicial proceeding * * *" does not encompass facts otherwise of official record simply because of their inclusion in the report. *J. A. Haltiwanger v. United States* (D.C. App. 1977, 377 A. 2d 1142).

Impeachment, use of information for

Defendant was properly impeached by use of prior inconsistent statement given by him to representative of District of Columbia Bail Agency in the prosecution of offense for which the bail agency statement was given. *J. Herbert, Jr. v. United States* (D.C. App. 1975, 340 A.2d 802).

Stipulation as to impeachment testimony to be offered by employee of District of Columbia Bail Agency as to certain statements made to him by defendant after arrest was binding on defendant, notwithstanding contention that this section prohibits use of any information given Bail Agency for purpose of impeachment at trial. *L. A. Cowan v. United States* (D.C. App. 1975, 331 A.2d 323).

Pretrial detention reports

Failure of Government to comply with rule requiring attorney for Government to make biweekly report to court listing each defendant held pending trial for period in excess of ten days and to state reasons why such defendants were still being held in custody cancelled any negative effect that defendants' failure to assert right to speedy trial formally until day of trial might have had on validity of the speedy trial claim. *United States v. E. L. Cooper* (1974, 504 F. 2d 260, 164 U.S. App. D.C. 191).

Record on appeal

Record on appeal from denial of motion to withdraw guilty pleas, raising serious unanswered questions about whether defendant's decision to plead was materially affected by, inter alia, defense counsel's failure to seek an independent mental examination of defendant, or to call the psychiatrist to testify or the influence of ex parte communications between U.S. Attorney and examining staff, or psychiatrists' failure to file promptly his letters or court's failure to inquire into circumstances surrounding the examination was inadequate for proper consideration of district court's reasons for denying the motion. *United States v. G. M. Morgan* (1973, 482 F. 2d 786, 157 U.S. App. D.C. 197).

Reports—Use for impeachment

Defendant was properly impeached with information concerning prior conviction for uttering even though his admission of the prior conviction was made on a form prepared for bail agency. *J. Anderson v. United States* (D.C. App. 1976, 352, A. 2d 392).

§ 23-1307. Annual reports to executive committee, Congress, and Commissioner

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER II.—RELEASE AND PRETRIAL DETENTION

§ 23-1321. Release in noncapital cases prior to trial

NOTES TO DECISIONS

Ball—Excessive

Although accused charged with grand larceny and released on personal recognizance bond allegedly threatened a witness and was arrested on charge of obstructing justice, setting of surety bond of \$5,000 is not justified on theory that, in view of the serious nature of the pending charges, amounting to an assault on integrity of judicial system, and the unemployment of accused, accused was unreliable and unlikely to abide by nonfinancial conditions of release; thus case must be remanded for proceedings on issue of pretrial detention or appropriate conditions of release. *H. D. Jones v. United States* (D.C. App. 1975, 347 A. 2d 399).

Under Ball Reform Act of 1966, and under District of Columbia local bail provisions, a money bond may not be used to assure detention. *B. F. Villines v. United States* (D.C. App. 1973, 312 A. 2d 304).

Conditions of release

Where trial court set secured money bonds of \$10,000 each for two defendants charged with murder during perpetration of robbery, but record did not contain full information concerning nature and circumstances of offense and why other conditions of release would not be suitable, proceedings on appeal after defendants' motions for review of bond had been overruled would be remanded for supplementation of record by complete statement by trial court on those matters or, if trial court deemed it appropriate, entry of new orders respecting pretrial bail. *D.C. Bouknight et ano. v. United States* (D.C. App. 1973, 305 A. 2d 524).

Constitutionality

This subchapter does not violate due process on basis that it is impermissibly vague and uncertain as failing to delimit with precision the term "release," inasmuch as it provides that additional penalty shall be assessed when a person is convicted of an offense committed while released pursuant to this section which specifically sets forth various types of release which may be ordered by judicial officer. *T. E. Tansimore, Jr. v. United States* (D.C. App. 1976, 355 A. 2d 799).

Custodial release

Particularly when requested by accused, some form of third-party custody should be explored and rationally imposed or rejected before a monetary bond is selected. *H. D. Jones v. United States* (D.C. App. 1975, 347 A.2d 399).

Setting of third-party custody and intensity thereof as condition of pretrial release need not immediately result in release because custodian obtained, as well as degree of supervision undertaken, must be acceptable to court before release is permitted. *Id.*

—Preparation of defense

Motion for conditional release which added nothing to general averment of previously denied motion, which offered only a bare demand for release in order that defendant might participate in preparation for trial, which was silent as to precise manner in which defendant's unrelieved incarceration would prohibit his effective assistance in development of defense, and which did not offer specific allegations of fact which, if proven, would have demonstrated good cause for affording requested relief, was properly denied by trial court, and defendant was not improperly inhibited in presentation of his defense by such denial. *G. H. Perry v. United States* (D.C. App. 1976, 364 A.2d 617).

§ 23-1322. Detention prior to trial

NOTES TO DECISIONS

Abuse of discretion

Record on appeal from order for pretrial detention of juvenile pending trial on a delinquency petition charging heroin possession discloses no abuse of discretion by the trial judge. *In the Matter of A. W.* (D.C. App. 1976, 353 A.2d 686).

Bail

Pretrial order setting \$10,000 bail for release of accused, who was charged with robbery and weapon assault in case of considerable notoriety and who exhibited self-oriented pattern of life with little or no recognition of social responsibility, and rejecting accused's plan to be placed in multiparty, 24-hour custody of his father, mother and grandmother would be affirmed. *T. Marshall v. United States* (D.C. App. 1973, 308 A.2d 766).

— Excessive

Although accused charged with grand larceny and released on personal recognizance bond allegedly threatened a witness and was arrested on charge of obstructing justice, setting of surety bond of \$5,000 is not justified on theory that, in view of the serious nature of the pending charges, amounting to an assault on integrity of judicial system, and the unemployment of accused, accused was unreliable and unlikely to abide by nonfinancial conditions of release; thus case must be remanded for proceedings on issue of pretrial detention or appropriate conditions of release. *H. D. Jones v. United States* (D.C. App. 1975, 347 A.2d 399).

Under Bail Reform Act of 1966, and under District of Columbia local ball provisions, a money bond may not be used to assure detention. *B. F. Villines v. United States* (D.C. App. 1973, 312 A.2d 304).

Constitutionality

As applied after showing that defendant had threatened witnesses, pretrial detention statute was not unconstitutional as resulting in denial of defendant's right to bail prior to trial. *T. E. Blunt v. United States* (D.C. App. 1974, 322 A.2d 579).

Pretrial detention statute was not unconstitutional as denying due process by abridging presumption of innocence. *Id.*

Pretrial detention statute provided procedure for detention hearings which satisfied requirements of fundamental fairness and did not deprive defendant of due process by denying him right to cross-examine witnesses who alleged that he had threatened them. *Id.*

Pretrial detention statute did not unconstitutionally deny defendant due process of law by establishing "clear and convincing" evidence as standard of proof in detention hearings rather than "reasonable doubt" standard. *Id.*

Construction

Pretrial detention statute does not require that government make motion for pretrial detention as soon as grounds therefor become apparent or be thereafter foreclosed from making such motion. *T. E. Blunt v. United States* (D.C. App. 1974, 322 A.2d 579).

Evidence—Sufficiency

Showing of defendant's lengthy criminal record spanning 22 years, highly assaultive nature of defendant's past offenses and gravity of pending charge of assault with deadly weapon, together with failure of defense to present any suitable structured program of release, supported finding that no condition or combination of conditions of release would reasonably assure witness' safety and that defendant should therefore be committed to pretrial detention. *T. E. Blunt v. United States* (D.C. App. 1974, 322 A.2d 579).

Findings—Sufficiency

Even though defendant contested complaining witness' version of events which led to defendant's arrest for obstructing justice, had trial court inquired into that charge and concluded that there was clear and convincing evidence that defendant was guilty of obstruction of justice, his detention would have been warranted pursuant to pretrial detention provisions of this section. *H. D. Jones v. United States* (D.C. App. 1975, 347 A.2d 399).

Finding by trial judge that defendant was a person described in pretrial detention statute was sufficient to permit Court of Appeals to determine that court had found allegations that defendant threatened government witnesses to be true by clear and convincing evidence. *T. E. Blunt v. United States* (D.C. App. 1974, 322 A.2d 579).

Identification

If Government's case turns upon testimony of identification witness, and defense counsel forecasts irreparable suggestivity if witness appears at preliminary hearing, his remedy lies in a motion for a lineup order, to assure that identification witness will first view the suspect at a lineup, rather than in the magistrate's hearing room; the magistrate or judge should grant this motion, unless cause to the contrary is shown, since a lineup conducted by police, with attendance of defense counsel, assures or at least promotes reliability of identification and is therefore in interest of justice. *United States v. E. Smith* (1972, 473 F.2d 1148, 154 U.S. App. D.C. 111).

Mootness

Where subsequent to time amended complaint was filed challenging constitutionality of preventive detention provisions of District of Columbia Court Reform and Criminal Procedure Act by plaintiff who had been incarcerated under such provisions, the District of Columbia Court of Appeals vacated the order of the Superior Court under which plaintiff had been detained, and as result of proceedings on remand a parole violation warrant was executed against plaintiff who was being detained pending trial as a parole violator, the complaint would be dismissed as moot as against contention that "collateral consequences" attached to original determination of superior court that plaintiff should be preventively detained an as against contention that in view of short term nature of preventive detention orders appellate review of detention orders, at least if limited to individual cases of detention, would always be frustrated on mootness grounds. *S. Dash, Chairman, et al. v. Hon. J. N. Mitchell, Attorney General etc., et al.* (1972, 356 F. Supp. 1292).

Proof

Where, although government's proffer of proof that defendant had made threats against prospective witnesses as technically made before government made its motion for pretrial detention, defendant and his counsel were present at time of proffer but made no effort to rebut it and both failed to ask court for additional time to gather evidence to rebut allegation of threats or took advantage of actual offer of court for such time, any error made by court in relying on government's proffer did not prejudice defendant and was harmless. *T. E. Blunt v. United States* (D.C. App. 1974, 322 A.2d 579).

Standing

"Organizational plaintiffs" consisting of individual trustees of Public Defender Service of District of Columbia, Washington Urban League Incorporated, and American Civil Liberties Union Fund of the national capital area had no standing to challenge constitutionality of District of Columbia Reform and Criminal Procedure Act of 1970, where allegations failed to set out any "injury in fact" to the plaintiffs. *S. Dash, Chairman, et al. v. Hon. J. N. Mitchell, Attorney General etc., et al.* (1972, 356 F. Supp. 1292).

Plaintiffs had no standing as federal taxpayers to challenge constitutionality of Act on theory that the plaintiffs' tax payments and those of other taxpayers would be used to defray costs of pretrial detention of persons pursuant to the Act, since the Act serves primarily to "regulate" one aspect of administration of criminal justice within the District of Columbia, and any expenditure of funds in administration of the preventive division was only "incidental" in character. *Id.*

Plaintiffs had no standing as District of Columbia taxpayers to challenge constitutionality of Act on theory that plaintiff's tax payments and those of other taxpayers of District would be used to defray costs of pretrial detention of persons pursuant to the Act, since the preventive detention provisions were not part of a "spending program" but served primarily to "regulate" one aspect of administration of criminal justice within the District. *Id.*

A complaint alleging that plaintiff "is subject to pretrial detention if charged with another such offense [crime of violence]" did not state a justiciable case or controversy so as to give standing to challenge constitutionality of Act, where, inter alia, there were no allegations of possibility of another arrest for a "crime of violence," and there was no allegation that plaintiff was inhibited or deterred in exercise of his First Amendment rights. *Id.*

Allegation that plaintiff had been arrested for a "dangerous crime" did not give him standing to challenge constitutionality of preventive detention provisions of Act on ground that plaintiff was inhibited or deterred in exercise of his First Amendment rights, where there was no allegation that plaintiff had any reason to fear that preventive detention would be sought, there was no allegation that plaintiff was or had been inhibited or deterred in exercise of First Amendment rights, and the "dangerous crime" charge against plaintiff had been dismissed. *Id.*

Threats to witnesses

Court is not prevented by defendant's right to bail from acting to protect witnesses from threats by defendant, thus safeguarding integrity of its own process. *T. E. Blunt v. United States* (D.C. App. 1974, 322 A.2d 579).

Time for hearing

Commitment of defendant to pretrial detention was not rendered improper by mere fact that government did not move for such detention until five months after defendant's arrest. *T. E. Blunt v. United States* (D.C. App. 1974, 322 A.2d 579).

§ 23-1324. Appeal from conditions of release

NOTES TO DECISIONS

Pretrial bail

Defendant's appeal from pretrial bail order which required him to obtain fulltime employment as condition to his continued relief was improper as he was not under detention and as no extraordinary situation was presented, and thus, would be dismissed. *W. C. Walls, Jr. v. United States* (D.C. App. 1976, 364 A.2d 154).

Pretrial order setting \$10,000 bail for release of accused, who was charged with robbery and weapon assault in case of considerable notoriety and who exhibited self-oriented pattern of life with little or no recognition of social responsibility, and rejecting accused's plan to be placed in multiparty, 24-hour custody of his father, mother and grandmother would be affirmed. *T. Marshall v. United States* (D.C. App. 1973, 308 A.2d 766).

Remand

Where trial court set secured money bonds of \$10,000 each for two defendants charged with murder during perpetration of robbery, but record did not contain full information concerning nature and circumstances of offense and why other conditions of release would not be suitable, proceedings on appeal after defendants' motions for review of bond had been overruled would be remanded for supplementation of record by complete statement by trial court on those matters or, if trial court deemed it appropriate, entry of new orders respecting pretrial bail. *D. C. Bouknight et ano. v. United States* (D.C. App. 1973, 305 A.2d 524).

§ 23-1325. Release in capital cases or after conviction

NOTES TO DECISIONS

Applicability

Federal Bail Reform Act (18 U.S.C. 3148), rather than District of Columbia Code bail provisions, is applicable where a defendant, convicted in federal court of a District of Columbia Code offense, presents a motion for release pending appeal in federal courts of District of Columbia. *United States v. W. Brown* (1973, 483 F.2d 1314, 157 U.S. App. D.C. 311).

Bail—Excessive

Under Bail Reform Act of 1966, and under District of Columbia local bail provisions, a money bond may not be used to assure detention. *B. F. Villines v. United States* (D.C. App. 1973, 312 A.2d 304).

Construction

Applications for release of prisoners convicted in the District of Columbia under federal criminal statutes hav-

ing nationwide application must be considered under the Bail Reform Act of 1966 and not under the 1970 Court Reform and Criminal Procedure Act [this subchapter]. *United States v. T. E. Stanley* (1972, 469 F.2d 576, 152 U.S. App. D.C. 170).

Likelihood of reversal

Defendant, who was convicted of manslaughter and as to whom trial judge could not find a likelihood of reversal though he did not consider risk of flight or danger, would not be granted release under statutory provisions on non-financial conditions pending appeal. *United States v. W. Jones* (1972, 476 F.2d 883, 155 U.S. App. D.C. 127).

Risk of flight or danger

Evidence is sufficient to support trial court's denial of release pending imposition of sentence, in proceeding in which trial judge concluded that he was not clearly convinced by evidence that welfare of defendant's young children might not be jeopardized by release of defendant, who was convicted of second-degree murder of husband who died by being shot between the eyes after being knocked to floor by earlier shot. *B. A. Ibn-Tamas v. United States* (D.C. App. 1977, 368 A.2d 520).

Since defendant raised substantial issues on appeal he had a right to be released, assuming he could show that he was unlikely to leave the jurisdiction or pose danger to others. *United States v. J. L. Sarvis* (1975, 523 F.2d 1177, 173 U.S. App. D.C. 228).

Only basis for refusal to reduce a postconviction surety bond must be found in a necessity to ensure against flight. *B. F. Villines v. United States* (D.C. App. 1973, 312 A.2d 304).

In view of defendant's past record of convictions, character, and fact of conviction for inducing a female to engage in prostitution, compelling a female by threats and duress to live a life of prostitution against her will, assault with a dangerous weapon, and mayhem and malicious disfigurement, order setting postconviction bail was unsupported respecting necessary finding as to non-dangerousness, and defendant should have been ordered detained pending appeal and should have remained in custody, not because he lacked means to make bail, but for reason that his release would present danger to community. *Id.*

Defendants, who were convicted of second-degree murder and carrying a deadly weapon and as to whom trial judge was unable to find that they were not likely to flee or pose a danger though he did not discuss substantiality of the appeal, would not be granted bail pending appeal. *United States v. C. L. Smith* (1972, 476 F.2d 884, 155 U.S. App. D.C. 128).

§ 23-1327. Penalties for failure to appear

NOTES TO DECISIONS

Construction

Phrase "released * * * prior to the commencement of his sentence" in this section relating to offense of willful failure to appear in court as required is intended to make it certain that defendant will be subject to sanctions of bail-jumping statute at all stages of criminal proceeding until he surrenders to serve his sentence and is not intended to indicate that conviction and sentence in underlying offense are conditions precedent to bail-jumping conviction. *W. J. Williams v. United States* (D.C. App. 1975, 331 A.2d 341).

Elements of offense

Fact that underlying burglary charge was dismissed does not render invalid defendant's conviction for willfully failing to appear at preliminary hearing on burglary charge. *W. J. Williams v. United States* (D.C. App. 1975, 331 A.2d 341).

For conviction of willful failure to appear while subject to conditions of release, Government satisfies burden of showing that failure to appear is willful by demonstrating what is commonly referred to as general intent of defendant to commit act of omission, and no specific intent need be proved. *F. L. Patton v. United States* (D.C. App. 1974, 326 A.2d 818).

Instructions

In prosecution for willfully failing to appear at preliminary hearing on second-degree burglary charge, defendant was not entitled to instruction on defense of

intoxication, where defendant testified that he was intoxicated on alcohol and had been taking a stimulant at time when he was scheduled to appear but he produced no evidence that he had reached a point of incapacitating intoxication. *W. J. Williams v. United States* (D.C. App. 1975, 331 A.2d 341).

Set aside of bond forfeiture

Given proffer of data regarding asserted departures from customary practice by bail agency and clerk's office, bondsman's assistance in apprehending defendant and the delay or prejudice suffered by government by breach, it was error for trial judge not to have held an evidentiary hearing on motion of bondsman to set aside bond forfeiture. *United States v. J. J. Nell et ano.* (1975, 515 F.2d 1351, 169 U.S. App. D.C. 380).

Willfulness

Trial court's reliance upon statutory presumption to establish the element of "willfulness," necessary to a conviction of bail jumping, did not violate defendant's Fifth Amendment rights to due process and privilege against self-incrimination; moreover, defendant did not raise that issue in the trial court and, under the circumstances, the Court of Appeals would decline to exercise its discretion to notice the asserted error raised for the first time on appeal. *D. M. Robinson v. United States* (D.C. App. 1974, 322 A. 2d 271).

§ 23-1328. Penalties for offenses committed during release

NOTES TO DECISIONS

Constitutionality

This subchapter does not violate due process on basis that it is impermissibly vague and uncertain as failing to delimit with precision the term "release," inasmuch as it provides that additional penalty shall be assessed when a person is convicted of an offense committed while released pursuant to section 23-1321 which specifically sets forth various types of release which may be ordered by judicial officer. *T. E. Tansimore, Jr. v. United States* (D.C. App. 1976, 355 A.2d 799).

Construction

This section which provides that person convicted of offense committed while on release shall be subject to additional penalties does not create a new and separate crime and jury trial is not required on issue of whether accused committed offense while on release. *T. E. Tansimore, Jr. v. United States* (D.C. App. 1976, 355 A.2d 799).

Evidence—Sufficiency

In absence of admission or proof that defendant was on release when he committed offenses, it is error to sentence defendant as a release offender on basis of unsubstantiated allegations by Government. *T. E. Tansimore, Jr. v. United States* (D.C. App. 1976, 355 A.2d 799).

§ 23-1329. Penalties for violation of conditions of release

NOTES TO DECISIONS

Contempt

In order to convict an individual for criminal contempt, it is necessary to find beyond a reasonable doubt that the individual committed a volitional act that constitutes contempt; accordingly, in the instant case, a conviction of contempt cannot be predicated solely on defendant's being arrested on probable cause, since the volitional act would be commission of a crime, not the matter of being arrested. *L. Parker v. United States* (D.C. App. 1977, 373 A. 2d 903).

Evidence—Admissibility

Where issue defendant sought to raise at criminal contempt hearing was reason he had been in District of Columbia after curfew in violation of condition of his release on personal recognizance and not whether he had been there, officers' statements in bail agency report, which were admitted at such hearing, concerning defendant's presence at that time and place cannot be deemed to have caused defendant to take stand and incriminate himself. *In the Matter of W. C. Wiggins* (D.C. App. 1976, 359 A.2d 579).

Defendant, who conceded in open court that he had knowingly violated two conditions of his release on personal recognizance, in effect confessed to contemptuous conduct and officers' statements in bail agency report introduced at hearing simply corroborated that confession, and thus violation of defendant's right to confront officers whose statements were contained in report was harmless beyond a reasonable doubt. *Id.*

§ 23-1332. Applicability of subchapter

NOTES TO DECISIONS

Construction

Applications for release of prisoners convicted in the District of Columbia under federal criminal statutes having nationwide application must be considered under the Bail Reform Act of 1966 and not under the 1970 Court Reform and Criminal Procedure Act [this subchapter]. *United States v. T. E. Stanley* (1972, 469 F. 2d 576, 152 U.S. App. D.C. 170).

Chapter 17.—DEATH PENALTY

§ 23-1702. Provision for death chamber; appointment of executioner and assistants; fees

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 24.—PRISONERS AND THEIR TREATMENT

Chap. Sec.
2A. Interstate Parole and Probation Compact.. 24-251

Chapter 1.—PROBATION

§ 24-104. Discharge from or continuance of probation—
Modification or revocation of order.

NOTES TO DECISIONS

Construction

Probation statutes are broadly drawn and necessarily must lend themselves to flexibility. *J. Wright v. United States* (D.C. App. 1974, 315 A.2d 839).

Statute should not be so construed as to result in absurdity, where statute fairly leaves room for construction to avoid such result. *Id.*

Under statute providing for modification of terms and conditions of order of probation "during the probationary term," "probationary term" should be construed for revocation purposes as including term beginning at time probation is granted. *Id.*

Evidence—Admissibility

Defendant's claim that his Fifth Amendment privilege against self-incrimination was violated when transcript of his testimony in kidnapping case was received in evidence in probation revocation proceedings is without basis, since defendant had appeared as prosecution witness in kidnapping case in obedience to subpoena, and not as a defendant, and thus trial judge owed defendant no duty to warn him of his right to remain silent and, when defendant, without asserting his privilege against self-incrimination, testified voluntarily that he was in numbers business and that he possessed a 9-mm. gun, he waived his Fifth Amendment privilege so that admissions were properly received at probation revocation hearings. *C. C. Short v. United States* (D.C. App. 1976, 366 A.2d 781).

A probation revocation proceeding is not a criminal prosecution; instead, it is more in nature of an administrative hearing intimately concerned with probationer's rehabilitation; thus, grant of immunity from prosecution in exchange for testimony in criminal case cannot prevent use of defendant's testimony against defendant in a probation revocation hearing. *Id.*

Revocation

Court did not abuse its discretion in revoking defendant's probation based on defendant's admissions that he had unlawfully carried a 9-mm. pistol, engaged in gambling activities during his probationary period and made a false statement to police during an investigation. *C. C. Short v. United States* (D.C. App. 1976, 366 A.2d 781).

Notice to defendant that Government would rely on false statement given to police concerning gunshot wound as grounds for revocation of probation was not required, since defendant's defense to charge that he possessed a .22-caliber pistol raised that issue and it should have been apparent to defendant that when he changed his story and identified his girl friend as owner of .22-caliber pistol and as one who shot him he would leave himself vulnerable to misdemeanor charge of lying to police during an investigation. *Id.*

Probation must not be revoked except after exercise of informed discretion based upon hearing in accordance with due process requirements. *J. Wright v. United States* (D.C. App. 1974, 315 A.2d 839).

Once granted, probation does not become vested right; it is granted in sound exercise of discretion and so may be revoked. *Id.*

Where defendant convicted of attempted petit larceny was sentenced to imprisonment for 365 days, of which 180 days was to be served under work release program and the

remainder suspended, and work release was to be followed by one year's probation, and defendant arrived at halfway house but that same evening left and did not return, sentencing court had power, after adequate hearing at which defendant was represented by counsel, to vacate prior order suspending sentence, and to revoke probation, though statute provided for modification of terms and conditions of order of probation at any time "during the probationary term." *Id.*

A probationer must be given advance notice of probation revocation hearing, must be informed of charges against him, and must be given an opportunity to meet and answer the charges. *United States v. W. H. Joyner* (1973, 486 F. 2d 1261, 159 U.S. App. D.C. 1).

Facts that "Important Notice From Your Bondsman," advising probationer to appear in court on certain date, did not explain purpose of hearing, that probationer did not personally receive any notification, that until day of hearing probationer's attorney had not seen him for several months, and that revocation was based on a simple statement of all charges made, without explanation of circumstances out of which they arose, without presentation of evidence, and without specification by court of which of the charges, if less than all, the court's determination to revoke probation was based upon combined to render probation revocation hearing defective. *Id.*

§ 24-106. Services of a psychiatrist and a psychologist available to probation officers, the Board of Parole and other designated officers.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2.—INDETERMINATE SENTENCES AND PAROLES

§ 24-201a. Board of Parole—Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-201b. Transfer of powers of Board of Indeterminate Sentence and Parole—Duties of parole executive—Cooperation with Board.

NOTES TO DECISIONS

Supervision of parolees

Where parole officer of District of Columbia was under clear duty, defined by Department of Corrections policy, to disclose parolee's full adult record when referring him for employment, and was similarly under duty to provide adequate supervision for parolee's parole, parole officer's actions in failing to disclose parolee's prior sex-related convictions to parolee's potential employers was "ministerial," not "discretionary" action, and District therefore was not shielded by sovereign immunity from liability arising out of parolee's actions in raping and murdering woman in apartment complex where he was em-

ployed. *R. C. Rieser, Administrator etc. v. District of Columbia et ano.* (1977, 563 F. 2d 462, 183 U.S. App. D.C. 375).

Punitive damages were properly denied in father's suit against District of Columbia, on allegations that District parole officers negligently failed to advise potential employer of parolee's prior history of violent sex-related crimes, with result that parolee was hired to work at apartment complex, where he subsequently raped and murdered plaintiff's daughter, in view of fact that evidence showed no indication that higher officers of District government either participated in or ratified parole officers' misfeasance. *Id.*

§ 24-201c. Applications for reduction of minimum sentence—Jurisdiction of court—Limits on reduction for certain crimes.

NOTES TO DECISIONS

Bases for reduction of sentence

In weighing petition by Parole Board for a reduction of defendant's minimum sentence to time served, District Court seeks to determine whether time served by defendant is adequate to deter others from committing crimes and to satisfy society's desire for a punishment that fits offense and also seeks to determine whether defendant is likely, if let free, to commit other crimes. *United States v. F. McIlwain* (1977, 427 F. Supp. 358).

Evidence—Sufficiency

Remorse, both deep and genuine, shown by defendant for what he did, together with a clearer indication of defendant's stability and the passing of an additional year since initial petition by Parole Board for a reduction in minimum sentence to time served, is sufficient to establish that defendant's immediate release is in the interest of justice. *United States v. F. McIlwain* (1977, 427 F. Supp. 358).

§ 24-203. Imposition of indeterminate sentences authorized—Life and death sentences.

NOTES TO DECISIONS

Sentences—Modification

Where notice of appeal was filed after trial court sentenced defendant but before trial court entered order setting minimum sentences, trial court was without jurisdiction to modify the sentence so as to provide for the minimum sentencing required by this section; remand is required for entry of minimum sentences. *A. F. Smith v. United States* (D.C. App. 1976, 357 A. 2d 418).

§ 24-204. Parole authorized—Conditions—Custody.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Computation of sentence

Department of Corrections improperly computed prisoner's sentences where it failed to give prisoner credit toward parole eligibility for time served under sentence which was later vacated. *J. T. Cogdell v. D. C. Jackson et al.* (1975, 397 F. Supp. 362).

§ 24-205. Violation of parole—Warrant—Arrest—Return to confinement.

CROSS REFERENCES

Representation of indigents, see §§ 2-2222, 11-2601.

Rewards for apprehension of parole violators, see § 24-426.

NOTES TO DECISIONS

Jurisdiction

Parole board secures its jurisdiction over parolee by issuing violation warrant before date of parole expiration, and such jurisdiction is not lost simply because board

chooses to delay revoking parole until intervening criminal sentence has been fully served. *D. H. Sutherland v. District of Columbia Board of Parole* (1973, 366 F. Supp. 270).

Warrant as detainer

Parole board's decision to maintain warrant as detainer in excess of three years without affording parole revocation hearing violated parolee's right to due process under the Fifth Amendment. *W. H. Jones v. S. Johnston, Parole Executive etc.* (1974, 368 F. Supp. 571).

§ 24-206. Revocation of parole after retaking—Hearing—New parole.

CROSS REFERENCE

Representation of indigents, see §§ 2-2222, 11-2601.

NOTES TO DECISIONS

Discretion of board

Parole board must consider mitigating circumstances and rehabilitative potential as well as existence of parole violations before determining that reincarceration is appropriate. *D. H. Sutherland v. District of Columbia Board of Parole* (1973, 366 F. Supp. 270).

Jurisdiction

Parole board secures its jurisdiction over parolee by issuing violation warrant before date of parole expiration, and such jurisdiction is not lost simply because board chooses to delay revoking parole until intervening criminal sentence has been fully served. *D. H. Sutherland v. District of Columbia Board of Parole* (1973, 366 F. Supp. 270).

Prompt disposition of consequence of parole violation

Failure to provide parolee with parole revocation hearing or even dispositional interview during period of approximately three years while parole violation warrant was lodged as detainer against parolee who was in prison required cancellation of the warrant even though parolee had been convicted of a crime while on parole. *W. H. Jones v. S. Johnston, Parole Executive etc.* (1974, 368 F. Supp. 571).

It is of paramount importance that parole board not stop in its review of alleged parole violation at detainer stage but continue with critical decision of whether parolee has violated terms of his parole and, if he has, what measures are appropriate both in terms of the community and the parolee himself. *Id.*

Federal prisoner had right to prompt parole revocation hearing on parole revocation detainer warrant lodged against him while he was serving ten-year term in federal penitentiary, and parole board could not wait until prisoner's current sentence had been served before holding hearing or revoking parole. *D. H. Sutherland v. District of Columbia Board of Parole* (1973, 366 F. Supp. 270).

Where no parole revocation hearing had been held for more than five months after parole revocation warrant was lodged as detainer on federal prisoner, it was too late for parole board to cure its error by affording prisoner revocation hearing and court would direct that board cancel warrant. *Id.*

Right to counsel

Where violation of parole consisted in not reporting to parole headquarters immediately upon release and parolee remained at liberty four years without acquiring any criminal record, and his parole had been mandatory, absence of counsel at parole revocation proceeding warranted setting aside order of revocation. *R. W. Baker v. T. R. Sard et ano.* (1973, 486 F. 2d 415, 158 U.S. App. D.C. 348).

Sentence upon reimprisonment

Fact that petitioner had not been released by the time of his maximum release date was not a basis for concluding that he was being unlawfully held by the parole board in violation of his rights to due process where, as a parole violator during term of his original sentence, he was required to return to incarceration to serve balance of sentence and lost time which he spent on parole before violation, practical effect of which was to extend ultimate release date. *L. A. Arrington v. A. McGruder, et al.* (1974, 490 F. 2d 795, 160 U.S. App. D.C. 227).

§ 24-209. Federal Parole Board—Authority over United States prisoners convicted in the District of Columbia.

NOTES TO DECISIONS

Prompt disposition of consequence of parole violation

Failure to provide parolee with parole revocation hearing or even dispositional interview during period of approximately three years while parole violation warrant was lodged as detainer against parolee who was in prison required cancellation of the warrant even though parolee had been convicted of a crime while on parole. *W. H. Jones v. S. Johnston, Parole Executive etc.* (1974, 368 F. Supp. 571).

It is of paramount importance that parole board not stop in its review of alleged parole violation at detainer stage but continue with critical decision of whether parolee has violated terms of his parole and, if he has, what measures are appropriate both in terms of the community and the parolee himself. *Id.*

Warrant as detainer

Parole board's decision to maintain warrant as detainer in excess of three years without affording parole revocation hearing violated parolee's right to due process under the Fifth Amendment. *W. H. Jones v. S. Johnston, Parole Executive etc.* (1974, 368 F. Supp. 571).

Chapter 2A.—INTERSTATE PAROLE AND PROBATION COMPACT

Sec.

24-251. Authority of Mayor to execute Interstate Parole and Probation Compact.

24-252. Definitions.

24-253. Severability.

§ 24-251. Authority of Mayor to execute Interstate Parole and Probation Compact.

The Mayor of the District of Columbia is hereby authorized to execute a compact on behalf of the District of Columbia with any of the States legally joining therein in the form substantially as set out below. (Mar. 12, 1976, D.C. Law 1-51, § 2, 22 DCR 5296.)

CODIFICATION

The words "as set out below" are substituted for "as follows" in the interest of clarity.

INTERSTATE PAROLE AND PROBATION COMPACT

"A COMPACT

Entered into by and among the contracting states, signatories hereto, with the consent of the Congress of the United States of America, granted by the Act of May 24, 1949 (4 U.S.C. § 112) given to states (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the District of Columbia) to enter into compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies.

"THE CONTRACTING STATES SOLEMNLY AGREE That:

"(1) It shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact (herein called 'sending state'), to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called 'receiving state'), while on probation or parole, if

"(a) Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;

"(b) Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person's being sent there.

"Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person. A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than six continuous months immedi-

ately preceding the commission of the offense for which he has been convicted.

"(2) Each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

"(3) Duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of the states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state: *Provided*, however, That if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such a state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

"(4) The duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact, without interference.

"(5) The Governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

"(6) This compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

"(7) This compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto."

EFFECTIVE DATE

Section 5 of act Mar. 12, 1976, D.C. Law 1-51, provided: "This act [enacting this chapter], shall take effect at the end of the period provided for Congressional Review of acts of the Council of the District of Columbia in subsection (c) of Section 602 of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147c]."

SHORT TITLE

The first section of act Mar. 12, 1976, D.C. Law 1-51, provided "That this act [enacting this chapter] may be cited as the 'Interstate Parole and Probation Compact Act'."

§ 24-252. Definitions.

As used in this chapter, the term "state" means any of the several states of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the District of Columbia, and the term "Governor" means the chief executive officer of any such jurisdiction. (Mar. 12, 1976, D.C. Law 1-51, § 3, 22 DCR 5299.)

§ 24-253. Severability.

If any section or provision of this chapter is held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the remaining sections or provisions of this chapter. (Mar. 12, 1976, D.C. Law 1-51, § 4, 22 DCR 5299.)

Chapter 3.—INSANE CRIMINALS

§ 24-301. Commitment of persons of unsound mind to the District of Columbia General Hospital—Certification to the court—Acquittal by jury on grounds of insanity—Confinement in a mental institution—Conditions for release after confinement—Conditional release—Expenses—Writ of habeas corpus—Inconsistent provisions of Federal Statutes superseded—Return order for apprehension of escaped inmates—Procedure and time limitation for pleading insanity as a defense.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Representation of indigents by Public Defender Service, see § 2-2222.

Rewards for apprehension of fugitives from welfare institutions, see § 24-426.

NOTES TO DECISIONS

Burden of proof

There is justification for preponderance of proof standard for commitment of the insanity-acquitted even if higher standard is required prior to civil commitment for propensity and even though there is no justification for denying the insanity-acquitted the right to jury trial that is recognized for those involved in civil commitment proceedings. *United States v. J. J. Brown* (1973, 478 F. 2d 306, 155 U.S. App. D.C. 402).

Where insanity-acquitted individual has been in detention for considerable period of time, his continued detention vel non should be governed by same standard of burden of proof applied to civil commitments; extent of period calls for sound discretion, considering nature of crime, nature of treatment, and response of person, and generally will not exceed five years and should never exceed maximum sentence for offense, less mandatory release time. *Id.*

Defendant acquitted by reason of insanity could be committed on determination of mental illness by preponderance of evidence, despite contention that due process required reasonable doubt standard in involuntary civil commitment proceeding and that equal protection required same standard for the insanity-acquitted. *Id.*

— On petition for release

At hearing instituted by confined party, having been found not guilty by reason of insanity of taking indecent liberties with minor, to determine need of his further confinement at psychiatric hospital, burden of proof at hearing was on confined party to establish that he was both sane and not dangerous to himself or others, but he failed to carry that burden. *J. Harris, Jr. v. United States* (D.C. App. 1976, 356 A.2d 630).

Where, prior to *Bolton* decision holding that persons acquitted by reason of insanity must be given judicial hearing similar to committed persons prior to their commitment, petitioner was committed to mental hospital after he was found not guilty by reason of insanity and petitioner had been confined for over nine of ten years for which he might have been sentenced criminally, trial court should consider whether government should bear burden of proving continued confinement was justified. *G. C. Waite v. L. Jacobs* (1973, 475 F. 2d 392, 154 U.S. App. D.C. 281).

Commitment after acquittal by reason of insanity

If defendant is found not guilty by reason of insanity, it is the duty of the trial court to commit him to mental hospital for hearing to determine whether defendant is entitled to relief and in that hearing the defendant has burden of proving by preponderance of the evidence that he is not likely to injure himself or other persons due to mental illness if he is released from custody. *United States v. A. W. Brauner* (1972, 471 F. 2d 969, 153 U.S. App. D.C. 1).

Competency hearing

In prosecution for assault with a dangerous weapon and for possession of a prohibited weapon, trial court did not abuse its discretion in failing to hold competency hearing, in view of facts that defendant objected to such hearing, that psychiatric reports concluded that defendant was competent to stand trial, and that defense counsel alone thought that hearing was required. *R. J. Lopez v. United States* (D.C. App. 1977, 373 A. 2d 882).

When differing views of experts exist on issue of defendant's sanity at time of offense and the views supporting the insanity defense are not inherently incredible, their presentation in an on-the-record inquiry would aid the trial judge in exercising in an informed manner his discretion as to whether to interpose the insanity defense and would allow the appellate court to intelligently review that exercise for signs of abuse. *United States v. R. E. David* (1975, 511 F. 2d 355, 167 U.S. App. D.C. 117).

Where court, after defendant's conviction and prior to sentencing, requested and received a psychiatric report showing defendant to be competent to engage in the pending proceedings, to which report defendant did not object, failure to hold hearing on defendant's competency was not an abuse of discretion. *E. T. Hughes v. United States* (D.C. App. 1973, 308 A. 2d 238).

Competency to stand trial

Trial court in prosecution for rape, burglary and robbery was not required sua sponte to raise issue of defendant's sanity, despite defendant's contention that various circumstances surrounding crimes of which he was accused raised issue in that regard. *A. W. Clyburn, Jr. v. United States* (D.C. App. 1977, 381 A. 2d 260).

Though testimony of psychiatrist who had examined defendant and who had reported in a letter to the court that he found defendant generally competent but lacking the specific ability to properly assist defense counsel might have shed additional light on question of defendant's competence to stand trial, where psychiatrist was unavailable to testify and court had testimony of psychiatric consultant and a clinical psychologist, both of whom had examined defendant, and where defendant's attorney had declined to provide any basis to believe that defendant was unable to assist the attorney, all circumstances including trial court's opportunity to observe defendant's demeanor provided ample ground on which to make reasoned decision as to defendant's competence and, therefore, trial court did not err in making competency determination without testimony of the absent psychiatrist. *T. W. Whalen v. United States* (D.C. App. 1977, 379 A. 2d 1152).

In making a determination of competency to stand trial, it may be very useful for the trial judge to question both the defendant and his counsel; the applicable criteria to measure one's ability to consult with his lawyer and to understand the course of legal proceedings and thus counsel's firsthand evaluation of a defendant's ability to consult on his case and to understand the charges and proceedings against him may be as valuable as an expert psychiatric opinion on competency. *United States v. R. E. David* (1975, 511 F. 2d 355, 167 U.S. App. D.C. 117).

Suicide attempts do not establish that accused is no longer sufficiently cognizant of his role in trial or is unable to satisfactorily perform it. *United States v. L. D. Caldwell* (1974, 543 F. 2d 1333, 178 U.S. App. D.C. 20).

— Commitment

A defendant who has been committed solely because of mental incapacity to proceed to trial cannot be held more than a reasonable period of time to determine whether there is substantial probability that he will attain capacity in foreseeable future; if it appears that he will not be mentally competent to stand trial in foreseeable future, Government must either institute civil commitment proceedings or release him. *United States v. J. D. Lancaster* (1976, 408 F. Supp. 225).

Conditional release

Where both doctors who testified stated that condition of defendant, who had been committed to hospital for mentally ill following his acquittal on ground that he was insane at time of commission of offenses, had deteriorated and that he constituted a danger to himself and others, trial judge correctly declined to grant defendant's

request for change in conditions of his confinement. *United States v. A. R. Tyler* (D.C. App. 1977, 376 A. 2d 798).

When District Court is asked to review the medical judgment of a hospital staff on a question of internal administration, its function resembles that of an appellate court when it reviews agency action and, in deference to medical expertise, the hospital should be allowed to operate within a broad range of discretion; when District Court is asked to review conditional release certification of person who has been acquitted on grounds of mental illness and confined to hospital for the mentally ill, Court must decide whether the proposed release affords reasonable assurances for the public safety. *United States v. L. C. Ecker, II* (1976, 543 F. 2d 178, 177 U.S. App. D.C. 31; cert. denied 97 S.Ct. 788, 429 U.S. 1063).

Evidence that patient of mental hospital who had been acquitted on charges of murder and rape because of mental illness was still suffering from chronic mental illness, that his fantasy life which was observed on initial commitment had continued, and that the patient had been reprimanded for improperly touching a female patient on the buttocks and for seeking out female patients in the deaf program is sufficient to sustain finding that patient is likely to pose a danger to himself or others if the conditional release sought for him were granted. *Id.*

Evidence concerning extremely short period of time during which patient who had been committed to hospital after being acquitted of rape and murder by reason of insanity had been without medication, apparent haste to subject him to psychological testing and the inner turmoil still reflected therein and patient's elopement from hospital shortly after being told to assume a great deal of responsibility for his own future raised sufficient questions about patient's mental stability and adequacy of hospital's investigation into his mental status to support trial judge's denial of conditional release which had been recommended by the hospital. *United States v. L. C. Ecker, II* (1973, 479 F. 2d 1206, 156 U.S. App. D.C. 223).

In determining whether patient who has been committed to hospital after being acquitted of crime by reason of insanity should be given conditional release from hospital, hospital and trial court, which must approve hospital's recommendation for such release, should elucidate with specificity those factors which weigh heavily in their decisions. *Id.*

Theoretical limits of prison term to which patient might have been sentenced for murder had he not been acquitted by reason of insanity were of no relevance in determining whether patient should have been conditionally released from hospital to which he had been committed following his acquittal. *Id.*

Constitutionality

In view of fact that defendant, who was indefinitely committed to mental hospital after he was acquitted by reason of insanity and might never improve sufficiently to obtain unconditional release, had not been denied any right to treatment, commitment does not constitute cruel and unusual punishment in violation of the Eighth amendment. *United States v. D. Jackson* (1976, 553 F. 2d 109, 179 U.S. App. D.C. 375).

Construction

In light of legislative history, intent underlying this section requiring indefinite commitment of any person who is acquitted of an offense solely on the ground of insanity appears to have been to insure that persons acquitted by reason of insanity are automatically committed for the protection of the public and their own protection and rehabilitation. *United States v. D. Jackson* (1976, 553 F. 2d 109, 179 U.S. App. D.C. 375).

Where hearing to determine need for further confinement at psychiatric hospital of confined party, who had been found not guilty by reason of insanity of taking indecent liberties with minor, is at confined party's request following Bolton hearing and is not preceded by certificate from superintendent of hospital, provision of this section governing such proceedings instituted by confined party controls over provision of this section permitting release of confined party from hospital upon certification of superintendent of such hospital. *J. Harris, Jr. v. United States* (D.C. App. 1976, 356 A.2d 630).

Defendant acquitted by reason of mental retardation is within provisions of this section for commitment of insanity—acquitted to hospital for mentally ill, until eligible for release, and commitment is mandatory. *United States v. M. K. Shorter* (D.C. App. 1975, 343 A. 2d 569).

Continuance for mental examination

Refusal, in prosecution for offenses, which allegedly took place in November, 1971, of sodomy, taking indecent liberties with a minor and assault with a deadly weapon, to grant continuance for psychiatric examination of accused merely on basis of fact that accused's record included at least one 1967 conviction for a crime against nature was not an abuse of discretion. *J. C. Davis v. United States* (D.C. App. 1974, 315 A. 2d 157).

Directed verdict

Since burden is on defense to prove insanity, and since jury is always free to find a defendant sane even if Government does not contradict expert testimony by witnesses of its own, court should only in exceptional circumstances take case from jury by directing verdict of insanity and thus it was reversible error for trial judge to take issue of defendant's sanity from jury for in so doing court in effect allowed experts to decide issue of sanity, an issue which is for jury alone to decide. *United States v. A. R. Tyler* (D.C. App. 1977, 376 A. 2d 798).

Discretion of court

The determination of a defendant's competency to stand trial must be that of the trial judge; it is the duty of the trial judge to make a specific judicial determination of competency to stand trial, rather than accept psychiatric advice as determinative on the issue. *United States v. R. E. David* (1975, 511 F. 2d 355, 167 U.S. App. D.C. 117).

Equal protection

In view of fact that acquittal by reason of insanity of mentally retarded defendant requires proof by a preponderance of the evidence not only of mental retardation, but also of a causal connection between the retardation and the defendant's lack of behavior control, rational basis exists for treating criminal defendants who are acquitted by reason of insanity differently from civilly committed retarded or mentally ill persons and, therefore, classification does not deprive such mentally retarded individuals of equal protection of the laws. *United States v. D. Jackson* (1976, 553 F. 2d 109, 179 U.S. App. D.C. 375).

Dangerousness demonstrated by the commission of a crime and subsequent acquittal by reason of insanity constitute rational basis for disparity in statutory provisions which require court approval for release of mental patient who has been acquitted of criminal charges by reason of insanity but which do not provide for any court review of release of a person civilly committed. *United States v. L. C. Ecker, II* (1976, 543 F.2d 178, 177 U.S. App. D.C. 31; cert. denied 97 S.Ct. 788, 429 U.S. 1063).

Exercise of trial judge's statutory, broad power of review over decision of hospital, to which patient had been committed following his acquittal of rape and murder by reason of insanity, to release him conditionally did not deny patient equal protection. *United States v. L. C. Ecker, II* (1973, 479 F. 2d 1206, 156 U.S. App. D.C. 223).

After expiration of period for which acquittee might have been incarcerated had he been convicted, it may be irrational, within meaning of equal protection doctrine, to distinguish between acquittee and committee. *G. C. Waite v. L. Jacobs* (1973, 475 F. 2d 392, 154 U.S. App. D.C. 281).

Once maximum sentence period has expired, it is unconstitutional to discriminate against acquittee, as compared with committee, for purposes of release from indefinite commitment. *Id.*

Escape

Arrest of defendant on felony charge was terminated and lost its legal vitality when he was acquitted by reason of insanity; thus, defendant's escape from mental hospital to which he was committed following the acquittal did not constitute an escape from custody pursuant to a lawful arrest and did not violate the Federal Escape Act. *United States v. W. C. Powell* (1974, 503 F. 2d 195, 164 U.S. App. D.C. 104).

Evidence

Where detailed report submitted by psychiatrist who had examined defendant at federal medical center did not contain any reference to a "confinement factor" the psychiatrist was barred, at proceedings on remand of motion to withdraw guilty pleas, from proffering an explanation that the schizophrenia which he had observed and commented on in the prior report was only the result of the close confinement in which defendant was being held at the time. *United States v. G. M. Morgan* (1977, 567 F. 2d 479, — U.S. App. D.C. —).

In proceeding before judge without jury on recommendation of superintendent of hospital for mentally ill, to which defendant had been committed after being found not guilty by reason of insanity that defendant be unconditionally released, detective's testimony which was allegedly hearsay and which concerned evidence of defendant's alleged involvement in murder following escape from hospital merely flushed out evidence otherwise before court in hospital records and testimony of hospital personnel and thus judge, who would have been remiss in fulfilling his responsibility to guard against discharge of mentally ill patient who might be dangerous to others had he closed his eyes to detective's report of investigation, did not err in admitting such testimony. *United States v. J. R. Snyder* (1976, 529 F. 2d 871, 174 U.S. App. D.C. 117).

— Abnormal mental condition

The potential impact of concepts such as diminished capacity or partial insanity, however labeled, is of a scope and magnitude which precludes their proper adoption by an expedient modification of rules of evidence; if such principles are to be incorporated into law of criminal responsibility, change should lie within providence of legislature. *E. Bethea, Jr., v. United States* (D.C. App. 1976, 365 A.2d 64; cert. denied 97 S.Ct. 2979, 433 U.S. 911).

Even when there is no defense of insanity, expert testimony of abnormal mental condition will be admissible when it bears on the existence of specific mental element necessary for a crime, provided trial judge determines that the testimony is grounded in sufficient scientific support, and would aid jury in reaching decision on ultimate issues; overruling *Fisher v. United States*, 80 U.S. App. D.C. 96, 149 F. 2d 28. *United States v. A. W. Brawner* (1972, 471 F. 2d 969, 153 U.S. App. D.C. 1).

A defendant who presents evidence that his abnormal condition of the mind has substantially impaired behavioral controls is exculpated if his behavioral controls were not only substantially impaired but were impaired to such extent that he lacked substantial capacity to conform his conduct to the law. *Id.*

— Mental disease or defect

Concept of portion of standard for insanity defense that the terms "mental disease or defect," as used in such standard, do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct should not be adopted as a rule of evidence; it is preferable to treat possibility of proof's factual or scientific infirmity with a jury instruction. *E. Bethea, Jr. v. United States* (D.C. App. 1976, 365 A.2d 64; cert. denied 97 S.Ct. 2979, 433 U.S. 911).

Following proper proof by Government, defendant must demonstrate both the existence of a cognizable mental disease or defect and the necessary relationship of such a disability to either his awareness of the requirements of society's code of behavior or his ability to conform his conduct thereto. *Id.*

Trial court must carefully supervise testimony and examination of expert witnesses, on issue of insanity defense, in an effort to ensure that the factual bases for their proffered conclusions are aired fully in a manner which is comprehensible to laymen. *Id.*

The introduction or proffer of past criminal and antisocial actions is not admissible as evidence of mental disease unless accompanied by expert testimony, supported by showing of the concordance of a responsible segment of professional opinion, that the particular characteristics of these actions constitute convincing evidence of an underlying mental disease that substantially impairs behavioral controls. *United States v. A. W. Brawner* (1972, 471 F. 2d 969, 153 U.S. App. D.C. 1).

— Sufficiency

There was ample, relevant evidence to require that insanity issue be submitted to jury on theory that alcoholic addiction and brain damage impaired defendant's behavioral control to extent that he lacked substantial capacity to appreciate wrongfulness of his conduct or to conform his conduct to requirements of the law. *D. A. Cooper v. United States* (D.C. App. 1977, 368 A.2d 554).

Habeas corpus

This section which precludes a person who has been committed to a hospital for mentally ill after being acquitted by reason of insanity and who has not filed a motion for his release from applying for habeas corpus unless his remedy is inadequate or ineffective to test validity of his detention, defendant, who was committed under pre-Bolton procedures, was foreclosed from petitioning for federal habeas corpus on ground that he should be released from confinement unless government bore burden of proving that his mental condition fell within intentment of relevant commitment statutes, until he first presented to District of Columbia Superior Court his argument for altering burden of proof in regard to pre-Bolton defendants. *J. A. Johnson v. L. Robinson* (1974, 509 F. 2d 395, 166 U.S. App. D.C. 62).

Hearing and findings

At hearing instituted by confined party, having been found not guilty by reason of insanity of taking indecent liberties with minor, to determine need for his further confinement at psychiatric hospital, Superior Court's findings of fact were insufficient to permit affirmance of order finding him ineligible for release. *J. Harris, Jr. v. United States* (D.C. App. 1976, 356 A. 2d 630).

Insanity defense

Circumstances do not warrant imposing insanity defense on criminal defendant who refuses to raise such defense himself. *United States v. T. L. Robertson* (1977, 430 F.Supp. 444).

Under the model penal code definition of "insanity," an "insanity" defense may be based either on a mental disease or on a mental defect, provided there is a sufficient causal link between the defendant's mental disease or defect and his inability to control his behavior. *United States v. D. Jackson* (1976, 553 F.2d 109, 179 U.S. App. D.C. 375).

Where the District Court had decided not to raise the insanity defense over defendant's objection but after hearing on remand it was determined that there was sufficient evidence of serious mental illness which substantially affected defendant's mental and emotional processes and behavior controls as to require determination of his criminal responsibility, and defendant then apparently desired to raise insanity defense, case would be remanded for new trial, and District Court would have discretion to decide whether to limit new trial to the criminal responsibility issue. *United States v. T. L. Robertson* (1976, 529 F.2d 879, 174 U.S. App. D.C. 125).

Where staff of hospital for mentally ill at which defendant was patient agreed that defendant was mentally ill at time he allegedly committed assault with dangerous weapon and mayhem but there were conflicting opinions as to whether offenses were product of mental illness, trial judge, before declining to raise issue of insanity sua sponte after defendant, whose competence to stand trial was not challenged, refused to rely on insanity defense, should have conducted evidentiary hearing on issue of criminal responsibility and case is therefore remanded for such a hearing. *United States v. J. R. Snyder* (1976, 529 F. 2d 871, 174 U.S. App. D.C. 117).

Where evidence suggested that defendant might have been unable to control himself at time he committed murder and other bizarre acts, trial court characterized acts as "impulsive and frenzied" when it reduced charge from first-degree to second-degree murder, defense counsel believed insanity defense appropriate but refused to raise it only because defendant prohibited him from doing so, reason for defendant's opposition was the belief that insanity defense would impugn on the credibility of his racial and political views and testimony of two of four physicians who examined defendant expressed views supportive of insanity plea, trial court acted properly in ordering hearing to determine if insanity defense should

be raised *sua sponte*. *United States v. T. L. Robertson* (1974, 507 F. 2d 1148, 165 U.S. App. D.C. 325; 529 F. 2d 879, 174 U.S. App. D.C. 125).

Where trial court at hearing to determine whether court should *sua sponte* raise insanity defense, which defendant refused to raise, heard only the conclusory medical testimony of two psychiatrists opposing imposition of defense and did not probe the basis of their conclusions as to defendant's sanity and court did not entertain testimony of other two examining psychiatrists who found defendant mentally ill and where trial court did not set forth in reasonable detail reasons for ultimate determination not to raise insanity defense, case would be remanded for court to hear testimony of psychiatrist who did not testify and make a complete statement as to reasons for determination. *Id.*

Following standard for an insanity defense is adopted for prospective application: a person is not responsible for criminal conduct if at the time of such conduct as a result of a mental disease or defect he lacks substantial capacity either to recognize the wrongfulness of his conduct or to conform his conduct to the requirements of the law; as used in the standard, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct. *E. Bethea, Jr. v. United States* (D.C. App. 1976, 365 A.2d 64; cert. denied 97 S.Ct. 2979, 433 U.S. 911).

Defense of insanity should not be foreclosed in all cases to those who may be fully aware of law's requirements, but because of delusion resulting from a mental disease or defect believe their conduct to be morally justified. *Id.*

In standard for an insanity defense, a "mental disease or defect" includes any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs behavior controls. *Id.*

Evidence that, *inter alia*, defendant suffered from severe personality disorder that caused him on occasion to disassociate when his sexual advances were rejected, and that while defendant was in this state, he did not have capacity for choice or control, was sufficient to allow jury to reasonably infer from all evidence that defendant had necessary mental capacity for first-degree burglary when he entered victim's apartment armed with knife but that he did not have capacity for choice or control when he killed victim because of a then dissociative condition. *C. R. Harman v. United States* (D.C. App. 1976, 351 A. 2d 504; cert. denied 97 S. Ct. 116, 429 U.S. 841).

Insanity defense is raised where as result of mental disease or defect a defendant lacks substantial capacity either to appreciate criminality of his conduct or to conform his conduct to requirements of law, and, "mental retardation" being mental defect capable of affecting both mental processes and behavior controls to extent that defendant in given situation might not be able to appreciate wrongfulness of his conduct or might not be able to conform his conduct to requirements of law is a basis for insanity defense. *United States v. M. K. Shorter* (D.C. App. 1975, 343 A. 2d 569).

This section which places burden on accused to prove insanity defense by preponderance of evidence applied to productivity as well as insanity, in criminal prosecution, where, at time of offense charged, defense of insanity was a unitary concept requiring proof of insanity and productivity. *United States v. L. Greene* (1973, 489 F. 2d 1145, 160 U.S. App. D.C. 21; cert. denied 95 S. Ct. 239, 419 U.S. 977).

This section which requires accused to prove insanity defense by preponderance of evidence does not deny equal protection merely because different standard of proof concerning such defense is applicable in other federal jurisdictions. *Id.*

This section which requires accused to prove insanity defense by preponderance of evidence did not deny due process to defendant who was accused of violation of D.C. statute pertaining to felony murder, in that sanity was not an element of such offense. *Id.*

Where offenses with which defendant was charged were committed at time when the prosecution had the burden of proving criminal responsibility beyond a reasonable doubt once defendant had raised an insanity defense, where statute was thereafter amended to preclude acquittal on ground of insanity unless insanity was affirmatively established by a preponderance of the evi-

dence, and where defendant raised insanity defense, giving of instruction, over objection, that defendant had burden of establishing his insanity defense by a preponderance of the evidence violated the *ex post facto* clause of the Constitution, despite contention that amendment provided for a mere procedural change. *United States v. E. B. Williams, Jr.* (1973, 475 F. 2d 355, 154 U.S. App. D.C. 244).

Where defendant, indicted for sodomy, assault with dangerous weapon and mayhem, neither raised defense of insanity prior to return of jury verdict of guilty nor brought to court's attention prior imprisonment for sex-related crime or attempted suicide while in prison and confinement there for psychiatric treatment, defendant had not been improperly deprived of defense of insanity during trial. *E. T. Hughes v. United States* (D.C. App. 1973, 303 A. 2d 238).

A person is not responsible for criminal conduct if at the time of such conduct as result of mental disease or defect he lacks substantial capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law; overruling *Durham v. United States*, 94 U.S. App. D.C. 228, 214 F. 2d 862. *United States v. A. W. Brawner* (1972, 471 F. 2d 969, 153 U.S. App. D.C. 1).

Rule that a person is not responsible for criminal conduct if at the time of such conduct as result of mental disease or defect he lacks substantial capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law is prospective in its application and applies only to trial commencing after June 23, 1972. *Id.*

Within rule that a person is not responsible for criminal conduct if at the time of such conduct as result of mental disease or defect he lacks substantial capacity to appreciate the wrongfulness of his conduct or to conform his conduct to requirements of the law, the term "mental disease or defect" includes any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs behavior controls. *Id.*

A defendant is exculpated if he lacks substantial capacity to appreciate that his conduct is wrongful. *Id.*

Exculpation from guilt is established not by mental disease or defect alone but only if "as result" defendant lacks the substantial capacity required for responsibility. *Id.*

In order to be exculpated from guilt by reason of conduct which results from mental disease or defect, accused must be lacking in substantial capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law at time of such conduct. *Id.*

Instructions

Concept of portion of standard for insanity defense that the terms "mental disease or defect," as used in such standard, do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct should not be adopted as a rule of evidence; it is preferable to treat possibility of proof's factual or scientific infirmity with a jury instruction. *E. Bethea, Jr. v. United States* (D.C. App. 1976, 365 A.2d 64; cert. denied 97 S.Ct. 2979, 433 U.S. 911).

Charge to jury on issue of insanity defense should leave no doubt that it is for jury alone to determine the existence of a cognizable mental disease or defect, whether such a disability resulted in a substantial impairment of the accused's capacity to obey the law and consequently whether there existed a sufficient relationship between the mental abnormality and the condemned behavior to warrant the conclusion that the defendant should not be held responsible for his acts. *Id.*

Charge to jury on issue of insanity defense must include unambiguous instructions emphasizing that regardless of the nature and extent of the experts' testimony, the issue of exculpation remains at all times a legal and not a medical question. *Id.*

Where defendant claimed insanity and his expert witness when asked if his fee had been paid prior to his appearance in court answered in negative, better practice would have been to give cautionary instruction immediately following such improper question, but refusal does not require reversal, and with respect to request for such

instruction just prior to jury's retirement for deliberations, reviewing court would defer to trial judge's evaluation that more harm might be done by dredging subject up than by instructing. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

The District Court is constitutionally authorized to instruct jury, pursuant to this section, that defendants bore burden of proving by a preponderance of the evidence their insanity defenses as to nonfederal charges on trial. *Id.*

In appropriate case, a defendant may request omission from instruction on defense of insanity of the phrase pertaining to lack of capacity to appreciate wrongfulness, if that particular matter is not involved on the facts, and defendant fears that jury that does not attend rigorously to the details of the instruction may erroneously suppose that the defense is lost if defendant appreciates wrongfulness. *United States v. A. W. Brawner* (1972, 471 F.2d 969, 153 U.S. App. D.C. 1).

Suggested instruction on defense of insanity in criminal cases is formulated by the court. *Id.*

In instructing that even though defendant did not have abnormal mental condition that absolves him of criminal responsibility, he may have had condition that negatives the specific mental state required for a higher degree of crime, the trial court may not substitute for the term "abnormal mental condition" any other terms such as "mental unsoundness." *Id.*

Mandatory commitment

Where trial court raised the defense of insanity *sua sponte* and found defendant not guilty by reason of insanity of destroying the property of the United States, trial court was not entitled to automatically commit defendant; the automatic commitment applied only in event the defendant himself raised the defense of insanity. *United States v. B. L. Wright* (1975, 511 F.2d 1311, 167 U.S. App. D.C. 309).

Negligence

Where on August 11, general hospital to which patient had been committed to determine his competency to stand trial on charge of assaulting his wife reported that patient was suffering from chronic brain syndrome due to actual brain damage, patient was committed to mental hospital and superintendent of mental hospital, on December 19, informed trial court that patient had recovered from mental disorder and was mentally competent to stand trial though mental hospital personnel knew that patient had suffered from organic brain defect and nothing in their evaluation differed from findings reported by general hospital, mental hospital was negligent in failing to transmit adequate information to trial court and United States, of which hospital was an agent, was liable for death of patient's wife who was fatally shot by patient less than two months after his discharge from hospital. *H. M. Hicks et al. v. United States* (1973, 357 F. Supp. 434; *aff'd* 511 F.2d 407, 167 U.S. App. D.C. 169).

Petition for release—Moot

Determination of competency to stand trial for subsequent offense, allegedly committed after confined party's escape from mental hospital, does not render moot issue that he is eligible for release from hospital, where he had been confined upon pleading not guilty by reason of insanity to taking indecent liberties with minor, on ground that he is no longer mentally ill and does not pose danger to himself or community, and, due to length of time which has passed since last hearing two years earlier, confined party has, except for pendency of this appeal, right to institute new proceedings seeking reexamination to determine whether he is eligible to be released from commitment order. *J. Harris, Jr. v. United States* (D.C. App. 1976, 356 A.2d 630).

Plea of guilty

Denial of presentence motion to withdraw guilty plea was abuse of discretion where defendant initially intended to rely on an insanity plea supported by hospital record and entered plea only after psychiatrist filed revised report indicating that defendant was without mental disease and in view of fact that he would soon be ineligible for Youth Corrections Act treatment but subsequent medical center report counseled against YCA treatment because of severity of defendant's mental

illness; medical center report revealed new evidence of insanity, in face of which defendant should have been released from his earlier decision. *United States v. G. M. Morgan* (1977, 567 F.2d 479, — U.S. App. D.C. —).

Psychiatric assistance

When trial court is satisfied that it can, without appointment of additional experts, resolve issue of competence to stand trial, failure to make additional appointments on resolution of issue of competence is not denial of expert assistance for substantive defense of insanity. *United States v. L. D. Caldwell* (1974, 543 F.2d 1333, 178 U.S. App. D.C. 20).

Examinations of defendant by government psychiatrists during 15-day confinement at government hospital and 50-minute examination conducted by psychiatrist by order of the court were not equivalent to the indigent defendant's right to psychiatric services necessary to an adequate defense in his case and it was error for trial court to deny defendant's timely request for psychiatric assistance. *United States v. W. J. Chavis, Jr.* (1973, 486 F.2d 1290, 159 U.S. App. D.C. 30).

Where defendant had right to *ex parte* hearing on motion for appointment of psychiatrist to aid the defense and prosecutor twice reversed himself on the adequacy of a psychiatric examination of the defendant by legal psychiatric services psychiatrist, it was improper for trial court to deny the motion because the prosecutor intervened to oppose it. *Id.*

Psychiatrist's reports—Availability to defense

Both prosecutor's *ex parte* contacts with psychiatrists appointed to examine defendants and failure of examining doctors to file their reports must be eliminated, since, to perform its high function in best way, justice must satisfy appearance of justice. *United States v. R. R. Henry* (1976, 523 F.2d 661, 174 U.S. App. D.C. 88).

Reversible error occurred where defendant's counsel was not notified or furnished results of mental examination of defendant until day of trial and was therefore unable to prepare insanity defense. *Id.*

—Ex parte contacts

Common notions of fairness suggest that communications which provide a government psychiatrist with information on which he may base an opinion as to a defendant's mental condition should be shared with opposing counsel; until a psychiatrist who is examining a subject pursuant to court order reaches a diagnosis or while he is in process of changing a diagnosis he is a neutral expert and *ex parte* communications between himself and either side are out of place; however, the situation changes when the psychiatrist renders the diagnosis, becomes identified as a prosecution or defense witness and confers with attorneys for that side in preparation for trial. *United States v. G. M. Morgan* (1977, 567 F.2d 479, — U.S. App. D.C. —).

Record on appeal

Although there was no indication in transcript of plea withdrawal proceedings that psychiatrist's tape recording of his interviews with defendant was ever moved into evidence, tape was part of the record on appeal since it arrived in the appellate court with the other exhibits as part of the record, district court's log of exhibits listed the tape as received into evidence and trial judge treated it as part of the record. *United States v. G. M. Morgan* (1977, 567 F.2d 479, — U.S. App. D.C. —).

Record on appeal from denial of motion to withdraw guilty pleas, raising serious unanswered questions about whether defendant's decision to plead was materially affected by, *inter alia*, defense counsel's failure to seek an independent mental examination of defendant, or to call the psychiatrist to testify or the influence of *ex parte* communications between U.S. Attorney and examining staff, or psychiatrists' failure to file promptly his letters or court's failure to inquire into circumstances surrounding the examination was inadequate for proper consideration of district court's reasons for denying the motion. *United States v. G. M. Morgan* (1973, 482 F.2d 786, 157 U.S. App. D.C. 197).

Release

Evidence, including hospital records' reflection of ambivalence and uncertainty concerning defendant's condi-

tion, in proceeding on recommendation of superintendent of hospital for mentally ill, to which defendant had been committed after being found not guilty by reason of insanity, that defendant had recovered his sanity and in opinion of superintendent would not in reasonable future be dangerous to himself or others and was therefore entitled to unconditional release, supported finding that defendant still suffered from mental illness and would be dangerous to others if released. *United States v. J. R. Snyder* (1976, 529 F.2d 871, 174 U.S. App. D.C. 117).

Evidence that defendant was originally diagnosed as sexual sadist and found not guilty by reason of insanity, that defendant was placed in maximum security at mental hospital, that more recent diagnosis indicated that defendant was without mental disease or defect, and that defendant had performed exceptionally well and avoided uncontrolled behavior during hospitalization, establishes that defendant is without mental disorder and thus no basis exists for continuing defendant as patient at hospital, notwithstanding evidence that defendant had postured his insanity defense. *United States v. E. Carter, Jr.* (1975, 415 F. Supp. 15).

Right to treatment

Evidence that, inter alia, there has not only been a good faith effort to treat defendant, who was committed to hospital for mentally ill following acquittal by reason of insanity, but that treatment provided is suited to defendant's needs and that his condition has improved during his confinement sufficiently establishes that defendant is being given adequate treatment, despite fact that defendant, who suffers from mental retardation, has been confined to a hospital for the mentally ill. *United States v. D. Jackson* (1976, 553 F.2d 109, 179 U.S. App. D.C. 375).

Right of mental hospital patient, who had been acquitted of criminal charges because of his insanity, to receive treatment under least restrictive conditions possible does not entitle him to obtain conditional release upon recommendation of the hospital without judicial review. *United States v. L. C. Ecker, II* (1976, 543 F.2d 178, 177 U.S. App. D.C. 31; cert. denied 97 S.Ct. 788, 429 U.S. 1063).

Scope of review

When District Court is asked to review the medical judgment of a hospital staff on a question of internal administration, its function resembles that of an appellate court when it reviews agency action and, in deference to medical expertise, the hospital should be allowed to operate within a broad range of discretion; when District Court is asked to review conditional release certification of person who has been acquitted on grounds of mental illness and confined to hospital for the mentally ill, Court must decide whether the proposed release affords reasonable assurances for the public safety. *United States v. L. C. Ecker, II* (1976, 543 F.2d 178, 177 U.S. App. D.C. 31; cert. denied 97 S.Ct. 788, 429 U.S. 1063).

§ 24-302. Commitment of mentally ill person while serving sentence.

CROSS REFERENCE

Representation of indigents, see § 11-2601.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-2601.

NOTES TO DECISIONS

In general

Sentence of ten years' imprisonment, and refusal to commit defendant to institution for treatment of sexual psychopathy, did not constitute cruel and unusual punishment of defendant after conviction of sodomy and assault with dangerous weapon. *E. T. Hughes v. United States* (D.C. App. 1973, 308 A. 2d 238).

Chapter 4.—PRISONS AND PRISONERS

SUBCHAPTER I.—PRISONS

Sec.

24-426. Payment of rewards—Apprehension of prison fugitives and of conditional release and parole violators.

24-427. Discharge and release payments.

SUBCHAPTER V.—RESOCIALIZATION FURLOUGH PROGRAM

Sec.

24-481. Definitions.

24-482. Authority to grant furloughs.

24-483. Purposes of furloughs.

24-484. Procedures.

24-485. Records and reports.

24-486. Institutional review committees.

24-487. Report to Council.

24-488. Severability.

SUBCHAPTER I.—PRISONS

§ 24-402. Sentence of prisoners to jail, reformatory, or penitentiary for more than one year—Jurisdiction of Commissioner over prisoners in reformatory—Transfer of prisoners from penitentiary to reformatory.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Rewards for apprehension of prison fugitives, see § 24-426.

NOTES TO DECISIONS

Furlough program—Regulations

United States Attorney General has authority to regulate furlough program at Lorton Reformatory despite passage of District of Columbia Court Reform and Criminal Procedure Act and District of Columbia Self-Government and Governmental Reorganization Act, and therefore has authority to issue order which curtailed furlough privileges previously available to certain inmates at Lorton. *L. D. Milhouse et al. v. E. H. Levi, United States Attorney General, et al.* (1976, 548 F. 2d 357, 179 U.S. App. D.C. 1).

United States Attorney General's order which denied furlough eligibility to persons in Lorton Reformatory convicted prior to said order is not prohibited by ex post facto clause of Constitution. *Id.*

§ 24-403. Transfer of prisoners from jail to workhouse.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-411. Superintendent and all other employees—Appointment—Discharge—Supervision of Board of Public Welfare.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-412. Employment of prisoners.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-417. Superintendent required to execute judgments in capital cases—Failure of Congress to make specific appropriation not abolition of position or repeal of authority.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-418. Sale of products of workhouse and reformatory.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-418a. Sale of gun mountings to States of the Union and their political subdivisions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-420. Grounds of jail increased.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-425. Place of imprisonment—Designation by Attorney General—Transfer.

NOTES TO DECISIONS

Due process

If District of Columbia prison officials choose to withhold from inmates at the Lorton Correctional Complex procedural rights which the Supreme Court has clearly held to be matter of discretion, those inmates are bound by that decision for as long as they remain at Lorton and the Attorney General is under no duty to see that such procedural rights are afforded to them. *C. Curry-Bey v. D. Jackson et al.* (1976, 422 F. Supp. 926).

Escape from custody of Attorney General

Evidence that defendant was sentenced, upon his conviction of robbery, to the custody of the Attorney General for a specified term, that he served part of his sentence at reformatory, that he was then admitted to a halfway house run by a nonprofit organization operating under a contract with the Department of Corrections, and that, after being told he was to be returned to the reformatory for a "violation," he left the halfway house without permission established an escape from the Attorney General's legal custody to which defendant was remitted at the time of sentence, and which continued even when he was assigned to a facility not under the control of the Department of Justice. *United States v. J. I. Taylor* (1973, 485 F. 2d 1077, 158 U.S. App. D.C. 298).

Furlough program—Regulations

United States Attorney General has authority to regulate furlough program at Lorton Reformatory despite passage of District of Columbia Court Reform and Criminal Procedure Act and District of Columbia Self-Government and Governmental Reorganization Act, and there-

fore has authority to issue order which curtailed furlough privileges previously available to certain inmates at Lorton. *L. D. Milhouse et al. v. E. H. Levi, United States Attorney General, et al.* (1976, 548 F.2d 357, 179 U.S. App. D.C. 1).

United States Attorney General's order which denied furlough eligibility to persons in Lorton Reformatory convicted prior to said order is not prohibited by ex post facto clause of Constitution. *Id.*

Sovereign immunity

Action brought by county against Attorney General of the United States and against the District of Columbia based on allegations that federal reformatory located in the county was being maintained in a manner not authorized by statute and a manner which was constitutionally void and that the escapes and riots at the reformatory resulting from the mismanagement constituted a public nuisance is not barred by sovereign immunity. *Board of Supervisors of Fairfax County, Virginia v. United States et al.* (1976, 408 F. Supp. 556).

Suitable place of confinement

If it were proven that federal reformatory is a public nuisance, it would not be a suitable place of confinement for persons convicted of crimes in the District of Columbia courts, and the Attorney General could then properly be enjoined from exceeding his statutory authority in so designating the reformatory. *Board of Supervisors of Fairfax County, Virginia v. United States et al.* (1976, 408 F. Supp. 556).

Transfer of prisoners

Under this section which explicitly commits prisoner transfer decisions to the discretion of the Attorney General, federal prisoner is not entitled to administrative hearing before his transfer from reformatory to penitentiary. *C. F. Smith v. W. B. Sarbe et al.* (1977, 562 F. 2d 729, 183 U.S. App. D.C. 210).

Rights of parole, work release, furlough and good time credit belonging to prisoners at Lorton Correctional Complex are not unconstitutionally infringed by the transfer of prisoners for disciplinary reasons to federal prisons in other states. *C. Curry-Bey v. D. Jackson et al.* (1976, 422 F. Supp. 926).

In the absence of a written rule or regulation confining transfers of District of Columbia prisoners to cases of misconduct and in light of clear and apparently limitless authority of the Attorney General to transfer District of Columbia prisoners to federal facilities, any expectation of a District of Columbia prisoner that he will not be transferred to a federal prison is unjustified so that due process protections are not triggered. *Id.*

§ 24-426. Payment of rewards—Apprehension of prison fugitives and of conditional release and parole violators.

The Mayor of the District of Columbia, pursuant to regulations prescribed by the Council of the District of Columbia, is authorized to provide for the payment of rewards for the capture, or for information leading to the apprehension, of fugitives from District of Columbia penal, correctional, and welfare institutions and of conditional release and parole violators. Funds appropriated pursuant to this section shall be apportioned and expended in the discretion of, and upon such conditions as may be imposed by, the Mayor of the District of Columbia. No reward money shall be paid to any officer or employee of the Metropolitan Police Department, or of any penal, correctional, or welfare institution, or of any court, legal agency, or other agency closely involved in the criminal justice system. (Oct. 26, 1973, Pub. L. 93-140, § 11, 87 Stat. 506.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Police officers prohibited from receiving compensation from person arrested or liable for arrest, see § 4-175.

Rewards, presents, fees, or emoluments to police officers, general prohibition, see § 4-129.

APPROPRIATIONS

See note under § 1-226a.

§ 24-427. Discharge and release payments.

The Mayor of the District of Columbia is authorized to furnish each prisoner upon his release from a penal or correctional institution under the jurisdiction of the government of the District of Columbia with suitable clothing and, in the discretion of the Mayor, a sum of money, which shall not exceed \$100. (Oct. 26, 1973, Pub. L. 93-140, § 12, 87 Stat. 506.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

APPROPRIATIONS

See note under § 1-226a.

SUBCHAPTER II.—DEPARTMENT OF CORRECTIONS

§ 24-441. Department of Corrections created—Director.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-442. Powers of Department over institutions—Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Apprehension of prison fugitives and of conditional release and parole violations, prohibition on payment of rewards to officers and employees of Department of Corrections, see § 24-426.

Pistol matches, attendance by officers and employees of Department of Corrections, see § 4-189.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24-481.

NOTES TO DECISIONS

Administrative procedure

Where United States Attorney General's order curtailing furlough privileges previously available to certain inmates held in District of Columbia's corrections system merely placed eligibility restrictions on persons convicted of crime of violence, leaving eligibility criteria for all other prisoners as well as all other pertinent guidelines to be established by local officials, District of Columbia defendants retained significant rulemaking responsibility

which could have substantial impact upon inmates, and District of Columbia was therefore improperly dismissed as party to inmates' suit questioning whether furloughs could be curtailed without compliance with District of Columbia Administrative Procedure Act. *L. D. Milhouse et al. v. E. H. Levi, United States Attorney General, et al.* (1976, 548 F.2d 357, 179 U.S. App. D.C. 1).

Constitutional rights of area residents

Even if county could stand in the position of *parens patriae* to its citizens with respect to constitutional rights, any injury resulting to citizens as result of operation of federal reformatory in the county to the deprivation of the citizens' constitutional rights of association, travel, security in the possession of their homes, and privacy would be personal to those residents rather than to any quasi-sovereign interest of the county so that county does not have standing to assert those rights. *Board of Supervisors of Fairfax County, Virginia v. United States et al.* (1976, 408 F. Supp. 556).

Constitutionally impermissible conditions

To alleviate overcrowding in District of Columbia jail, defendants, Director of Department of Corrections and Superintendent of Detention, would be enjoined from housing more than stated number of persons at each facility and, if reduction in population was not made within 48 hours, defendants would be directed to release on their own recognizance, within 48 hours of admission, persons in excess of number stated and would be required to submit plan to reduce population and/or increase facilities available to house committed persons so that in future overcrowding might be avoided. *L. Campbell et al. v. A. McGruder et al.* (1976, 416 F. Supp. 111).

Conditions at District of Columbia jail, including overcrowding, lack of segregation of sentenced from unsentenced residents, lack of classification program for determining level and security needed for unsentenced residents, and numerous violations of building code, plumbing code, housing regulations, health regulations, food regulations and fire code, were constitutionally impermissible as to unconvicted pretrial detainees incarcerated at such jail. *L. Campbell et al. v. A. McGruder et al.* (1975, 416 F. Supp. 100).

Upon finding that conditions at District of Columbia jail are constitutionally impermissible as to unconvicted pretrial detainees incarcerated therein, Mayor, Director of Department of Corrections and superintendent of jail would be ordered to direct fire department, Department of Inspections and Licenses, and environmental health administration to inspect jail and submit reports listing code violations, provide clean clothing to all residents at least once a week, provide at least one hour of outdoor recreation daily for each resident, establish classification system for determining which residents require maximum security confinement, provide medical examinations of all food handlers once every 30 days, establish procedures for identification and transfer of mentally ill residents, and establish specified procedures for use of restraint. *Id.*

Due process

If District of Columbia prison officials choose to withhold from inmates at the Lorton Correctional Complex procedural rights which the Supreme Court has clearly held to be matter of discretion, those inmates are bound by that decision for as long as they remain at Lorton and the Attorney General is under no duty to see that such procedural rights are afforded to them. *C. Curry-Bey v. D. Jackson et al.* (1976, 422 F. Supp. 926).

Duty owed to inmates—Evidence

Plaintiff suing District of Columbia for injuries he received while inmate in Lorton Reformatory was not required to prove that District of Columbia owned and operated Lorton Reformatory, since such fact should have been judicially noticed on basis of common knowledge or statutory enactment. *J. L. Gaither, Jr. v. District of Columbia* (D.C. App. 1975, 333 A.2d 57).

—Jury question

Whether guard at Lorton Reformatory breached duty to inmate on theory that guard knew of odor of gas near gas burner under coffee urn yet ordered inmate to light the burner is jury question, in action against District of

Columbia for injuries received. *J. L. Gaither, Jr. v. District of Columbia* (D.C. App. 1975, 333 A. 2d 57).

Environmental impact

Where construction of reformatory used to house prisoners convicted in the courts of the District of Columbia was completed long before effective date of National Environment Policy Act, no impact statement is required with respect to maintenance of the reformatory. *Board of Supervisors of Fairfax County, Virginia v. United States et al.* (1976, 408 F. Supp. 556).

Furlough program—Regulations

United States Attorney General has authority to regulate furlough program at Lorton Reformatory despite passage of District of Columbia Court Reform and Criminal Procedure Act and District of Columbia Self-Government and Governmental Reorganization Act, and therefore has authority to issue order which curtailed furlough privileges previously available to certain inmates at Lorton. *L. D. Milhouse et al. v. E. H. Levi, United States Attorney General, et al.* (1976, 548 F. 2d 357, 179 U.S. App. D.C. 1).

United States Attorney General's order which denied furlough eligibility to persons in Lorton Reformatory convicted prior to said order is not prohibited by ex post facto clause of Constitution. *Id.*

Jurisdiction

District court had subject matter jurisdiction to hear claim by inmates of District of Columbia corrections system that furloughs could not be curtailed by United States Attorney General without compliance with District of Columbia Administrative Procedure Act where such claim involved nucleus of operative facts which was common with that presented in substantive claim against both federal and nonfederal parties that United States Attorney General lacked authority to promulgate guidelines governing furlough programs and Lorton Reformatory. *L. D. Milhouse et al. v. E. H. Levi, United States Attorney General, et al.* (1976, 548 F.2d 357, 179 U.S. App. D.C. 1).

Allegations that United States, District of Columbia, and Attorney General were acting beyond their statutory authority in maintaining, in Virginia, reformatory for persons convicted in the courts of the District of Columbia do not provide basis for federal question jurisdiction where the statutes in question are provisions of the Code of the District of Columbia. *Board of Supervisors of Fairfax County, Virginia v. United States et al.* (1976, 408 F. Supp. 556).

Even though Virginia retains concurrent jurisdiction over land ceded to the United States government for building of reformatory, where the land in question had been acquired in ten parcels over a period of 30 years, so that application of state law as it existed at the time of federal acquisition to controversy surrounding the reformatory would require irrational application of different law to various components of the single reformatory complex, court would not apply state substantive standards to claim that the reformatory was a nuisance and would not deem that law to be federalized state law for purposes of conferring federal question jurisdiction. *Id.*

To have a single decree binding on all prisons in District of Columbia's prison system, to achieve uniformity in treatment of inmates, and to provide for supervision of administrator of district correctional system by single court which imposed sentences, District Court for Eastern District of Virginia should decline to decide class action by inmates of Lorton Reformatory, located in Virginia but part of District of Columbia prison system, complaining that disciplinary proceedings denied due process rights and should transfer cause to District Court of District of Columbia. *N. Wright, III, et al. v. D. C. Jackson et al.* (1974, 505 F. 2d 1229).

Services rendered to reformatory, payment

Fact that county could not recover under Tucker Act for services rendered to reformatory because there is no contract implied in fact to pay for the services does not preclude recovery of amounts representing services provided as an element of damages should county succeed on its claim that the prison constitutes a nuisance. *Board of Supervisors of Fairfax County, Virginia v. United States et al.* (1976, 408 F. Supp. 556).

Sovereign immunity

Action brought by county against Attorney General of the United States and against the District of Columbia based on allegations that federal reformatory located in the county was being maintained in a manner not authorized by statute and a manner which was constitutionally void and that the escapes and riots at the reformatory resulting from the mismanagement constituted a public nuisance is not barred by sovereign immunity. *Board of Supervisors of Fairfax County, Virginia v. United States et al.* (1976, 408 F. Supp. 556).

Action brought by county against the United States based on contention that reformatory located in the county for confinement of prisoners convicted in the District of Columbia courts is a nuisance is barred by sovereign immunity. *Id.*

Transfer of prisoners

Rights of parole, work release, furlough and good time credit belonging to prisoners at Lorton Correctional Complex are not unconstitutionally infringed by the transfer of prisoners for disciplinary reasons to federal prisons in other states. *C. Curry-Bey v. D. Jackson et al.* (1976, 422 F. Supp. 926).

In the absence of a written rule or regulation confining transfers of District of Columbia prisoners to cases of misconduct and in light of clear and apparently limitless authority of the Attorney General to transfer District of Columbia prisoners to federal facilities, any expectation of a District of Columbia prisoner that he will not be transferred to a federal prison is unjustified so that due process protections are not triggered. *Id.*

§ 24-443. Board of Public Welfare powers transferred to Department—Officers and employees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Employees—Public statements

Although subsequent to filing of action challenging constitutionality of District of Columbia regulation prohibiting employees from making public any disagreement or criticism of District operating policies and practices the regulation was expunged and disciplinary action taken against plaintiffs thereunder was rescinded, declaratory and injunctive relief would be issued in view of nature and character of the impermissive action and to avoid its repetition and to ensure that knowledge of the government's corrective action is widespread and generally known. *P. M. A. Matthews et al. v. W. E. Washington et al.* (1976, 424 F. Supp. 97).

§ 24-444. Rules and regulations of Board of Public Welfare in effect.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-445. Contracts of Board of Public Welfare not invalidated—Appropriations available.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER III.—CORRECTIONAL INDUSTRIES FUND

§ 24-452. Availability of fund for performance of services and production of commodities for rehabilitation of inmates—Accounting for the fund.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-453. Sale of products and services to District, Federal and State governments—Receipts from sales to be deposited in fund—Use of funds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-454. Reports of financial condition and results of operations to be made by Director of the Department of Corrections to Commissioner—Disposition of realized profits—Net worth of fund not to be increased beyond \$2,500,000—Payments to inmates and their dependents—Excess profits to be deposited to general funds of the District.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER IV.—WORK RELEASE PROGRAM

§ 24-461. Authority to establish program for minor offenders—Grant of privilege in special circumstances.

NOTES TO DECISIONS

Abuse of discretion

Assuming that petitioner claiming denial of constitutional rights meant to cite the D.C. statute establishing a work release program, it could not be held that district court abused discretion in finding that there were no special circumstances which merited the granting of work release privilege to petitioner. *L. I. Green v. United States* (1973, 481 F. 2d 1140, 157 U.S. App. D.C. 40).

Application

District of Columbia Work Release Act applies only to three enumerated classes of persons imprisoned for minor offenses, not to imprisoned felons; as to the latter, work release is granted at the discretion of the Attorney General under the provisions of federal statute. *R. Contee v. United States* (D.C. App. 1974, 315 A.2d 149).

§ 24-462. Recommendations—Requests for privilege—Necessity for order of sentencing court.

NOTES TO DECISIONS

Court order

Placement in work release program is available only by court order. *J. E. Armstead v. United States* (D.C. App. 1973, 310 A. 2d 255).

Misdemeanant's sentence of "six months with narcotic treatment in vocational rehabilitation" did not constitute explicit court order necessary for valid placement of misdemeanant in work release program. *Id.*

Department of Corrections is not privileged to interpret ambiguous order of trial judge as authorizing work release when order does not specifically so provide. *Id.*

§ 24-463. Terms and conditions for release to be provided in court order.

NOTES TO DECISIONS

Abuse of discretion

Assuming that petitioner claiming denial of constitutional rights meant to cite the D.C. statute establishing a work release program, it could not be held that district court abused discretion in finding that there were no special circumstances which merited the granting of work release privilege to petitioner. *L. I. Green v. United States* (1973, 481 F. 2d 1140, 157 U.S. App. D.C. 40).

Court order

Placement in work release program is available only by court order. *J. E. Armstead v. United States* (D.C. App. 1973, 310 A. 2d 255).

Misdemeanant's sentence of "six months with narcotic treatment in vocational rehabilitation" did not constitute explicit court order necessary for valid placement of misdemeanant in work release program. *Id.*

Department of Corrections is not privileged to interpret ambiguous order of trial judge as authorizing work release when order does not specifically so provide. *Id.*

§ 24-464. Rules and regulations—Individual plans for each prisoner granted privilege.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-465. Punishment of prisoner for failure to comply with plan—Prosecution by Corporation Counsel.

CROSS REFERENCE

Rewards for apprehension of conditional release and parole violators, see § 24-426.

NOTES TO DECISIONS

Prosecution

Defendants, who, in course of serving sentences for felonies, were transferred to a half-way house, were guilty of escape from penal institution when they left the half-way house and did not return. *United States v. M. Venable* (D.C. App. 1974, 316 A.2d 857).

Misdemeanant who was placed in halfway house for participation in work release program due to administrative error rather than by court order required for valid placement, and who left and failed to return to halfway house, was properly prosecuted under § 22-2601 which prescribes punishment for escape from penal institution rather than the section which prescribes punishment for violation of work release plan. *J. E. Armstead v. United States* (D.C. App. 1973, 310 A. 2d 255).

Revocation of probation

Where defendant convicted of attempted petit larceny was sentenced to imprisonment for 365 days, of which 180 days was to be served under work release program and the remainder suspended, and work release was to be followed by one year's probation, and defendant arrived at halfway house but that same evening left and did not return, sentencing court had power, after adequate hearing at which defendant was represented by counsel, to vacate prior order suspending sentence, and to revoke probation, through statute provided for modification of terms and conditions of order of probation at any time "during the probationary term." *J. Wright v. United States* (D.C. App. 1974, 315 A. 2d 839).

§ 24-466. Collection of earnings—Deposit in trust fund—Immunity from attachment—Disbursements—Payment of balance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by

Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-467. Method of payments for support of dependents.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-468. Authority of Attorney General to designate Commissioner to perform functions vested under section 24-425, for purposes of this subchapter.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-469. Authority under Reorganization Plan not affected—Delegation of functions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

**SUBCHAPTER V.—RESOCIALIZATION
FURLOUGH PROGRAM**

§ 24-481. Definitions.

For the purposes of this subchapter—

(a) The term "Department" means the District of Columbia Department of Corrections.

(b) The term "Director" means the Director of the Department of Corrections, or his designated agent.

(c) The term "furlough" means any extension of the limits of the place of confinement of a sentenced prisoner for the purposes outlined in section 24-483, and when said purposes are in agreement with the goals of section 24-442 when the person sentenced is not escorted by a United States Marshall or an officer or employee of the District of Columbia.

(d) The term "minimum custody status" means that status of an individual who—

(1) in the case of an individual who has been sentenced to serve for a definite number of years, is within twelve (12) months of his earliest possible date of parole;

(2) in the case of an individual who has been sentenced to serve for a sentence of not less than a minimum period, has served for at least one-half of that minimum period;

(3) in the case of an individual who has been sentenced to serve for an indefinite period, has served for twelve (12) months;

(4) in the case of an individual who has been sentenced to serve for a definite period of less than eighteen months has served for at least one-half of that period.

(e) The term "resident" means an individual confined, after conviction and sentencing, in an institution or facility of the District of Columbia operated by the Department of Corrections.

(f) The term "committee" means an Institutional Review Committee established pursuant to section 24-487. (Apr. 23, 1977, D.C. Law 1-130, § 2, 23 DCR 9694.)

EMERGENCY ACT AMENDMENT

1977—For temporary provisions relating to granting furloughs prior to the enactment of this subchapter, see the Emergency Resocialization Furlough Act of 1976 (D.C. Act 1-213, Jan. 12, 1977, 23 DCR 5078).

EFFECTIVE DATE

Section 10 of act Apr. 23, 1977, D.C. Law 1-130, provided: "This act [enacting this subchapter] shall become effective in accordance with the provisions of Section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act Apr. 23, 1977, D.C. Law 1-130, provided "That this act [enacting this subchapter] may be cited as the 'Resocialization Furlough Act of 1976'."

§ 24-482. Authority to grant furloughs.

(a) The Mayor of the District of Columbia, or his designated agent, may grant a resocialization furlough to any eligible resident for the purposes specified in this subchapter and according to the procedures provided for in this subchapter. The decision to grant or deny a furlough shall not be made on the basis of rewarding a resident for good behavior nor for punishing misbehavior. Furloughs shall not be used to shorten sentences; any resident furloughed shall be considered, while on furlough, to still be in custody, and time spent on furlough shall be credited toward the remainder of his sentence.

(b) For the purposes of this subchapter, an eligible resident shall be any resident who—

(1) has attained minimum custody status;

(2) has demonstrated responsible attitudes and behavior in the institution or facility so that there is reasonable assurance that he will comply fully with the conditions of the furlough;

(3) has received, where applicable, a favorable recommendation by the appropriate committee; and

(4) is mentally, physically, and financially capable of completing the furlough without escort or assistance from any officer or employee of the Department after his release from the institution or facility.

(c) Any individual who is incarcerated in any institution or facility operated by the Department after being convicted of having violated either section 22-2401 (relating to first degree murder), section 22-2402 (relating to first degree murder), or section 22-2403 (relating to second degree murder) (D.C. Code, sec. 22-2801)¹ (relating to rape), or section 22-3501 (relating to indecent acts with a minor) shall not be eligible for any furlough under the provisions of this subchapter, except where such individual is within twelve months of a firm release date.

¹ So in original.

(d) Any eligible resident who is within 12 months of a firm release date or who is participating in an approved work training or higher education program may be considered for one furlough per month. All other eligible residents may be considered for one furlough every three months. (Apr. 23, 1977, D.C. Law 1-130, § 3, 23 DCR 9694.)

NOTES TO DECISIONS

Attorney General, authority of

United States Attorney General has authority to regulate furlough program at Lorton Reformatory despite passage of District of Columbia Court Reform and Criminal Procedure Act and District of Columbia Self-Government and Governmental Reorganization Act, and therefore has authority to issue order which curtailed furlough privileges previously available to certain inmates at Lorton. *L. D. Milhouse et al. v. E. H. Levi, United States Attorney General, et al.* (1976, 548 F.2d 357, 179 U.S. App. D.C. 1).

United States Attorney General's order which denied furlough eligibility to persons in Lorton Reformatory convicted prior to said order is not prohibited by ex post facto clause of Constitution. *Id.*

§ 24-483. Purposes of furloughs.

(a) The Mayor, or his designated agent, may grant a furlough, except as provided in subsection (b), to any eligible resident—

(1) in order to visit the bedside of a dying relative, or to attend the funeral of a relative, in the Washington Metropolitan Area;

(2) upon the recommendation of the Institutional Review Committee, in order to call upon prospective employers in the Washington Metropolitan Area, enroll in an educational institution or program, obtain suitable housing prior to release, or to finalize parole supervision plans with an officer or employee of the Department; or

(3) upon the recommendation of the Institutional Review Committee, to participate in family and approved community, religious, or educational, social, civic, and recreational activities, when it is determined that such participation will directly facilitate the transition from life in the facility or institution to life in the community.

(4) The Mayor, or his designated agent, may grant a furlough for the purposes specified in paragraph (1) outside of the Washington Metropolitan Area, so long as such furlough does not exceed 72 hours.

(b) The Mayor, or his designated agent, may grant a furlough to an eligible resident for longer than 12 hours, but for no longer than 72 hours, where he finds that, based on a report from the Institutional Review Committee, such eligible resident—

(1) has demonstrated complete institutional adjustment;

(2) is strongly motivated to benefit from the program;

(3) is considered to have exceptional potential for rehabilitation; and

(4) will not, while on furlough, constitute a threat or danger to the community.

(c) For the purposes of this section, the term "relative" means a spouse, child (including a step-child, adopted child, or child to whom the resident,

though not a natural parent, has acted in the place of a parent), parent (including a person who, though not a natural parent, has acted in the place of a parent), brother, or sister.

(d) In the event any eligible resident applies for a furlough for one of the reasons specified in paragraph (1) of subsection (a), verification of the death or seriousness of the illness, as the case may be, of the relative must be obtained from the attending physician, hospital physician, or funeral home director (as applicable), before such furlough may be granted. (Apr. 23, 1977, D.C. Law 1-130, § 4, 23 DCR 9694.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24-481.

§ 24-484. Procedures.

(a) Each caseworker or counselor on the staff of the Department who is assigned to investigate an application for a furlough shall (1) verify the reasons given by the applicant for the furlough, (2) determine whether the furlough requested and the applicant meet the requirements of this subchapter, and (3), ascertain whether the furlough will contribute to the attainment of the correctional goals of the applicant. If the caseworker or counselor finds that the request meets these criteria, and the provisions of this subchapter, then he shall prepare a memorandum recommending the granting of the furlough. Such memorandum shall be reviewed by the appropriate supervisory personnel and finally by the Mayor, or his designated agent. Each such memorandum shall contain the name of the resident concerned, his Department number, the crime for which he was sentenced, the reason for the requested furlough, all factual information (including its verification data), and a statement by the caseworker or counselor on how the furlough is expected to contribute to the attainment of the resident concerned correctional goals and the date of the last furlough granted to such resident.

(b) Each resident being released on furlough will be advised in writing of the conditions of his furlough and will be given a thorough explanation of such conditions. In addition, each resident will be advised that the willful failure to remain within the extended limits of his confinement, or his failure to return to a designated place within the time prescribed may be deemed an escape, punishable by a fine of not more than \$5,000 or imprisonment for not longer than five years, or both. This furlough release authorization form shall be signed by the resident concerned, indicating his understanding of the conditions of the furlough and his willingness to comply with such conditions. Such form will also be signed by the person authorizing such furlough. The resident concerned will be given a copy of such form and instructed to keep it on his person at all times while on furlough.

(c) If a resident on furlough fails to return to a designated place within the time specified in the furlough authorization form signed by him, or if there is reason to believe that he has violated the conditions of his furlough after release, the Administrator shall immediately attempt to contact the

resident in order to have him returned to the institution or facility from which he was released. If a furloughed resident cannot be located within 2 hours after the scheduled time for his return, he shall be deemed to be an escapee, subject to the appropriate actions taken under Departmental Order 5120.1A. (Apr. 23, 1977, D.C. Law 1-130, § 5, 23 DCR 9694.)

§ 24-485. Records and reports.

(a) Residents being released on furlough shall be reported as "furloughed" on appropriate Departmental records and statistical forms, identifying such movement as a furlough. Because time spent on furlough is creditable toward the service of a sentence, such status will not preclude the earning of good time or pay.

(b) Each caseworker or counselor assigned to handle a furloughed resident will, upon the completion of each such furlough, prepare a brief report to include—

(1) the name and Department number of the furloughed resident to whom the report relates;

(2) the purpose of the furlough being completed;

(3) a statement of the results of the furlough, including an explanation of any unusual circumstances or events;

(4) the reporter's assessment of the circumstances or events in relation to the resident's correctional goals; and

(5) the dates of any previous furloughs granted, including the one to which the report relates.

(c) Copies of all executed furlough release authorization forms shall be kept in the office of the Administrator. Within 5 calendar days before the beginning of each month, the information on these forms (in digested form) will be reported to the designee of the Director. These reports will include—

(1) the name and Department number of each resident who has been granted a furlough during the reporting period;

(2) sentence data relating to such resident, including his earliest release date;

(3) the purpose of the furlough;

(4) the beginning and ending dates of the furlough;

(5) the name of the officer authorizing the furlough;

(6) the number of furloughs previously granted to such resident; and

(7) the total number of furloughs granted to all residents during the reporting period.

(Apr. 23, 1977, D.C. Law 1-130, § 6, 23 DCR 9694.)

§ 24-486. Institutional review committees.

There shall be established, within each facility and institution of the Department, an institutional review committee composed of a psychologist, a senior correctional officer, and an academician. Each committee shall be appointed by the Director, or his designee. It shall be the function of each committee to examine the progress and adjustments of the residents of the facility or institution in which the com-

mittee was established, and to make recommendations to the appropriate person with respect to the applications for furloughs of such residents. In making such recommendations, each committee shall rely generally upon consideration of the applicant's disciplinary record, psychological evaluation, work and training participation, and attitudinal and behavior adjustment. (Apr. 23, 1977, D.C. Law 1-130, § 7, 23 DCR 9694.)

§ 24-487. Report to Council.

The Director shall submit to the Council's Committee on Public Safety, semiannually (on January 31 and July 31 of each year) a report on the furlough program conducted during the immediately preceding period. The report shall include the number of furloughs granted during such reporting period, the types of furloughs so granted, a listing of all instances where a furloughed resident failed to abide by the conditions of his furlough, an analysis of each of the resident's furloughed,¹ giving the sex, sentence data, and other relevant information relating to each such resident, and such other information as the Director may deem necessary and relevant. The Director shall formulate an overall evaluation and submit same as a part of the report required by this section. (Apr. 23, 1977, D.C. Law 1-130, § 8, 23 DCR 9694.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24-481.

§ 24-488. Severability.

If any section or provision of this subchapter is held to be unconstitutional or otherwise invalid in its application to any person or circumstance, such unconstitutionality or invalidity shall not affect the applicability of that section or provision, or the applicability of the remaining sections or provisions of this subchapter, to other persons or circumstances. (Apr. 23, 1977, D.C. Law 1-130, § 9, 23 DCR 9694.)

Chapter 5.—REHABILITATION OF ALCOHOLICS

Sec.

24-535. Donations of services and gifts—Deposit of gifts in General Fund—Use of gifts, by Mayor, to carry out purposes of this chapter.

§ 24-522. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-523. Public health program for intoxicated persons and chronic alcoholics—Detoxification centers and other facilities—Delegation of functions by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

¹ So in original.

§ 24-524. Procedures for dealing with persons who are found intoxicated in public—Filing of criminal charges against chronic alcoholics—Dealing with intoxicated persons who violate certain laws—Records of detoxification center to be confidential.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-526. Outpatient treatment of chronic alcoholics—Medical director to determine who shall be admitted for outpatient treatment—Care of chronic alcoholics for whom recovery is unlikely—Compulsory participation not permitted, except by Court order.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-527. Commitment of chronic alcoholics by Court order for treatment—Hearing and findings required before commitment—Writ of habeas corpus—Right to counsel—Term of commitment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Representation of indigents by Public Defender Service, see § 2-2222.

§ 24-529. Commissioner may contract with appropriate public or private organizations to carry out purposes of this chapter.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-530. Programs for the prevention and treatment of alcoholism and rehabilitation of alcoholics among District employees and in private industry.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-531. Program for the prevention and treatment of alcoholism and rehabilitation of alcoholics in correctional institutions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-532. Program for the prevention of alcoholism and the treatment and rehabilitation of incipient alcoholics among juveniles and young adults.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-533. Evaluation of programs for treatment of chronic alcoholics—Recommendations to Congress by Commissioner—Publication of data and statistics—Implementation of objectives of this chapter—Use of Federal funds, programs and facilities.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-534. Liability for cost of treatment—Procedures for determining liability and ability to pay—Waiver of liability, by Commissioner, in certain cases—Actions to recover cost of treatment—Deposit into United States Treasury of sums collected.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

COMMISSIONER'S ORDER GOVERNING REIMBURSEMENT FOR TREATMENT SERVICES PROVIDED TO ALCOHOLIC PATIENTS BY THE D.C. GOVERNMENT

Commissioner's Order No. 74-23, Jan. 31, 1974, ORDERED:

1. That this Order governs the reimbursement policy for treatment services provided to alcoholic patients by the District of Columbia Government in accordance with the provisions of Section 14 of Public Law 90-452, D.C. Code Supplement II 24-534, the District of Columbia Alcoholic Rehabilitation Act of 1967, which requires that any person who receives such treatment is required to reimburse the District of Columbia for all or such part of the actual cost of providing such services as the Commissioner or his designated representative may require; and,

2. That the Director of Human Resources is hereby delegated the authority and responsibility to carry out this Order and to promulgate the necessary administrative directives. In this connection:

a. He shall, through his designated representative, enter into contracts for reimbursement of treatment costs in the name of the District of Columbia Government with persons liable or willing to assume responsibility for payment for treatment furnished under the provisions of this Order; and furthermore,

b. Because Congress further provided that administrative exceptions could be made where the Commissioner or his designated representative waived this reimbursement liability as being unreasonable in certain cases, he may waive, or authorize his designated representative to waive, liability under this Order governing eligibility and standards of payment for treatment of alcoholic patients whenever in his opinion circumstances warrant such action, *provided* that a record of each such waiver shall be kept in a special file in the Department of Human Resources and shall be made available to such reviewing bodies as the Commissioner may designate; and

c. He shall review this Order at intervals not to exceed one year and recommend to the Commissioner of the District of Columbia such revisions as may be indicated. Changes in per diem rates only may exceed this interval if required.

A. Standards for Payment

1. Liability for payment for the treatment given to alcoholic patients will be determined, according to ability to pay, in the following order:

- a. Person receiving treatment (or his estate)
- b. Father
- c. Mother
- d. Spouse
- e. Adult Children

2. Determination of ability to pay shall take into consideration income and resources such as liquid assets, compensation, or insurance. The ability to pay of the patient and legally responsible relatives shall be determined in accordance with income standards and administrative guidelines established by the Director of Human Resources. The patient, or his responsible relative, shall be required to sign a contract to meet the agreed terms of payment. This contract may be renegotiated whenever any change of factors occurs upon which the original patient contract was based and will be effective as of the date of renegotiation.

3. Treatment services provided to alcoholic patients will be provided at the expense of the District of Columbia to all patients for the first month. After the first month, patients of the Rehabilitation Center for Alcoholics with a gross income between \$100 and \$600 a month shall be charged at the rate of 20% of their monthly income or \$4.00 per day, whichever is less. Patients with a gross income of \$600 a month, or with sufficient liquid assets as determined by the Director of Human Resources, shall be charged at the rate of 20% of their income or \$10.25 per day, whichever is less. In cases where patients are unable to pay, the responsible relative (as listed in Paragraph 1) of alcoholic patients shall be charged for the cost of treatment on the same basis as patients.

B. Effective Date

The provisions of this Order shall be effective on 2-1-74.

§ 24-535. Donations of services and gifts—Deposit of gifts in General Fund—Use of gifts, by Mayor, to carry out purposes of this chapter.

The Mayor may accept on behalf of the District of Columbia donations of services or gifts of real or personal property, tangible or intangible, which are made for the purpose of carrying out his functions under this chapter. Gifts of money and the proceeds from the liquidation of any other gift shall be deposited in the General Fund of the District of Columbia as established in the Revenue Funds Availability Act of 1975. The Mayor shall use such donations and gifts to carry out the purposes of this chapter. (Aug. 4, 1947, ch. 472, § 15; Aug. 3, 1968, Pub. L. 90-452, § 3(a), 82 Stat. 624; Jan. 22, 1976, D.C. Law 1-42, § 5(b), 22 DCR 6316.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

The General Fund of the District of Columbia, referred to in text, was established by section 9 of the Revenue Funds Availability Act of 1975 (D.C. Law 1-42, Jan. 22, 1976) which is classified to § 47-130c.

AMENDMENT

1976—Act Jan. 22, 1976, D.C. Law 1-42, amended section by substituting "General Fund of the District of Columbia

as established in the Revenue Funds Availability Act of 1975" for "Treasury of the United States to the credit of a trust fund account, which is hereby authorized, and may be invested and reinvested as trust funds of the District of Columbia".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 10 of act Jan. 22, 1976, D.C. Law 1-42, set out as a note under § 47-130c.

Chapter 6.—REHABILITATION OF USERS OF NARCOTICS

§ 24-601. Purpose.

NOTES TO DECISIONS

Construction

District of Columbia's "Rehabilitation of Users of Narcotics" statute provision, stating that the statute shall not be used to substitute treatment for punishment in cases of crime committed by drug users, means that, when the Government is able successfully to prosecute any drug user for a criminal offense under any federal statute, it may do so. *United States v. R. Moore* (1973, 486 F. 2d 1139, 158 U.S. App. D.C. 375; cert. denied 94 S. Ct. 298, 414 U.S. 980).

§ 24-602. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Addition as defense to criminal prosecution

Decision permitting a defendant charged with possession of narcotics and narcotics paraphernalia to raise affirmative defense that he lacked capacity to refrain from using narcotics by reason of drug addiction cannot be rested on trial court record which does not disclose basis for expert witness' conclusion that defendant had an overwhelming compulsion psychologically to use heroin and there was no showing whether finding of addiction related to criminal responsibility or only to habitual use. *W. R. Franklin v. United States* (D.C. App. 1975, 339 A.2d 398).

§ 24-603. Order of examination.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-605. Examinations by physicians.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-607. Hearing.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-608. Confinement of patient.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-610. Periodic examination of released patients.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-613. Care and treatment of drug users—Authority of the Surgeon General.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

**Chapter 7.—INTERSTATE AGREEMENT
ON DETAINERS****§ 24-702. Definitions.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-704. Regulations.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

PART V

GENERAL STATUTES

TITLE 25—ALCOHOLIC BEVERAGES.
TITLE 26—BANKS AND OTHER FINANCIAL INSTITUTIONS.
TITLE 27—CEMETERIES AND CREMATORIES.
TITLE 28—COMMERCIAL INSTRUMENTS AND TRANSACTIONS.
TITLE 29—CORPORATIONS.
TITLE 30—DOMESTIC RELATIONS.
TITLE 31—EDUCATION AND CULTURAL INSTITUTIONS.
TITLE 32—ELEEMOSYNARY, CURATIVE, CORRECTIONAL, AND PENAL INSTITUTIONS.
TITLE 33—FOOD AND DRUGS.
TITLE 34—HOTELS AND LODGING-HOUSES.
TITLE 35—INSURANCE.
TITLE 36—LABOR.

TITLE 37—LIBRARIES.
TITLE 38—LIENS.
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TITLE 40—MOTOR VEHICLES.
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TITLE 42—PERSONAL PROPERTY.
TITLE 43—PUBLIC UTILITIES.
TITLE 44—RAILROADS AND OTHER CARRIERS.
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TITLE 46—SOCIAL SECURITY.
TITLE 47—TAXATION AND FISCAL AFFAIRS.
TITLE 48—TRADE-MARKS AND TRADE NAMES.
TITLE 49—COMPILATION AND CONSTRUCTION OF CODE.

TITLE 25.—ALCOHOLIC BEVERAGES

Chapter 1.—ALCOHOLIC BEVERAGE CONTROL

Sec.

25-111a. Repealed.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 47-504.

§ 25-102. Short title—Application.

SHORT TITLES

The first section of act Oct. 26, 1977, D.C. Law 2-27, provided "That this act [amending §§ 25-114 and 47-2305] may be cited as the 'Variable Licensing Periods Act of 1977'."

The first section of act Apr. 6, 1977, D.C. Law 1-102, provided "That this act [amending § 25-111] may be cited as the 'Standing Up Service Act'."

§ 25-103. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 25-104. Alcoholic Beverage Control Board—Appointment—Term—Employees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 25-106. Jurisdiction of Board over licenses—Appeal from revocation—Duties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Due process

In absence of any evidence showing incompatibility of positions, positions of director of the Department of Economic Development and chairman of the Alcoholic Beverage Control Board are not incompatible and fact that both positions were held by same person did not deny due process to those challenging grant of class "C" liquor license. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1976, 359 A.2d 295).

Fact that second member of the Alcohol Beverage Control Board was involved in both investigation and determination of case involving application for class "C" liquor license is not sufficient to overcome presumption of fairness of actions of examiners and is not enough to mandate setting aside of Board's granting of license on basis of denial of due process. *Id.*

§ 25-107. Powers of Council—Rules and regulations—Licenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

NOTES TO DECISIONS

Construction of regulations

In District of Columbia regulation of Alcoholic Beverage Control Board relating to issuance of liquor license clearly means that Board cannot issue license for establishment whose nearest main street entrance is within 400 feet of nearest street main entrance of a church having 100 members or more; while existence of these conditions is a question for Board, if the facts are estab-

lished, the prohibition against issuance of license is absolute. *Vestry of Grace Parish et ano. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1976, 366 A. 2d 1110).

§ 25-110. Licenses — Applications for — To whom granted—Records.

CROSS REFERENCE

Advisory Neighborhood Commissions, notice of applications for licenses, see § 1-1711.

§ 25-111. License classifications—Fees.

Licenses issued under authority of this chapter shall be of twelve kinds:

* * * * *

(g) *Retailer's license, class C.*—Such a license shall be issued only for a bona fide restaurant, hotel, or club, or a passenger-carrying marine vessel serving meals, or a club car or a dining car on a railroad. It shall authorize the holder thereof to keep for sale and to sell spirits, wine, and beer at the place therein described for consumption only in said place. Except in the case of clubs, hotels, and passenger-carrying marine vessels serving meals in interstate commerce of one hundred miles or more, no beverage shall be sold or served to a customer in any closed container. In the case of hotels, alcoholic beverages may also be sold and served in the private room of a registered guest. In the case of clubs, alcoholic beverages may be sold and served in any room or area available only to bona fide members of such club or their bona fide guests, or both. No license shall be issued to a club which has not been established for at least three months immediately prior to the making of the application for such license. All alcoholic beverages offered for sale or sold by the holder of such licenses may be displayed and dispensed in full sight of the purchaser.

The fee for such a license shall be for a restaurant, \$825 per annum; for a hotel, under one hundred rooms, \$825 per annum; for a hotel of one hundred or more rooms, \$1,650 per annum; for a club, \$425 per annum; for a marine vessel serving meals in interstate commerce of one hundred miles or more and for each railroad dining car or club car, \$3 per month or \$20 per annum: *Provided*, That such a license may be issued to any company engaged in interstate commerce covering all dining, club and lounge cars operated by such company on railroads within the District of Columbia upon the payment of an annual fee of \$100; for all other passenger-carrying marine vessels serving meals, \$75 per month or \$825 per annum.

(h) *Retailer's license, class D.*—Such a license shall be issued only for bona fide restaurant, tavern, hotel, or club, or a passenger-carrying marine vessel serving meals, light lunches, or sandwiches, or a club car or a dining car on a railroad. Such a license shall authorize the holder thereof to sell beer and light wines at the place therein described for consumption only in said place. Except in the case of clubs and hotels, no beer or light wines shall be sold or served to a customer in any closed container. No license shall be issued to a club which has not been established for at least three months immediately prior to the making of the application for such license.

The annual fee for such a license shall be \$330 except that in the case of a marine vessel the fee shall be \$30 per month or \$330 per annum, and in the case of each railroad dining car or club car \$150 per month or \$15 per annum: *Provided*, That such a license may be issued to any company engaged in interstate commerce covering all dining, club, and lounge cars operated by such company on railroads within the District of Columbia upon the payment of an annual fee of \$50.

* * * * *

(As amended Apr. 6, 1977, D.C. Law 1-102, § 2 (a), (b), 23 DCR 8732.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1977—Act Apr. 6, 1977, D.C. Law 1-102, amended subsecs. (g) and (h) by deleting the fourth, fifth, and sixth sentences of each subsection. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 3 of act Apr. 6, 1977, D.C. Law 1-102, provided: "This act [amending this section] shall take effect immediately following the period provided for Congressional review in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)(1)]."

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

§ 25-111a. Repealed. Jan. 22, 1976, D.C. Law 1-42, § 5(a), 22 DCR 6316.

Section, Acts Aug. 4, 1947, 61 Stat. 746, ch. 472, § 16, formerly § 14; May 27, 1949, 63 Stat. 135, ch. 146, title V, § 504; Aug. 3, 1968, Pub. L. 90-452, § 3(b), 82 Stat. 624, appropriated a portion of the license fees to carry out the purposes of chapter 5 of title 24.

EFFECTIVE DATE OF REPEAL

See sec. 10 of act Jan. 22, 1976, D.C. Law 1-42, set out as a note under § 47-130c.

§ 25-112. Authority of Council to forbid transportation of liquor into District—Permit may be granted.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 25-114. Description in license of premises—Sale limited to premises—Storage not on premises—Expiration of licenses—Monthly licenses—Proportionate fees.

Every license shall particularly describe the place where the rights thereunder are to be exercised, and beverages shall not be manufactured or kept for sale or sold by any licensee except at the place so described in his license: *Provided, however*, That the holder of a manufacturer's or wholesaler's license, the holder of a retailer's license, class A, or the holder of a retailer's license, class C, and class D, issued for a passenger-carrying marine vessel or club car or a dining car on a railroad, may store bev-

erages, with the consent of the Board, upon premises other than the premises designated in the license. Every license issued under the authority of this chapter shall begin and end on the dates established by the Mayor. Whenever the Mayor changes a license period, the applicant for the license shall pay the appropriate proportionate amount of the annual license fee. Every monthly license shall date from the first day of the month in which it is issued and expire on the last day of the month named in the license. Monthly licenses shall not be issued for periods exceeding six months. (Jan. 24, 1934, 48 Stat. 327, ch. 4, § 13; Aug. 27, 1935, 49 Stat. 900, ch. 756, § 8; Dec. 8, 1970, Pub. L. 91-535, § 5, 84 Stat. 1394; Oct. 26, 1977, D.C. Law 2-27, § 2, 24 DCR 3720.)

AMENDMENT

1977—Act Oct. 26, 1977, D.C. Law 2-27, amended the second and third sentences of section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 4 of act Oct. 26, 1977, D.C. Law 2-27, provided: "This act [amending §§ 25-114 and 47-2305] shall take effect as provided in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

CROSS REFERENCE

Annual publication of list of expiring licenses, see § 1-171i.

§ 25-115. Applications for licenses—Qualification of applicants—Moral character—Citizenship—Prior convictions—Ownership—Interest of manufacturer in retail business—Character of premises—Advertising application—Hearing of protests—Objection of property owners—Removal of bonded liquor from Government warehouses—Penalty.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Advisory Neighborhood Commissions, notice of applications for licenses, see § 1-171i.

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

NOTES TO DECISIONS

Administrative procedure

Although church vestry was not a party to proceeding, since it had participated throughout hearing on application for issuance of liquor license both by attendance and the testimony of minister and other parishioners and had notice of all hearings, Alcoholic Beverage Control Board properly denied motion, after all hearings had been completed, transcript issued and proposed findings submitted, to allow vestry to intervene. *Vestry of Grace Parish et al. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1976, 366 A. 2d 1110).

Where matter regarding issuance of proposed liquor license to restaurant had been litigated thoroughly by both parties represented by counsel over a period of several months and all had sufficient opportunity to present evidence, Alcoholic Beverage Control Board had ample justification for declining to reopen record to hear allegedly newly discovered evidence which would cast doubt on validity of survey as to distance between restaurant and nearest main street entrance of church. *Id.*

Bare assertion, albeit true, that certain gaps remained

to be filled in the Alcoholic Beverage Control Board's published regulations to meet statutory standards is not sufficient to require setting aside Board's order granting class "C" liquor license where it was not alleged that citizens' association challenging the grant suffered in any way from lack of any particular provision. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1976, 359 A. 2d 295).

Due process

In absence of any evidence showing incompatibility of positions, positions of director of the Department of Economic Development and chairman of the Alcoholic Beverage Control Board are not incompatible and fact that both positions were held by same person did not deny due process to those challenging grant of class "C" liquor license. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1976, 359 A. 2d 295).

Fact that second member of the Alcohol Beverage Control Board was involved in both investigation and determination of case involving application for class "C" liquor license is not sufficient to overcome presumption of fairness of actions of examiners and is not enough to mandate setting aside of Board's granting of license on basis of denial of due process. *Id.*

Evidence

In proceedings on application for liquor license, District of Columbia Alcoholic Beverage Control Board did not abuse its discretion in refusing to consider hearsay summaries of residents' views about proposed license and information concerning potential congestive impact of metro station under construction nearby. *G. Kopff et al. v. District of Columbia Alcoholic Beverage Control Board et al.* (D.C. App. 1977, 381 A. 2d 1372).

— Substantial

Consideration of testimony concerning membership of church constituted substantial evidence before Alcoholic Beverage Control Board that the church, whose entrance was near proposed restaurant for which liquor license was sought, did have less than the requisite 100 members within meaning of regulation specifying minimum distance between proposed licensee and nearest main street entrance of church. *Vestry of Grace Parish et al. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1976, 366 A. 2d 1110).

Findings of fact—Sufficiency

In proceedings before District of Columbia Alcoholic Beverage Control Board on application for liquor license, requirement of section 1-171i that "great weight be given to views of advisory neighborhood commissions implies that explicit reference should be given by Board to each ANC issue and concern as such, that specific findings and conclusions with respect to each should be made, and that ANC be acknowledged as source of issue or concern. *G. Kopff et al. v. District of Columbia Alcoholic Beverage Control Board et al.* (D.C. App. 1977, 381 A. 2d 1372).

In proceeding on application for issuance of liquor license, District of Columbia Alcoholic Beverage Control Board entered findings which were adequate to address each contested issue, including saturation of liquor licenses, parking in traffic, refuse storage, character of neighborhood, and neighborhood wishes and desires. *Id.*

Findings and conclusions of law by Alcoholic Beverage Control Board that there were sufficient off-street parking facilities to serve patrons of applicant for retailer's class C liquor license, that adequate valet service for parking would be available, that it was not shown that issuance of license would cause increase in trash and litter in the area and that premises were appropriate for issuance of license were supported by substantial evidence. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 323 A. 2d 715).

Detailed recitation of testimony and conclusionary statements of District of Columbia Alcoholic Beverage Control Board's view of such testimony as establishing entitlement to retailer's class C alcoholic beverages license were too inadequate to permit review, and remand was

necessary. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 316 A. 2d 865).

Notice

Alcoholic Beverage Control Board erred when it failed to give special notice to affected advisory neighborhood commission before it issued liquor license; such error was cured, however, when actual notice was given to affected ANC's by individual remonstrants. *G. Kopff et al. v. District of Columbia Alcoholic Beverage Control Board et al.* (D.C. App. 1977, 381 A. 2d 1372).

In proceedings on application for liquor license, District of Columbia Alcoholic Beverage Control Board committed reversible error in failing to comply with requirements of this section by not giving notice of rescheduled hearing on license application to known remonstrants and by failing to post such notice on applicant's premises. *Id.*

Where, on petition for review of order of Alcoholic Beverage Control Board granting application to transfer alcoholic beverage retailer's license, petitioners were present and accorded fair opportunity to be heard, they could not complain that statutory requirements were not satisfied because there was no indication in Board's decision that required notice of hearing was ever published. *R. F. Schiffmann et al. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1973, 302 A. 2d 235).

In case of hearing on application to transfer alcoholic beverage retailer's license, better practice would have been for the board to have included in record copies of notice of publication required by statute. *Id.*

Objections

On petition for review of order granting application for transfer of retail liquor license, evidence did not support claim that Alcoholic Beverage Control Board had furnished petitioners with ambiguous and misleading instructions for preparation of protest petitions. *R. F. Schiffmann et al. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1973, 302 A. 2d 235).

Prejudicial error

Record on review established no prejudicial error in Alcoholic Beverage Control Board's compliance with court's prior decision, amounting to substantial compliance with order that Board take further proceedings and enter into record all information which would be relevant and material to statutory criteria for issuance or denial of license and which would be relied upon in any degree by the Board. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1973, 305 A. 2d 861).

Review

Advisory neighborhood commission has no capacity to seek court review of action of District of Columbia Alcoholic Beverage Control Board in issuing liquor license; area residents who were commission members, however, have standing to initiate such review and to assert rights of commission itself. *G. Kopff et al. v. District of Columbia Alcoholic Beverage Control Board et al.* (D.C. App. 1977, 381 A. 2d 1372).

Validity of action of District of Columbia Alcoholic Beverage Control Board in issuing liquor license was not mooted as issue by virtue of fact that, after license was initially issued and before court review of Board's action was completed, license was renewed and renewal was not contested. *Id.*

Court's review of decision of Alcoholic Beverage Control Board on liquor license application is limited to determination of whether Board decision is supported by substantial evidence which is more than a mere scintilla and is such relevant evidence as reasonable minds might accept as adequate to support conclusion. *Vestry of Grace Parish et ano. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1976, 366 A. 2d 1110).

§ 25-117. Transfer of license—Fee—Conditions imposed.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

NOTES TO DECISIONS

Administrative procedure

Where Alcoholic Beverage Control Board personally inspected premises and, subsequent to hearing on application for transfer of license and not in presence of parties, measured area to see if proposed liquor store violated regulation prohibiting liquor store within 400 feet of recreational area entrance then requested remand to remedy procedural defects but limited remand to question of measurements without setting forth facts revealed by personal inspection and giving parties opportunity to address themselves to those facts when decision as to main entrance was based on both testimony and personal inspection, Board's refusal to admit further testimony at remand hearing on question of main entrance was error. *Northeast Liquors, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1973, 302 A. 2d 222).

Construction

In enacting this section providing that Board of Alcoholic Beverage Control, " * * shall not allow the transfer of the license of any person against whom there is pending in the courts or before the Board any charge of keeping a disorderly house, or of violating this chapter or the laws against gambling in the District of Columbia," Congress sought to prevent transfer "by the licensee" when said licensee has charges pending against him, and said proviso does not apply to cases where transfer is sought by someone other than the present license holder. *D. Hornstein et al. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 321 A. 2d 567).

Evil sought to be prevented by section providing that Board of Alcoholic Beverage Control " * * shall not allow the transfer of the license of any person against whom" charges are pending, was transfer by licensee who is the putative subject of revocation or suspension. *Id.*

Due process

There was no denial of due process in Alcoholic Beverage Control Board's scheduling of hearing on protest of transfer of liquor license ten days prior to the resignation of one of its members, even if members knew that said member would be resigning. *Palisades Citizens Association v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 324 A. 2d 692).

Findings of fact

No written findings were required for disposition of petition for reconsideration of transfer order entered by Alcoholic Beverage Control Board. *Palisades Citizens Association v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 324 A. 2d 692).

Judicial review

On petition for review of order of Alcoholic Beverage Control Board granting application for transfer of alcoholic beverage retailer's license, Court of Appeals may not disturb any action of Board in exercise of its statutory powers unless such action is plainly wrong or without support in substantial evidence in administrative record. *R. F. Schiffmann et al. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1973, 302 A. 2d 235).

Moral character

Due process requires information in Alcoholic Beverage Control Board's confidential file concerning an applicant's moral fitness and good character to be made available to parties as part of the record. *Northeast Liquors, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1973, 302 A. 2d 222).

Ordinarily, party opposing transfer of liquor license has burden of showing change in circumstances relating to the applicant's moral character. *Id.*

Where case concerns application for transfer of liquor license rather than initial granting of license, appellate court must presume that matter of applicant's moral character was determined by the Board when original license was issued. *Id.*

In absence of any evidence in record as to whether confidential information concerning applicant's moral character was made available to party opposing transfer of applicant's liquor license at hearing, decision of the Board allowing transfer of license would be remanded. *Id.*

Notice

Where, on petition for review of order of Alcoholic Beverage Control Board granting application to transfer alcoholic beverage retailer's license, petitioners were present and accorded fair opportunity to be heard, they could not complain that statutory requirements were not satisfied because there was no indication in Board's decision that required notice of hearing was ever published. *R. F. Schiffmann et al. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1973, 302 A. 2d 235).

In case of hearing on application to transfer alcoholic beverage retailer's license, better practice would have been for the Board to have included in record copies of notice of publication required by statute. *Id.*

Objections

On petition for review of order granting application for transfer of retail liquor license, evidence did not support claim that Alcoholic Beverage Control Board had furnished petitioners with ambiguous and misleading instructions for preparation of protest petitions. *R. F. Schiffmann et al. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1973, 302 A. 2d 235).

Remand

Where Court of Appeals could not determine from the record whether Alcoholic Beverage Control Board's decision denying petition for reconsideration of transfer order had been issued while there was a quorum on the Board, case was remanded to the Board to determine whether such quorum existed. *Palisades Citizens Association v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 324 A. 2d 692).

Transfer of license

Where mortgage holders of liquor business purchased business at foreclosure sale when the licensee ceased to do business on the premises as a result of charges against its officers of permitting illegal activity on the premises, and sought transfer of licensee's liquor license, this section providing that Board of Alcoholic Beverage Control " * * shall not allow the transfer of the license of any person against whom charges are pending," did not prevent requested transfer of liquor license to mortgage holders. *D. Hornstein et al. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 321 A. 2d 567).

§ 25-118. Revocation of license—Causes—Hearing—Discretionary closing for one year.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS**Discretion of Board**

Revocation of petitioner's retailer's Class "C" alcoholic beverage license by Alcoholic Beverage Control Board was not an abuse of discretion, despite claim that, in imposing sanction, Board treated petitioner differently than others in similar situations and, in so doing, ignored its own precedents and procedures and failed to justify different treatment accorded petitioner, where petitioner admitted charges alleging unlawful receipt and possession of unstamped distilled spirits, concealment of goods on restaurant premises with intent to defeat collection of taxes (both felonies), failing to superintend business, and permitting an unregistered .22 caliber rifle to be kept on premises. *Alrob Enterprises, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1975, 337 A. 2d 497).

Fifteen-day suspension of liquor license when doorman refused to permit entry of police officers unless each paid a \$2 admission charge though he was told that they were on official business and identification was displayed, and when manager of the premises failed to intervene to provide officers with full opportunity to examine the premises as required by regulations, was within Alcoholic Beverage Control Board's statutory authority and discretion, de-

spite contention that, when compared with sanctions imposed in other cases, such suspension failed to accord licensee equal protection, equal justice, and due process. *The Meteor Corporation v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 316 A. 2d 545).

Grounds for suspension

Inasmuch as Alcoholic Beverage Control Board grounded its suspension of retail liquor license upon asserted violation of section 22-2001 forbidding presentation of obscene exhibitions, the suspension order would stand or fall upon question whether dance performed by go-go dancer was the kind of performance forbidden by the section and order could not be sustained on theory of broader power to regulate liquor licensees. *4934, Incorporated v. Mayor W. E. Washington et ano.* (D.C. App. 1977, 375 A. 2d 20).

Dance performed on premises of retail liquor licensee by dancer who wore bikini-type panties and who wrapped her legs around shoulders of male customers who were leaning over rim of stage did not overstep constitutional protections and is not ground for suspension of liquor license. *Id.*

Review

Where findings of Alcoholic Beverage Control Board on which it based suspension of license were supported by substantial evidence, reviewing court was not at liberty to disturb the Board's action. *The Meteor Corporation v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 316 A. 2d 545).

§ 25-119. Revocation of license when manufacturer interested—Manufacturer forbidden to loan money or furnish equipment for wholesaler or retailer—Extending credit permitted—"Manufacturer" defined.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 25-120. Revocation of license when wholesaler interested—Wholesaler forbidden to loan money or furnish equipment to retailer—Extending credit not prohibited—"Wholesaler" defined.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 25-121. Sale to minors or intoxicated persons—Liability of licensee.**CROSS REFERENCE**

Age of majority, see § 21-101 note.

NOTES TO DECISIONS**Civil liability**

Complaint which was brought by victim of shooting committed by District of Columbia police officer and which alleged that bar owner violated a statutory duty owed to the victim by serving the officer at time when it was known or should have been known that the officer was intoxicated and might pose a danger to others stated a cause of action against the bar owner. *D. S. Marusa v. District of Columbia et al.* (1973, 484 F. 2d 828, 157 U.S. App. D.C. 348).

In order for violation of a criminal law or regulation to create civil liability, the law or regulation should generally be one designed to promote safety, plaintiff must be a member of class to be protected by the statute and defendant must be person upon whom the statute imposes specific duties. *Id.*

§ 25-123. Monthly reports of sales and purchases.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 25-124. Beverage taxes—Method of collection—Class C or D licensees—Reports.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

§ 25-125. Sale, distribution, furnishing of beverages by convicted persons and minors.**CROSS REFERENCE**

Age of majority, see § 21-101 note.

§ 25-130. Minor misrepresenting age to procure beverage—Penalty.**CROSS REFERENCE**

Age of majority, see § 21-101 note.

§ 25-131. Issuance of new permits under Beverage License Act of 1933 forbidden—Surrender of permit and refund of fees—Repeal.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 25-133. Sale by retailer of beverages on credit prohibited—Exceptions.**NOTES TO DECISIONS****Construction**

Prohibition of this section of credit sales of liquor was not enacted for protection of liquor store owners but to protect public interest. *W. L. Fields v. A. F. Hunter, Sr., et al.* (D.C. App. 1977, 368 A.2d 1156).

Enforcement of illegal agreement

Even though buyer of liquor on credit was not without fault, seller, liquor store owner is not entitled to enforce the illegal agreement. *W. L. Fields v. A. F. Hunter, Sr., et al.* (D.C. App. 1977, 368 A.2d 1156).

Sale on credit

Liquor store owner's acceptance of postdated check for portion of sum due for liquor sold violated prohibition of this section of sale of liquor on credit. *W. L. Fields v. A. F. Hunter, Sr., et al.* (D.C. App. 1977, 368 A.2d 1156).

§ 25-138. Tax on beer.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Council authorized to change tax rates. see § 47-504.

TITLE 26.—BANKS AND OTHER FINANCIAL INSTITUTIONS

Chapter 3.—TRUST, LOAN, MORTGAGE, SAFE DEPOSIT AND TITLE CORPORATIONS

§ 26-305. District of Columbia Council may grant or refuse charter.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 26-306. Notice of application to Council.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 26-307. Recording charter—Certificate to be secured from Comptroller of Currency.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 6.—MONEY LENDERS—LICENSES

§ 26-601. Loaning of money on security—Rate of interest—License—Appointment of resident agent—Service on removal.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Illegal contracts—Coverage by insurance

If title insurance policy insuring lender and its successors in interest against any defect in execution of deed of trust covered loss caused by lender's violation of Loan Shark Law [this chapter] enforcement of the policy by successor in interest would not contravene public policy, where successor in interest should have known that loan transaction violated Loan Shark Law, but could not have had subjective knowledge of any violation. *Hartford Life Insurance Co. v. Title Guarantee Co. et al.* (1975, 520 F.2d 1170, 172 U.S. App. D.C. 156).

Injunctions

Plaintiff, which brought suit seeking cancellation of note and deed of trust or, in the alternative, revision of note and trust, and which could obtain the relief sought only by asserting and establishing the unconstitutionality of federal statute, was not entitled to issuance of a preliminary injunction restraining foreclosure pending final action on the complaint, since the statute upon which plaintiff was relying was presumptively constitutional

and since plaintiff failed to establish a likelihood or probability of success on the merits. *Murray Co. v. National Mortgage Corporation et al.* (D.C. App. 1973, 299 A.2d 147).

§ 26-602. Application for license filed with Commissioner—Contents of application—Date and expiration of license—Notice of application posted and published—Protests—Hearings—Rejection of application.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 26-603. Bond to accompany application—Sureties—Actions on bond—Copy of bond to be furnished upon request—Renewal of bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 26-604. Register to be kept—Contents—Inspection of register—Annual statements.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 26-606. Complaints—Hearings on complaints—Record of hearings—Revoking of, or refusal to grant license.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 26-607. Penalties—Enforcement.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 26-610. Persons, associations, and corporations exempt from operation of this chapter.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 26-611. Commissioner to enforce—Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 26-612. Loans exempt from provisions of this chapter.

NOTES TO DECISIONS

Injunctions

Plaintiff, which brought suit seeking cancellation of note and deed of trust or, in the alternative, revision of note and trust, and which could obtain the relief sought only by asserting and establishing the unconstitutionality of federal statute, was not entitled to issuance of a preliminary injunction restraining foreclosure pending final action on the complaint, since the statute upon which plaintiff was relying was presumptively constitutional and since plaintiff failed to establish a likelihood or probability of success on the merits. *Murray Co. v. National Mortgage Corporation et al.* (D.C. App. 1973, 299 A. 2d 147).

TITLE 27.—CEMETERIES AND CREMATORIES

Chapter 1.—CEMETERY ASSOCIATIONS—REGULATORY PROVISIONS

§ 27-105. Duty to inclose and underdrain.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 27-112. Dedication of land—Title vested in perpetuity.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 27-114. Distance from city and from dwellings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 27-114a. Commissioner authorized to license certain lands for cemetery purposes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 27-119a. Disposal of dead bodies—Permits required—Movement and disposition of tissue by tissue banks—Violations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 27-121. Place of burial.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 27-124. Crematories—Consent of property owners—Permit.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 27-128. Disinterment by order of court.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 27-129. Public crematory—Cremation required in certain cases.

CROSS REFERENCES

Funeral and burial at public expense,
Notice and removal of body, see § 2-202.
Indigents and wards of District, see § 3-213a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3-213a, 27-131.

§ 27-130. Establishment of crematory—Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3-213a, 27-131.

§ 27-131. Act for promotion of anatomical science not affected by crematory law.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3-213a.

TITLE 28.—COMMERCIAL INSTRUMENTS AND TRANSACTIONS

Uniform Commercial Code set out herein as subtitle I, was enacted into law on Dec. 30, 1963, by Pub. L. 88-243, 77 Stat. 630, § 1, effective Jan. 1, 1965

SUBTITLE I.—UNIFORM COMMERCIAL CODE

Article 1.—GENERAL PROVISIONS

PART 1.—SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER

§ 28:1-103. Supplementary general principles of law applicable

Unless displaced by the particular provisions of this subtitle, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions. The age of majority as it pertains to the capacity to contract is eighteen years of age. (Dec. 30, 1963, 77 Stat. 631, Pub. L. 88-243, § 1, eff. Jan. 1, 1965; July 22, 1976, D.C. Law 1-75, § 6, 23 DCR 1183.)

AMENDMENT

1976—Act July 22, 1976, D.C. Law 1-75, amended section by adding last sentence relating to age of majority.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 8 of act July 22, 1976, D.C. Law 1-75, set out as a note under § 21-101.

NOTES TO DECISIONS

General

When Uniform Commercial Code did not apply to precise situation, i.e., where bank paid checks lacking one of two required signatures and made disbursements of loan advances contrary to loan agreement, general contract principles governed, and defenses of contributory negligence and proximate cause were not available. *G & R Corporation, et al. v. American Security & Trust Company* (1975, 523 F.2d 1164, 173 U.S. App. D.C. 215).

PART 2.—GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

§ 28:1-201. General definitions

NOTES TO DECISIONS

Good faith

Findings of District Court, in civil action brought against lending institutions by victims of home improvement fraud, that even though lenders lacked actual notice of fraud involved in transactions in question, such institutions had reason to know of misrepresentation and unconscionable dealing, and were thus on notice of victim's defenses to note and are not entitled to status of holders in due course, are clearly erroneous and are reversed. *C. L. Slaughter et al. v. Jefferson Federal Savings and Loan Association et al.* (1976, 538 F.2d 397, 176 U.S. App. D.C. 49; rev'g 361 F. Supp. 590).

§ 28:1-207. Performance or acceptance under reservation of rights

NOTES TO DECISIONS

Special circumstances

Indefinite quantity contract for mobile generator sets did not involve such special circumstances as to prevent application of doctrine that performance of otherwise unenforceable contract rendered contract enforceable. *Federal Electric Corporation v. United States* (1973, 486 F. 2d 1377, 202 Ct.Cl. 1028).

Article 2.—SALES

PART 1.—SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

§ 28:2-105. Definitions: transferability; "goods"; "future" goods; "lot"; "commercial unit"

NOTES TO DECISIONS

Contracts for sale of goods

Supplier's certificates wherein supplier of steel in transactions financed by the Agency for International Development agreed to make an appropriate refund to AID if supplier failed to perform its agreement with foreign importers created a separate and independent cause of action in favor of the Government, and such certificates are not contracts for the sale of goods governed by this Article and the four-year statute of limitations section 28:2-725. *United States v. Framen Steel Supply Company* (D.C.N.Y. 1977, 435 F. Supp. 681).

§ 28:2-106. Definitions: "contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming" to contract; "termination"; "cancellation"

NOTES TO DECISIONS

Contracts for sale of goods

Supplier's certificates wherein supplier of steel in transactions financed by the Agency for International Development agreed to make an appropriate refund to AID if supplier failed to perform its agreement with foreign importers created a separate and independent cause of action in favor of the Government, and such certificates are not contracts for the sale of goods governed by this Article and the four-year statute of limitations section 28:2-725. *United States v. Framen Steel Supply Company* (D.C.N.Y. 1977, 435 F. Supp. 681).

PART 3.—GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

§ 28:2-302. Unconscionable contract or clause

NOTES TO DECISIONS

Unconscionable contract

Findings of District Court, in civil action brought against lending institutions by victims of home improvement fraud, that even though lenders lacked actual notice of fraud involved in transactions in question, such institutions had reason to know of misrepresentation and un-

conscionable dealing, and were thus on notice of victim's defenses to note and are not entitled to status of holders in due course, are clearly erroneous and are reversed. *C. L. Slaughter et al. v. Jefferson Federal Savings and Loan Association et al.* (1976, 538 F. 2d 397, 176 U.S. App. D.C. 49; rev'g 361 F. Supp. 590).

§ 28:2-312. Warranty of title and against infringement; buyer's obligation against infringement

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5 of title 28 Appendix.

§ 28:2-313. Express warranties by affirmation, promise, description, sample

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5 of title 28 Appendix.

NOTES TO DECISIONS

Representations

Representation made by reputable brewer of beer to distributor of carbon dioxide that the surplus carbon dioxide brewer was willing to sell to distributor was from time to time used by brewer in the manufacture of its own beer was a representation on which the distributor was entitled to rely on as a matter of fact. *Rock Creek Ginger Ale Company, Inc. v. Thermice Corporation* (1971, 352 F. Supp. 522).

Samples

Where distributor of carbon dioxide entered into negotiations for purchase of surplus carbon dioxide of brewer and demanded and was furnished a sample which distributor tested and found of satisfactory quality and odor free and past deliveries aggregating over 700,000 pounds of carbon dioxide had been picked up by buyer-distributor from brewer with no deviation from quality of sample or any objectionable odor which formed basis of suit by bottler against distributor, sample must be considered as describing values of goods contracted for from brewer in absence of a clear, convincing and unmistakable denial of such responsibility. *Rock Creek Ginger Ale Company, Inc. v. Thermice Corporation* (1971, 352 F. Supp. 522).

§ 28:2-314. Implied warranty: merchantability; usage of trade

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5 of title 28 Appendix.

NOTES TO DECISIONS

Automobiles

When purchaser acquired new automobile there was by operation of law an implied warranty from both the manufacturer and dealer that the automobile was fit and suitable for the ordinary purposes for which an automobile is sold and used. *B. Williams v. Stuart Motor Company et ano.* (1974, 494 F. 2d 10⁴, 161 U.S. App. D.C. 155).

Drugs

In the absence of evidence that oral contraceptive contained any foreign ingredients, substances, or other impurities rendering it inherently dangerous or unfit for human consumption and in view of evidence that patient was suffering from hypertension when the drug was prescribed, patient, who suffered a stroke, could not recover from the manufacturer for breach of implied warranty of merchantability or breach of implied warranty of fitness for a particular use. *D. Chambers v. G. D. Searle & Co.* (D.C. Md. 1975, 441 F. Supp. 377; aff'd 567 F. 2d 269).

Merchant

Where distributor of carbon dioxide negotiated the purchase of brewer's surplus carbon dioxide, sales of carbon dioxide by brewer, which was a beer manufacturer and not merchant of carbon dioxide, was not subject to implied warranties of merchantability. *Rock Creek Ginger Ale Company, Inc. v. Thermice Corporation* (1971, 352 F. Supp. 522).

Warranty

Seller's implied warranty of merchantability of gas air conditioner was effective prior to expiration of seller's

express manufacturer's warranty where such express warranty contained no language, which excluded or modified the implied warranty, and was not inconsistent with the implied warranty. *K. R. Lee, Jr. et ano. v. Air Care, Inc.* (D.C. App. 1974, 325 A. 2d 598).

§ 28:2-315. Implied warranty: fitness for particular purpose

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5 of title 28 Appendix.

NOTES TO DECISIONS

Drugs

In the absence of evidence that oral contraceptive contained any foreign ingredients, substances, or other impurities rendering it inherently dangerous or unfit for human consumption and in view of evidence that patient was suffering from hypertension when the drug was prescribed, patient, who suffered a stroke, could not recover from the manufacturer for breach of implied warranty of merchantability or breach of implied warranty of fitness for a particular use. *D. Chambers v. G. D. Searle & Co.* (D.C. Md. 1975, 441 F. Supp. 377; aff'd 567 F. 2d 269).

§ 28:2-316. Exclusion or modification of warranties

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5 of title 28 Appendix.

NOTES TO DECISIONS

Exclusion or modification

Seller's implied warranty of merchantability of gas air conditioner was effective prior to expiration of seller's express manufacturer's warranty where such express warranty contained no language, which excluded or modified the implied warranty, and was not inconsistent with the implied warranty. *K. R. Lee, Jr. et ano. v. Air Care, Inc.* (D.C. App. 1974, 325 A. 2d 598).

Limitation of liability

Warranty and limitation of liability clauses which restrict buyer's remedies to repair and replacement of non-conforming parts and limit manufacturer seller's liability regardless of its negligence in causing such nonconformities are valid and enforceable. *Potomac Electric Power Company v. Westinghouse Electric Corporation* (1974, 385 F. Supp. 572).

§ 28:2-317. Cumulation and conflict of warranties express or implied

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5 of title 28 Appendix.

NOTES TO DECISIONS

Cumulative warranties

Seller's implied warranty of merchantability of gas air conditioner was effective prior to expiration of seller's express manufacturer's warranty where such express warranty contained no language, which excluded or modified the implied warranty, and was not inconsistent with the implied warranty. *K. R. Lee, Jr. et ano. v. Air Care, Inc.* (D.C. App. 1974, 325 A. 2d 598).

§ 28:2-318. Third party beneficiaries of warranties express or implied

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5 of title 28 Appendix.

PART 6.—BREACH, REPUDIATION AND EXCUSE

§ 28:2-607. Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over

NOTES TO DECISIONS

Notice of breach

Assuming applicability of this section requiring buyer to notify seller of breach within a reasonable time, with respect to carbon dioxide distributor, found liable in dam-

ages for delivery of defective carbon dioxide to bottler and bringing third-party complaint against brewer which sold carbon dioxide to distributor which neither sought to return the goods or to receive a rebate because of the defect, notice to brewer, from which distributor was making weekly pickups, of defect in carbon dioxide within a week of the time distributor learned of the defect was reasonable and in compliance with this section. *Rock Creek Ginger Ale Company, Inc. v. Thermice Corporation* (1971, 352 F. Supp. 522).

PART 7.—REMEDIES

§ 28:2-706. Seller's resale including contract for resale

NOTES TO DECISIONS

Mitigated damages

Where bank disbursed joint venture funds on one signature instead of two as required and joint venturer suffered loss, transfer of investment realty to such joint venturer by other joint venturer, who had diverted the funds, could be said to have been caused by bank's breach of contract, and any profit on immediate resale of such investment realty would have mitigated damages payable by bank, but profits realized by resale three years later did not. *G & R Corporation, et al. v. American Security & Trust Company* (1975, 523 F. 2d 1164, 173 U.S. App. D.C. 215).

§ 28:2-712. "Cover"; buyer's procurement of substitute goods

NOTES TO DECISIONS

Mitigated damages

Where bank disbursed joint venture funds on one signature instead of two as required and joint venturer suffered loss, transfer of investment realty to such joint venturer by other joint venturer, who had diverted the funds, could be said to have been caused by bank's breach of contract, and any profit on immediate resale of such investment realty would have mitigated damages payable by bank, but profits realized by resale three years later did not. *G & R Corporation, et al. v. American Security & Trust Company* (1975, 523 F. 2d 1164, 173 U.S. App. D.C. 215).

§ 28:2-715. Buyer's incidental and consequential damages

NOTES TO DECISIONS

Consequential damages

Where manufacturer seller had continuously exerted its best efforts to correct problem which caused turbine generator to suffer from excessive heat rate, and where turbine generator was still operative and where increased fuel costs due to heat rate were not excessive, damages for increased heat costs were consequential and not recoverable from manufacturer seller where warranty provision of sales contract specifically limited liability to replacement of parts. *Potomac Electric Power Company v. Westinghouse Electric Corporation* (1974, 385 F. Supp. 572).

§ 28:2-719. Contractual modification or limitation of remedy

NOTES TO DECISIONS

Limitation of liability

Warranty and limitation of liability clauses which restrict buyer's remedies to repair and replacement of non-conforming parts and limit manufacturer seller's liability regardless of its negligence in causing such nonconformities are valid and enforceable. *Potomac Electric Power Company v. Westinghouse Electric Corporation* (1974, 385 F. Supp. 572).

§ 28:2-725. Statute of limitations in contracts for sale

CROSS REFERENCE

Limitation of actions, generally, see § 12-301.

NOTES TO DECISIONS

Costs on appeal

Where appeal by plaintiff purchaser of automobile, in action for breach of contract against automobile dealer

and manufacturer, in which action judgment had been entered for defendants on grounds that action was commenced more than six years after purchase of the automobile and thus was barred by the statute of limitations, was completely lacking in substance, appeal would be dismissed as frivolous and double costs would be assessed against purchaser. *E. E. Tolson, Jr. v. Handley Ford, Inc. et ano.* (D.C. App. 1973, 304 A. 2d 634).

United States, suits by

Though contract on which United States brought suit provided that it should be governed by the laws of the District of Columbia, where such contract is not the contract for sale of goods within this Article, it is not governed by the four-year statute of limitations of this section, and since District three-year limitations period for simple contracts does not apply to an action in which the United States is the real plaintiff, the only applicable statute of limitations is the six-year limitation period for government suits on contracts prescribed by federal statute. *United States v. Framen Steel Supply Company* (D.C.N.Y. 1977, 435 F. Supp. 681).

Congress, by adopting this Article for the District of Columbia without excepting the United States from four-year statute of limitations of this section, expressly applied such statute of limitations for United States contracts governed by this Article, and thus six-year statute of limitations which applies to all contract actions by the United States "except as otherwise provided by Congress" does not apply to United States contracts governed by this Article. *Id.*

Article 3.—COMMERCIAL PAPER

PART 3.—RIGHTS OF A HOLDER

§ 28:3-302. Holder in due course

NOTES TO DECISIONS

Alleged fraud

In view of the apparent inconsistency in district court findings and because record showed that defendant purchased note on recommendation of his accountant action to enjoin sale of plaintiff's home to satisfy lien of deed of trust was remanded to district court for development of additional information in determining whether defendant was a holder in due course with respect to whom claims of fraud in procurement of note and usury would not be valid defenses. *J. M. Warren v. A. Lopatin et al.* (1973, 475 F. 2d 1329, 155 U.S. App. D.C. 60).

Findings—Sufficiency

Trial court's finding that promissory note was sold to third person or persons, each of whom were advised that note was usurious and were immediately put on notice that said note was riddled with infirmities is not sufficient to support conclusion that purchase of note was made with actual knowledge of said infirmities and that purchasers were therefore not holders in due course of the negotiable instrument. *J. R. Biggs et ano. v. H. L. Stewart et ano.* (D.C. App. 1976, 361 A. 2d 159).

Fraud

Findings of District Court, in civil action brought against lending institutions by victims of home improvement fraud, that even though lenders lacked actual notice of fraud involved in transactions in question, such institutions had reason to know of misrepresentation and unconscionable dealing, and were thus on notice of victim's defenses to note and are not entitled to status of holders in due course, are clearly erroneous and are reversed. *C. L. Slaughter et al. v. Jefferson Federal Savings and Loan Association et al.* (1976, 538 F. 2d 397, 176 U.S. App. D.C. 49; rev'g 361 F. Supp. 590).

Good faith

Findings of District Court, in civil action brought against lending institutions by victims of home improvement fraud, that even though lenders lacked actual notice of fraud involved in transactions in question, such institutions had reason to know of misrepresentation and unconscionable dealing, and were thus on notice of victim's defenses to note and are not entitled to status of

holders in due course, are clearly erroneous and are reversed. *C. L. Slaughter et al. v. Jefferson Federal Savings and Loan Association et al.* (1976, 538 F.2d 397, 176 U.S. App. D.C. 49; rev'g 361 F. Supp. 590).

Notice

Findings of District Court, in civil action brought against lending institutions by victims of home improvement fraud, that even though lenders lacked actual notice of fraud involved in transactions in question, such institutions had reason to know of misrepresentation and unconscionable dealing, and were thus on notice of victim's defenses to note and are not entitled to status of holders in due course, are clearly erroneous and are reversed. *C. L. Slaughter et al. v. Jefferson Federal Savings and Loan Association et al.* (1976, 538 F.2d 397, 176 U.S. App. D.C. 49; rev'g 361 F. Supp. 590).

Where knowledge which vice-chairman of board of bank had acquired of partnership difficulties and settlement between maker and payee of note, which was given as part of partnership settlement agreement and which payee endorsed to bank, was acquired in his individual capacity as a private accountant and not as an official or employee of the bank, such knowledge was not imputable to the bank for purpose of determining whether bank, which sought to recover on note, had received knowledge that note was conditional and subject to defenses, including defense of failure of consideration. *R. M. Millman v. State National Bank of Maryland et ano.* (D.C. App. 1974, 323 A.2d 723).

§ 28:3-303. Taking for value

NOTES TO DECISIONS

Collateral

Whether bank, seeking to recover on note, took note in payment of an outstanding loan or as collateral for issuance of the loan was immaterial to determination whether bank was holder in due course since a holder who takes a negotiable instrument as collateral for a loan takes for value and may thereby be a holder in due course. *R. M. Millman v. State National Bank of Maryland et ano.* (D.C. App. 1974, 323 A.2d 723).

§ 28:3-304. Notice to purchaser

NOTES TO DECISIONS

Alleged fraud

In view of the apparent inconsistency in district court findings and because record showed that defendant purchased note on recommendation of his accountant action to enjoin sale of plaintiff's home to satisfy lien of deed of trust was remanded to district court for development of additional information in determining whether defendant was a holder in due course with respect to whom claims of fraud in procurement of note and usury would not be valid defenses. *J. M. Warren v. A. Lopatin et al.* (1973, 475 F. 2d 1329, 155 U.S. App. D.C. 60).

§ 28:3-305. Rights of a holder in due course

NOTES TO DECISIONS

Findings—Sufficiency

Trial court, in maker's action to cancel promissory note and deed of trust, did not make adequate findings concerning note purchasers' personal and real defenses. *J. R. Biggs et ano. v. H. L. Stewart et ano.* (D.C. App. 1976, 361 A.2d 159).

Immunity from defenses

Findings of District Court, in civil action brought against lending institutions by victims of home improvement fraud, that even though lenders lacked actual notice of fraud involved in transactions in question, such institutions had reason to know of misrepresentation and unconscionable dealing, and were thus on notice of victim's defenses to note and are not entitled to status of holders in due course, are clearly erroneous and are reversed. *C. L. Slaughter et al. v. Jefferson Federal Savings and Loan Association et al.* (1976, 538 F.2d 397, 176 U.S. App. D.C. 49; rev'g 361 F. Supp. 590).

Since bank, to which payee endorsed and delivered note, was a holder in due course, the bank which sued maker and payee, took note free of maker's defenses asserted against the payee, including defense of want of

consideration. *R. M. Millman v. State National Bank of Maryland et ano.* (D.C. App. 1974, 323 A.2d 723).

§ 28:3-306. Rights of one not holder in due course

NOTES TO DECISIONS

Findings—Sufficiency

Trial court, in maker's action to cancel promissory note and deed of trust, did not make adequate findings concerning note purchasers' personal and real defenses. *J. R. Biggs et ano. v. H. L. Stewart et ano.* (D.C. App. 1976, 361 A.2d 159).

§ 28:3-307. Burden of establishing signatures, defenses and due course

NOTES TO DECISIONS

Alleged fraud

In view of the apparent inconsistency in district court findings and because record showed that defendant purchased note on recommendation of his accountant action to enjoin sale of plaintiff's home to satisfy lien of deed of trust was remanded to district court for development of additional information in determining whether defendant was a holder in due course with respect to whom claims of fraud in procurement of note and usury would not be valid defenses. *J. M. Warren v. A. Lopatin et al.* (1973, 475 F. 2d 1329, 155 U.S. App. D.C. 60).

Applicable law

Provisions of this section that when signatures are admitted or established production of the instrument entitles a holder to recover on it unless the defendant establishes a defense apply to suit on notes although the transaction took place prior to the effective date of this section. *R. J. Toomey et ano. v. D. S. Cammack* (D.C. App. 1975, 345 A. 2d 453).

Burden of proof

Findings of District Court, in civil action brought against lending institutions by victims of home improvement fraud, that even though lenders lacked actual notice of fraud involved in transactions in question, such institutions had reason to know of misrepresentation and unconscionable dealing, and were thus on notice of victim's defenses to note and are not entitled to status of holders in due course, are clearly erroneous and are reversed. *C. L. Slaughter et al. v. Jefferson Federal Savings and Loan Association et al.* (1976, 538 F.2d 397, 176 U.S. App. D.C. 49; rev'g 361 F. Supp. 590).

PART 4.—LIABILITY OF PARTIES

§ 28:3-401. Signature

NOTES TO DECISIONS

Absence of signature

After foreclosure was had on first deed of trust and proceeds of sale left nothing for payment of second deed of trust, bona fide assignees of rights of bona fide assignee of rights under such second deed of trust which was evidenced by a note can sue purchasers directly on their contract to assume such second deed of trust, though note did not contain purchasers' signatures and thus they could not be held liable on such instrument itself. *City Mortgage Investment Club et ano. v. P. C. Beh et ano.* (D.C. App. 1975, 334 A.2d 183).

§ 28:3-415. Contract of accommodation party

NOTES TO DECISIONS

Accommodation party

Individuals who endorsed note as sureties, assuming liability for maker's debt if it failed to pay, are "accommodation parties," having same obligations as other endorers without surety status. *McLachlen National Bank v. L. I. S. Fields et al.* (D.C. App. 1976, 364 A. 2d 1191).

§ 28:3-417. Warranties on presentment and transfer

NOTES TO DECISIONS

Transfer "without recourse"

Although, with respect to unenforceability of note endorsed "without recourse" because of illegality of under-

lying loan, transferee had full knowledge of same facts as its transferor and made the same "mistake" of law, transferee did not subjectively know when it accepted the note that a good defense existed against it, and thus was entitled to coverage of warranty. *Hartford Life Insurance Co. v. Title Guarantee Co. et al.* (1975, 520 F. 2d 1170, 172 U.S. App. D.C. 156).

Article 4.—BANK DEPOSITS AND COLLECTIONS

PART 2.—COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

§ 28:4-208. Security interest of collecting bank in items, accompanying documents and proceeds

NOTES TO DECISIONS

Holder in due course

Where wife had obtained a temporary restraining order on October 2, 1972, barring withdrawal of any of husband's retirement funds from husband's account at first bank before defendant second bank presented checks signed by husband to first bank, wife has a prior claim to funds in account of first bank insofar as temporary restraining order is a valid attachment of those funds, even though defendant bank cashed husband's checks on September 28, September 29, and October 2, 1972, without having notice of wife's claim to the funds. *L. O. Trigo v. The Riggs National Bank of Washington, D.C.* (D.C. App. 1975, 338 A. 2d 445).

§ 28:4-209. When bank gives value for purposes of holder in due course

NOTES TO DECISIONS

Holder in due course

Where wife had obtained a temporary restraining order on October 2, 1972, barring withdrawal of any of husband's retirement funds from husband's account at first bank before defendant second bank presented checks signed by husband to first bank, wife has a prior claim to funds in account of first bank insofar as temporary restraining order is a valid attachment of those funds, even though defendant bank cashed husband's checks on September 28, September 29, and October 2, 1972, without having notice of wife's claim to the funds. *L. O. Trigo v. The Riggs National Bank of Washington, D.C.* (D.C. App. 1975, 338 A. 2d 445).

PART 3.—COLLECTION OF ITEMS: PAYOR BANKS

§ 28:4-303. When items subject to notice, stop-order, legal process or setoff; order in which items may be charged or certified

NOTES TO DECISIONS

Notice

Where wife had obtained a temporary restraining order on October 2, 1972, barring withdrawal of any of husband's retirement funds from husband's account at first bank before defendant second bank presented checks signed by husband to first bank, wife has a prior claim to funds in account of first bank insofar as temporary restraining order is a valid attachment of those funds, even though defendant bank cashed husband's checks on September 28, September 29, and October 2, 1972, without having notice of wife's claim to the funds. *L. O. Trigo v. The Riggs National Bank of Washington, D.C.* (D.C. App. 1975, 338 A. 2d 445).

PART 4.—RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMERS

§ 28:4-406. Customer's duty to discover and report unauthorized signature or alteration

NOTES TO DECISIONS

General

Where Uniform Commercial Code did not apply to precise situation, i.e., where bank paid checks lacking one of two required signatures and made disbursements of loan advances contrary to loan agreement, general contract principles governed, and defenses of contributory

negligence and proximate cause were not available. *G & R Corporation, et al. v. American Security & Trust Company* (1975, 523 F. 2d 1164, 173 U.S. App. D.C. 215).

Notice

Purpose of provision of this section allowing maximum one-year limitation, regardless of negligence of bank's customer, for customer to assert claims against bank for payment of items bearing unauthorized signatures or material alterations is to compel customer to notify bank of wrongful payment of item within reasonable time, and customer's duty to discover and notify is limited to notice that item has been improperly paid; provision does not compel customer to declare at that time his intention to avail himself of legal remedies against the bank. *G & R Corporation, et al. v. American Security & Trust Company* (1975, 523 F. 2d 1164, 173 U.S. App. D.C. 215).

Where bank not only authorized diversion of funds from joint venture account but also received the benefits thereof, bank would not be heard to complain that it lacked notice of such disbursement, and bank was not protected by this section providing maximum one-year limitation, regardless of negligence of bank or customer, for customer to assert claims against bank for disbursements made upon unauthorized signature or alteration. *Id.*

Unauthorized signature

Where drawing on joint venture account with bank required signature of one of two contractors and signature of one of two other joint venturers, and bank paid upon the signatures of the contractors alone, neither signature was an "unauthorized signature" within meaning of this section providing that customer's negligence in examining bank statement and notifying bank may preclude him from recovering from bank for payment of items bearing unauthorized signatures or material alterations. *G & R Corporation, et al. v. American Security & Trust Company* (1975, 523 F. 2d 1164, 173 U.S. App. D.C. 215).

Article 9.—SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

PART 5.—DEFAULT

§ 28:9-501. Default; procedure when security agreement covers both real and personal property

NOTES TO DECISIONS

Replevin

Upon failure of conditional vendee to make payment, conditional vendor has right to replevy the goods and either keep them as his own or dispose of them by sale provided conditional vendor adheres to notice provisions of the Uniform Commercial Code. *J. R. Roebuck et ano. v. Walker-Thomas Furniture Co., Inc.* (D.C. App. 1973, 310 A. 2d 845).

Rights in collateral

Conditional vendee's ownership rights in collateral are not cut off as a result of failure to make payment and entry of default judgment, but rather such default merely satisfies a condition precedent to the conditional vendor's right to invoke certain remedies. *J. R. Roebuck et ano. v. Walker-Thomas Furniture Co., Inc.* (D.C. App. 1973, 310 A. 2d 845).

§ 28:9-504. Secured party's right to dispose of collateral after default; effect of disposition

NOTES TO DECISIONS

Construction

It is only where secured creditor ignores rights against the collateral and elects to proceed on the underlying debt that subsequent disposal of collateral is not governed by requirements of Uniform Commercial Code. *J. R. Roebuck et ano. v. Walker-Thomas Furniture Co., Inc.* (D.C. App. 1973, 310 A. 2d 845).

Notice

Notice by certified mail to address of purchasers prior to proposed public resale following repossession of car under conditional sales contract was sufficient, though notice was returned unclaimed by the post office. *J. T.*

Randolph et ux. v. Franklin Investment Co., Inc. (D.C. App. 1977, 368 A.2d 1151).

Though creditor failed to comply with regulation and this section requiring that it send another notice to buyers before it disposed of repossessed car at private sale after there was no purchaser at public sale, buyers were not aggrieved by final judgment awarding a deficiency, where trial court made a finding on reasonable value, which was supported by the evidence, and offset the excess of such amount over the sum paid at private sale against the balance of the claimed indebtedness. *Id.*

Upon failure of conditional vendee to make payment, conditional vendor has right to replevy the goods and either keep them as his own or dispose of them by sale provided conditional vendor adheres to notice provisions of the Uniform Commercial Code. *J. R. Roebuck et ano. v. Walker-Thomas Furniture Co., Inc.* (D.C. App. 1973, 310 A. 2d 845).

SUBTITLE II.—OTHER COMMERCIAL TRANSACTIONS

Subtitle II.—Other Commercial Transactions was enacted into law by Pub. L. 88-509, 78 Stat. 667, § 1, Aug. 30, 1964, effective Jan. 1, 1965

Chapter 23.—ASSIGNMENT OF CHOSSES IN ACTION

§ 28-2303. Assignment of nonnegotiable contract

NOTES TO DECISIONS

Intent

In enacting statutory provision allowing assignee to sue in his own name, Congress did not intend the statute to be utilized to evade the prohibition against the unauthorized practice of law by laymen, but rather only sought to allow suit on a debt, which is assigned for procedural convenience, to be brought in the name of the assignee. *J. H. Marshall & Associates, Inc. v. W. A. Burleson* (D.C. App. 1973, 313 A. 2d 587).

Chapter 27.—BUSINESS HOLIDAYS AND COMPUTATION OF TIME

SUBCHAPTER I.—BUSINESS HOLIDAYS

§ 28-2701. Holidays designated—Time for performing acts extended

The following days in each year, namely, the first day of January, commonly called New Year's Day; the fifteenth day of January, commonly called Dr. King's Birthday; the twenty-second day of February, known as Washington's Birthday; the Fourth of July; the thirtieth day of May, commonly called Decoration Day; the first Monday in September, known as Labor Day; the twenty-fifth day of December, commonly called Christmas Day; every Saturday, after twelve o'clock noon; any day appointed or recommended by the President of the United States as a day of public feasting or thanksgiving, and the day of the inauguration of the President, in every fourth year are holidays in the District for all purposes. When the fifteenth day of January, commonly called Dr. King's Birthday, falls on a Saturday, the next preceding day is a holiday. When a day set apart as a legal holiday falls on Sunday the next succeeding day is a holiday. In such cases, and when a Sunday and a holiday fall on successive days, all commercial paper falling due on any of those days shall, for all purposes of presenting for payment or acceptance, be deemed to mature and be presentable for payment or acceptance on the next secular business day succeeding. Every Saturday is a holiday in the District for (1) every bank

or banking institution having an office or banking house located within the District, (2) every Federal savings and loan association whose main office is in the District, and (3) every building association, building and loan association, or savings and loan association, incorporated or unincorporated, organized and operating under the laws of and having an office located within the District. An act which would otherwise be required, authorized, or permitted to be performed on Saturday in the District at the office or banking house of, or by, any such bank or bank institution, Federal savings and loan association, building association, building and loan association, or savings and loan association, if Saturday were not a holiday, shall or may be so performed on the next succeeding business day, and liability or loss of rights of any kind may not result from such delay. (Aug. 30, 1964, 78 Stat. 671, Pub. L. 88-509, § 1, eff. Jan. 1, 1965; Aug. 1, 1975, D.C. Law 1-11, § 103, 22 DCR 1804; July 12, 1977, D.C. Law 2-13, § 2, 24 DCR 1443.)

AMENDMENTS

1977—Act July 12, 1977, D.C. Law 2-13, amended section by adding the second sentence relating to when Dr. King's Birthday falls on Saturday.

1975—Act Aug. 1, 1975, D.C. Law 1-11, inserted "the fifteenth day of January, commonly called Dr. King's Birthday;" immediately after the first semicolon.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 4 of act July 12, 1977, D.C. Law 2-13, set out as a note under § 1-314b.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 104 of act Aug. 1, 1975, D.C. Law 1-11, provided: "This act [amending § 28-2701] becomes effective on the 31st day after submission to the Speaker of the House and President of the Senate provided that a resolution disapproving this act has not been adopted by the Congress (P.L. 93-198); 87 Stat. 714 [see § 1-147(c)]."

SHORT TITLE

Section 101 of act Aug. 1, 1975, D. C. Law 1-11, provided: "That this act [amending § 28-2701] may be cited as the 'King Birthday Act'."

FINDINGS AND PURPOSES

Section 101 of Act Aug. 1, 1975, D. C. Law 1-11, provided: "(a) The Council of the District of Columbia wishes to commemorate in an appropriate manner the birthday of Dr. Martin Luther King, Jr., to acknowledge an honor:

"(1) His leadership in the struggle for moral principles of government and humane treatment of persons in all nations of the world;

"(2) His leadership and lifetime dedication against discrimination, war and racism;

"(3) His leadership in the struggle for civil rights of all Americans, and in particular the quest for self-determination for the District of Columbia.

"(b) The Council of the District of Columbia further finds that there is now no holiday in the District of Columbia in commemoration of the contributions of any Black citizen."

CROSS REFERENCE

Designation of Dr. King's Birthday as holiday for District employees, see § 1-314b.

SUBCHAPTER II.—COMPUTATION OF TIME

§ 28-2711. Daylight-saving time

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 161.

Chapter 33.—INTEREST AND USURY

Sec.

28-3309. District of Columbia Council authorized to exempt certain loans, and to change rates of interest.

AMENDMENT

1973—Item 28-3309 was added to the chapter analysis by Act Dec. 29, 1973, Pub. L. 93-229, § 1(b).

§ 28-3301. Rate of interest expressed in contract

NOTES TO DECISIONS

Accrual of cause of action

Defendant bank which participated in briefing and argument of class certification issue in suit for violation of usury statute but which did not raise issue whether suit was filed prematurely insofar as it based claims for relief on loans on which borrowers had not yet made payments amounting to more than principal plus legal interest as of the date when the action was filed would not be permitted to raise the prematurity argument for the first time after the limitations period for filing suit on those claims had passed. *L. Torosian et al. v. National Capital Bank of Washington* (1976, 411 F. Supp. 167).

Court may declare the legality or illegality of methods used to compute interest and the usuriousness or legality of rates of interest prescribed in loan agreements even though no cause of action for damages may yet have accrued. *Id.*

Bonus as usury

Bonus paid to a creditor for continued use of money is interest, regardless of what it is called; hence, amount maker paid holders of promissory note to extend the instrument for an additional two years constitutes interest, although it was added to the principal, and is to be considered as interest in determining whether extension contract is usurious. *E. G. Pazianos v. M. Schenker et al.* (D.C. App. 1976, 366 A. 2d 440).

Computation of interest

For purpose of demonstrating compliance with the District of Columbia usury laws, banks may compute the interest rate on personal unsecured installment loans according to the United States rule of interest computation, and need not apply the residuary method. *L. Torosian et al. v. National Capital Bank of Washington* (1976, 411 F. Supp. 167).

Amount paid to extend promissory note is to be prorated only over the two-year extension period in determining whether the extension agreement is usurious and is not to be prorated over the entire seven-year period; in determining whether extension is usurious the prorated amount, plus the stated interest, is to be divided by the principal balance at time of the extension contract. *E. G. Pazianos v. M. Schenker et al.* (D.C. App. 1976, 366 A. 2d 440).

Act of bank in computing interest on personal, unsecured installment loans without regard to declining balance of principal was usurious under law of District of Columbia where amount of interest charged exceeded that which would be assessed by computing interest at maximum permissible rate with regard to unpaid balances of principal. *D. Cohen et al. v. District of Columbia National Bank et al.* (1974, 382 F. Supp. 270).

Neither fact that it had been past practice in District of Columbia to compute interest on installment loans without regard to declining balance of principal nor fact that there had been no direct congressional intervention to alter practice could serve as a justification for procedure when it resulted in usurious interest rates in excess of eight percent. *Id.*

A loan is usurious only if the total interest exacted exceeds that which would have been collected had the maximum lawful rate of interest been charged over the entire period of the loan. *Montgomery Federal Savings and Loan Association v. E. Baer et ano.* (D.C. App. 1973, 308 A. 2d 768).

Construction

In context of personal, unsecured installment loans, term "principal amount," within this section providing that parties to an instrument in writing for payment of

money may contract for payment of interest on principal amount at any rate not exceeding eight percent per annum, refers to original principal amount of loan, rather than actual principal amount which remains under control of borrower, and operates to prohibit a bank from computing interest without regard to declining balance of loan if interest rates in excess of eight percent result therefrom. *D. Cohen et al. v. District of Columbia National Bank et al.* (1974, 382 F. Supp. 270).

Subsequent enactment of legislation more favorable to position of bank engaging in usurious practice of computing interest without regard to declining balance of principal did not have any retroactive effect; any favorable implication was effectively rebutted by plain wording of statute as to unpaid balances. *Id.*

Within meaning of this section providing that the parties to a written instrument for the payment of money at a future time may contract therein for the payment of interest on the principal at a rate not exceeding eight percent per annum, the phrase "8 percent per annum" relates to the rate of interest and rate alone; it has no bearing on the time of payment, as to which the section is simply silent. *Montgomery Federal Savings and Loan Association v. E. Baer et ano.* (D.C. App. 1973, 308 A. 2d 768).

Corporations—Guarantors

Section 29-904 which withdraws defense of usury from corporation applies also to individual guarantor so that guarantor, as well as corporation, is precluded from interposing usury as defense to action upon promissory note. *G. Caruso v. L. Hollander* (D.C. App. 1976, 363 A. 2d 297).

Forfeiture

Although fee charged in connection with extension of note for two years rendered the extension contract usurious, the usury does not require forfeiture of interest charged under the original obligation but only that charged under the extension agreement; hence, principal sum due is the principal balance at time of the extension agreement, minus amount paid as principal and interest following execution of extension agreement. *E. G. Pazianos v. M. Schenker et al.* (D.C. App. 1976, 366 A. 2d 440).

Intent

Where holders of note were directly involved in negotiations that culminated in two-year extension agreement and specifically agreed to extend due date of final balloon payment in return for the usurious extension fee, their intent to commit usury would be inferred; in any event, ignorance of the law will not protect a party from the penalties of usury, unless the imposition of the usurious rate was a result of mistake or accident. *E. G. Pazianos v. M. Schenker et al.* (D.C. App. 1976, 366 A. 2d 440).

Motor vehicle financing

Provision of section 40-902 permitting interest rates in excess of 8% with respect to installment loans on certain categories of motor vehicle sales is available to finance company, which thus could recover 14% interest on retail installment contract for sale of second-hand vehicle less than four years old, notwithstanding contention that such provision is applicable only when action is brought by original payee of the note (the car dealer) or a holder in due course. *J. T. Randolph et ux. v. Franklin Investment Co., Inc.* (D.C. App. 1977, 368 A.2d 1151).

Revolving charge accounts

Financial institution which issued credit cards honored by independent merchants is entitled to same exemption from usury laws under the "time-price" doctrine as employed by retailers who operated their own revolving charge account plans. *B. L. Kass et ano. v. Central Charge Service, Inc.* (D.C. App. 1973, 304 A. 2d 632).

Under usury statute existing prior to enactment of D.C. Consumer Credit Protection Act of 1971, a retail merchant could enforce a revolving charge account agreement with a customer, terms of which required payment of one and one-half percent per month on balances remaining unpaid after first billing cycle for goods purchased on credit. *B. L. Kass et ano. v. Garfinckel, Brooks Brothers, Miller & Rhoads, Inc.* (D.C. App. 1973, 299 A. 2d 542).

Time-price sale

The time-price doctrine, that is, that a bona fide sale of property on credit at a price which exceeds cash price by more than legal rate of interest does not constitute

usury since the seller is privileged to fix one price for cash and another for credit, is broad enough to apply to conditional sales as well as revolving credit transactions. *B. L. Kass et ano. v. Garfinckel, Brooks Brothers, Miller & Rhoads, Inc.* (D.C. App. 1973, 299 A. 2d 542).

Usury

A loan is usurious under law of District of Columbia, when declining balance of principal is taken into account throughout term thereof, if total interest exacted exceeds that which would have been collected had the maximum lawful rate of interest been charged over entire period of loan. *D. Cohen et al. v. District of Columbia National Bank et al.* (1974, 382 F. Supp. 270).

Whether a loan is secured or unsecured, under prevailing District of Columbia case law, failure to take declining principal balance into account can taint a loan with usury, if it results in actual interest rates in excess of eight percent. *Id.*

Custom and practice of District of Columbia banking community of computing interest on installment loans without regard to declining balance of principal did not preclude determination that practice was usurious where it resulted in actual interest rates in excess of eight percent. *Id.*

A general exception to usury statute in District of Columbia exists, at least for a bank chartered under National Bank Act, in case of a discounted loan, but where discount feature is combined with an installment feature, fact that discount feature is present does not redeem loan from taint of usury insofar as installment feature is concerned. *Id.*

— De minimis

Interest overcharge of 74¢ on a total interest charge of \$172.58, resulting from rounding off the monthly payments amount from \$91.42 to \$92 for the first 23 months and from loan officer's failure to follow instruction not to deviate from charts that set forth loan terms calculated to yield 8% interest according to the United States rule, is de minimis and excusable as inadvertent on part of bank. *L. Torosian et al. v. National Capital Bank of Washington* (1976, 411 F. Supp. 167).

§ 28-3303. Usury defined

NOTES TO DECISIONS

Accrual of cause of action

Defendant bank which participated in briefing and argument of class certification issue in suit for violation of usury statute but which did not raise issue whether suit was filed prematurely insofar as it based claims for relief on loans on which borrowers had not yet made payments amounting to more than principal plus legal interest as of the date when the action was filed would not be permitted to raise the prematurity argument for the first time after the limitations period for filing suit on those claims had passed. *L. Torosian et al. v. National Capital Bank of Washington* (1976, 411 F. Supp. 167).

Court may declare the legality or illegality of methods used to compute interest and the usuriousness or legality of rates of interest prescribed in loan agreements even though no cause of action for damages may yet have accrued. *Id.*

Bonus as usury

Bonus paid to a creditor for continued use of money is interest, regardless of what it is called; hence, amount maker paid holders of promissory note to extend the instrument for an additional two years constitutes interest, although it was added to the principal, and is to be considered as interest in determining whether extension contract is usurious. *E. G. Pazianos v. M. Schenker et al.* (D.C. App. 1976, 366 A. 2d 440).

Computation of interest

For purpose of demonstrating compliance with the District of Columbia usury laws, banks may compute the interest rate on personal unsecured installment loans according to the United States rule of interest computation, and need not apply the residuary method. *L. Torosian et al. v. National Capital Bank of Washington* (1976, 411 F. Supp. 167).

Amount paid to extend promissory note is to be prorated only over the two-year extension period in deter-

mining whether the extension agreement is usurious and is not to be prorated over the entire seven-year loan period; in determining whether extension is usurious the prorated amount, plus the stated interest, is to be divided by the principal balance at time of the extension contract. *E. G. Pazianos v. M. Schenker et al.* (D.C. App. 1976, 366 A. 2d 440).

A loan is usurious only if the total interest exacted exceeds that which would have been collected had the maximum lawful rate of interest been charged over the entire period of the loan. *Montgomery Federal Savings and Loan Association v. E. Baer et ano.* (D.C. App. 1973, 308 A. 2d 768).

Corporations—Guarantors

Section 29-904 which withdraws defense of usury from corporation applies also to individual guarantor so that guarantor, as well as corporation, is precluded from interposing usury as defense to action upon promissory note. *G. Caruso v. Hollander* (D.C. App. 1976, 363 A. 2d 297).

Forfeiture

Although fee charged in connection with extension of note for two years rendered the extension contract usurious, the usury does not require forfeiture of interest charged under the original obligation but only that charged under the extension agreement; hence, principal sum due is the principal balance at time of the extension agreement, minus amount paid as principal and interest following execution of extension agreement. *E. G. Pazianos v. M. Schenker et al.* (D.C. App. 1976, 366 A. 2d 440).

Intent

Where holders of note were directly involved in negotiations that culminated in two-year extension agreement and specifically agreed to extend due date of final balloon payment in return for the usurious extension fee, their intent to commit usury would be inferred; in any event, ignorance of the law will not protect a party from the penalties of usury, unless the imposition of the usurious rate was a result of mistake or accident. *E. G. Pazianos v. M. Schenker et al.* (D.C. App. 1976, 366 A. 2d 440).

Placement fees

Loan placement fee should relate to the whole loan for the entire period it is outstanding and is not attributable to interest in any single year; therefore, the payment of "points" by the borrower, although paid in full the first year, is in consideration of the lender making the full loan for the entire term and the borrower does not pay such a fee for the privilege of having the use of a money for only one year. *Montgomery Federal Savings and Loan Association v. E. Baer et ano.* (D.C. App. 1973, 308 A. 2d 768).

Revolving charge accounts

Financial institution which issued credit cards honored by independent merchants is entitled to same exemption from usury laws under the "time-price" doctrine as enjoyed by retailers who operated their own revolving charge account plans. *B. L. Kass et ano. v. Central Charge Service, Inc.* (D.C. App. 1973, 304 A. 2d 632).

Under usury statute existing prior to enactment of D.C. Consumer Credit Protection Act of 1971, a retail merchant could enforce a revolving charge account agreement with a customer, terms of which required payment of one and one-half percent per month on balances remaining unpaid after first billing cycle for goods purchased on credit. *B. L. Kass et ano. v. Garfinckel, Brooks Brothers, Miller & Rhoads, Inc.* (D.C. App. 1973, 299 A. 2d 542).

Time-price sale

The time-price doctrine, that is, that a bona fide sale of property on credit at a price which exceeds cash price by more than legal rate of interest does not constitute usury since the seller is privileged to fix one price for cash and another for credit, is broad enough to apply to conditional sales as well as revolving credit transactions. *B. L. Kass et ano. v. Garfinckel, Brooks Brothers, Miller & Rhoads, Inc.* (D.C. App. 1973, 299 A. 2d 542).

Usury—De minimis

Interest overcharge of 74¢ on a total interest charge of \$172.58, resulting from rounding off the monthly pay-

ments amount from \$91.42 to \$92 for the first 23 months and from loan officer's failure to follow instruction not to deviate from charts that set forth loan terms calculated to yield 8% interest according to the United States rule, is de minimis and excusable as inadvertent on part of bank. *L. Torosian et al. v. National Capital Bank of Washington* (1976, 411 F. Supp. 167).

§ 28-3304. Action to recover usury paid

NOTES TO DECISIONS

Corporations—Guarantors

Section 29-904 which withdraws defense of usury from corporation applies also to individual guarantor so that guarantor, as well as corporation, is precluded from interposing usury as defense to action upon promissory note. *G. Caruso v. L. Hollander* (D.C. App. 1976, 363 A. 2d 297).

§ 28-3305. Unlawful interest credited on principal debt

NOTES TO DECISIONS

Recovery of interest

Although fee charged in connection with extension of note for two years rendered the extension contract usurious, the usury does not require forfeiture of interest charged under the original obligation but only that charged under the extension agreement; hence, principal sum due is the principal balance at time of the extension agreement, minus amount paid as principal and interest following execution of extension agreement. *E. G. Pazianos v. M. Schenker et al.* (D.C. App. 1976, 366 A. 2d 440).

§ 28-3309. District of Columbia Council authorized to exempt certain loans, and to change rates of interest

The District of Columbia Council is authorized from time to time to provide by regulation for (1) the exemption from the provisions of this chapter of any loan or financial transaction, and (2) the change of any interest rate specified in this chapter. The Council is further authorized to amend or repeal any such regulation at any time, but no such amendment or repeal relating to any exemption made under authority of this section shall affect any such loan or financial transaction lawfully made or entered into while such exemption is in effect. (Added Dec. 29, 1973, Pub. L. 93-229, § 1(a), 87 Stat. 945.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 161.

Chapter 35.—STATUTE OF FRAUDS

§ 28-3502. Special promise to answer for debt or default of another

NOTES TO DECISIONS

Authority to sign

Conclusion of trial court, based on resolution of conflicting testimony in action by purchaser for specific performance of contract to sell real estate owned by mother and daughter as joint tenants, that the mother who affixed signatures of both to the contract did, because of prior transactions, have authority to affix the signature of her daughter to the contract is not erroneous. *M. A. Gustin v. R. D. Stegall et al., Administrator, etc.* (D.C. App. 1975, 347 A. 2d 917; cert. denied 96 S. Ct. 2174, 425 U.S. 974).

Memorandum

Itemized statement for services performed for municipality by landscape architect and city planner pursuant

to oral contract with acting director of agency satisfied statute of frauds. *L. E. Coffin, Jr. v. District of Columbia* (D.C. App. 1974, 320 A. 2d 301).

Oral promise

Oral contract contemplating long-term employment is void under statute of frauds. *K. T. E. Gebhard et al. v. GAF Corporation* (1973, 59 F.R.D. 504).

Partnership agreements

Oral partnership agreement does not run afoul of statute of frauds where no term of years was ever fixed by agreement and it was therefore capable of performance within one year, nor did asserted agreement by its terms convey any interest in land so as to place it within statute of frauds. *A. Cooper v. J. M. Saunders-Hunt* (D.C. App. 1976, 365 A. 2d 626).

Performance—Partial performance

Husband's authorizing filing of pretrial praecipe and withdrawing countersuit in divorce proceeding commenced by wife is sufficient to bring oral agreement, which had been negotiated with consent of husband and wife, and which provided that title to marital estate was to be given to husband in return for cash payment and withdrawal of countersuit, outside statute of frauds, and thus trial court, after verifying consent of wife, was in error in refusing to hold that parties were bound by such agreement. *C. J. Brown v. P. F. Brown* (D.C. App. 1975, 343 A.2d 59).

Although statute provides that any agreement involving an interest in real estate which purportedly is for a term in excess of one year must be in writing to be enforceable, the effectiveness of such legislation is not absolute and partial or complete performance under an oral contract may remove the case from the applicability of the statute. *Amberger & Wohlfarth, Inc. v. District of Columbia* (D.C. App. 1973, 300 A. 2d 460).

— Within one year

If contract contains alternative forms of performance it is enforceable so long as one alternative may be performed within a year. *H. S. Sperring v. A. J. Sullivan et al.* (1973, 361 F. Supp. 282).

§ 28-3505. New promise or acknowledgement¹ of debt incurred during infancy

CROSS REFERENCE

Age of majority, see § 21-101 note.

Chapter 36.—DIRECT MOTOR VEHICLE INSTALLMENT LOANS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 4 of title 28 Appendix.

§ 28-3601. Direct motor vehicle installment loans

NOTES TO DECISIONS

Banking institutions

Following repossession and sale of automobile under conditional sales contract, finance company was properly granted deficiency judgment though cash price of the vehicle was less than \$2,000, and despite contention that exemption under section 28-3812 for direct motor vehicle installment loans from preclusions of deficiency judgment where cash price is \$2,000 or less applies only to the benefit of banking institutions. *J. T. Randolph et ux. v. Franklin Investment Co., Inc.* (D.C. App. 1977, 368 A.2d 1151).

Chapter 37.—REVOLVING CREDIT ACCOUNTS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 4 of title 28 Appendix.

¹ So in original. Does not agree with spelling in section catchline as set out in section analysis of this chapter preceding § 28-3501.

Chapter 38.—CONSUMER PROTECTIONS

Sec.

28-3817. Health spa sales.

AMENDMENT

1976—Item 28-3817 was added to the chapter analysis by act Apr. 15, 1976, D.C. Law 1-62, § 2(b).

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 4 of title 28 Appendix.

§ 28-3801. Scope—Limitation on agreements and practices**CROSS REFERENCE**

Enforcement of unlawful trade practices by Office of Consumer Protection, see 28 App., § 1 et seq.

§ 28-3808. Assignees subject to defenses**NOTES TO DECISIONS****Construction**

Provision of consumer protection law that act can only be asserted as a defense to or setoff against claim by the assignee, is not applicable and did not limit scope of counterclaim where the statute was enacted after the commencement of that action. *J. H. Marshall & Associates, Inc. v. W. A. Burseson* (D.C. App. 1973, 313 A. 2d 587).

§ 28-3812. Limitation on creditors' remedies**NOTES TO DECISIONS****Motor vehicle loans**

Following repossession and sale of automobile under conditional sales contract, finance company was properly granted deficiency judgment though cash price of the vehicle was less than \$2,000, and despite contention that exemption under this section for direct motor vehicle installment loans from preclusions of deficiency judgment where cash price is \$2,000 or less applies only to the benefit of banking institutions. *J. T. Randolph et ux. v. Franklin Investment Co., Inc.* (D.C. App. 1977, 368 A.2d 1151).

§ 28-3813. Consumers' remedies**NOTES TO DECISIONS****Damages, recovery of**

Although used car dealer violated the 30-day grace period mandated by section 28-3812 by repossessing car and accelerating balance due on contract only 25 days after scheduled payment was due, where, inter alia, buyers had been put in as good a position as if sellers had complied with chapter and where buyers did not prove consequential or special damages, discretionary award of statutory 10% penalty is unwarranted. *J. R. Vines et al. v. T. M. Hodges et al.* (1976, 422 F. Supp. 1292).

Where, inter alia, undisputed facts do not warrant finding that defendants knowingly and wilfully violated statutes and regulations applicable to sale of used car and where it is not established that price of used car contained an "exorbitant finance charge," no award of punitive damages is proper on summary judgment motion, in action under the Truth in Lending Act and this chapter and sections 40-901 et seq. *Id.*

§ 28-3814. Debt collection**CROSS REFERENCE**

Dismissal of debt collection action pending consumer protection complaint, see 28 App., § 6.

§ 28-3815. Administrative enforcement**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 161.

CROSS REFERENCE

Enforcement by Office of Consumer Protection, see 28 App., § 4.

§ 28-3817. Health spa sales

(a) As used in this section, the term—

(1) "health spa" means a proposed or existing location or organization with indoor or outdoor facilities for physical sport, exercise, training, or therapy or rehabilitation. It does not include any location, the primary activity of which is training or instruction in a specific skill, such as dance, or swimming. It does not include any location which is operated primarily by a not-for-profit organization.

(2) "health spa sale" means a cash sale or a consumer credit sale in which a health spa or affiliated organization agrees, after the effective date of this section, to provide or make available, for a period of more than 30 days, goods or services (whether or not a membership is included) for physical sport, exercise, training, therapy or rehabilitation.

(3) "buyer" means any natural person who purchases a health spa sale contract for his, or another natural person's, personal use.

(4) "seller" means the seller of a health spa sale to a buyer.

(b) Every contract containing a health spa sale shall:

(1) be in writing;

(2) if renewable in whole or part, require the buyer's separate signature and payment for renewal;

(3) provide for a buyer's right (which may not be waived) to cancel, as explained in subsection (c);

(4) in close proximity to the space reserved for the buyer's signature, and in boldface type of at least ten points, include the following statement:

"NOTICE TO THE BUYER:

You have the right to cancel this contract during the first fifteen days after the contract is made, or after the first fifteen days, if, due to death, illness, injury, or a change in residence, you are unable to use the full membership privileges in this contract. If you cancel, you will have to pay only for the goods or services you are entitled to up through the month in which you cancel, plus a registration fee of 5% of the price of this contract (not counting any finance charge), not to exceed \$25. You must notify the health spa, by certified or registered mail at the address given in this contract, of your intention to cancel, or your cancellation will not be effective. If your cancellation is due to illness or injury, a doctor's certificate must accompany your notice of cancellation to the health spa. Contact the District of Columbia Office of Consumer Affairs if you have a question as to how to calculate your obligation or your refund after you cancel."

(5) be presented, fully completed, to the buyer, and be signed and dated by the buyer, and then a copy, as so approved, be furnished to the buyer; and

(6) specify the seller's and the buyer's addresses.

(c) (1) The buyer, at his option, has the right to cancel a health spa sale during the first fifteen days

after the sale is made, or after such fifteen days, if, due to death, illness, injury, or a change in residence, the buyer is unable to use all the goods and services provided in the sale.

(2) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer to be no longer bound by the health spa sale, and (whenever such notice is given more than 15 days after the contract is made) that, due to death, illness, injury, or a change in residence, the buyer is unable to use all the goods or services promised in the sale. If the cancellation is due to illness or injury, a doctor's certificate must accompany the notice of cancellation to the health spa.

(3) Cancellation occurs when the buyer mails written notice of cancellation to the seller at the seller's address as specified in the contract, by registered or certified mail.

(4) The cancellation balance shall be calculated as follows:

(A) Divide the number of months (counting a fraction as one month) which have elapsed from the date the contract (or renewal option then in effect) became effective to the date of cancellation, by the total number of months for which such services were contracted.

(B) Multiply the contract price (or the price for the renewal period then in effect) by the quotient obtained in paragraph (A).

(C) Add to the amount obtained in paragraph (B) a registration fee of 5 percent of the original price of the contract (not counting any finance charge), but in no case more than \$25.00.

(D) If the payment by the consumer of the contract price is financed, subtract from the amount obtained in paragraph (4) the amount of interest, calculated by the method of 78ths, not yet accrued through the month of the contract during which cancellation occurs.

(E) Subtract the difference obtained in paragraph (D), or if not applicable, the amount obtained in paragraph (C), from the amount already paid by the buyer under the contract and finance agreement.

If this balance is a positive figure, it is the amount of the seller's refund to the buyer, and shall be due and payable within 15 days after the cancellation. If this balance is a negative figure, it is the amount of the buyer's obligation to the seller, and within 15 days after the cancellation, the seller shall notify the buyer of his obligation. Notice of such obligation, if given by mail, is given when it is deposited in a mail box postage prepaid and properly addressed to the buyer's address as stated in the notice of cancellation, or, if the buyer's address is not stated there, as stated in the contract.

(5) The buyer's right to cancel, as explained in this subsection, applies separately to all health spa sale contracts between the seller and the buyer.

(6) When there are two or more buyers (signatories, not necessarily beneficiaries, of the contract) of a health spa sale, the right to cancel, as explained in this subsection, is available only when all the buyers join in the notice of cancellation.

(7) After receiving notice of cancellation from the buyer, the seller shall mark his copy of the cancelled health spa sale contract "cancelled".

(d) (1) The seller shall maintain copies of all cancelled health spa sale contracts for a period of 2 years from their dates of cancellation, and such records shall be open to inspection by proper representatives of the District of Columbia Government.

(2) If a contract containing a health spa sale does not meet all the requirements of subsection (b), such health spa sale shall be void, and the buyer shall at any time be entitled to a complete refund of all payments made under that contract.

(3) Any person, company or organization which purchases a buyer's obligations under a health spa sale, makes such purchase subject to the buyer's right to cancel as explained in subsection (c), as if such person, company, organization were the seller.

(4) The principal consumer protection agency or the Corporation Counsel of the District of Columbia Government may seek in the proper court or administrative agency an order requiring a health spa to include in all health spa sale contracts the notice required in paragraph (b) (4) of this section.

(e) (1) Every health spa which makes health spa sales for goods or services to be provided or made available at a health spa which is planned or under construction, shall be required by the principal consumer protection agency of the District of Columbia Government to maintain a bond issued by a surety company admitted to do business in the District of Columbia. The principal sum of the bond shall be a minimum of \$15,000.00 and may be increased at the direction of the principal consumer protection agency of the District of Columbia Government to such amount as that agency reasonably determines will equal the amount to be paid under the terms of such contracts prior to completion of the health spa. The health spa shall be relieved from the obligation to maintain such bond three months after beginning operations. The aggregate liability of the surety to all persons for all breaches of the conditions of the bonds shall in no event exceed the amounts thereof.

(2) The bond required by this subsection shall be in favor of the District of Columbia for the benefit of any buyer injured by having paid monies for use of a health spa which fails to open within twelve months after the date of the first such payments by the buyer, or which fails to make full and proper refunds under the right to cancel as explained in subsection (c) of this section. (Added Apr. 15, 1976, D.C. Law 1-62, § 2(a), 22 DCR 6044.)

SHORT TITLE

The first section of act Apr. 15, 1976, D.C. Law 1-62, provided "That this act [enacting this section] may be cited as the 'Health Spa Consumer Protection Act'."

EFFECTIVE DATE

Section 3 of act Apr. 15, 1976, D.C. Law 1-62, provided: "This act [enacting this section] shall take effect at the end of the period provided for Congressional review of acts of the Council in section 602(c) (1) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c) (1)]."

CROSS REFERENCE

Office of Consumer Protection established as principal consumer protection agency, see 28 App., § 3.

TITLE 28.—APPENDIX

Act	Sec.
District of Columbia Consumer Protection Procedures Act.....	1
Hearing Aid Dealers and Consumers Act of 1977	51

DISTRICT OF COLUMBIA CONSUMER PROTECTION PROCEDURES ACT

Act July 22, 1976, D.C. Law 1-76, 23 DCR 1185

- Sec.
1. Short title.
 2. Definitions and purposes.
 3. Office of Consumer Protection.
 4. Powers of the Office.
 5. Unlawful trade practices.
 6. Complaint procedures.
 7. Consumer education.
 8. Advisory Committee on Consumer Protection.
 9. Severability.
 10. Effective date.

§ 1. Short title.

This act may be cited as the "District of Columbia Consumer Protection Procedures Act". (July 22, 1976, D.C. Law 1-76, § 1, 23 DCR 1185.)

SHORT TITLE

The first section of act June 11, 1977, D.C. Law 2-8, provided "That this act [amending §§ 4 and 6 of this Appendix and enacting provisions set out as notes under § 4 of this Appendix] may be cited as the 'Consumer Goods Repair Board Act of 1977'."

§ 2. Definitions and purposes.

(a) As used in this act, the term—

(1) "person" means an individual, firm, corporation, partnership, cooperative, association or any other organization, legal entity, or group of individuals however organized;

(2) "consumer" means a person who does or would purchase, lease (from), or receive consumer goods or services, including a co-obligor or surety, or a person who does or would provide the economic demand for a trade practice; as an adjective, "consumer" describes anything, without exception, which is primarily for personal, household, or family use;

(3) "merchant" means a person who does or would sell, lease (to), or transfer, either directly or indirectly, consumer goods or services, or a person who does or would supply the goods or services which are or would be the subject matter of a trade practice;

(4) "complainant" means one or more consumers who took part in a trade practice, or one or more persons acting on behalf of (not the legal representative or other counsel of) such consumers, or the successors or assigns of such consumers or persons, once such consumers or persons complain to the Office about the trade practice;

(5) "respondent" means one or more merchants alleged by a complainant to have taken part in

or carried out a trade practice, or the successors or assigns of such merchants, and includes other persons who may be deemed legally responsible for the trade practice;

(6) "trade practice" means any act which does or would create, alter, repair, furnish, make available, provide information about, or, directly or indirectly, solicit or offer for or effectuate, a sale, lease or transfer, of consumer goods or services;

(7) "goods and services" means any and all parts of the economic output of society, at any stage or related or necessary point in the economic process, and includes consumer credit, franchises, business opportunities, and consumer services of all types;

(8) "Office", "Director", "General Counsel", "Advisory Committee" and other such terms mean the Office of Consumer Protection, and certain senior officials and organizational structures thereof, established in section 3 [sec. 3 of this Appendix], and further specified in other parts of this act.

(b) The purposes of this act are to:

(1) assure that a just mechanism exists to remedy all improper trade practices;

(2) promote, through effective enforcement, fair business practices throughout the community;

(3) educate consumers to demand high standards and seek proper redress of grievances.

(July 22, 1976, D.C. Law 1-76, § 2, 23 DCR 1185.)

§ 3. Office of Consumer Protection.

(a) There is established an Office of Consumer Protection, which shall be the principal consumer protection agency of the District of Columbia Government, and shall carry out the purposes of this act and other duties assigned to it.

(b) (1) The Director of the Office shall be appointed by the Mayor. The Director may hold no other public office, except ex officio as Director.

(2) The Director shall be chief of any section of administration within the Office, and shall have direct control of all general administrative and personnel employees within the Office. The Director may make administrative orders, not inconsistent with this act, for the operation of the Office and to facilitate and foster consumer protection in the District.

(3) Consistent with this act and other District laws, the Director may hire employees, assign work, and delegate the duties, exercise the powers, and carry out the functions, of the Office and the Director.

(c) The Director shall exercise the powers of the Director in section 6 of this act [sec. 6 of this Appendix] through a section of Investigations, and shall appoint a Deputy Director-Chief of Section of Investigations, who may carry out investigative, conciliatory and other duties assigned by the Director.

(d) The General Counsel shall be appointed by the Director, from among active lawyer members of the unified District of Columbia Bar. The General Counsel may hold no other public office, except ex officio as General Counsel.

(e) The Mayor shall appoint one full-time administrative law judge to the Section of Hearings. Such judge shall be appointed to a three-year term.

(f) Organization Order No. 40 (C.O. 73-225, October 3, 1973), establishing the Office of Consumer Affairs, is repealed, and such Office is abolished. All the powers, duties and functions, under any District law, of such Office and of its Director, are transferred to the Office of Consumer Protection. All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the powers, duties and functions so transferred, are authorized to be transferred to the Office of Consumer Protection. All positions and personnel so transferred which are in the competitive service shall retain such status and continue to be subject to all rules and regulations governing such competitive service, until such time as the District Government personnel system is established in accordance with section 422 of the District Charter [D.C. Code, sec. 1-162]. Such positions and personnel may be retransferred or found in excess and separated from the service in accordance with this act or an administrative order of the Director.

(g) On the effective date of this act or soon thereafter, the Mayor shall appoint an Acting Director or Director of the Office of Consumer Protection. Appointments to the offices of Deputy Director-Chief of Section of Investigations, General Counsel, and Chief of the Section of Consumer Education shall be made solely by the Director of the Office of Consumer Protection after appointment by the Mayor. (July 22, 1976, D.C. Law 1-76, § 3, 23 DCR 1185.)

CROSS REFERENCES

Enforcement of prescription drug price information and substitution requirements, see § 33-843.

Prescription drug price information poster to be furnished pharmacies, see § 33-812.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2 of this Appendix.

§ 4. Powers of the Office.

(a) The Office may:

(1) receive and investigate complaints and initiate its own investigation of deceptive, unfair, or unlawful trade practices against consumers; issue summonses, hold hearings, compel the attendance of witnesses, administer oaths, and take the testimony of any person under oath, concerning any trade practice or practices;

(2) issue subpoenas to compel the production of documents, papers, books, records and other evidence concerning any trade practice;

(3) issue cease and desist orders with respect to trade practices determined to be in violation of District law by the Office;

(4) report to appropriate governmental agencies any information concerning violation of any law;

(5) present the interest of consumers before administrative and regulatory agencies and legislative bodies;

(6) assist, advise and cooperate with private, local and federal agencies and officials to protect and promote the interest of the District of Columbia consumer public;

(7) assist, develop and conduct programs of consumer education and information through public hearings, meetings, publications or other materials prepared for distribution to the consumer public of the District of Columbia;

(8) undertake activities to encourage local business and industry to maintain high standards of honesty, fair business practices and public responsibility in the production, promotion and sale of consumer goods and services and in the extension of credit;

(9) exercise and perform such other functions and duties consistent with the purposes or provisions of this act which may be deemed necessary or appropriate to protect and promote the welfare of District of Columbia consumers;

(10) publish rules and regulations governing the Office's procedures, developed by the Director in accordance with the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1503-06);

(11) implead and interplead persons who are properly parties to a case before the Office under section 6 of this act [sec. 6 of this Appendix];

(12) negotiate, agree to, and sign consent decrees;

(13) determine whether a person has executed a trade practice in violation of any law of the District of Columbia, and provide full remedy for such violation by:

(A) damages in contract, and orders for restitution, rescission, reformation, repair and replacement,

(B) stipulations, conditions and directives, both temporary and permanent, of all kinds,

(C) enforcement of orders and decrees, collection of civil penalties, and other activities, in the courts,

(D) and other lawful methods; and

(14) maintain both confidential and public records, and publicize its own actions, in accordance with section 6 of this act [sec. 6 of this Appendix].

(b) The Office shall:

(1) perform the functions of the Mayor, Office of Consumer Affairs, Board of Consumer Goods Repairs Services or Department of Economic Development in:

(A) the District of Columbia Consumer Credit Protection Act of 1971 (D.C. Code, Title 28, Chs. 36, 37, 38, et. al.),

(B) the District of Columbia Consumer Retail Credit Regulation (Regulation 71-18; 5P DCRR),

(C) and the District of Columbia Consumer Goods Repair Regulation (Regulation 74-3);

(2) render annual reports to the Council and the Mayor as to the number of complaints filed and the nature, status and disposition thereof, and about the other activities of the Office undertaken during the previous year.

(c) The Office may not:

(1) order damages for personal injury of a tortious nature;

(2) apply the provisions of section 6 [sec. 6 of this Appendix] to;

(A) landlord-tenant relations;

(B) persons subject to regulation by the Public Service Commission of the District of Columbia;

(C) professional services of clergymen, lawyers, practitioners of the healing arts and Christian Science practitioners engaging in their respective professional endeavors;

(D) a television or radio broadcasting station or publisher or printer of a newspaper, magazine, or other form of printed advertising, which broadcasts, publishes or prints an advertisement which violates District law, except insofar as such station, publisher or printer engages in a trade practice which violates District law in selling or offering for sale its own goods or services, or has knowledge of the advertising being in violation of District law;

(E) an action of an agency of government.

(July 22, 1976, D.C. Law 1-76, § 4, 23 DCR 1185; June 11, 1977, D.C. Law 2-8, § 4(a), 24 DCR 726.)

AMENDMENT

1977—Act June 11, 1977, D.C. Law 2-8, amended subsec. (b) (1) by inserting “, Board of Consumer Goods Repairs Services” immediately after “Office of Consumer Affairs”.

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subsec. (b) (1), see sec. 4(a) of the Consumer Goods Repair Board Emergency Act of 1977 (D.C. Act 2-29, Apr. 7, 1977, 23 DCR 8224).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 6 of act June 11, 1977, D.C. Law 2-8, provided: “This act [amending §§ 4 and 6 of this Appendix and enacting provisions set out as notes under § 4 of this Appendix] shall become effective as provided for acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)].”

BOARD OF CONSUMER GOODS REPAIR SERVICES ABOLISHED; TRANSFER OF FUNCTIONS; SAVINGS PROVISION

Sections 2 and 5 of act June 11, 1977, D.C. Law 2-8, provided:

“Sec. 2. The Board of Consumer Goods Repair Services, established by the Consumer Goods Repair Regulation approved March 15, 1974 (Reg. No. 74-3), is abolished. All powers, duties, and functions of that Board, under the provisions of Regulation 74-3 and other District of Columbia laws, are transferred to the Office of Consumer Protection established by the District of Columbia Consumer Protection Procedures Act, effective July 22, 1976 (D.C. Law 1-76).

“Sec. 5. All orders and decisions made by the Board of Consumer Goods Repair Services before the effective date of the Consumer Goods Repair Board Emergency Act of 1976, effective January 11, 1977 (Act 1-202), and all orders and decisions made by the Office of Consumer Protection in the administration of the Consumer Goods Repair Regulation approved March 15, 1974 (Reg. No. 74-3), from that date until the effective date of this act, shall be legally binding and enforceable.”

For temporary provisions abolishing the Consumer Goods Repair Board and transferring its functions and budgetary allocations to the Office of Consumer Protection prior to the enactment of sections 2 and 5 of act June 11, 1977, D.C. Law 2-8, see secs. 2 and 4 of the Consumer Goods Repair Board Emergency Act of 1976 (D.C. Act 1-202, Jan. 11, 1977, 23 DCR 5038) and secs. 2 and 5 of the Consumer Goods Repair Board Emergency Act of 1977 (D.C. Act 2-29, Apr. 7, 1977, 23 DCR 8223).

CROSS REFERENCES

Board of Consumer Goods Repair Services, see Org. Ord. No. 49, title 1 Appendix.

Enforcement of prescription drug price information and substitution requirements, see § 33-843.

Hearing aid sales, enforcement and implementation of requirements, see section 53 of this Appendix.

Prescription drug price information poster to be furnished pharmacies, see § 33-812.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6, 53 of this Appendix.

§ 5. Unlawful trade practices.

It shall be a violation of this act, whether or not any consumer is in fact misled, deceived or damaged thereby, for any person to:

(a) represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have;

(b) represent that the person has a sponsorship, approval, status, affiliation, certification or connection that the person does not have;

(c) represent that goods are original or new if in fact they are deteriorated, altered, reconditioned, reclaimed or second hand, or have been used;

(d) represent that goods or services are of particular standard, quality, grade, style or model, if in fact they are of another;

(e) misrepresent as to a material fact which has a tendency to mislead;

(f) fail to state a material fact if such failure tends to mislead;

(g) disparage the goods, services or business of another by false or misleading representations of material facts;

(h) advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered;

(i) advertise or offer goods or services without supplying reasonably expected public demand, unless the advertisement or offer discloses a limitation of quantity or other qualifying condition which has no tendency to mislead;

(j) make false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions, or the price in comparison to price of competitors or one's own price at a past or future time;

(k) falsely state that services, replacements or repairs are needed;

(l) falsely state the reasons for offering or supplying goods or services at sale or discount prices;

(m) harass, or threaten a consumer with any act other than legal process, either by telephone, cards or letters;

(n) cease work on, or return after ceasing work on, an electrical or mechanical apparatus, appliance, chattel or other goods or merchandise, in other than the condition contracted for, or to impose a separate charge to reassemble or restore such an object to such a condition without notification of such charge prior to beginning work on or receiving such object;

(o) replace parts or components in an electrical or mechanical apparatus, appliance, chattel or other

goods or merchandise when such parts or components are not defective, unless requested by the consumer;

(p) falsely state or represent that repairs, alterations, modifications or servicing have been made and receiving remuneration therefor when they have not been made;

(q) fail to supply to a consumer a copy of a sales or service contract, lease, promissory note, trust agreement or other evidence of indebtedness which the consumer may execute;

(r) make or enforce unconscionable terms or provisions of sales or leases; in applying this subsection, consideration shall be given to the following, and other factors:

(1) knowledge by the person at the time credit sales are consummated that there was no reasonable probability of payment in full of the obligation by the consumer;

(2) knowledge by the person at the time of the sale or lease of the inability of the consumer to receive substantial benefits from the property or services sold or leased;

(3) gross disparity between the price of the property or services sold or leased and the value of the property or services measured by the price at which similar property or services are readily obtainable in transactions by like buyers or lessees;

(4) that the person contracted for or received separate charges for insurance with respect to credit sales with the effect of making the sales, considered as a whole, unconscionable;

(5) that the person has knowingly taken advantage of the inability of the consumer reasonably to protect his interests by reasons of age, physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors;

(s) pass off goods or services as those of another;

(t) use deceptive representations or designations of geographic origin in connection with goods or services;

(u) represent that the subject of a transaction has been supplied in accordance with a previous representation when it has not;

(v) misrepresent the authority of a salesman, representative or agent to negotiate the final terms of a transaction;

(w) offer for sale or distribute any consumer product which is not in conformity with an applicable consumer product safety standard or has been ruled a banned hazardous product under the federal Consumer Product Safety Act (15 U.S.C. §§ 2051-83), without holding a certificate issued in accordance with section 14(a) of that Act [15 U.S.C. 2063] to the effect that such consumer product conforms to all applicable consumer product safety rules (unless the certificate holder knows that such consumer product does not conform), or without relying in good faith on the representation of the manufacturer or a distributor of such product that the product is not subject to a consumer product safety rule issued under that Act;

(x) sell consumer goods in a condition or manner not consistent with that warranted by operation of

sections 28:2-312 through 318 of the District of Columbia Code, or by operation or requirement of federal law. (July 22, 1976, D.C. Law 1-76, § 5, 23 DCR 1185.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 57 of this Appendix.

§ 6. Complaint procedures.

(a) A case is begun by filing with the Office a complaint plainly describing a trade practice and stating the complainant's (and, if different, the consumer's) name and address, the name and address (if known) of the respondent, and such other information as the Director may require. The complaint must be in or reduced by the Director to writing.

(b) The Director shall investigate each such complaint and determine:

(1) what trade practice actually occurred, and

(2) whether the trade practice which occurred violates any statute, regulation, rule of common law, or other law, of the District of Columbia.

In carrying out such investigation and determination, the Director shall consult the respondent and such other available sources of information, and make such other efforts, as are appropriate and necessary to carry out such duties.

(c) If at any time the Director finds that the trade practice complained of may, in whole or in part, be a violation of law other than a law of the District of Columbia or a law within the jurisdiction of the Office, the Director may in writing so inform the complainant, respondent and officials of the District, the United States, or other jurisdiction, who would properly enforce such law.

(d) Within 60 days after the complaint is filed, the Director shall determine that there are, or that there are not, reasonable grounds to believe that a trade practice, in violation of a law of the District of Columbia within the jurisdiction of the Office, has occurred in any part or all of the case. The Director may find that there are not such reasonable grounds for any of the following reasons:

(1) any violation of law which may have occurred is of a law not of the District of Columbia or not within the jurisdiction of the Office, or occurred more than three years prior to the filing of the complaint;

(2) in case paragraph (1) does not apply, no trade practice occurred in violation of any law of the District;

(3) the respondent cannot be identified or located, or would not be subject to the personal jurisdiction of a District of Columbia court;

(4) the complainant, to the Director's knowledge, no longer seeks redress in the case;

(5) the complainant and respondent, to the Director's knowledge, have themselves reached an agreement which settles the case;

(6) the complainant can no longer be located. The director may dismiss any part or all of a case to which one or more of such reasons apply. The Director shall inform all parties in writing of the determination, and, if any part or all of the case is dismissed, shall specify which of the reasons in this

subsection applies to which part of the case, and such other detail as is necessary to explain the dismissal.

(e) The Director shall attempt to settle, in accordance with subsection (h), each case for which reasonable grounds are found in accordance with subsection (d) [Within 45 days after determining the reasonable grounds provided for in subsection (d), and in no event later than 105 days after the complaint is filed, the Director shall:]

(1) effect a consent decree,

(2) dismiss the case in accordance with paragraph (h) (2).

(3) through the General Counsel, present to the Section of Hearings, with copies to all parties, a brief and plain statement of each trade practice which occurred in violation of District law, the law it violates, and the relief sought from the Section of Hearings for the violation, or

(4) notify all parties of another action taken, with the reasons therefor stated in detail and supported by fact; such reasons may include only:

(A) any of those in paragraphs (1) through (6) of subsection (d), and

(B) that the presentation of a charge to the Section of Hearings would not serve the purposes of this act.

(5) Repealed. June 11, 1977, D.C. Law 2-8, § 4 (b), 24 DCR 726.

(f) When the case is transmitted to the Section of Hearings, the General Counsel shall sign, and serve the respondent, the Office's summons to answer or appear before the Section of Hearings. Not less than 30 nor more than 90 days after such transmittal, the case shall be heard. The case shall proceed under section 10 of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1509). The Section of Hearings may, without delaying its hearing or decision, attempt to settle the case pursuant to subsection (h), and has discretion to permit any stipulation or consent decree the parties agree to. The Director shall be a party on behalf of the complainant. Applications to intervene shall be decided as may be proper or required by law or rule. Reasonable discovery shall be freely allowed. Any finding or decision may be modified or set aside, in whole or part, before a notice of appeal is filed in the case, or the time to so file has run out.

(g) If, after hearing the evidence, the Section of Hearings decides a trade practice occurred in which the respondent violated a law of the District of Columbia within the jurisdiction of the Office, such Section shall issue an order which:

(1) shall require the respondent to cease and desist from such conduct;

(2) shall, if such Section also decides that the consumer has been injured by the trade practice, order redress through contract damages, restitution for money, time, property or other value received from the consumer by the respondent, or through rescission, reformation, repair, replacement, or other just method;

(3) shall state the number of trade practices the respondent performed in violation of law;

(4) shall, absent good cause found by the Section, require the respondent to pay the Office its costs for investigation, negotiation, and hearing;

(5) may include such other findings, stipulations, conditions, directives, and remedies as are reasonable and necessary to identify, correct, or prevent the conduct which violated District law;

(6) may be based, in whole or part, upon a violation of a law establishing or regulating a type of business, occupational or professional license or permit, and may refer the case for further proceedings to an appropriate board or commission, but may not suspend or revoke a license or permit if there is a board or commission which oversees the specific type of license or permit.

(h) (1) At any time after reasonable grounds are found in accordance with subsection (d), the respondent, the Office (represented by (i) the Director prior to transmittal to the Section of Hearings and after an order issued pursuant to subsection (f) has been appealed, and (ii) the Section of Hearings after transmittal to that Section and prior to such appeal), and the complainant, may agree to settle all or part of the case by a written consent decree which may:

(A) include any provision described in paragraphs (2) through (5) of subsection (g);

(B) not contain an assertion that the respondent has violated a law;

(C) contain an assurance that the respondent will refrain from a trade practice;

(D) bar the Office from further action in the case, or a part thereof;

(E) contain such other provisions or considerations as the parties agree to.

(2) The representative of the Office shall administer the settlement proceedings, and may utilize the good offices of the Advisory Committee on Consumer Protection. All settlement proceedings shall be informal and include all interested parties and such representatives as the parties may choose to represent them. Such proceedings shall be private, and nothing said or done, except a consent decree, shall be made public by the Office, any party, or the Advisory Committee, unless the parties agree thereto in writing. The representative of the Office may call settlement conferences. For persistent and unreasonable failure by the complainant to attend such conferences or to take part in other settlement proceedings, the Director, prior to transmittal to the Section of Hearings, may dismiss the case.

(3) A consent decree described in paragraph (1) may be modified by agreement of the Office, complainant and respondent.

(i) (1) An aggrieved party may appeal to the District of Columbia Court of Appeals after:

(A) the Section of Hearings decides a case pursuant to subsection (f);

(B) all parts of a case have been dismissed by operation of subsections (d) or (e);

(C) the Director dismisses an entire case in accordance with paragraph (h) (2).

Such appeals shall be conducted in accordance with the procedures and standards of section 11 of the District of Columbia Administrative Procedure Act

(D.C. Code, sec. 1-1510), and take into account the procedural duties placed upon the Office in this section and all actions taken by the Office in the case.

(2) An aggrieved party may appeal any ruling of the Section of Hearings under subsection (j) to the Superior Court of the District of Columbia.

(3) (A) Any person found to have executed a trade practice in violation of a law of the District of Columbia within the jurisdiction of the Office:

(i) shall be liable to the Office for a civil penalty of not exceeding \$1000.00 for each violation enumerated in an order pursuant to paragraph (g) (3);

(ii) may be assessed and made liable to the Office for a civil penalty of not exceeding \$1000.00 for each violation or failure to adhere to a provision, of an order described in subsections (f), (g) or (j) or a consent decree described in subsection (h).

(B) The Office, the complainant, or the respondent may sue in the Superior Court of the District of Columbia for a remedy, enforcement, or assessment or collection of a civil penalty, when any violation, or failure to adhere to a provision of a consent decree described in subsection (h), or an order described in subsections (f), (g) or (j), has occurred. The Office shall sue in that Court for assessment of a civil penalty when an order described in subsection (g) has been issued and become final. A failure by the Office or any person to file suit or prosecute under this subparagraph in regard to any provision or violation of a provision of any consent decree or order, shall not constitute a waiver of such provision or any right under such provision. The Court shall levy the appropriate civil penalties, and may order, if supported by evidence, temporary, preliminary or permanent injunctions, damages, treble damages, reasonable attorney's fees, consumer redress, or other remedy.

(4) The Corporation Counsel shall represent the Office in all proceedings described in this subsection.

(j) If, at any time before notice of appeal from a decision made according to subsection (f) is filed or the time to so file has run out, the Director believes that legal action is necessary to preserve the subject matter of the case, to prevent further injury to any party, or to enable the Office ultimately to order a full and fair remedy in the case, the General Counsel shall present the matter to the Section of Hearings, which may issue a cease and desist order to take effect immediately, or grant such other relief as will assure a just adjudication of the case, in accordance with such beliefs of the Director which are substantiated by evidence. The Section's ruling may be appealed to court within 7 days of notice thereof on the Director, respondent, and complainant.

(k) (1) Any consumer who suffers any damage as a result of the use or employment by any person of a trade practice in violation of a law of the District of Columbia within the jurisdiction of the Office may bring an action in the Superior Court of the District of Columbia to recover or obtain any of the following:

- (A) treble damages;
- (B) reasonable attorneys' fees;

(C) punitive damages;

(D) any other relief which the court deems proper.

(2) Nothing in this act shall prevent any person who is injured by a trade practice in violation of a law of the District of Columbia within the jurisdiction of the Office from exercising any right or seeking any remedy to which the person might be entitled or from filing any complaint with any other agency.

(3) Any written decision made pursuant to subsection (f) is admissible as prima facie evidence of the facts stated therein.

(4) If a merchant files in any court a suit seeking to collect a debt arising out of a trade practice from which has also arisen a complaint filed with the Office by the defendant in the suit either before or after the suit was filed, the court shall dismiss the suit without prejudice, or remand it to the Office.

(l) The Director and Section of Hearings may use any power granted to the Office in section 4 of this act [sec. 4 of this Appendix], as each reasonably deems will aid in carrying out the functions assigned to each in this section. Each, while holding the primary responsibility of the Office for decision in a certain case, may join such case with others then before the Office. No case may be disposed of in a manner not expressly authorized in this section. Every complaint case filed with the Office and within its jurisdiction shall be decided in accordance with the procedures and sanctions of this section, notwithstanding that a given trade practice, at issue in the case, may be governed in whole or in part by another law which has different enforcement procedures and sanctions.

(m) (1) Whenever requested, the Office will make available to the complainant and respondent an explanation, and any other information helpful in understanding, the provisions of any consent decree to which the Office agrees, and any order or decision which the Office makes.

(2) The Director shall maintain a public index for all the cases on which the Office has made a final action or a consent decree, organized by:

- (A) name of complainant;
- (B) name of respondent;
- (C) industry of the merchant involved;

(D) nature of the violation of District law alleged or found to exist (for example, subsection of section 5 of this act [sec. 5 of this Appendix] involved, or section of a licensing law involved);

(E) final disposition.

(n) All of the moneys paid to the Office by operation of this section shall be paid to the General Fund of the District.

(o) Every complaint case that is before the Office in accordance with this section shall proceed in confidence, except for hearings and meetings before the Section of Hearings, until the Office makes a final action or a consent decree.

(p) The Director may file a complaint in accordance with subsection (a), on behalf of one or more consumers or as complainant, based on evidence and information gathered by the Office in carrying out this act. Persons not parties to but directly or

indirectly intended as beneficiaries of an order described in subsections (f), (g) or (j), or a consent decree described in subsection (h), arising out of a complaint filed by the Director, may enforce such order or decree in the manner provided in subparagraph (i) (3) (B).

(q) At any hearing pursuant to subsections (f) or (j), a witness has the right to be advised by counsel present at such hearing. In any process under this section, the complainant and respondent may have legal or other counsel for representation and advice. (July 22, 1976, D.C. Law 1-76, § 6, 23 DCR 1185; June 11, 1977, D.C. Law 2-8, § 4(b), 24 DCR 726.)

AMENDMENT

1977—Act June 11, 1977, D.C. Law 2-8, amended subsec. (e) by striking par. (5), by substituting a period for “, or” at the end of par. (4) (B), and by inserting “or” at the end of par. (3).

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subsec. (e) (3)–(5), see sec. 4(b) of the Consumer Goods Repair Board Emergency Act of 1977 (D.C. Act 2-29, Apr. 7, 1977, 23 DCR 8224).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 6 of act June 11, 1977, D.C. Law 2-8, set out as a note under § 4 of this Appendix.

CROSS REFERENCE

Hearing aid sales, applicability to, see section 53 of this Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3, 4, 7, 53 of this Appendix.

§ 7. Consumer education.

(a) The Section of Consumer Education shall:

(1) inform the public and the business community of existing laws, regulations and guidelines concerning consumer rights and standards of fair treatment;

(2) coordinate consumer education programs with, and use consumer education programs to help carry out, the consumer protection programs of the Office;

(3) handle publicity for the Office concerning cases under section 6 [sec. 6 of this Appendix], when the Director requests;

(4) aid the Director in the formulation of consumer protection plans and recommend legislation and regulations related to consumer education;

(5) cooperate with consumer-related agencies, groups and individuals in the D.C. area to improve consumer education efforts.

(b) The Section Chief shall be appointed by the Director. (July 22, 1976, D.C. Law 1-76, § 7, 23 DCR 1185.)

§ 8. Advisory Committee on Consumer Protection.

(a) There shall be an Advisory Committee on Consumer Protection consisting of 11 members appointed by the Mayor for three-year terms. The non-governmental members, immediately prior to the effective date of this act, of the Advisory Committee on Consumer Affairs established in Organization Order No. 40 (C.O. 73-225; October 3, 1973), shall carry out their terms. No District Government

employees shall be members. Four members shall be District merchants. Seven members shall be persons with demonstrated and current records of activity on behalf of consumers.

(b) The Committee shall:

(1) recommend priorities in, and, at the Committee's discretion, carry out, investigations and research, which concern broad, developing, or frequently encountered consumer problems;

(2) assist the Director as the Director may request;

(3) monitor the performance and organization of the Office, by quantitative and qualitative methods, and make recommendations and criticisms, based thereon;

(4) cooperate with consumer-related agencies, groups, and individuals in the District and in the metropolitan area to improve city-wide and area-wide consumer protection and education efforts.

(c) The Committee shall elect one of its members as Chairperson and another as Vice-Chairperson, each to serve at the pleasure of the Committee, and such other officers and subcommittees as it determines.

(d) The Office shall provide staff support for the Advisory Committee. Appropriate expenses incurred by the Committee as a whole, or by individual members, may be paid when authorized by the Director.

(e) The Committee shall meet on call by the Chairperson as frequently as required to perform its duties, but no less than once each month, and it shall submit an annual report to the Mayor, Council, and the public.

(f) The Committee shall hold public hearings as deemed necessary. (July 22, 1976, D.C. Law 1-76, § 8, 23 DCR 1185.)

§ 9. Severability.

If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of this act, and the application of such provision to other persons not similarly situated or to other circumstances, shall not be affected. (July 22, 1976, D.C. Law 1-76, § 9, 23 DCR 1185.)

§ 10. Effective date.

This act shall take effect upon the expiration of the period for Congressional review provided in section 602(c) (1) of the District of Columbia Self-Government and Governmental Reorganization Act [D.C. Code, sec. 1-147(c) (1)]. (July 22, 1976, D.C. Law 1-76, § 10, 23 DCR 1185.)

HEARING AID DEALERS AND CONSUMERS ACT OF 1977

Act Oct. 26, 1977, D.C. Law 2-33, 24 DCR 3726

Sec.

51. Short title.

52. Definitions.

53. Powers and duties of the Office of Consumer Protection.

54. Registration.

55. Special provisions.

56. Minimal procedures.

57. Grounds for revocation and suspension.

58. Severability.

59. Effective date.

§ 51. Short title.

This act may be cited as the "Hearing Aid Dealers and Consumers Act of 1977". (Oct. 26, 1977, D.C. Law 2-33, § 1, 24 DCR 3726.)

§ 52. Definitions.

As used in this act, the term—

(1) "audiologist" means any person who has at least a masters degree in audiology and meets the requirements of the American Speech and Hearing Association certificate of clinical competence or the equivalent in the determination of the Commission on Licensure to Practice the Healing Arts.

(2) "fitting and selling of hearing aids" means those practices used for the purpose of making selection, adaptation or sale of hearing aids.

(3) "hearing aid" means any wearable instrument or device designed or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments or accessories of that wearable instrument, excluding batteries, cords or earmolds.

(4) "hearing test evaluation" means a written statement, based on testing conducted by an audiologist, otolaryngologist or a medical technician directly supervised by an otolaryngologist. The statement shall include the following information:

(A) the ear or ears to be fitted;

(B) the type of earmold;

(C) the gain (amplification) of the hearing aid;

(D) the minimum and maximum power output of a hearing aid;

(E) the frequency response of the hearing aid;

(F) the results of pure tone and speech audiometry; and

(G) the date of the hearing test.

This shall not prevent an audiologist or otolaryngologist from recommending a specific make and model of hearing aid.

(5) "medical clearance" means a written statement based upon a medical examination by an otolaryngologist, that concludes that the patient may benefit from a hearing aid and that there are no medical conditions to contraindicate the use of a hearing aid. The statement must include the date of the medical examination.

(6) "Office" means the Office of Consumer Protection of the District of Columbia.

(7) "otolaryngologist" means a physician licensed in the District of Columbia who specializes in medical problems of the ear, nose and throat.

(8) "person" means any individual, partnership, association, organization or corporation.

(9) "registrant" means a hearing aid dealer who engages in the practice of fitting and selling hearing aids and who has registered pursuant to section 4 of this act [sec. 54 of this Appendix].

(10) "sell" or "sale" means any transfer of title or of the right of use by sale, conditional sales contract, lease, bailment, hire-purchase or any other means, excluding wholesale transactions of dealers and distributors.

(11) "telephone option" means an option available on hearing aids which enables the wearer to hear the electrical signal on the telephone line

rather than the acoustic signal produced by the telephone.

(12) "used hearing aid" means a hearing aid which has been worn for any period of time by a buyer or potential buyer. (Oct. 26, 1977, D.C. Law 2-33, § 2, 24 DCR 3726.)

§ 53. Powers and duties of the Office of Consumer Protection.

The Office shall:

(1) issue and renew certificates of registration to engage in the business of fitting and selling of hearing aids, as provided in section 4 of this act [section 54 of this Appendix]; and

(2) implement and enforce the provisions of this act by utilizing the powers, procedures and sanctions of the Office, as provided for in sections 4 and 6 of the "District of Columbia Consumer Protection Procedures Act", approved July 22, 1976 (D.C. Law 1-76) [sections 4 and 6 of this Appendix] and the regulations of the Office. (Oct. 26, 1977, D.C. Law 2-33, § 3, 24 DCR 3726.)

§ 54. Registration.

(a) It is unlawful for a person to engage in the practice of fitting and selling of hearing aids without having first obtained a certificate of registration from the Office under the provisions of this act.

(b) Nothing in this act shall prohibit a corporation, partnership, trust, association, or other like organization maintaining an established business address in the District of Columbia from engaging in the business of fitting and selling of, or offering for sale, hearing aids at retail without a certificate of registration: *Provided*, That any and all such fitting and selling of hearing aids is conducted by individuals who are registered pursuant to section 4 of this act [this section]. Such corporations, partnerships, trusts, associations, or other like organizations shall file annually with the Office a list of all individuals holding valid certificates of registration who are directly or indirectly employed by them.

(c) Each person desiring to obtain a Certificate of Registration from the Office to engage in the practice of fitting and selling of hearing aids shall make an application to the Office. The application shall be made upon a form and in such manner as the Office shall provide. It shall set forth:

(1) the name and business address of the applicant:

(A) if an individual, the name under which he or she intends to conduct business;

(B) if a partnership, the name and business address of each member thereof and the name under which the business is to be conducted;

(C) if a corporation, the name of the corporation and the name and business address of each of the officers of the corporation.

Any applicant who intends to conduct business under a fictitious name shall file with the application a copy of the registration of that fictitious name;

(2) the place or places, including the complete address or addresses, where the business is to be conducted; and

(3) such further information as the Office may prescribe.

(d) The Office shall act upon an application for a certificate of registration within thirty (30) days after receiving the application. Each application shall be accompanied by an application fee, which shall in no event be refunded. If an application is approved by the Office, upon payment of a registration fee, the applicant shall be granted a certificate of registration to be valid for a period determined by the Mayor of the District of Columbia. The certificate shall be conspicuously posted in the place of business of the registrant. In the case of loss, mutilation, or destruction of a certificate, the Office shall issue a duplicate certificate, upon proof of facts and payment of a fee.

(e) If a registrant maintains more than one place of business within the District, he or she shall apply for and procure a duplicate certificate for each place of business. If a registrant has a change of address of place of business, he or she shall notify the Office within fifteen (15) days of such change.

(f) Certificates expire on the date determined by the Mayor of the District of Columbia. An unexpired certificate may be renewed by applying to the Office on the form prescribed by the Office and the payment of a renewal fee. Late applications for registration or renewal shall be an additional amount. The Office shall act on an application for renewal within thirty (30) days after receiving the application.

(g) The Office shall not prevent an applicant for a certificate of registration from fitting and selling of hearing aids pending a determination of the initial application within six (6) months after the effective date of this act.

(h) No physician or audiologist may register under this act to sell hearing aids for profit.

(i) The Mayor of the District of Columbia is authorized to fix and change from time to time the period for which any certificate of registration authorized under this act may be issued. The Mayor of the District of Columbia is authorized to set and change from time to time the amount of any fees provided for in sections 4(d) and 4(f) of this act [subsecs. (d) and (f) of this section]. (Oct. 26, 1977, D.C. Law 2-33, § 4, 24 DCR 3726.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 52, 53 of this Appendix.

§ 55. Special provisions.

(a) No registrant shall fit, offer for sale, or sell a hearing aid to a person unless, within the preceding three (3) months, the person has received a medical clearance after an examination by an otolaryngologist and a hearing test evaluation.

(b) No registrant shall sell a hearing aid not conforming to the hearing test evaluation required without prior consultation and written approval from the signer of the hearing test evaluation.

(c) Sections 5(a) and 5(b) of this act [subsecs. (a) and (b) of this section] do not apply to—

(1) The purchase of an identical hearing aid within two (2) years of the date that the purchaser receives the original aid; and

(2) the purchase of parts, attachments or accessories of the telephone designed to aid the hearing-impaired.

(d) If a prospective hearing aid user has a bona fide religious belief which precludes him or her from having a medical examination as required in section 5(a) of this act [subsec. (a) of this section], the prospective hearing aid user may waive the medical examination requirement: *Provided*, That the prospective hearing aid user signs the following statement, printed in ten (10)-point type:

"My religious beliefs require that I waive the medical examination and the hearing aid evaluation required by the 'Hearing Aid Dealer and Consumers Act of 1977' for the purchase of a hearing aid. I voluntarily waive the medical examination, notwithstanding the fact that I have been advised by

HEARING AID DISPENSER'S NAME

that my best health interest would be served if I had a medical evaluation by a physician who is an ear specialist."

No registrant shall seek to induce a prospective hearing aid user to execute such a waiver.

(e) No otolaryngologist or audiologist making recommendations pursuant to sections 5(a) and 5(b) of this act [subsecs. (a) and (b) of this section] shall have a direct or indirect membership, coownership, or proprietary interest in a business which is controlled by or which employs a registrant for the purpose of fitting and selling of hearing aids for profit.

(f) No hearing aid shall be sold to any person unless accompanied by a thirty (30) day money-back written guarantee providing that if the customer returns the hearing aid within thirty (30) days in the same condition as when purchased the customer shall be entitled to the return of the cost of the hearing aid and accessories as itemized on the bill provided pursuant to section 6(a) of this act [section 56(a) of this Appendix], but in no case shall the hearing aid dealer be permitted to retain a service charge greater than five percent (5%) of the cost of the hearing aid and accessories and the cost of the earmold.

(g) No registrant or agent thereof shall visit the home or shall telephone any potential buyer for the purpose of inducing a sale of a hearing aid without having obtained, prior to the visit, the express written consent of the buyer to that visit. Any consent shall clearly and conspicuously state that the buyer is aware that the seller may attempt to sell a hearing aid during the visit. (Oct. 26, 1977, D.C. Law 2-33, § 5, 24 DCR 3726.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 56 of this Appendix.

§ 56. Minimal procedures.

(a) Each hearing aid sale shall be accompanied by a receipt that includes:

(1) the name, address, and signature of the purchaser;

(2) the date of consummation of the sale;

(3) the name and address of the regular place of business, the number of the certificate of registration, and the signature of the registrant;

(4) the make, model, serial number, and purchase price of the hearing aid;

(5) a statement as to whether the hearing aid is "new" or "used";

(6) the complete terms of the sale, including:

(A) an itemization of the total purchase price, including but not limited to the cost of the hearing aid, the earmold, any batteries or other accessories, and any service costs; and

(B) a clear and precise statement of the terms of the trial period and the terms of any guarantee or warranty, including disclosures made pursuant to section 7(a)(3)(H) [sec. 57(a)(3)(H) of this Appendix];

(7) the title and address of the Office, with a statement that complaints which arise with respect to the transaction may be submitted to the Office;

(8) the original of the written recommendation;

(9) the following statements in ten (10)-point type or larger:

(A) "This hearing aid will not restore normal hearing nor will it prevent further hearing loss";

(B) "No hearing aid may be sold to you without a prior medical examination";

(C) "A return visit to a physician who is an ear specialist or audiologist after the purchase of this aid will help you in best adapting to it"; and

(10) if the hearing aid sold has a telephone option, a statement that the telephone option will not work on all telephones and a statement indicating the types of telephones upon which it will work.

(b) Each registrant shall keep records for every customer to whom he or she renders services or sells a hearing aid, including:

(1) a copy of the receipt as specified in subsection (a) of this section 6 [this section];

(2) a record of services provided;

(3) any correspondence to or from the customer; and

(4) any waiver forms, as provided under section 5(d) of this act [sec. 55(d) of this Appendix]. Such records shall be preserved for seven (7) years after the date of the transaction.

(c) Each registrant shall post conspicuously in large print at his or her place(s) of business and make available for inspection at any sale a retail price list showing all hearing aid models for sale. (Oct. 26, 1977, D.C. Law 2-33, § 6, 24 DCR 3726.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 55 of this Appendix.

§ 57. Grounds for revocation and suspension.

(a) In addition to those practices prohibited under section 5 of the "District of Columbia Consumer Protection Procedures Act", effective July 22, 1976 (D.C. Law 1-76) [sec. 5 of this Appendix], the

Office may deny the application for a certificate of registration or may suspend or revoke the certificate of registration of any hearing aid dealer issued pursuant to this act or may refuse to issue a renewal if it has been determined by the Office or a court of competent jurisdiction that such registrant has:

(1) made a material false statement or concealed a material fact in connection with an application for a certificate;

(2) had a certificate of registration issued under this act revoked or suspended previously;

(3) been guilty of fraud or fraudulent practices or has practiced dishonest or misleading advertising, including but not limited to:

(A) advertising a particular model, type, or kind of hearing aid when the offer is not a bona fide effort to sell the product so offered as advertised;

(B) advertising that a hearing aid is a new invention or involves a new mechanical, engineering, or scientific concept or principle in hearing aid capability;

(C) advertising that a hearing aid will be beneficial to persons with hearing loss, regardless of the type of hearing loss;

(D) advertising that a hearing aid will enable persons with a hearing loss to consistently distinguish and understand speech sounds in noisy situations;

(E) representing that the services or advice of a person licensed to practice medicine or of a person licensed as an audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true;

(F) using or incorporating in any title or designation the words "doctor", "clinic", "clinical audiologist", "hearing aid audiologist", or any other term, abbreviation, or symbol;

(G) wearing any costume, which would tend to give a false impression that one is being treated medically or tested by an audiologist;

(H) representing, advertising, or implying that the hearing aid or repair is guaranteed, without a clear and concise disclosure of the identity of the guarantor, the nature and extent of the guarantee and any condition or limitations imposed;

(I) stating or implying that the use of any hearing aid will restore hearing to a normal level, preserve hearing, prevent or retard progression of a hearing impairment, save a person from deafness, or any other false or misleading medically or audilogically unsupportable claims regarding the efficacy or benefits of a hearing aid;

(J) representing or implying that a hearing aid is or will be "custom made", "made to order", "prescription made", or in any other sense especially fabricated for an individual person when such is not the case; and

(K) representing that a hearing aid has a telephone option, unless it is clearly and conspicuously disclosed that the telephone option will not work on all types of telephones;

(4) been grossly negligent in the fitting, selling, or repairing of any hearing aid;

(5) failed to comply with any other provision of this act or any rules or regulations promulgated hereunder; and

(6) directly or indirectly giving, offering to give, permitting or causing to be given, money or anything of value to any person who advises another in a professional capacity, as an inducement to influence such person, to have such person influence others, to purchase or contract to purchase any product sold or offered for sale by the registrant, or to influence any person to refrain from dealing in the products of competitors.

(b) For the purposes of paragraphs (3), (4), (5), and (6) of subsection (a) of this section 7 [this section], the actions of any employee of a hearing aid dealer shall be attributed to and deemed to be actions of such hearing aid dealer. (Oct. 26, 1977, D.C. Law 2-33, § 7, 24 DCR 3726.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 56 of this Appendix.

§ 58. Severability.

The provisions of this act are severable, and if any provision, sentence, clause, section or part is held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such holding shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this act or its application to other persons or circumstances. It is hereby declared to be the legislative intent that this act would have been adopted if such illegal, invalid, inapplicable or unconstitutional provision, sentence, clause, section or part had not been included herein and if the person or circumstances to which the act or any part is inapplicable had been specifically exempted. (Oct. 26, 1977, D.C. Law 2-33, § 8, 24 DCR 3726.)

§ 59. Effective date.

This act shall take effect pursuant to section 602 (c) of the District of Columbia Self-Government and Governmental Reorganization Act [D.C. Code, sec. 1-147(c)]. (Oct. 26, 1977, D.C. Law 2-33, § 9, 24 DCR 3726.)

TITLE 29.—CORPORATIONS

Chapter 1.—GENERAL PROVISIONS

§ 29-102. Notice of application for, alteration to, or extension of charter or special privileges.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-105. Semiannual publication of financial statement required from foreign insurance companies, building associations, and banking companies, doing business in District—Exemption—Fraternal orders.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2.—BUSINESS CORPORATIONS (1901)

§ 29-201. Formation—Certificate—Exception—Dealing in real estate.

NOTES TO DECISIONS

Third party rights

Although charitable corporation was organized to accept custody and control of children brought into the country for adoption and was authorized to do any acts which would prevent such individuals from becoming public charges, such objectives do not, of themselves, create a parental relation between the committee and those children who might come into its care and do not create third-party rights in District of Columbia to reimbursement for expenses incurred in connection with involuntary commitment of mentally retarded orphan who had been brought into the United States by the corporation for purpose of adoption. *District of Columbia v. In the Matter of H. J. B.* (D.C. App. 1976, 359 A.2d 285).

§ 29-211. Liability of stockholders.

NOTES TO DECISIONS

Piercing the corporate veil

Where corporation was formed with wife as sole stockholder to protect business of husband and wife from claims of husband's judgment creditors, wife extensively commingled corporate with personal funds and formalities of corporate form were in a large part disregarded, judgment creditor of corporation is entitled to have corporate veil pierced on basis that corporation had no independent existence but was used as personal instrumentality of husband and wife and creditor is entitled to recover amount of judgment from husband and wife. *R. Harris et ano. v. J. S. Wagshal* (D.C. App. 1975, 343 A.2d 283).

Chapter 4.—INSTITUTIONS OF LEARNING

Sec.

29-415. License to confer degrees—Issuance by Educational Institution Licensure Commission—Evidence required.

Sec.

29-417. Revocation of license—Hearing before Educational Institution Licensure Commission—Review.

29-420. Omitted.

§ 29-404. Property to be held for purposes of education.

CROSS REFERENCE

Institutional funds, management of, see §§ 32-1201 et seq.

§ 29-405. Application of funds.

CROSS REFERENCE

Institutional funds, management of, see §§ 32-1201 et seq.

§ 29-415. License to confer degrees—Issuance by Educational Institution Licensure Commission—Evidence required.

No institution heretofore or hereafter incorporated under the provisions of this chapter shall have the power to confer any degree in the District of Columbia or elsewhere, nor shall any institution incorporated outside of the District of Columbia or any person or persons individually or as a partnership or association or otherwise, undertaking to confer any degree, operate in the District of Columbia, unless under and by virtue of a license from the Educational Institution Licensure Commission, which before granting any such license may require satisfactory evidence—

* * * * *

(As amended Apr. 6, 1977, D.C. Law 1-104, § 6(a) (1), 23 DCR 8734.)

AMENDMENT

1977—Act Apr. 6, 1977, D.C. Law 1-104, amended section by substituting "Educational Institution Licensure Commission" for "Board of Higher Education of the District of Columbia".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 9 of act Apr. 6, 1977, D.C. Law 1-104, set out as a note under § 31-2001.

CROSS REFERENCE

Abolishment of Board of Higher Education and transfer of functions (other than functions of licensing institutions to confer degrees), see § 31-1717.

Licensing of institutions by Educational Institution Licensure Commission, see §§ 31-2001 et seq.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-416, 29-417, 29-419, 31-1717.

§ 29-416. Application for license—Recordation—Use of public school personnel authorized.

Application for the license referred to in section 29-415 shall be in writing upon forms prepared under the direction of the Educational Institution Licensure Commission, and shall be filed with the secretary of the said commission, whose duty it shall be, in case the institution so licensed is incorporated under the laws of the District of Columbia, to forward a copy of

said license to the recorder of deeds for the District of Columbia, who shall indorse upon the certificate of incorporation the fact that said license has been issued. The Educational Institution Licensure Commission is hereby authorized to employ the personnel of the public school system of the District of Columbia, so far as the same may be necessary, for the proper performance of its duties under sections 29-414 to 29-419, and it shall be the duty of all public officers and bureaus of the federal government concerned with educational matters to render such advice and assistance to the Educational Institution Licensure Commission as it may from time to time consider necessary or desirable for the better performance of its duties under sections 29-414 to 29-419. (Mar. 3, 1901, ch. 854, § 586c, as added Mar. 2, 1929, 45 Stat. 1504, ch. 523; Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title I, § 106; Apr. 6, 1977, D.C. Law 1-104, § 6 (a) (2), 23 DCR 8734.)

CODIFICATION

"Commission" has been substituted for "board" to reflect the amendment of section by act Apr. 6, 1977, D.C. Law 1-104, which substituted Educational Institution Licensure Commission for Board of Higher Education.

AMENDMENT

1977—Act Apr. 6, 1977, D.C. Law 1-104, amended section by substituting "Educational Institution Licensure Commission" for "Board of Higher Education".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 9 of act Apr. 6, 1977, D.C. Law 1-104, set out as a note under § 31-2001.

CROSS REFERENCE

Licensing of institutions by Educational Institution Licensure Commission, see §§ 31-2001 et seq.

§ 29-417. Revocation of license—Hearing before Educational Institution Licensure Commission—Review.

A license once issued may be revoked by said Educational Institution Licensure Commission for non-compliance on the part of any individual or individuals, associations, or incorporated institution so licensed with the provisions of section 29-415. Upon the revocation of any such license it shall be the duty of the secretary of the Educational Institution Licensure Commission, in the case of an institution incorporated under the laws of the District of Columbia, to forward a copy of the revocation to the recorder of deeds for the District of Columbia, who shall cause a notation to be placed upon the certificate of incorporation to the effect that its authority to confer degrees has been revoked: *Provided, however,* That thirty days' notice shall first have been given to such individual or individuals, association, or to the trustees, directors, or managers of said institutions, with full opportunity to be heard by said Educational Institution Licensure Commission at either a public or nonpublic session thereof, as may be desired by such individual or individuals, association, or the institution threatened with revocation of its license, and the evidence upon which said commission shall act in the revocation of such license shall be committed to writing under the direction of the commission, and upon application therefor a copy thereof furnished to such individual or individuals, association, or the institution whose license has been revoked: *And provided further,* That any

party aggrieved by the action of said commission in refusing to license or in revoking a license previously granted may appeal as provided in the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510). (Mar. 3, 1901, ch. 854, § 586d, as added Mar. 2, 1929, 45 Stat. 1504, ch. 523, and amended June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title I, § 106; July 29, 1970, Pub. L. 91-358, § 163(a), title I, 84 Stat. 582; Apr. 6, 1977, D.C. Law 1-104, § 6(a) (3), 23 DCR 8734.)

CODIFICATION

"Commission" has been substituted for "board" to reflect the amendment of section by act Apr. 6, 1977, D.C. Law 1-104, which substituted Educational Institution Licensure Commission for Board of Higher Education.

AMENDMENT

1977—Act Apr. 6, 1977, D.C. Law 1-104, amended section by substituting "Educational Institution Licensure Commission" for "Board of Higher Education".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 9 of act Apr. 6, 1977, D.C. Law 1-104, set out as a note under § 31-2001.

CROSS REFERENCE

Licensing of institutions by Educational Institution Licensure Commission, see §§ 31-2001 et seq.

§ 29-418. Title of institution not to imply official connection with Government of United States or District of Columbia—Prohibition applicable to nonresidents and foreign corporation conferring degrees in District of Columbia—License not to be denied merely because of use of prohibited words.

No institution incorporated under the provisions of this chapter shall use as its title, in whole or in part, the words United States, federal, American, national, or civil service, or any other words which might reasonably imply an official connection with the government of the United States, or any of its departments, bureaus, or agencies, or of the government of the District of Columbia, nor shall any such institutions advertise or claim the power to issue degrees under the authority of Congress or otherwise than under the authority of the license granted to them by the Educational Institution Licensure Commission as hereinbefore provided. The prohibition in this section contained shall be deemed to include and is hereby declared applicable to any individual or individuals, association, or incorporation outside of the District of Columbia which shall undertake to do business in the District of Columbia or to confer degrees or certificates therein, and any such individual or individuals, association, or incorporation violating the provisions of this section shall be subject to the penalty hereinafter in section 29-419: *Provided,* That no institution, incorporated prior to April 16, 1934, under the provisions of this chapter, and carrying on its work exclusively in any foreign country with the consent and approval of the government thereof, shall if otherwise entitled to be licensed by the Educational Institution Licensure Commission, be denied the same solely because of the inclusion in its name and as descriptive of its origin of any of the specific words the use of which is by this section forbidden to incorporations under the provisions of this chapter. (Mar. 3, 1901, ch. 854,

§ 586e, as added Mar. 2, 1929, 45 Stat. 1505, ch. 523, and amended Apr. 16, 1934, 48 Stat. 592, ch. 143; Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title I, § 106; Apr. 6, 1977, D.C. Law 1-104, § 6(a)(4), 23 DCR 8734.)

AMENDMENT

1977—Act Apr. 6, 1977, D.C. Law 1-104, amended section by substituting "Educational Institution Licensure Commission" for "Board of Higher Education".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 9 of act Apr. 6, 1977, D.C. Law 1-104, set out as a note under § 31-2001.

§ 29-420. Omitted.

Section, Act Mar. 3, 1901, ch. 854, § 586g, as added Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title I, § 106(a), defined the term "Board of Higher Education" for the purposes of this chapter. Since that term was deleted from this chapter by act Apr. 6, 1977, D.C. Law 1-104, this section has been omitted as obsolete.

Chapter 5.—RELIGIOUS SOCIETIES

§ 29-507. Corporate powers.

CROSS REFERENCE

Institutional funds, management of, see §§ 32-1201 et seq.

Chapter 6.—CHARITABLE, EDUCATIONAL, AND RELIGIOUS ASSOCIATIONS

§ 29-603. Trustees, directors and managers.

CROSS REFERENCE

Institutional funds, management of, see §§ 32-1201 et seq.

Chapter 8.—COOPERATIVE ASSOCIATIONS

§ 29-801. Definitions.

EMERGENCY ACT AMENDMENTS

1977—For temporary provisions relating to payments of housing assistance and relocation compensation to tenants displaced by conversion cooperatives, see the Second Emergency Cooperative Regulation Act of 1977 (D.C. Act 2-47, June 17, 1977, 24 DCR 207) and the Third Emergency Cooperative Regulation Act of 1977 (D.C. Act 2-88, Oct. 12, 1977, 24 DCR 3177).

COOPERATIVE CONVERSION MORATORIUM

Act June 19, 1976, D.C. Law 1-71, 23 DCR 570, provided:

"That this act may be cited as the 'Cooperative Conversion Moratorium act'.

"Sec. 2. (a) Notwithstanding any provision of the District of Columbia Cooperative Association Act (D.C. Code, sec. 29-801 et seq.), or any other provision of law permitting the formation of associations, no association shall be incorporated in the District of Columbia to acquire, manage, or operate any multi-family housing accommodation in the District of Columbia during the 180 day period beginning on the effective date of this act. During such period, no association which is already incorporated or operating in the District of Columbia shall acquire, manage, or operate any multi-family housing accommodation which was not owned, managed, or operated by it on September 1, 1975.

"(b) For the purposes of this Act—

"(1) the term 'association' shall have the same meaning as provided in paragraph (1) of the first section of the District of Columbia Cooperative Association Act (D.C. Code, sec. 29-801(1));

"(2) the term 'multi-family housing accommodation' means any building or structure, or any group of buildings or structures, built before the effective date of this act, designed or used for residential occupancy by more than one family; and

"(3) the term 'family' means a group of persons related by blood or marriage.

"(c) Nothing in this section shall be construed to prohibit any association from acquiring a multi-family housing accommodation for resale, where such resale is to persons other than members of the association, or from acquiring, managing, or operating any multi-family housing accommodation for rental purposes.

"Sec. 3. The Mayor may grant an exemption to the provisions of this act in any case where he finds that—

"(a) less than 50 percent of the units in the multi-family housing accommodation being converted to a cooperative are occupied; or

"(b) if more than 50 percent of such units are occupied, at least 50 percent of the lessees of such units have agreed in writing to the conversion of such housing accommodation to a cooperative.

The exemptions provided for in this section shall be granted only upon application and shall not be granted in less than ten days after such application is made.

"Sec. 4. Except to the extent that it relates to a multi-family housing accommodation, for which an exception has been granted under section 3, during the period this act is in effect—

"(a) no notice given to any person during such period which purports to terminate the tenancy of such person, so that such person's rental unit may be converted to a cooperative, shall be valid; and

"(b) any such notice given before such period, and which has not been effectuated, shall be void, and the time required under any other provision of law for such a notice shall be tolled.

"Sec. 5. This act shall become law according to the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)], and shall be deemed to have become effective on the expiration date of the Emergency Cooperative Conversion Moratorium Act [Council act No. 1-90, enacted Feb. 6, 1976]."

For prior temporary provisions, similar to those of act June 19, 1976, D.C. Law 1-71, see the Emergency Cooperative Conversion Moratorium act (D.C. Act 1-90, Feb. 6, 1976, 22 DCR 4379); the Second Emergency Cooperative Conversion Moratorium Act of 1976 (D.C. Act 1-112, May 6, 1976, 22 DCR 6447); and the Emergency Cooperative Regulation Act of 1976 (D.C. Act 1-189, Jan. 3, 1977, 23 DCR 4941), the Emergency Cooperative Regulation Act of 1977 (D.C. Act 2-13, Mar. 18, 1977, 23 DCR 7683), secs. 2-4 of the Second Emergency Cooperative Regulation Act of 1977 (D.C. Act 2-47, June 17, 1977, 24 DCR 207), and secs. 2-4 of the Third Emergency Cooperative Regulation Act of 1977 (D.C. Act 2-88, Oct. 12, 1977, 24 DCR 3177).

§ 29-830. Expulsion of members—Procedure—Purchase of holdings.

NOTES TO DECISIONS

Procedural requirements

Resolution which was passed by cooperative apartment association and which declared stockholder to be tenant by sufferance and to have forfeited all right as a stockholder to a financial interest in association is ineffective to accomplish a forfeiture of stockholder's interest in association and to provide a basis upon which to expel stockholder from association where stockholder did not receive written notice of meeting of association wherein resolution was adopted and, more importantly, was not given an opportunity to be heard when he attended meeting and, hence, was not provided with procedural safeguards afforded by this section. *The Clydesdale, Inc. v. J. S. Wegener* (D.C. App. 1977, 372 A.2d 1013).

Though stockholder in cooperative apartment building did not follow procedure prescribed in bylaws of association by paying his maintenance fee assessed for two months, where association never gave stockholder a 24-hour period of grace provided for in bylaws, failure of association to comply with its own bylaws operated to render ineffective both its resolution declaring stockholder to be a tenant by sufferance and to have forfeited all right as a stockholder to a financial interest in association and its order to surrender possession of unit occupied by stockholder within 30 days. *Id.*

Chapter 9.—BUSINESS CORPORATIONS (1954)**CHAPTER REFERRED TO IN U.S. CODE**

This chapter is referred to in sections 3932, 3936 of title 42, sections 541, 545 of title 45, and sections 731, 735 of title 47, U.S. Code.

§ 29-902. Definitions.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-904. General powers.**NOTES TO DECISIONS****Practice of law**

Where collection agency practices terminated by Court of Appeals as being an unauthorized practice of law had been long carried on without judicial disapproval and where judgments had been valid under law existing when they were rendered, decision terminating such practices would not be applied retroactively. *Kelly Adjustment Co. v. R. Boyd et ano.* (D.C. App. 1975, 342 A.2d 361).

Collection agency did not become entitled to utilize practices which constituted the unauthorized practice of law merely because it received the grant by corporate charter from the District of Columbia to conduct its collection business and to do what is necessary to carry out its purposes. *J. H. Marshall & Associates, Inc. v. W. A. Burleson* (D.C. App. 1973, 313 A. 2d 587).

Usury—Defense

This section which withdraws defense of usury from corporation applies also to individual guarantor so that guarantor, as well as corporation, is precluded from interposing usury as defense to action upon promissory note. *G. Caruso v. L. Hollander* (D.C. App. 1976, 363 A.2d 297).

§ 29-905. Defense of ultra vires.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-906a. Reserved name.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-907a. Change of registered office or registered agent.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-907b. Registered agent as an agent for service.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-908. Authorized shares.**NOTES TO DECISIONS****Overissued shares—Cancellation**

Where plaintiff's claims for relief were barred by statute of limitations, plaintiff had no proprietary interest in stock certificate which, as any overissued security, is void and worthless and thus, to avert any claim by a future transferee of the stock, court ordered that certificate be returned to corporation for cancellation. *W. G. Carmichael v. T. J. Egan et al.* (1977, 433 F. Supp. 465).

§ 29-908a. Issuance of shares of preferred or special classes in series.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-908i. Liability of subscribers and shareholders.**NOTES TO DECISIONS****Piercing the corporate veil**

Where corporation was formed with wife as sole stockholder to protect business of husband and wife from claims of husband's judgment creditors, wife extensively commingled corporate with personal funds and formalities of corporate form were in a large part disregarded, judgment creditor of corporation is entitled to have corporate veil pierced on basis that corporation had no independent existence but was used as personal instrumentality of husband and wife and creditor is entitled to recover amount of judgment from husband and wife. *R. Harris et ano. v. J. S. Wagshal* (D.C. App. 1975, 343 A.2d 283).

§ 29-911. Voting of shares.**SECTION REFERRED TO IN U.S. CODE**

This section is referred to in section 733 of title 47, U.S. Code.

§ 29-916d. Quorum of directors.**SECTION REFERRED TO IN U.S. CODE**

This section is referred to in section 733 of title 47, U.S. Code.

§ 29-920. Books and records.**SECTION REFERRED TO IN U.S. CODE**

This section is referred to in section 544 of title 45, and 734 of title 47, U.S. Code.

§ 29-921. Incorporators.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-921b. Filing of articles of incorporation.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-921g. Procedure to amend articles of incorporation before acceptance of subscriptions to shares.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-923a. Filing of articles of amendment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-924. Redemption and cancellation of shares.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-924b. Cancellation of reacquired shares.¹

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-925. Reduction of stated capital in certain cases.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-927d. Articles of merger or consolidation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-927e. Effective date of merger or consolidation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-927g. Merger or consolidation of domestic and foreign corporations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-927h. Merger of parent corporation and wholly owned subsidiary.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-930. Voluntary dissolution of corporation by its incorporators.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-930c. Filing of statement of intent to dissolve.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-930d. Effect of statement of intent to dissolve.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-930e. Proceedings after filing of statement of intent to dissolve.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-930f. Revocation by consent of shareholders of voluntary dissolution proceedings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-930g. Revocation by act of corporation of voluntary dissolution proceedings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

¹Section probably should have been numbered as § 29-924a.

§ 29-930h. Filing of statement of revocation of voluntary dissolution proceedings.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-930i. Effect of statement of revocation of voluntary dissolution proceedings.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-930j. Articles of dissolution.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-930k. Filing of articles of dissolution.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-931. Involuntary dissolution.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-931a. Venue and process.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-931b. Jurisdiction of court to liquidate assets and business of corporation.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-931h. Filing of decree of dissolution.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-931i. Survival of remedy after dissolution.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS**Construction**

District of Columbia corporation, articles of incorporation of which had been revoked for failure to pay required annual report fee, and which did not wish to be reinstated because it was no longer in business, could properly maintain an action which was instituted prior to revocation without paying annual report fee. *M.A.S., Inc. v. Van Curler Broadcasting Corp. et al.* (1973, 357 F. Supp. 686).

§ 29-932. Annual report of domestic corporation.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1967, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-933. Admission of foreign corporation—Exemption from certificate requirement in certain cases—Service of process on exempt corporations—Rules and regulations.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS**Exemption—Tour service**

Secretary of Interior has exclusive authority to regulate interpretive tour service operated under contract with Department of Interior, and service therefor is immune from enforcement of District of Columbia licensing and registration requirements. *District of Columbia et al. v. Landmark Services, Inc.* (1976, 416 F. Supp. 559).

Suit by foreign corporation

Foreign corporation which was engaged in sale of medical equipment in interstate commerce, which had no offices or warehouse facilities in District of Columbia, which solicited orders in District on one occasion through agent at national trade show, which pursued sales prospects gathered at trade show through personnel in California offices and which shipped equipment purchased directly to one buyer in District was not "transacting business" in District within meaning of statute requiring a foreign corporation transacting business in District to obtain certificate of authority prior to maintaining an action on any claim arising out of such business and thus was not required to secure such a certificate prior to maintaining action on contract for sale of equipment. *Hargrove Displays, Inc. v. Rohe Scientific Corporation et al.* (D.C. App. 1974, 316 A. 2d 330).

§ 29-933d. Application for certificate of authority.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-933e. Filing of documents on application for certificate of authority.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-933f. Effect of certificate of authority.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Suit by foreign corporation

Foreign corporation which was engaged in sale of medical equipment in interstate commerce, which had no offices or warehouse facilities in District of Columbia, which solicited orders in District on one occasion through agent at national trade show, which pursued sales prospects gathered at trade show through personnel in California offices and which shipped equipment purchased directly to one buyer in District was not "transacting business" in District within meaning of statute requiring a foreign corporation transacting business in District to obtain certificate of authority prior to maintaining an action on any claim arising out of such business and thus was not required to secure such a certificate prior to maintaining action on contract for sale of equipment. *Hargrove Displays, Inc. v. Rohe Scientific Corporation et al.* (D.C. App. 1974, 316 A. 2d 330).

§ 29-933h. Change of registered office or registered agent of foreign corporation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-933i. Service of process on foreign corporation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Construction

This section pertaining to service of process on foreign corporations does not relate solely to manner of service and concerns amenability to service. *In re FTC Corporate Patterns Report Litigation* (1977, 432 F. Supp. 274).

Government contacts

New York corporation, involved in construction and operation of mills in foreign countries, was not within District of Columbia jurisdiction through government contacts which did not involve sales to the Government but merely taking advantage of services offered to prospective foreign investors by federal agencies, for purpose of action by plaintiffs in whose favor corporation negotiated federal loan. *Siam Kraft Paper Co., Ltd. v. Parsons & Whittemore, Inc., et al.* (1975, 400 F.Supp. 810).

Service on agent

Where foreign corporation received service of process through its appointed registered agent in District of Co-

lumbia and corporation was authorized to do business in District, service is sufficient to bring corporation before court in enforcement proceedings brought by FTC. *In re FTC Corporate Patterns Report Litigation* (1977, 432 F. Supp. 274).

Transacting business

In order for foreign corporation to be "doing business" in District of Columbia so as to be amenable to service there in enforcement actions brought by FTC, it is not necessary that corporation maintain permanent office in District of Columbia. *In re FTC Corporate Patterns Report Litigation* (1977, 432 F. Supp. 274).

§ 29-933j. Amendment to articles of incorporation of foreign corporation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-933k. Merger of foreign corporation authorized to transact business in the District.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-933l. Amended certificate of authority.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-933m. Annual report of foreign corporations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-934. Withdrawal of foreign corporation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-934a. Filing of application for withdrawal.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-934b. Revocation of certificate of authority.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-934c. Issuance of certificate of revocation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-934d. Effect of revocation or withdrawal upon actions and contracts.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-934f. Transacting business without certificate of authority.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Status

Under statute relating to foreign corporations qualifying to do business within District of Columbia, noncomplying foreign corporation exists within District subject only to disabilities and penalties set forth in statute. *A. Tasker, Inc. v. J. P. Amsellem* (D.C. App. 1974, 315 A. 2d 178).

Suit against individual officers

Fact that foreign corporation did not qualify to do business within District of Columbia did not entitle creditor of corporation to maintain suit against individual officers of corporation. *A. Tasker, Inc. v. J. P. Amsellem* (D.C. App. 1974, 315 A.2d 178).

§ 29-935. Commissioner—Duties and functions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-936. Fees and license taxes, and charges.

* * * * *

(c) An initial license fee is hereby imposed as follows:

(1) Every domestic corporation upon the filing of its articles of incorporation shall pay, in addition to any other fees and charges imposed by this chapter, the sum of 2 cents for each authorized share of its capital stock up to and including ten thousand shares, and the sum of 1 cent for each additional authorized share up to and including fifty thousand shares, and the sum of one-half of 1 cent for each additional authorized share in excess of fifty thousand shares: *Provided*, That

in any case in which the articles of incorporation, of a domestic corporation authorizes par value shares having a par value per share other than \$100 per share, then, in respect to such shares only, the aggregate par value of all such shares shall be divided by the figure 100 and the quotient so obtained shall be the number of shares for the purpose of the initial license tax as to such shares: *And provided further*, That in no case shall the initial license fee payable be less than \$20.

* * * * *

(3) Upon filing of articles of consolidation or articles of merger, if the corporation created in the case of articles of consolidation, or the corporation surviving in the case of articles of merger shall be a domestic corporation, then in addition to any other fees and charges imposed by this chapter, a sum equal to the difference between the initial license fee computed at the rates provided in paragraph (c) (1) of this section upon the total of the authorized number of shares of the corporation created by such consolidation or surviving in the case of a merger and the initial license fee so computed upon the aggregate amount of the total authorized number of shares of such of the constituent corporations as are domestic corporations: *Provided further*, That in no case shall the sum payable as an initial license fee be less than \$40.

(d) Each foreign corporation authorized under the provisions of this chapter to do business in the District shall pay an annual report fee of \$25, which sum shall be paid at the time of the filing of the annual report required of such corporations under the provisions of this chapter.

(e) Each domestic corporation organized, incorporated, or reincorporated under the provisions of this chapter shall pay, at the rate hereinafter set out, an annual report fee based upon the amount of its total authorized capital stock on the 15th day of March immediately preceding the date on which such annual report is due to be filed. The annual report fee shall be paid at the time of filing the annual report required of such corporations under the provisions of this chapter. The amount of the annual report fee shall be as follows:

Where the total authorized capital stock does not exceed \$25,000, \$15; where the total authorized capital stock exceeds \$25,000 but does not exceed \$100,000, \$35; where the total authorized capital stock exceeds \$100,000 but does not exceed \$300,000, \$80; where the total authorized capital stock exceeds \$300,000 but does not exceed \$500,000, \$150; where the total authorized capital stock exceeds \$500,000 but does not exceed \$1,000,000, \$250; and further a sum of \$125 for each \$1,000,000 or fraction thereof, in excess of \$1,000,000. Shares without par value, for the purpose of ascertaining the amount of the annual report fee, but for no other purpose, shall be taken to be of the par value of \$100 each.

* * * * *

(g) If the annual report fee of any domestic corporation is unpaid on the April 15 on which the

same is due, the annual report fee shall bear interest at the rate of 2 per centum per month until paid.

(As amended Sept. 14, 1976, D.C. Law 1-82, title VII, §§ 701-705, 23 DCR 2461.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Section 701 of act Sept. 14, 1976, D.C. Law 1-82, amended subsec. (c) (1) by substituting "\$20" for "\$10".

Section 702 of such act amended subsec. (c) (3) by substituting "\$40" for "\$20".

Section 703 of such act amended subsec. (d) by substituting "\$25" for "\$10".

Section 704 of such act amended subsec. (e) generally. For prior provisions, see the 1973 edition of the Code.

Section 705 of such act amended subsec. (g) by substituting "2 per centum" for "1 per centum".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see secs. 701-705 of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 95) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1857).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 29-938. Proclamation of revocation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Construction

Purpose of revocation of articles of incorporation for failure to file annual reports is to prohibit corporation from enjoying privileges of that status when it has failed to perform its resultant responsibilities; revocation is disability imposed on corporation as a penalty. *Accurate Construction Co., et ano. v. B. Washington* (D.C. App. 1977, 378 A. 2d 681).

District of Columbia corporation, articles of incorporation of which had been revoked for failure to pay required annual report fee, and which did not wish to be reinstated because it was no longer in business, could properly maintain an action which was instituted prior to revocation without paying annual report fee. *M.A.S., Inc. v. Van Curler Broadcasting Corp. et al.* (1973, 357 F. Supp. 686).

Contracts

Where articles of incorporation of construction corporation had been revoked for failure to file annual reports at time that deed of trust and promissory note were executed to secure payment to corporation for certain improvements to home, but corporation's articles of incorporation were reinstated ten years later and subsequent to initiation of action seeking cancellation of deed of trust and promissory note, deed and note were void because corporation lacked capacity to contract, notwithstanding reinstatement. *Accurate Construction Co., et ano. v. B. Washington* (D.C. App. 1977, 378 A. 2d 681).

§ 29-938b. Correction of error in proclamation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-938c. Reservation of name of proclaimed corporation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-938d. Reinstatement of proclaimed corporations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Contracts

Where articles of incorporation of construction corporation had been revoked for failure to file annual reports at time that deed of trust and promissory note were executed to secure payment to corporation for certain improvements to home, but corporation's articles of incorporation were reinstated ten years later and subsequent to initiation of action seeking cancellation of deed of trust and promissory note, deed and note were void because corporation lacked capacity to contract, notwithstanding reinstatement. *Accurate Construction Co., et ano. v. B. Washington* (D.C. App. 1977, 378 A. 2d 681).

§ 29-941. Effect of nonpayment of fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Construction

District of Columbia corporation, articles of incorporation of which had been revoked for failure to pay required annual report fee, and which did not wish to be reinstated because it was no longer in business, could properly maintain an action which was instituted prior to revocation without paying annual report fee. *M.A.S., Inc. v. Van Curler Broadcasting Corp. et al.* (1973, 357 F. Supp. 686).

This section providing that no corporation required to pay a fee, charge or penalty shall maintain in District of Columbia any action until all such fees and penalties have been paid in full was not intended to apply to a corporation whose articles of incorporation have been revoked for failure to pay annual report fees. *Id.*

§ 29-947. Action without a meeting.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-948. Appeal from Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-949. Certificates and certified copies of certain documents to be received in evidence.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Annual reports

In prosecution for keeping a bawdy or disorderly house, copy of annual report of corporate owner of premises as filed with a recorder of deeds listing defendant as president, treasurer and one of the directors of corporation was properly admitted over objection that record was not properly authenticated before admission and that the record was out of date, since it was obvious that the report was the most recent one on file and it was the burden of defendant to rebut evidence of ownership adduced. *L. T. Raleigh v. United States* (D.C. App. 1976, 351 A.2d 510).

§ 29-950. Unauthorized assumption of corporate powers.

NOTES TO DECISIONS

Suit against individual officers

Fact that foreign corporation did not qualify to do business within District of Columbia did not entitle creditor of corporation to maintain suit against individual officers of corporation. *A. Tasker, Inc. v. J. P. Amsellem* (D.C. App. 1974, 315 A.2d 178).

§ 29-951. Forms to be furnished by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-952. Reincorporation or incorporation of existing corporations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-952a. Effect of issuance of certificate of reincorporation or incorporation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-953. Transfer of duties of Recorder of Deeds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of

the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-958. Civil actions and prosecutions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-959. Verification no longer required.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 10.—NONPROFIT CORPORATIONS

CHAPTER REFERRED TO IN U.S. CODE

This chapter is referred to in section 177 of title 10, sections 1701j-2, 1701y of title 12, section 78ccc of title 15, section 1302 of title 29, section 2996e of title 42, section 711 of title 45, section 396 of title 47, U.S. Code.

§ 29-1002. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1005. General powers.

CROSS REFERENCE

Institutional funds, management of, see §§ 32-1201 et seq.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in section 2996e of title 42, U.S. Code.

§ 29-1006. Defense of ultra vires.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1008. Reserved name.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1010. Change of registered office or registered agent.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of

the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1011. Registered agent as an agent for service.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1018. Board of directors.

NOTES TO DECISIONS

Fiduciary duty

A director or trustee of a charitable hospital organized under the Non-Profit Corporation Act of the District of Columbia is in default of his fiduciary duty to manage the fiscal and investment affairs of the hospital if it has been shown by a preponderance of the evidence (1) that while assigned to a particular committee of the board having general financial or investment responsibility under the bylaws of the corporation, he has failed to use due diligence in supervising the actions of those officers, employees or outside experts to whom the responsibility for making day-to-day financial or investment decision has been delegated; (2), that he knowingly permitted the hospital to enter into business transaction with himself or with any corporation, partnership or association in which he then had a substantial interest or held a position as trustee, director, general manager or principal officer, without having previously informed persons charged with approving that transaction of his interest or position and of any significant reasons, unknown to or not fully appreciated by such persons, why the transaction might not be in the best interest of the hospital; or (3) that he actively participated in or voted in favor of a decision by the board or any committee or subcommittee thereof to transact business with himself or with any corporation, partnership or association in which he then had a substantial interest or held a position as trustee, director, general manager or principal officer, or if he otherwise failed to perform his duties honestly, in good faith, and with a reasonable amount of diligence and care. *D. M. Stern et al. v. Lucy Webb Hayes National Training School for Deaconesses and Missionaries et al.* (1974, 381 F. Supp. 1003).

§ 29-1029. Incorporators.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan. No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1031. Filing of articles of incorporation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan. No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1037. Filing of articles of amendment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan. No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1042. Articles of merger or consolidation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan. No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1043. Effective date of the merger or consolidation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan. No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1045. Merger or consolidation of domestic and foreign corporations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan. No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1050. Revocation of voluntary dissolution proceedings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan. No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1052. Filing of articles of dissolution.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan. No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1053. Involuntary dissolution.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan. No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1054. Venue and process.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan. No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1055. Jurisdiction of court to liquidate assets and affairs of corporation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan. No. 3 of 1967, were abolished as of noon

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1083. Annual report of domestic and foreign corporations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1084. Filing of annual report of domestic and foreign corporations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1086. Proclamation of revocation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1088. Correction of error in proclamation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1089. Reservation of name of proclaimed corporation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1090. Reinstatement of proclaimed corporations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1091. Penalties imposed upon corporations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1092. Fees for filing documents and issuing certificates.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1093. Commissioner: Duties and functions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1094. Appeal from Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1095. Certificates and certified copies to be received in evidence.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1096. Forms to be furnished by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1099. Action by members or directors without a meeting.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1099d. Filing of statement of election to accept this chapter.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1099f. Actions to be in name of District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1099j. Effect of false statement.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 11.—PROFESSIONAL CORPORATIONS

Sec.

29-1121. Treatment of professional corporation as unincorporated business for purpose of franchise tax.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 47-1557b, 47-1574c.

§ 29-1101. Short title.

SHORT TITLE

The first section of act Jan. 23, 1976, D.C. Law 1-43, provided: "That this act [enacting § 29-1121] shall be known and may be cited as the 'District of Columbia Professional Corporation Revision Act of 1975'."

§ 29-1102. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1106. Incorporation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1114. Foreign professional corporations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29-1121.

§ 29-1121. Treatment of professional corporation as unincorporated business for purpose of franchise tax.

Notwithstanding any other provisions of this chapter, a professional corporation incorporated un-

der this chapter, and a foreign professional corporation obtaining a certificate of authority to render a professional service in the District of Columbia in accordance with the provisions of section 29-1114, which carries on or engages in any trade or business in the District of Columbia shall, for the purpose of the imposition of a franchise tax under subchapter II of chapter 15 of title 47 be considered and treated as an unincorporated business as defined in sections 47-1574 to 47-1574e, and not as an incorporated business, and, (1) be allowed the exemption provided for unincorporated businesses under section 47-1574c, (2) in addition to all other applicable provisions of subchapter II of chapter 15 of title 47 be subject to the limitation contained in the first proviso in section 47-1557b(a) (15) as to the aggregate deduction for services rendered by the individual owners and members actively engaged in the conduct of an unincorporated business. For the purpose of the application of the first proviso in section 47-1557b(a) (15), the words "individual owners or members actively engaged in the conduct of the unincorporated business" shall mean, in the case of a professional corporation, any shareholder of such corporation who, for compensation, renders professional services on behalf of the corporation of which he is a shareholder, but shall not include any other person who is employed by the corporation to render to the corporation any service, whether professional or otherwise, and for which such service such person is compensated as an officer, employee or agent. (Dec. 10, 1971, Pub. L. 92-180, § 21, as amended; Jan. 23, 1976, D.C. Law 1-43, § 2, 22 DCR 4370.)

CODIFICATION

Section 47-1557b(a) (15), referred to in text, was in the original a reference to "paragraph (15) of section 3 of Title III of the District of Columbia Income and Franchise Tax Act of 1947". The cited paragraph (15) is contained in subsection (a) of section 3.

EMERGENCY ACT AMENDMENT

1975—For temporary amendment of section, see sec. 2 of the Emergency Professional Corporation Revision Act of 1975 (D.C. Act 1-79, Dec. 18, 1975, 22 DCR 3458).

PRIOR PROVISIONS

Prior to amendment by act Jan. 23, 1976, D.C. Law 1-43, section 21 of Act Dec. 10, 1971, Pub. L. 92-180, provided for an amendment to § 47-1574 which is set out in the 1973 edition of the Code.

EFFECTIVE DATE

Section 3 of act Jan. 23, 1976, D.C. Law 1-43, provided: "This act [enacting this section] shall apply, for purposes of the application of the District of Columbia Income and Franchise Tax Act of 1947, with respect to taxable years beginning on or after January 1, 1975."

TITLE 30.—DOMESTIC RELATIONS

Chapter 1.—MARRIAGE

Sec.
30-116. Repealed.

§ 30-101. Prohibitions—Marriages void ab initio.

NOTES TO DECISIONS

Laches and estoppel

Where two couples obtained Mexican divorces which were invalid because none of four parties was domiciled in Mexico, two of them merely spent a few hours in that country in year when divorces were obtained and absent spouses merely executed powers of attorney but entered no appearance in Mexican court, husband, who later married the other's supposed ex-wife, was estopped from challenging Mexican decrees on jurisdictional grounds in suit to annul his second marriage. *A. S. Clagett v. J. D. B. King* (D.C. App. 1973, 308 A. 2d 245).

Presumption of validity

While District of Columbia presumption of the validity of the most recent marriage is not conclusive, it is one of the strongest in law and party attacking such marriage has burden of rebutting presumption by strong, distinct, satisfactory and conclusive evidence. *V. Johnson v. M. Young* (D.C. App. 1977, 372 A.2d 992).

§ 30-103. Marriages void from date of decree—Age of consent.

The following marriages in said District shall be illegal, and shall be void from the time when their nullity shall be declared by decree, namely:

First. The marriage of an idiot or of a person adjudged to be a lunatic.

Second. Any marriage the consent to which of either party has been procured by force or fraud.

Third. Any marriage either of the parties to which shall be incapable, from physical causes, of entering into the married state.

Fourth. When either of the parties is under the age of consent, which is hereby declared to be sixteen years of age. (Mar. 3, 1901, 31 Stat. 1391, ch. 854, § 1285; June 30, 1902, 32 Stat. 543, ch. 1329; Aug. 12, 1937, 50 Stat. 626, ch. 596, § 1; July 22, 1976, D.C. Law 1-75, § 5(d), 23 DCR 1182.)

AMENDMENT

1976—Act July 22, 1976, D.C. Law 1-75, amended par. Fourth by substituting "sixteen years of age" for "eighteen years of age for males and sixteen years of age for females".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 8 of act July 22, 1976, D.C. Law 1-75, set out as a note under § 21-101.

§ 30-104. Annulment—Party plaintiff—Next friend—Capable person who knowingly contracted illegal marriage.

NOTES TO DECISIONS

Laches and estoppel

Where two couples obtained Mexican divorces which were invalid because none of four parties was domiciled in Mexico, two of them merely spent a few hours in that country in year when divorces were obtained and absent spouses merely executed powers of attorney but entered no appearance in Mexican court, husband, who later married the other's supposed ex-wife, was estopped from

challenging Mexican decrees on jurisdictional grounds in suit to annul his second marriage. *A. S. Clagett v. J. D. B. King* (D.C. App. 1973, 308 A. 2d 245).

§ 30-110. Duty of clerk before issuing license—Perjury.

It shall be the duty of the clerk of the Superior Court of the District of Columbia before issuing any license to solemnize a marriage to examine any applicant for said license under oath and to ascertain the names and ages of the parties desiring to marry, and if they are under age the names of their parents or guardians, whether they were previously married, whether they are related or not, and if so, in what degree, which facts shall appear on the face of the application, of which the clerk shall provide a printed form, and any false swearing in regard to such matters shall be deemed perjury. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1291; June 25, 1936, 49 Stat. 1721, ch. 804; June 25, 1948, 62 Stat. 991 ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 264, Pub. L. 89-493, § 13(a); July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570; Apr. 7, 1977, D.C. Law 1-107, title I, § 113 (a), 23 DCR 8737.)

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-107, amended section by substituting "names and ages" for "names, ages, and color."

EFFECTIVE DATE OF 1977 AMENDMENT

See section 301 of act Apr. 7, 1977, D.C. Law 1-107, set out as a note under § 16-902.

NOTES TO DECISIONS

Constitutionality

Requirement of this section that marriage license applications record color of applicant is not required by a compelling government interest and does not have a rational basis, and thus is unconstitutional under equal protection clause. *A. B. Pedersen et al. v. J. M. Burton, Clerk* (1975, 400 F.Supp. 960).

§ 30-111. Consent of parent or guardian.

If any person intending to marry and seeking a license therefor shall be under eighteen years of age, and shall not have been previously married, the said clerk shall not issue such license unless a parent, or, if there be neither father nor mother, the guardian, if there be such, shall consent to such proposed marriage, either personally to the clerk, or by an instrument in writing attested by a witness and proved to the satisfaction of the clerk. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1292; July 22, 1976, D.C. Law 1-75, § 5 (a), 23 DCR 1182; Oct. 1, 1976, D.C. Law 1-87, § 32, 23 DCR 2544.)

AMENDMENTS

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting "unless a parent" for "unless the father of such person, or if there be no father, the mother".

Act July 22, 1976, D.C. Law 1-75, amended section by substituting "If any person intending to marry and seeking a license therefor" for "If any male person intending

to marry and seeking a license therefor shall be under twenty-one years of age, or any female so intending”.

EFFECTIVE DATES OF 1976 AMENDMENTS

For act Oct. 1, 1976, D.C. Law 1-87, see sec. 43 of such act set out as a note under § 1-511.

For act July 22, 1976, D.C. Law 1-75, see sec. 8 of such act set out as a note under § 21-101.

§ 30-116. Repealed. Apr. 7, 1977, D.C. Law 1-107, title I, § 113(b), 23 DCR 8737.

Section, Act Mar. 3, 1901, 31 Stat. 1393, ch. 854, § 1296, related to slave marriages.

EFFECTIVE DATE OF REPEAL

See section 301 of act Apr. 7, 1977, D.C. Law 1-107, set out as a note under § 16-902.

§ 30-118. Marriage license applications as public records and open to inspection—Accessibility.

NOTES TO DECISIONS

Constitutionality

Requirement of this section that marriage license applications which record color of applicant be disclosed is not required by a compelling government interest and does not have a rational basis, and thus is unconstitutional under equal protection clause. *A. B. Pedersen et al. v. J. M. Burton, Clerk* (1975, 400 F.Supp. 960).

§ 30-119. Premarital examinations—Statements regarding blood test to be filed with license application.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2.—PROPERTY RIGHTS

Sec.

30-201. Rights of married persons to acquire, hold and dispose of property, contract, engage in business, and sue and be sued.

30-202 to 30-215. Repealed.

30-216. Transferred.

§ 30-201. Rights of married persons to acquire, hold and dispose of property, contract, engage in business, and sue and be sued.

The fact that a person is or was married shall not, after October 1, 1976, impair the rights and responsibilities of such person, which are hereby granted or confirmed, to acquire from anyone, and to hold and dispose of, in any manner, as his or hers, property of any kind, or to accept and be bound by any covenant or agreement relating to any property or debt, or to contract or engage in any trade, occupation or business arrangement or in any civil litigation of any sort (whether in contract, tort or otherwise) with or against anyone including such person's spouse, to the same extent as an unmarried person, and neither the spouse of such person nor the spouse's property shall be liable because of any contract or tort by such person in which the spouse has not directly or indirectly participated, except that both spouses shall be liable on any debt, contract or engagement entered into by either of them during their marriage for necessities for either of them or for their dependent children. A married minor shall be subject to the same disabilities, including the requirement for appointment of a guardian of the

minor's estate, as an unmarried minor, except as otherwise provided by law. This section shall not be deemed to affect the law relating to dower, ownership of property held by the husband and wife as tenants by the entirety, inheritance of property, actions for loss of consortium, family relations, or, except as to necessities purchased during marriage, obligations for marital support. (Mar. 3, 1901, 31 Stat. 1374, ch. 854, § 1154; Aug. 31, 1957, 71 Stat. 562, Pub. L. 85-244, § 8; Sept. 14, 1961, 75 Stat. 517, Pub. L. 87-246, § 6; July 22, 1976, D.C. Law 1-75, § 5 (b), 23 DCR 1182; Oct. 1, 1976, D.C. Law 1-87 § 33 (a), 23 DCR 2544.)

CODIFICATION

In the first sentence, “October 1, 1976” has been substituted for “the date of enactment of this act”.

AMENDMENTS

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section generally. For prior provisions, see 1973 edition of the Code.

Act July 22, 1976, D.C. Law 1-75, amended section by substituting “eighteen” for “twenty-one”.

EFFECTIVE DATES OF 1976 AMENDMENTS

For act Oct. 1, 1976, D.C. Law 1-87, see sec. 43 of such act set out as a note under § 1-511.

For act July 22, 1976, D.C. Law 1-75, see sec. 8 of such act set out as a note under § 21-101.

§§ 30-202 to 30-215. Repealed. Oct. 1, 1976, D.C. Law 1-87, § 33(b), 23 DCR 2544.

Section 30-202, Act Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1170, authorized married women to make covenants running with the land.

Section 30-203, Acts Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1157; July 22, 1976, D.C. Law 1-75, § 5(c), 23 DCR 1182, related to the disabilities of a married woman under 18 years of age entitled to a separate estate and the appointment of a guardian for the estate.

Section 30-204, Act Mar. 3, 1901, 31 Stat. 1374, ch. 854, § 1153, related to the appointment of a trustee for the separate estate of a married woman.

Section 30-205, Act Mar. 3, 1901, 31 Stat. 1373, ch. 854, § 1152, related to the rights of a husband's creditors and the notice of the existence of such creditors when a husband made a conveyance to his wife.

Section 30-206, Act Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1171, related to the creation of equitable separate estates.

Section 30-207, Act Mar. 3, 1901, 31 Stat. 1373, ch. 854, § 1151, protected a wife's separate property from her husband's debts.

Section 30-208, Acts Mar. 3, 1901, 31 Stat. 1374, ch. 854, § 1155; May 28, 1926, 44 Stat. 676, ch. 419, related to the power of married women to trade, contract, sue, and be sued separately and the husband's liability for his wife's separate contract or tort.

Section 30-209, Act Mar. 3, 1901, 31 Stat. 1374, ch. 854, § 1156, provided that contracts of a married woman shall be deemed to be made in reference to her separate estate.

Section 30-210, Act Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1166, related to the liability of a husband for the debts of his wife arising before the marriage.

Section 30-211, Act Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1177, related to a husband's liability for his wife's acts in certain cases.

Section 30-212, Act Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1161, related to insurance of a husband's life by himself or his wife and the payment of the proceeds from the policy to the wife free from the claims of the husband's creditors.

Section 30-213, Act Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1162, provided that life insurance policies for the benefit of the wife, children, dependent relative, or creditor of the insured shall be free and clear from the claims of the insured's creditors.

Section 30-214, Act Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1163, related to the payment of insurance to a wife's children, descendants, or representatives when she died before her husband.

Section 30-215, Act Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1164, related to the discharge of persons making payments to a married woman of money deposited by her and deposits made to defraud a husband's creditors.

NOTES TO DECISIONS UNDER FORMER § 30-208

Interspousal immunity

Law of District of Columbia, which was place of parties' domicile and center of relationship, rather than law of New York, which was site of both injury and conduct which caused it, was applicable, where negligence was not in issue, and issue was one of capacity to sue. *L. T. Edmunds v. J. A. Edmunds et ano.* (1972, 353 F. Supp. 287).

§ 30-216. Transferred.

Section was transferred to and redesignated as section 19-107a by act Oct. 1, 1976, D.C. Law 1-87, § 33(c).

Chapter 3.—UNIFORM SUPPORT

§ 30-304. Extent of duties of support.

NOTES TO DECISIONS

Due process

Application of this chapter did not deny mother from whom support was sought due process even if mother had not been given notice of initiating proceeding where mother was provided with notice of proceeding in responding court and was given opportunity to be heard at hearing which she attended with appointed counsel in responding court. *M. Watson v. M. Dreadin* (D.C. App. 1973, 309 A. 2d 493; cert. denied 94 S. Ct. 1488, 415 U.S. 959).

Misconduct

Welfare of child should not be prejudiced by delictum of a parent, and mother's misconduct toward father, even if it consists of impeding his visitation rights, does not justify father's failure to support his child. *V. E. Norton v. J. Norton, Jr.* (D.C. App. 1972, 298 A. 2d 514).

§ 30-309. Complaint on behalf of a minor—Who may bring.

NOTES TO DECISIONS

Custody

In a case under this chapter, question of whether maternal grandmother, who initiated petition in Florida, had valid custody of child was not for determination by courts of District of Columbia where mother from whom support was sought resided, where maternal grandmother had obtained legal custody under preliminary order of Florida court and the mother produced no further order to the contrary. *M. Watson v. M. Dreadin* (D.C. App. 1973, 309 A. 2d 493; cert. denied 94 S. Ct. 1488, 415 U.S. 959).

Law governing

Law of initiating jurisdiction determines requisite status of petitioning party. *M. Watson v. M. Dreadin* (D.C. App. 1973, 309 A. 2d 493; cert. denied 94 S. Ct. 1488, 415 U.S. 959).

Standing

In proceedings in responding court under this chapter, mother, from whom support for child was sought, could not challenge standing of maternal grandmother, who had been granted custody of child under preliminary order of initiating court, to initiate the support proceedings. *M. Watson v. M. Dreadin* (D.C. App. 1973, 309 A. 2d 493; cert. denied 94 S. Ct. 1488, 415 U.S. 959).

§ 30-314. Duty of the court when the District of Columbia is responding State.

NOTES TO DECISIONS

Due process

Application of this chapter did not deny mother from whom support was sought due process even if mother had not been given notice of initiating proceeding where mother was provided with notice of proceeding in responding court and was given opportunity to be heard at hearing which she attended with appointed counsel in responding court. *M. Watson v. M. Dreadin* (D.C. App. 1973, 309 A. 2d 493; cert. denied 94 S. Ct. 1488, 415 U.S. 959).

Duty of court

Although mother had removed herself and child from jurisdiction of court to California, trial court should have proceeded to determine child's support petition on its merits rather than dismissing rule to show cause, where there was no specific finding that mother was in contempt or had trifled with court, nor was child residing in a foreign country beyond reach of court, and reciprocal support enforcement statute, placing specific responsibility on courts of District of Columbia to hear and determine petition, obviated necessity of child and mother appearing personally to pursue support action. *V. E. Norton v. J. Norton, Jr.* (D.C. App. 1972, 298 A. 2d 514).

§ 30-315. Order of support—Bond—Contempt.

NOTES TO DECISIONS

Evidence—Sufficiency

Evidence that mother had incurred over \$300 in telephone calls to maternal grandmother who had custody of child, that mother had offered to send airplane ticket to grandmother to be used to transport child from Florida to Washington, D.C., where mother resided and that mother was employable, at least to extent of earning money by caring for children of working mothers, sustained finding that mother was financially able to provide \$10 per week for support of child. *M. Watson v. M. Dreadin* (D.C. App. 1973, 309 A. 2d 493; cert. denied 94 S. Ct. 1488, 415 U.S. 959).

§ 30-320. Support of illegitimate children.

The natural father and the natural mother of an illegitimate child shall have the duty to support such child while such child is a minor. The alleged father's or alleged mother's parenthood of the illegitimate child may be established either by judicial process or by acknowledgment by the person whose parenthood is thus determined. (July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 20; Oct. 1, 1976, D.C. Law 1-87, § 34, 23 DCR 2544; April 7, 1977, D.C. Law 1-107, title I, § 114, 23 DCR 8737.)

AMENDMENTS

1977—Act Apr. 7, 1977, D.C. Law 1-107, amended section by striking out "under oath" immediately after "by acknowledgment."

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section generally. For prior provisions, see 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 301 of act Apr. 7, 1977, D.C. Law 1-107, set out as a note under § 16-902.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

CROSS REFERENCE

Age of majority, see § 21-101 note.

TITLE 31.—EDUCATION AND CULTURAL INSTITUTIONS

Chap.	Sec.
17. Public Postsecondary Education Reorganization	31-1701
18. Interstate Agreement on Qualification of Educational Personnel.....	31-1801
19. Commission on the Arts and Humanities..	31-1901
20. Educational Institution Licensure Commission	31-2001

Chapter 1.—BOARD OF EDUCATION

Chap.	Sec.
31-104-1. Annual budget.	
31-110. Repealed.	
31-115. Repealed.	
31-120. Repealed.	

§ 31-101. Election and number of members—Term of office—Commencement of term—Compensation of members—Qualifications—Forfeiture of office for failure to maintain qualifications—Vacancies—President—Secretary—Meetings.

(a) The control of the public schools in the District of Columbia is vested in a Board of Education to consist of eleven elected members, three of whom are to be elected at large, and one to be elected from each of the eight school election wards established under chapter 11 of title 1. The election of the members of the Board of Education shall be conducted on a nonpartisan basis and in accordance with such chapter.

(b) (1) Except as provided in paragraph (3) of this subsection and section 1-1110(e), the term of office of a member of the Board of Education shall be four years.

* * * * *

(3) The term of office of a member of the Board of Education elected at a general election shall begin at noon on the fourth Monday in January next following such election. A member may serve more than one term. However, the term of office of a member of the Board of Education elected in the general election for member of the Board of Education to be held in 1973 and thereafter shall expire at noon of the thirtieth day after the Board of Elections certifies the results of the election, including any runoff election, for members of the Board of Education in the fourth year of such member's term. The term of a member of the Board of Education elected in the general election to be held in 1977 and thereafter shall begin immediately upon the expiration of the term preceding it.

* * * * *

(As amended Aug. 14, 1973, Pub. L. 93-92, § 2, 87 Stat. 313; Dec. 24, 1973, Pub. L. 93-198, title IV, § 495, 87 Stat. 811.)

CODIFICATION

Subsection (a) of this section is based on sec. 495 of the District of Columbia Self-Government and Governmental Reorganization Act (Pub. L. 93-198, approved Dec. 24, 1973). A prior subsection (a) was based on sec. 2 of Act June 20, 1906, as redesignated and amended; see 1973 main edition of the Code.

AMENDMENT

1973—Section 2 of Act Aug. 14, 1973, Pub. L. 93-92, amended section by (1) striking out "paragraph (2)" in subsec. (b) (1) and inserting "paragraph (3)" in lieu thereof, and (2) inserting in subsec. (b) (3) the second and third sentences as above set out.

EFFECTIVE DATE OF NEW SUBSEC. (a)

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that subsec. (a) of this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

EFFECTIVE DATE OF 1973 AMENDMENT BY PUB. L. 93-92

Section 3 of Act Aug. 14, 1973, Pub. L. 93-92, provided: "The amendments made by this Act [amending this section and §§ 1-1102, 1-1105, 1-1108, 1-1109, 1-1110, 1-1111] shall take effect on and after the date of enactment of this Act."

CONTINUATION OF BOARD OF EDUCATION

Section 719 of Act Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 821, provided: "The term of any member elected to the District of Columbia Board of Education, and the powers and duties of the Board of Education, shall not be affected by the provisions of section 495 [§ 31-101(a)]. No provision of such section shall be construed to extend the term of any such member or to terminate the term of any such member."

CROSS REFERENCES

Administration and enforcement by Board of Education of employment of minors provisions, see § 36-227.

Compensation of members of Board of Education, applicability of provisions relating to Board of Trustees of University of District of Columbia, see § 31-1735.

Official mail, use by members, see §§ 1-1706, 1-1707.

Transfer of functions with respect to summer lunch program for children from Office of Youth Opportunity Services to Board of Education, see § 6-2003.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-1601, 31-1621, 31-1702.

NOTES TO DECISIONS

Hearings—Disruption of

Commissioner's order which provides that no person shall wilfully and knowingly utter loud, threatening or abusive language or engage in disorderly conduct within any building owned or under the control of the District with the intent to disrupt orderly conduct of government meeting or business is valid under the First Amendment. The order is not overbroad and vague and there is a valid state interest in regulating such conduct. *District of Columbia v. A. Gueory* (D.C. App. 1977, 376 A. 2d 834).

Commissioner's order which provides that no person shall wilfully and knowingly utter loud, threatening or abusive language or engage in any disorderly conduct within any building owned or under control of District with intent to impede, disrupt or disturb orderly conduct of government meeting or official business should be interpreted as prohibiting actual or imminent interference with peaceful conduct of governmental business. *Id.*

Meetings—Closed

The term "superintendent," as used in statutory scheme and contract, envisioned an employer-employee relationship between the Board of Education and the superintendent of schools; accordingly, while the meetings at which the Board developed and adopted standards

by which it would evaluate the performance of the present superintendent were not held to terminate the superintendent's employment, the meetings' agenda were unquestionably "related matter" as contemplated by statute and are properly subject to closed sessions. *R. Goodwin et al. v. District of Columbia Board of Education et al.* (D.C. App. 1975, 343 A.2d 63).

Board of Education's adoption of evaluative standards by which to assess the performance of the present superintendent of schools is not a "final policy decision" within the meaning of this section providing, in part, that "no final policy decision on such other matters may be made by the Board of Education in a meeting (or part thereof) closed to the public." *Id.*

Given the express intent of Congress to allow certain meetings of the Board of Education to be closed and the embodiment of that intent in a specific statute (this section), that prior statute remains in effect as a qualification of section 1-1503a requiring meetings of the District government to be open to the public. *Id.*

§ 31-103. Determination of general policies—Expenditures of funds—Appointment of teachers and employees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-104. Annual estimates.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-104-1. Annual budget.

With respect to the annual budget for the Board of Education in the District of Columbia, the Mayor and the Council may establish the maximum amount of funds which will be allocated to the Board, but may not specify the purposes for which such funds may be expended or the amount of such funds which may be expended for the various programs under the jurisdiction of the Board of Education. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 452, 87 Stat. 803.)

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

§ 31-104b. Coordination with the District of Columbia Government.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-105. Superintendent—Appointment—Term of office—Duties.

CROSS REFERENCES

Ceremonial expenses, see § 31-1121.

Official expenses, see § 31-1122.

NOTES TO DECISIONS

Employer-employee relationship with Board

The term "superintendent," as used in statutory scheme and contract, envisioned an employer-employee relationship between the Board of Education and the superintendent of schools; accordingly, while the meetings at which the Board developed and adopted standards by which it would evaluate the performance of the present superintendent were not held to terminate the superintendent's employment, the meetings' agenda were unquestionably "related matter" as contemplated by statute and are properly subject to closed sessions. *R. Goodwin et al. v. District of Columbia Board of Education et al.* (D.C. App. 1975, 343 A.2d 63).

§ 31-108. Removal of superintendent.

NOTES TO DECISIONS

Employer-employee relationship with Board

The term "superintendent," as used in statutory scheme and contract, envisioned an employer-employee relationship between the Board of Education and the superintendent of schools; accordingly, while the meetings at which the Board developed and adopted standards by which it would evaluate the performance of the present superintendent's employment, the meetings' agenda were unquestionably "related matter" as contemplated by statute and are properly subject to closed sessions. *R. Goodwin et al. v. District of Columbia Board of Education et al.* (D.C. App. 1975, 343 A.2d 63).

§ 31-110. Repealed. Oct. 30, 1975, D.C. Law 1-26, § 2(a) (1), 22 DCR 2467.

Section, act June 20, 1906, ch. 3446, § 3 (5th par.), 34 Stat. 317, as amended Apr. 22, 1968, Pub. L. 90-292, § 3(d) 82 Stat. 102, related to the appointment and duties of a director of intermediate instruction for white schools.

§ 31-115. Repealed. Oct. 30, 1975, D.C. Law 1-26, § 2(a) (2), 22 DCR 2467.

Section, act June 20, 1906, ch. 3446, § 7 (3d par.), 34 Stat. 320, related to duties of principals of normal, high, and manual schools, subject to authority of superintendents of white and colored schools.

§ 31-118. Teachers' college—Expansion of normal schools.

CROSS REFERENCES

Ceremonial expenses, see § 31-1121.

Official expenses, see § 31-1122.

§ 31-120. Repealed. Sept. 23, 1975, D.C. Law 1-15, § 2, 22 DCR 1987.

Section, act July 2, 1940, ch. 523, 54 Stat. 729, authorized the accreditation of junior colleges operating within the District.

EFFECTIVE DATE OF REPEAL

Section 3 of Act Sept. 23, 1975, D.C. Law 1-15, provided: "This act shall be effective at the end of the thirty day period provided for Congressional review of acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SAVINGS PROVISION

Section 2 of act Sept. 23, 1975, D.C. Law 1-15, provided in part: "That any accreditation of a junior college heretofore conferred by the Board of Education and still in force shall be continued in force for five years from the date of enactment of this act, or until such junior college is otherwise accredited, whichever is earlier."

§ 31-121. Education of pages—Board authorized to employ and compensate personnel.

The Board of Education of the District of Columbia is hereby authorized to employ such personnel for the education of pages as may be required and to pay compensation for such services in accordance with such rates of compensation as the Board of Education may prescribe. (Aug. 5, 1977, Pub. L. 95-94, title I, 91 Stat. 671.)

CODIFICATION

The provisions of this section were taken from the Legislative Branch Appropriations Act for 1978 and are contained in Pub. L. 95-94, 91 Stat. 671, under the heading, "Education of Pages", which provides for the education of Congressional and Supreme Court pages.

SIMILAR PROVISIONS

Provisions similar to those in this section are contained in the following legislative appropriation acts and in a number of earlier appropriation acts:

1977—Oct. 1, 1976, Pub. L. 94-440, title III, § 301, 90 Stat. 1451.

1976—July 25, 1975, Pub. L. 94-59, title III, 89 Stat. 286.

1975—Aug. 13, 1974, Pub. L. 93-371, § 101, 88 Stat. 436.

1974—Nov. 1, 1973, Pub. L. 93-145, § 101, 87 Stat. 540.

1973—July 10, 1972, Pub. L. 92-342, § 101, 86 Stat. 441.

1972—July 9, 1971, Pub. L. 92-51, § 101, 85 Stat. 136.

1971—Aug. 18, 1970, Pub. L. 91-382, § 101, 84 Stat. 817.

1970—Dec. 12, 1969, Pub. L. 91-145, § 101, 83 Stat. 350.

1969—July 23, 1968, Pub. L. 90-417, § 101, 82 Stat. 407.

1968—July 28, 1967, Pub. L. 90-57, § 101, 81 Stat. 134.

Chapter 2.—COMPULSORY SCHOOL ATTENDANCE AND WORK PERMITS

§ 31-201. Resident children of 7 to 16 years to have instruction during school year—Duty of parent or guardian.

CROSS REFERENCE

Employment of minors and work permits, see § 36-211 et seq.

ADMINISTRATION

§ 31-211. Department of school attendance and work permits—Creation.

REFERENCES IN TEXT

The Act to regulate child labor, referred to in text, is the Act of May 29, 1928, ch. 908, 45 Stat. 998, as amended, which is classified to chapter 2 (§ 36-201 et seq.) of title 36, Labor. Section 26 of the Act, as added by sec. 2(30) of D.C. Law 1-68, June 15, 1976, provided that the Act may be cited as the "District of Columbia Employment of Minors Act".

Chapter 3.—TUITION OF NONRESIDENTS

§ 31-307. Payment of tuition by nonresidents—Board of Education to fix tuition—Deposit of payments—Exception.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-308. Board of Education to determine who is required to pay tuition—Penalties—Prosecutions to be conducted by Corporation Counsel.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-309. Definitions.

As used in sections 31-307 to 31-311—

(1) the term "child" means a person who is less than eighteen years of age,

* * * * *

(3) the term "adult" means a person who is eighteen years of age, or older;

* * * * *

(As amended July 22, 1976, D.C. Law 1-75, § 5(f), 23 DCR 1183.)

AMENDMENT

1976—Act July 22, 1976, D.C. Law 1-75, amended pars. (1) and (3) by substituting "eighteen" for "twenty-one".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 8 of act July 22, 1976, D.C. Law 1-75, set out as a note under § 21-101.

§ 31-310. Authority not affected by reorganization plan—Delegation of functions—Section 31-301a to remain in full force and effect.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 5.—VOCATIONAL REHABILITATION OF RESIDENTS OF THE DISTRICT OF COLUMBIA

Sec.

31-501 to 31-507. Repealed.

§§ 31-501 to 31-507. Repealed. July 6, 1943, 57 Stat. 379, ch. 190, § 2.

Sections, act Feb. 23, 1929, 45 Stat. 1260, ch. 303, §§ 1-7, provided for the vocational rehabilitation of disabled residents of the District of Columbia. Section 1 of act July 6, 1943 (Vocational Rehabilitation Act Amendments of 1943) extended the Vocational Rehabilitation Act (29 U.S.C. 31 et seq.) to cover the District of Columbia. The latter act was repealed and replaced by the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

Section 31-506 amended by act Apr. 17, 1937, 50 Stat. 69, ch. 110.

EFFECTIVE DATE OF REPEAL

Section 2 of act July 6, 1943, provided that: "Effective July 1, 1943, the Act entitled 'An Act to provide for the vocational rehabilitation of disabled residents of the District of Columbia, and for other purposes,' approved February 23, 1929, as amended [this chapter], is hereby repealed."

Chapter 6.—TEACHERS, SCHOOL OFFICERS, AND OTHER EMPLOYEES IN GENERAL

SABBATICAL YEAR

§ 31-635. Employees other than elementary and secondary school teachers—Salary while on leave—Deductions—Temporary employees.

Any employee whose salary is fixed by section 31-1501, other than employees in the salary class of elementary and secondary school teachers, who is granted leave of absence for educational purposes under sections 31-632 to 31-637 shall receive compensation during the period of such leave of absence, such compensation to be equal to one-half of the

salary which he would have received and paid in the same as if he were on active duty during the period of such leave of absence, such payment to be reduced by (1) the amount of contributions which the employee is required to make to the retirement fund as provided by section 31-721, (2) contributions which he may elect to make to group life insurance as provided by chapter 87 of title 5, U.S. Code, and (3) any contributions which he may elect to make to any health benefits plan as provided by chapter 89 of title 5, U.S. Code: *Provided*, That during the period of the leave of absence of any employee who is an administrative or supervisory officer, the Board of Education, on the recommendation of the superintendent of schools, may authorize the temporary assignment to his position of any teacher or officer who serves under such officer on leave of absence: *And provided further*, That the position of the teacher or officer so assigned may be filled during the period of such absence by a qualified temporary employee. (June 12, 1940, 54 Stat. 349, ch. 342, § 4; Aug. 21, 1964, 78 Stat. 584, Pub. L. 88-472, § 2; Mar. 12, 1976, D.C. Law 1-53, § 2, 22 DCR 5132.)

AMENDMENT

1976—Act Mar 12, 1976, D.C. Law 1-53, amended section by substituting “, such”, immediately preceding the words “payment to be reduced by (1) the amount”, for “or equal to the largest amount to which any employee in the salary class of elementary and secondary school teachers would be entitled if given educational leave, whichever, is less, either”.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 3 of act Mar. 12, 1976, D.C. Law 1-53, provided: “The amendment [to this section] made by this act shall become effective on the first day of the first pay period which begins on or after the sixtieth day occurring after the date this act becomes law according to the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)].”

SHORT TITLE

The first section of act Mar. 12, 1976, D.C. Law 1-53, provided: “That this act [amending this section] may be cited as the ‘School Officers Sabbatical Leave Act’.”

SICK AND EMERGENCY LEAVES

§ 31-691. Sick and emergency leaves authorized for teachers and attendance officers.

SHORT TITLE

The first section of act Feb. 19, 1976, D.C. Law 1-47, provided: “That this act [amending § 31-694] may be cited as the ‘Advanced Additional Leave Act’.”

§ 31-694. Additional leaves in emergencies.

In cases of serious disability or ailments, and when required by the exigencies of the situation, and in accordance with such rules and regulations as the Board of Education may prescribe, the superintendent of schools may advance additional leave with pay not to exceed thirty days to every probationary or permanent teacher or attendance officer who may apply for such advance leave, and the superintendent of schools may advance additional leave, with pay, not to exceed the maximum number of days which he would earn during the term of this appointment, to every temporary teacher or attendance officer who may apply for such advanced leave. (Oct. 13, 1949, 63 Stat. 843, ch. 686, § 4; Oct. 29, 1951, 65

Stat. 660, ch. 601, § 3; Dec. 18, 1967, Pub. L. 90-212, § 1(c), 81 Stat. 659; Feb. 19, 1976, D.C. Law 1-47, § 2, 22 DCR 4683.)

AMENDMENT

1976—Act Feb. 19, 1976, D.C. Law 1-47, amended section generally to authorize the superintendent to advance additional leave, with pay, to temporary teachers or attendance officers.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 3 of act Feb. 19, 1976, D.C. Law 1-47 provided: “The amendment [to this section] made by this act shall be effective on the first day of the first pay period which begins on or after the sixty days following the date this act becomes law according to the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)], or July 1, 1975, whichever is later.”

Chapter 7.—RETIREMENT OF PUBLIC SCHOOL TEACHERS

SUBCHAPTER I.—RETIREMENT BEFORE JUNE 30, 1946

§ 31-701. Deduction from pay to provide annuity—Basis of deductions—Certificate.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-707. Longevity payable from District revenues—Calculation of annual appropriations—Certification to Budget Bureau—Reserves held by Treasurer of United States—Interest.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-715. Records to be kept by Commissioner of the District of Columbia—Annual report to Congress—Annual actuarial evaluation of fund.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-716. Annual estimates—No officer or employee receiving regular salary from Government shall receive additional compensation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-716a. Estimates of annual appropriations—Actuarial valuations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-717. Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER II.—RETIREMENT AFTER JUNE 30, 1946

§ 31-721. Deductions—Interest bearing accounts—Optional deposits—Refunds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-722. Retirement and annuity fund—Income from investments—Separate accounts.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-725. Computation of annuity—Options.

* * * * *

(e) (1) Notwithstanding any other provision of this subchapter, other than this subsection, the monthly rate of annuity payable under this section shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act [42 U.S.C. 401 et seq.].

(2) Notwithstanding any other provisions of this subchapter, other than this subsection, the monthly rate of annuity payable under this section to a surviving child shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act [42 U.S.C. 401 et seq.], or three times such primary insurance amount divided by the number of surviving children entitled to an annuity, whichever is the lesser.

(3) The provisions of this subsection shall not apply to an annuitant or to a survivor who is or becomes entitled to receive from the United States, or the District of Columbia, an annuity or retired pay under any other civilian or military retirement system, benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.], a pension, veterans' compensation, or any other periodic payment of a similar nature, when the monthly rate thereof is equal to or greater than the smallest primary insurance amount, including any cost-of-living increase

added to that amount, authorized to be paid from time to time under title II of the Social Security Act.

(4) An annuity payable from the teachers' retirement and annuity fund to a former teacher, which is based on a separation occurring prior to October 20, 1969, is increased by \$240.

(5) In lieu of any increase based on an increase under paragraph (4) of this subsection, an annuity payable from the teachers' retirement and annuity fund to the surviving spouse of a teacher or annuitant, which is based on a separation occurring prior to October 20, 1969, shall be increased by \$132.

(6) The monthly rate of an annuity resulting from an increase under paragraph (4) or (5) shall be considered as the monthly rate of annuity payable under subsection (a) for purposes of computing the minimum annuity under subsection (e). (As amended Sept. 3, 1974, Pub. L. 93-407, title III, § 301, 88 Stat. 1050.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1974—Section 301 of Act Sept. 3, 1974, Pub. L. 93-407, added subsec. (e).

EFFECTIVE DATE OF 1974 AMENDMENT

Section 302 of Act Sept. 3, 1974, Pub. L. 93-407, title III, provided: "This title [amending § 31-725] shall become effective on the date of enactment. Annuity increases under this title shall apply to annuities which commence before, on, or after the date of enactment of this title, but no increase in annuity shall be paid for any period prior to the first day of the first month which begins on or after the ninetieth day after the date of enactment of this title, or the date on which the annuity commences, whichever is later."

§ 31-729. Deferred annuity—Refunds—Deposit of amount withdrawn—Annuity to survivors—Termination and restoration of annuity—Determination of dependency and disability.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-730. Beneficiaries—Order of precedence for payment of lump-sum benefits—Payment of lump-sum credit—Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-734. Records and accounts—Report to Congress—Appropriation estimates.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-735. Transfer of appropriations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-736. Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-739a. Adjustment of annuities on basis of price index—Computation—Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-739c. Construction.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-740. Waiver of annuity—Revocation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-743. Effective dates of annuities provided by sections 31-741 and 31-742—Computation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-746. Tax-sheltered annuity program.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 8.—USE OF SCHOOL BUILDINGS

Sec.

31-802. Repealed.

§ 31-802. Repealed. June 28, 1977, D.C. Law 2-12, § 6(e), 24 DCR 1442.

Section, Act Mar. 4, 1915, 38 Stat. 1190, ch. 165, § 2, authorized the Board of Education to accept volunteer services from teachers and prohibited teachers from being required to perform such services. For general authority to accept volunteer services, see §§ 1-215a et seq.

EFFECTIVE DATE OF REPEAL

See section 9 of act June 28, 1977, D.C. Law 2-12, set out as a note under § 1-215a.

§ 31-803. Inspector of buildings to control and supervise construction and repairs of school buildings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 9.—MEDICAL AND DENTAL COLLEGES

SUBCHAPTER I.—REGISTRATION

§ 31-901. Medical and dental colleges not incorporated by special act of Congress to register with Commissioner—Permit.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-902. Application for registration and permit—Regulations—Inquiry as to equipment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-903. Penalty for failure to register and obtain permit.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-904. Injunction proceedings—Duty of Commissioner—Jurisdiction of court.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER II.—FINANCIAL ASSISTANCE

§ 31-922. Authorization of grants to Commissioner—Limitations—Appropriations authorized.

(b) For the purposes of this section and section 31-926, in determining eligibility for, and the amount of, grants with respect to private nonprofit medical and dental schools, consideration shall be given to any grants made to such schools pursuant to the portion of the program under section 773 of the Public Health Service Act [42 U.S.C. 295f-3] relating to financial assistance to schools which are in serious financial straits to aid them in meeting their costs of operation.

(c) There are authorized to be appropriated such sums as may be necessary for the fiscal year ending September 30, 1977, to make grants under this section. (As amended Aug. 24, 1974, Pub. L. 93-389, § 3, 88 Stat. 763; June 4, 1976, Pub. L. 94-308, 90 Stat. 682.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1976—Act June 4, 1976, Pub. L. 94-308, amended subsec. (c) by substituting "year ending September 30, 1977" for "years ending June 30, 1975, and June 30, 1976".

1974—Act Aug. 24, 1974, Pub. L. 93-389, amended subsec. (b) by substituting "section 773 of the Public Health Service Act" for "section 772 of the Public Health Service Act (42 U.S.C. 295f-2)"; and amended subsec. (c) to extend the appropriation authorization through the fiscal year ending June 30, 1976.

§ 31-923. Application for grants—Time for filing—Contents.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 3, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-926. Commissioner to make payments to medical and dental schools—Limitations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-927. Application for payments—Time for filing—Contents.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-928. Method of making payments under § 31-926.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 10.—GALLAUDET COLLEGE

SUBCHAPTER II.—MODEL SECONDARY

SCHOOL FOR THE DEAF

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1453 of Title 42, U.S. Code.

Chapter 11.—MISCELLANEOUS

Sec.

31-1102. Repealed.

31-1103. Repealed.

31-1109. Board of Education may accept and apply donations for public schools—Accounting.

31-1110. Repealed.

31-1111. Repealed.

31-1112. Repealed.

31-1113. Repealed.

31-1119. Driver education program.

31-1120. Subsistence and transportation of handicapped children.

31-1121. Ceremonial expenses.

31-1122. Official expenses.

§ 31-1102. Repealed. July 8, 1974, Pub. L. 93-334, 88 Stat. 290.

Section, R.S., D.C., § 274, required compulsory vaccination against smallpox for public school students.

§ 31-1103. Repealed. Sept. 23, 1975, D.C. Law 1-14, § 2, 22 DCR 1983.

Section, based on ninth par. under subheading "Miscellaneous" of heading relating to "Public Schools" of sec. 1 of Act Mar. 2, 1907, ch. 2510, 34 Stat. 1141, related to compulsory service of male pupils in the high school cadets.

SHORT TITLE

The first section of act Sept. 23, 1975, D.C. Law 1-14, provided: "That this Act [repealing § 31-1103] may be cited as the 'Cadet Corps Termination Act'."

EFFECTIVE DATE OF REPEAL

Section 3 of act Sept. 23, 1975, D.C. Law 1-14, provided: "This act shall be effective at the end of the thirty day period provided for Congressional review of acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

§ 31-1109. Board of Education may accept and apply donations for public schools—Accounting.

The Board of Education is authorized to receive any donations or contributions that may be made for the benefit of the public schools of the District of Columbia, and to apply the same in such manner as in their opinion shall be best calculated to effect the object of the donors; the board of education to account for all funds so received. (R. S. D. C., § 283; June 20, 1906, 34 Stat. 316, ch. 3446, § 2; Oct. 30, 1975, D.C. Law 1-26, § 3, 22 DCR 2467.)

AMENDMENT

1975—Act Oct. 30, 1975, D.C. Law 1-26, struck out "schools for colored children by persons disposed to aid

in the elevation of the colored population in the District" and inserted in lieu thereof "public schools of the District of Columbia".

EFFECTIVE DATE OF 1975 AMENDMENT

Section 4 of act Oct. 30, 1975, D.C. Law 1-26, provided that "This act [amending § 31-1109 and repealing §§ 31-110, 31-115, 31-1110 to 31-1113] shall be effective at the end of the thirty-day period provided for Congressional review of acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act Oct. 30, 1975, D.C. Law 1-26, provided "That this act [amending § 31-1109 and repealing §§ 31-110, 31-115, 31-1110 to 31-1113] may be cited as the 'Ethnic Reference Repeal Act.'"

§ 31-1110. Repealed. Oct. 30, 1975, D.C. Law 1-26, § 2(b) (1), 22 DCR 2467.

Section, R.S.D.C. § 281, related to the education of colored children.

§ 31-1111. Repealed. Oct. 30, 1975, D.C. Law 1-26, § 2(b) (2), 22 DCR 2467.

Section, R.S.D.C. § 282, provided for the placement of children in white and colored schools.

§ 31-1112. Repealed. Oct. 30, 1975, D.C. Law 1-26, § 2(b) (3), 22 DCR 2467.

Section, R.S.D.C. § 306, provided that proportionate amount of school moneys be set apart for colored schools.

§ 31-1113. Repealed. Oct. 30, 1975, D.C. Law 1-26, § 2(b) (4), 22 DCR 2467.

Section, R.S.D.C. § 310, required that facilities be provided for educating colored children.

§ 31-1115. Bond not required for supplies issued by Department of the Army.

On and after July 1, 1943, a bond shall not be required on account of military supplies or equipment issued by the Department of the Army for military instruction and practice by the students of high schools in the District of Columbia. (July 1, 1943, ch. 184, § 1, 57 Stat. 324.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011-3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

PRIOR PROVISIONS

Similar provisions were contained in the following prior District of Columbia appropriation acts:

- 1943—June 27, 1942, 56 Stat. 433, ch. 452, § 1.
- 1942—July 1, 1941, 55 Stat. 510, ch. 271, § 1.
- 1941—June 12, 1940, 54 Stat. 317, ch. 333, § 1.
- 1940—July 15, 1939, 53 Stat. 1015, ch. 281, § 1.
- 1939—Apr. 4, 1938, 52 Stat. 168, ch. 62, § 1.
- 1938—June 29, 1937, 50 Stat. 369, ch. 403, § 1.
- 1937—June 23, 1936, 49 Stat. 1869, ch. 726, § 1.
- 1936—June 14, 1935, 49 Stat. 355, ch. 241, § 1.
- 1935—June 4, 1934, 48 Stat. 859, ch. 389, § 1.
- 1934—June 16, 1933, 48 Stat. 235, ch. 93, § 1.
- 1933—June 29, 1932, 47 Stat. 360, ch. 308, § 1.
- 1932—Feb. 23, 1931, 46 Stat. 1393, ch. 282, § 1.
- 1931—July 3, 1930, 46 Stat. 968, ch. 848, § 1.
- 1930—Feb. 25, 1929, 45 Stat. 1278, ch. 314, § 1.
- 1929—May 21, 1928, 45 Stat. 662, ch. 659, § 1.
- 1928—Mar. 2, 1927, ch. 271, § 1, 44 Stat. 1314.
- 1927—May 10, 1926, ch. 276, § 1, 44 Stat. 432.
- 1926—Mar. 3, 1925, ch. 477, § 1, 43 Stat. 1232.
- 1925—June 7, 1924, ch. 302, § 1, 43 Stat. 557.

§ 31-1118. Use of appropriated funds for transportation of students, to change racial balance in schools—Education of individuals in elementary or secondary schools outside the District—Exceptions.

NOTES TO DECISIONS

Constitutionality

Fact that provision forbidding use of funds appropriated for District of Columbia to educate any individual in an elementary or secondary school outside the District was inserted within five days after plan inviting enrollment of District children in Maryland schools was approved by respective school boards and publicly announced and that the section appeared in context of an "anti-busing" provision and that report accompanying section to legislative floor made it plain that section was aimed at eliminating plan, did not provide basis for invalidating statute, otherwise valid on its face, on ground that purpose was to impede racial segregation. *J. Bulluck et al. v. W. Washington, Commissioner etc., et al.* (1972, 468 F. 2d 1096, 152 U.S. App. D.C. 39).

Discrimination

Fact that Congress authorizes the District of Columbia to educate some handicapped and foster children outside the District does not require that Congress authorize a program of general or limited racial integration between schools of the District and schools of adjacent states. *J. Bulluck et al. v. W. Washington, Commissioner etc., et al.* (1972, 468 F. 2d 1096, 152 U.S. App. D.C. 39).

Equal protection

This section providing that, except in case of foster children already outside the District of Columbia and those handicapped children for whom educational facilities do not exist in public school systems of the District, no funds appropriated for the District may be used for cost of education, including cost of transportation, of any individual in an elementary or secondary school located outside the District does not deny equal protection to Black pupils seeking racial integration between schools of the District and schools of adjacent states; statutory classification is reasonable since Congress could rationally decide that special situation in which the two excepted classes found themselves warranted expenditure of funds necessary to provide for their education. *J. Bulluck et al. v. W. Washington, Commissioner etc., et al.* (1972, 468 F. 2d 1096, 152 U.S. App. D.C. 39).

Mootness

Suit seeking declaration of unconstitutionality of statute barring use of funds appropriated for District of Columbia to educate any individual in an elementary or secondary school located outside the district was not rendered moot by District school board's termination of program to educate elementary students in Maryland shortly after opening of present school year, while appeal from dismissal of complaint was sub judice; since statute still existed and proponents of plan continued to advocate its reinstatement, court had a concrete factual situation in which proponents had a continuing interest and court was not required to await direct violation of statute before passing on its validity. *J. Bulluck et al. v. W. Washington, Commissioner etc., et al.* (1972, 468 F. 2d 1096, 152 U.S. App. D.C. 39).

§ 31-1119. Driver education program.

The Board of Education is authorized, within the limits of appropriations therefor, to accept, on a loan basis, and to maintain and provide for insurance of motor vehicles, for use in the driver education programs of the public schools. (Oct. 26, 1973, Pub. L. 93-140, § 20, 87 Stat. 508.)

APPROPRIATIONS

See note under § 1-226a.

CROSS REFERENCE

Operators permits, see § 40-301.

§ 31-1120. Subsistence and transportation of handicapped children.

The Board of Education is authorized to provide for the furnishing of subsistence supplies and transportation for severely handicapped children attending special education schools or classes established for their benefit in the public school system of the District of Columbia. (Oct. 26, 1973, Pub. L. 93-140, § 21, 87 Stat. 508.)

APPROPRIATIONS

See note under § 1-226a.

§ 31-1121. Ceremonial expenses.

The President of the Federal City College, the President of the Washington Technical Institute, the President of the District of Columbia Teachers College, and the Superintendent of Schools are hereby authorized to utilize moneys appropriated for the purposes of this section for such expenses as they may respectively deem necessary to conduct such official ceremonial, and graduation activities as are normally associated with the programs of educational institutions. (Oct. 26, 1973, Pub. L. 93-140, § 24, 87 Stat. 508.)

APPROPRIATIONS

See note under § 1-226a.

§ 31-1122. Official expenses.

The Superintendent of Schools, the President of the Federal City College, the President of the Washington Technical Institute, and the President of the District of Columbia Teachers College are hereby authorized to provide for the expenditure, within the limits of specified annual appropriations, of funds for appropriate purposes related to their official capacity as they may respectively deem necessary. Their determination thereof shall be final and conclusive, and their certificate shall be sufficient voucher for the expenditure of appropriations made pursuant to this section. (Oct. 26, 1973, Pub. L. 93-140, § 26, 87 Stat. 509.)

CODIFICATION

The portion of the source statute (sec. 26 of act Oct. 26, 1973) that relates to the Mayor of the District of Columbia and the Chairman of the Council of the District of Columbia is classified to § 1-262a.

APPROPRIATIONS

See note under § 1-226a.

Chapter 13.—EDUCATIONAL AGENCY FOR SURPLUS PROPERTY

§ 31-1301. Educational Agency for Surplus Property established—Functions and duties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-1302. Working capital fund provided—Rules and regulations of Agency.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-1303. Termination of Agency.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 14.—PUBLIC SCHOOL FOOD SERVICES

§ 31-1401. Department of food services—Establishment—Direction and control by Board of Education—Program.

CROSS REFERENCE

License fee, exemption for school cafeterias and restaurants, see § 47-2327.

§ 31-1402. Powers of the Board.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-1404. Food services fund—Appropriation authorized—Revenues and receipts—To be permanent revolving fund—Expenditures.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-1408. Audits of accounts—Reports to Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 15.—SALARIES OF TEACHERS, SCHOOL OFFICERS AND OTHER EMPLOYEES

SUBCHAPTER I.—SALARY SCHEDULE

Sec.

31-1501a. Annual comparability study of teachers salaries—Recommendations.

SUBCHAPTER II.—CLASSIFICATION AND ASSIGNMENT OF EMPLOYEES

31-1513. Teaching certificates—Renewals—Rules and Regulations.

SUBCHAPTER V.—ACCOMPANYING LEGISLATION

31-1542a. Summer school salaries—Appropriation Chargeable.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 47-504.

SUBCHAPTER I.—SALARY SCHEDULE

§ 31-1501. Salaries of teachers, school officers and other employees—Service steps.

The following is the salary schedule for teachers, school officers, and certain other employees of the Board of Education whose positions are covered under this chapter:

TEACHERS AND SCHOOL OFFICERS SALARY SCHEDULE

[To be effective on the first day of the first pay period beginning on or after October 1, 1976, except that salary paid to class 1A shall not exceed the amount payable to level III of the Executive Schedule and that the salary paid to any other class shall not exceed the amount payable to level V of the Executive Schedule]

Salary class and group	Service step—								
	1	2	3	4	5	6	7	8	9
Class 1A	\$52,076								
Class 1B	45,781								
Class 2A	43,492								
Class 2B	41,203								
Class 3	31,347	\$32,092	\$32,836	\$33,580	\$34,324	\$35,070	\$35,814	\$36,558	\$37,303
Class 4	27,524	28,174	28,824	29,475	30,125	30,775	31,425	32,075	32,725
Class 5									
Group B-MA	26,041	26,657	27,275	27,891	28,507	29,125	29,741	30,358	30,975
Group C-MA+30	26,596	27,213	27,830	28,447	29,063	29,681	30,297	30,913	31,531
Group D-Doctors	27,135	27,753	28,369	28,985	29,602	30,219	30,836	31,452	32,069
Class 6									
Group B-MA	24,879	25,468	26,058	26,647	27,236	27,824	28,413	29,002	29,591
Level IV-Principal	24,879	25,468	26,058	26,647	27,236	27,824	28,413	29,002	29,591
Level III-Principal	24,147	24,736	25,324	25,913	26,502	27,091	27,680	28,268	28,858
Level II-Principal	23,419	24,007	24,596	25,185	25,775	26,364	26,952	27,541	28,130
Level I-Principal	22,690	23,280	23,869	24,458	25,046	25,635	26,224	26,813	27,403
Group C-MA+30	25,435	26,024	26,613	27,202	27,790	28,380	28,969	29,557	30,147
Level IV-Principal	25,435	26,024	26,613	27,202	27,790	28,380	28,969	29,557	30,147
Level III-Principal	24,702	25,292	25,879	26,469	27,058	27,647	28,236	28,824	29,413
Level II-Principal	23,975	24,563	25,152	25,741	26,330	26,919	27,507	28,097	28,686
Level I-Principal	23,024	23,613	24,202	24,791	25,379	25,968	26,558	27,147	27,736
Group D-Doctors	25,975	26,563	27,152	27,741	28,330	28,919	29,508	30,097	30,686
Level IV-Principal	25,975	26,563	27,152	27,741	28,330	28,919	29,508	30,097	30,686
Level III-Principal	25,241	25,830	26,419	27,007	27,596	28,186	28,775	29,364	29,952
Level II-Principal	24,513	25,102	25,691	26,280	26,869	27,458	28,046	28,635	29,225
Level I-Principal	23,785	24,374	24,963	25,552	26,141	26,730	27,319	27,908	28,497
Class 7									
Group B-MA	22,891	23,435	23,980	24,524	25,069	25,613	26,157	26,702	27,246
Group C-MA+30	23,446	23,990	24,535	25,080	25,625	26,169	26,713	27,258	27,802
Group D-Doctors	23,985	24,530	25,074	25,618	26,163	26,708	27,253	27,797	28,341
Class 8									
Group B-MA	21,257	21,785	22,313	22,840	23,369	23,896	24,424	24,952	25,480
Group C-MA+30	21,813	22,340	22,869	23,396	23,924	24,452	24,980	25,507	26,036
Group D-Doctors	22,352	22,879	23,407	23,935	24,463	24,990	25,519	26,046	26,574
Class 9									
Group B-MA	20,557	21,096	21,635	22,174	22,712	23,252	23,791	24,330	24,869
Group C-MA+30	21,113	21,630	22,146	22,663	23,180	23,697	24,213	24,729	25,246
Group D-Doctors	21,652	22,168	22,685	23,202	23,719	24,236	24,752	25,268	25,785
Class 10									
Group B-MA	19,896	20,396	20,896	21,396	21,896	22,396	22,896	23,396	23,896
Group C-MA+30	20,451	20,952	21,451	21,951	22,451	22,951	23,452	23,952	24,452
Group D-Doctors	20,990	21,490	21,990	22,490	22,990	23,490	23,990	24,490	24,990
Class 11									
Group B-MA	19,246	19,729	20,212	20,697	21,180	21,663	22,146	22,630	23,113
Group C-MA+30	19,801	20,285	20,768	21,252	21,735	22,219	22,702	23,185	23,669
Group D-Doctors	20,340	20,823	21,308	21,791	22,274	22,758	23,241	23,724	24,207
Class 12									
Group B-MA	18,585	19,046	19,507	19,968	20,429	20,891	21,352	21,813	22,274
Group C-MA+30	19,141	19,601	20,062	20,524	20,985	21,446	21,907	22,369	22,830
Group D-Doctors	19,680	20,141	20,601	21,062	21,524	21,985	22,446	22,907	23,369
Class 13									
Group B-MA	17,079	17,635	18,190	18,746	19,301	19,857	20,412	20,968	21,524
Group C-MA+30	17,635	18,190	18,746	19,301	19,857	20,412	20,968	21,524	22,079
Group D-Doctors	18,173	18,729	19,285	19,840	20,396	20,951	21,507	22,063	22,618

Salary class and group	Service step—													
	1	2	3	4	5	6	7	8	9	10	11	12	13	Longevity step Y
Class 14														
Group A-BA	\$13,057	\$13,634	\$14,212	\$14,790	\$15,368	\$15,946	\$16,523	\$17,101	\$17,679	\$18,256	\$18,835	\$19,412	\$19,990	-----
Group B-MA	14,163	14,740	15,318	15,895	16,474	17,052	17,629	18,207	18,784	19,363	19,941	20,518	21,096	-----
Group C-MA+30	14,718	15,296	15,873	16,451	17,030	17,607	18,185	18,762	19,340	19,919	20,496	21,074	21,652	-----
Group D-Doctors	15,257	15,835	16,412	16,990	17,568	18,146	18,724	19,301	19,879	20,458	21,035	21,613	22,190	-----
Class 15														
Group A-BA	11,045	11,484	11,923	12,363	12,801	13,240	13,796	14,351	14,907	15,462	16,018	16,574	17,129	\$18,463
Group A-I-BA+15	11,595	12,034	12,474	12,912	13,351	13,790	14,346	14,902	15,457	16,013	16,568	17,124	17,680	19,569
Group B-BA+30, MA	12,151	12,706	13,262	13,818	14,373	14,929	15,485	16,041	16,596	17,152	17,708	18,264	18,820	21,546
Group C-MA+30	12,706	13,262	13,818	14,373	14,929	15,485	16,041	16,596	17,152	17,708	18,264	18,820	19,376	22,113
Group D-MA+60, Doctors	13,262	13,818	14,373	14,929	15,485	16,041	16,596	17,152	17,708	18,264	18,820	19,376	19,932	22,835

(As amended Sept. 3, 1974, Pub. L. 93-407, title II, § 202(1), (2), 88 Stat. 1042, 1045; Jan. 3, 1975, Pub. L. 93-635, §§ 4, 5, 88 Stat. 2175; Mar. 29, 1977, D.C. Law 1-90, § 2(1), (2), 23 DCR 9532b; May 18, 1977, D.C. Law 2-1, § 2(a), 23 DCR 9698.)

AMENDMENTS

1977—Act May 18, 1977, D.C. Law 2-1, amended the salary schedule generally.
Section 2(1) of act Mar. 29, 1977, D.C. Law 1-90, amended class 15 of the salary schedule by substituting "Group B, bachelor's degree plus 30 or master's degree" for "Group B, master's degree".

Section 2(2) of such act amended the salary schedule generally, Provided, however, that salary paid to class 1A shall not exceed the amount payable to level III of the Executive Schedule and that salary paid to any other class shall not exceed the amount payable to level V of the Executive Schedule.

1975—Section 4 of Act Jan. 3, 1975, Pub. L. 93-635, amended the salary schedule, effective on the first day of the first pay period beginning on or after September 1, 1974, by—

(1) striking out "\$29,900" in service step 5 of class 3 and inserting in lieu thereof "\$29,990";

(2) striking out "13,620" in service step 9 of Group A-1 of class 15 and inserting in lieu thereof "13,520";

(3) striking out "Group B, master's degree" in class 15 and inserting in lieu thereof "Group B, bachelor's degree + 30 or master's degree";

(4) striking out "14,780" in service step 8 of Group C of class 15 and inserting in lieu thereof "14,730"; and

(5) striking out "17,180" in service step 12 of Group C of class 15 and inserting in lieu thereof "17,130".

Section 5 of such Act, effective on and after September 3, 1974, amended the salary schedule that became effective on the first day of first pay period beginning on or after January 1, 1975, as follows: (1) by striking out "10,410" in service step 6 of Group A-1 of class 15 and inserting in lieu thereof "12,410"; and (2) by striking out "20,559" in Longevity step Y of Group D of class 15 and inserting in lieu thereof "20,550".

1974—Section 202(1) of Act Sept. 3, 1974, Pub. L. 93-407, amended the salary schedule generally, effective on the first day of the first pay period beginning after September 1, 1974, *Provided, however*, That salary paid to class 1A shall not exceed the amount payable to level III of the Executive Schedule and that the salary payable to any other class shall not exceed the amount payable to level V of the Executive Schedule.

Section 202(2) of such Act amended the salary schedule generally, effective on the first day of the first pay period beginning on or after January 1, 1975, except that salary paid to class 1A shall not exceed the amount payable to level III of the Executive Schedule and that the salary paid to any other class shall not exceed the amount payable to level V of the Executive Schedule.

EMERGENCY ACT AMENDMENTS

1977—For temporary adjustment of the rates of pay in the salary schedule, see secs. 201 and 301-303 of the District of Columbia Police, Firemen and Teachers' Salary Act Amendments Emergency Act of 1977 (D.C. Act 2-90, Oct. 13, 1977, 24 DCR 3198) and the District of Columbia Police, Firefighters and Teachers' Salary Act Amendments Second Emergency Act of 1977 (D.C. Act 2-119, Dec. 15, 1977, 24 DCR 5417).

For temporary amendment of section, see secs. 2(1) and 3 of the Emergency Additional Teachers' Salary Act Amendments of 1976 (D.C. Act 1-199, Jan. 11, 1977, 23 DCR 5026, 5031).

1976—For temporary amendment of section, see secs. 2(1) and 3 of the Emergency District of Columbia Teachers' Salary Amendments of 1976 (D.C. Act 1-110, Apr. 27, 1976, 22 DCR 6177, 6186) and the Second Emergency District of Columbia Teachers' Salary Act Amendments of 1976 (D.C. Act 1-138, July 2, 1976, 23 DCR 1072, 1076) and secs. 2(1), (2) and 3 of the Third Emergency District of Columbia Teachers' Salary Act Amendments of 1976 (D.C. Act 1-156, Oct. 8, 1976, 23 DCR 2575, 2580) and the Fourth Emergency District of Columbia Teachers' Salary Act Amendments of 1976 (D.C. Act 1-183, Dec. 28, 1976, 23 DCR 4921, 4926).

EFFECTIVE DATES OF 1977 AMENDMENTS

Section 2(a) of act May 18, 1977, D.C. Law 2-1, provided in part that the amendment of the salary schedule is effective on the first day of the first pay period beginning on or after October 1, 1976.

Section 5 of such act provided: "This act [amending §§ 31-1501 and 31-1542 and enacting provisions set out as notes under § 31-1501] shall take effect as provided for acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147 (c)]."

Section 2(1) of act Mar. 29, 1977, D.C. Law 1-90, provided in part that the amendment of class 15 of the salary schedule is effective on the first day of the first pay period beginning on or after January 1, 1975.

Section 2(2) of such act provided in part that the amendment of the salary schedule is effective on the first day of the first pay period beginning on or after January 1, 1976.

Section 4 of such act provided: "This act [amending §§ 31-1501, 31-1511, 31-1535, and 31-1542; and enacting provisions set out as notes under § 31-1501] shall take effect at the end of the period provided for Congressional review of acts of the Council of the District of Columbia in subsection (c) of section 602 of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLES

The first section of act May 18, 1977, D.C. Law 2-1, provided "That this act [amending §§ 31-1501 and 31-1542 and enacting provisions set out as notes under § 31-1501] may be cited as the 'Additional Teachers' Salary Act Amendments of 1976'."

The first section of act Mar. 29, 1977, D.C. Law 1-90, provided "That this act [amending §§ 31-1501, 31-1511, 31-1535, and 31-1542; and enacting provisions set out as notes under § 31-1501] may be cited as the 'District of Columbia Teachers' Salary Act Amendments of 1976'."

Section 201 of Act Sept. 3, 1974, Pub. L. 93-407, title II, provided: "This title [amending §§ 31-1501 and 31-1511; and enacting §§ 31-1501a, 31-1513, and provisions set out as notes under § 31-1501] may be cited as the 'Teachers' Salary Act Amendments of 1974'."

MAXIMUM PAY LIMITATION OF D.C. LAW 2-1

Section 3 of act May 18, 1977, D.C. Law 2-1, provided: "Notwithstanding the salary increases provided by section 2 of this act, the annual salary, payable to a class 1A employee shall not exceed the annual rate of basic pay for employees at level III of the Executive Schedule in subchapter II of chapter 53 of Title 5, United States Code, and the annual salary payable to any other class of public school employee shall not exceed the annual rate of basic pay for employees at level V of the Executive Schedule in subchapter II of chapter 53 of Title 5, United States Code."

GROUP INSURANCE PROVISIONS OF ACT MAR. 29, 1977, D.C. LAW 1-90

Section 3(c) of act Mar. 29, 1977, D.C. Law 1-90, provided: "For the purpose of determining the amount of insurance for which an individual is eligible under the provisions of chapter 87 of title 5, United States Code (relating to government employees group life insurance), all changes in rates of compensation or salary which result from enactment of this act shall be held and considered to be effective as of the date of enactment of this act."

RETROACTIVE COMPENSATION UNDER ACT MAY 18, 1977, D.C. LAW 2-1

Section 4 of act May 18, 1977, D.C. Law 2-1, provided: "(a) Retroactive salary shall be paid by reason of the amendments made by this act only in the case of an individual in the service of the Board of Education of the District of Columbia (including service in the armed forces of the United States) on the date of enactment of this act, except that such retroactive salary shall be paid—

"(1) to an employee covered in this act who retired during the period beginning on the first day of the first pay period which began on or after October 1, 1976, and ending on the date of enactment of this act, for services rendered during such period; and

"(2) in accordance with the provisions of subchapter VIII of chapter 55 of title 5, United States Code (relating to settlement of accounts of deceased employees) for services rendered during the period beginning on the first pay period which began on or after October 1, 1976, and ending on the date of enactment of this act by an employee who dies during that period.

"(b) For the purposes of this section, service in the armed forces of the United States, in the case of an individual relieved from training and service in the armed

forces of the United States or discharged from hospitalization following such training and service, includes the period provided by law for the mandatory restoration of the individual to a position in or under the government of the District of Columbia."

RETROACTIVE COMPENSATION UNDER ACT MAR. 29, 1977, D.C. LAW 1-90

Section 3(a), (b) of act Mar. 29, 1977, D.C. Law 1-90, provided:

"(a) Retroactive compensation or salary shall be paid by reason of the amendments made by this act only in the case of an individual in the service of the Board of Education of the District of Columbia or of the United States (including service in the Armed Forces of the United States) on the date of enactment of this act, except that such retroactive compensation or salary shall be paid—

"(1) to any employee covered in this act who retired during the period beginning on the first day of the first pay period which began on or after January 1, 1976, and ending on the date of enactment of this act, for services rendered during such period; and

"(2) in accordance with the provisions of subchapter VIII of chapter 55 of title 5, United States Code (relating to settlement of accounts of deceased employees), for services rendered during the period beginning on the first pay period which began on or after January 1, 1976, and ending on the date of enactment of this act, by any such employee who dies during such period.

"(b) For purposes of this section, service in the Armed Forces of the United States in the case of an individual relieved from training, and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the municipal government of the District of Columbia."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-609, 31-632 note, 31-634, 31-635, 31-691a note, 31-733, 31-746, 31-1511, 31-1512, 31-1513, 31-1521, 31-1522, 31-1531 to 31-1536, 31-1542 to 31-1548.

NOTES TO DECISIONS

Laches

Complaint of temporary District of Columbia school teacher was barred by laches, where teacher first learned of potential cause of action on April 15, 1967, when she was notified of her salary placement and where she received definitive ruling thereon from chief examiner on May 1, 1967, affirming her salary placement, but teacher failed to institute suit for five years and made no further attempt to pursue her case administratively for more than two years. *C. L. Clark v. H. J. Scott, Superintendent of Schools, et al.* (D.C. App. 1974, 329 A. 2d 442).

Laches as bar to complaint arising out of District of Columbia teacher salary grade dispute was not precluded on theory that school officials had not been prejudiced, since back pay and retirement claim of nearly \$9,000 would no doubt require elimination of some educational services offered in school system's presently committed budget. *Id.*

§31-1501a. Annual comparability study of teachers salaries—Recommendations.

Beginning with the calendar year 1975, the District of Columbia Board of Education shall, by March 1 of each year, submit to the Mayor of the District of Columbia the—

(a) percentage rate of the cost-of-living change since the effective date of the last increase of the compensation schedule for educational personnel in the District of Columbia; and

(b) results of a study comparing compensation of teachers in the District of Columbia with (1) teachers in cities of comparable size, and (2)

teachers within other jurisdictions of the Washington metropolitan area.

The Mayor shall submit the information submitted to him by the Board under this section to the Council of the District of Columbia along with his recommendations with respect to compensation (and other related matters) of educational personnel of the Board. (Sept. 3, 1974, Pub. L. 93-407, title II, § 203, 88 Stat. 1049.)

CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Salary Act of 1955, as amended, which comprises this chapter.

SUBCHAPTER II.—CLASSIFICATION AND ASSIGNMENT OF EMPLOYEES

§31-1511. Board of Education to establish eligibility requirements—Methods of appointment, promotion and salary classification—Definitions.

(a) The Board of Education on written recommendation of the Superintendent of Schools is authorized to establish the eligibility requirements and prescribe methods of appointment and promotion for teachers, school officers, and other employees. The Board of Education is authorized and directed on written recommendation of the Superintendent of Schools, to classify and assign all teachers, school officers, and other employees to the salary classes and groups in section 31-1501. Teachers, school officers, and other employees on probationary or permanent status shall not be required to take any examinations, either mental or physical, to be continued in the positions in which they are employed on December 31, 1962, or to which they may be transferred and assigned under the provisions of section 31-1521 and section 31-1522. No teacher, school officer, or other employee shall be appointed or promoted to any position covered by section 31-1501 on probationary or permanent status unless he possesses a master's degree, except that (1) a person possessing a bachelor's degree may be appointed on probationary or permanent status as a teacher in the elementary or secondary schools or as a coordinator of practical nursing; (2) a person possessing a bachelor's degree may be promoted to the position of census supervisor or coordinator of practical nursing; (3) a person not possessing a bachelor's degree may be appointed on probationary or permanent status as a—

(A) shop teacher in the vocational education program,

(B) teacher of military science and tactics, or

(C) teacher of driver training,

if he submits acceptable evidence of equivalent training and experience in accordance with the rules of the Board; and (4) a person not possessing a bachelor's degree may be appointed on a probationary or permanent status as a census supervisor, or promoted to that position, if he submits acceptable evidence of equivalent training and experience in accordance with the rules of the Board.

* * * *

(c) When used in this chapter—

* * * *

(2) The terms "plus fifteen credit hours" and "plus thirty credit hours" means the equivalent of

not less than fifteen or thirty graduate semester hours beyond the bachelor's degree or thirty graduate semester hours beyond the master's degree as the case may be in academic, vocational, or professional courses, representing a definite educational program satisfactory to the Board, except that in the case of a shop teacher in the vocational education program the fifteen or thirty semester hours need not be graduate semester hours. Graduate credit hours beyond thirty which were earned prior to obtaining a master's degree may be applied in computing such thirty credit hours. The term "plus sixty credit hours" means the equivalent of not less than sixty graduate semester hours in academic, vocational, or professional courses beyond a master's degree, representing a definite educational program satisfactory to the Board, except that in the case of a shop teacher in the vocational education program the sixty semester hours need not be graduate semester hours. Graduate credit hours beyond thirty which were earned prior to obtaining a master's degree may be applied in computing such sixty credit hours.

(As amended Sept. 3, 1974, Pub. L. 93-407, title II, § 205(a), 88 Stat. 1050; Mar. 29, 1977, D.C. Law 1-90, § 2(3), 23 DCR 9532b.)

AMENDMENTS

1977—Act Mar. 29, 1977, D.C. Law 1-90, amended subsec. (c) (2) by substituting "fifteen or thirty graduate" for "fifteen graduate" in the first sentence.

1974—Section 205(a) of Act Sept. 3, 1974, Pub. L. 93-407, amended subsec. (a) by striking out "(D) attendance officer, or (E) child labor inspector," and inserting "or" after "tactics," in paragraph (B).

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of subsec. (c) (2), see sec. 3 of the Third Emergency District of Columbia Teachers' Salary Act Amendments of 1976 (D.C. Act 1-156, Oct. 8, 1976, 23 DCR 2579) and the Fourth Emergency District of Columbia Teachers' Salary Act Amendments of 1976 (D.C. Act 1-183, Dec. 28, 1976, 23 DCR 4925).

EFFECTIVE DATE OF 1977 AMENDMENT

See sec. 4 of act Mar. 29, 1977, D.C. Law 1-90, set out as a note under § 31-1501.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 205(c) of Act Sept. 3, 1974, Pub. L. 93-407, provided: "The amendment made by subsection (a) shall be effective on and after the date of enactment of this Act."

APPOINTMENT AND PROMOTION REQUIREMENTS OF ATTENDANCE OFFICERS AND CHILD LABOR INSPECTORS

Section 205(b) of Act Sept. 3, 1974, Pub. L. 93-407, provided: "The employees in the category repealed by the amendment made by subsection (a) shall meet the general requirements of such section 2(a) [section 31-1511 (a)]."

§ 31-1513. Teaching certificates—Renewals—Rules and regulations.

(a) Each person receiving basic compensation under class 15 of the salary schedule in section 31-1501 shall be issued a five-year teaching certificate. Renewals shall be dependent upon application and six or more hours of appropriate credit earned during the preceding five-year period. The District of Columbia Board of Education shall establish appro-

priate rules, regulations, and requirements to carry out the purposes of this section.

(b) For the purposes of this section, class 15, group B, shall include persons possessing a master's degree or thirty appropriate semester hours beyond the bachelor's degree.

(c) For purposes of implementing this section the Board shall determine the appropriateness of the course work obtained in lieu of the degree. (Sept. 3, 1974, Pub. L. 93-407, title II, § 204, 88 Stat. 1049.)

CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Salary Act of 1955, as amended, which comprises this chapter.

SUBCHAPTER III.—METHOD OF ASSIGNMENT OF EMPLOYEES TO SALARY SCHEDULES

§ 31-1522. Types of positions to which chapter applies—Authority of Board to determine which positions meet established criteria and other matters—Teacher-aide positions—Initial assignment of school principal positions and periodic evaluation of duties and responsibilities.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER IV.—METHOD OF ADVANCEMENT AND PROMOTION OF EMPLOYEES

§ 31-1535. Effective date of promotions to groups A-1, B, C, and D—Assignment to numerical service steps—Retroactive correction of administrative error.

(a) On and after the effective date of the District of Columbia Teachers' Salary Act Amendments of 1970, each promotion to group A-1, group B, group C, or group D within a salary class shall become effective—

(1) on the first day of the twelfth month prior to the date of approval of promotion by the Board, or

(2) on the effective date of the master's degree or doctor's degree or on the completion of thirty or sixty credit hours beyond the master's degree or on the completion of fifteen or thirty credit hours beyond the bachelor's degree, as the case may be, whichever is later.

(As amended Mar. 29, 1977, D.C. Law 1-90, § 2(4), 23 DCR 9532b.)

AMENDMENT

1977—Act Mar. 29, 1977, D.C. Law 1-90, amended subsec. (a) (2) by substituting "fifteen or thirty credit hours" for "fifteen credit hours".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of subsec. (a) (2), see sec. 4 of the Third Emergency District of Columbia Teachers' Salary Act Amendments of 1976 (D.C. Act 1-156, Oct. 8, 1976, 23 DCR 2579) and the Fourth Emergency District of Columbia Teachers' Salary Act Amendments of 1976 (D.C. Act 1-183, Dec. 28, 1976, 23 DCR 4925).

EFFECTIVE DATE OF 1977 AMENDMENT

See sec. 4 of act Mar. 29, 1977, D.C. Law 1-90, set out as a note under § 31-1501.

SUBCHAPTER V.—ACCOMPANYING
LEGISLATION

§ 31-1542. Evening, summer, and Americanization
schools—Salaries—Extra-duty pay.

(a) The Board is authorized to conduct as part of its public school system the following: summer school programs, extended school year programs, adult education programs, and Americanization schools. The pay for teachers, officers, and other education employees in the summer school programs, adult education school programs, and veterans' summer high school centers shall be as follows:

SUMMER SCHOOL TEACHERS AND ADULT EDUCATION
SCHOOLS SALARY SCHEDULE

[To be effective on the first day of the first pay period beginning on or after October 1, 1976]

Classification	Per period		
	Step 1	Step 2	Step 3
Summer school (regular):			
Teacher, elementary and secondary schools:			
Counselor, elementary and secondary schools: Librarian, elementary and secondary schools: School social worker, speech correctionist, School psychologist...	\$9.76	\$11.08	\$12.48
Psychiatric social worker.....	11.22	12.74	14.35
Veterans' summer school centers: Teacher.....	9.76	11.08	12.48
Adult education schools:			
Teacher.....	10.74	12.19	13.73
Assistant principal.....	15.04	17.07	19.22
Principal.....	16.65	18.89	21.28

* * * * *

(As amended Sept. 3, 1974, Pub. L. 93-407, title II, § 202(3), (4), 88 Stat. 1049; Jan. 3, 1975, Pub. L. 93-635, § 11, 88 Stat. 2177; Mar. 29, 1977, D.C. Law 1-90, § 2(5), 23 DCR 9523b; May 18, 1977, D.C. Law 2-1, § 2(b), 23 DCR 9698.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1977—Act May 18, 1977, D.C. Law 2-1, amended the schedule of pay rates in subsec. (a) generally.

Act Mar. 29, 1977, D.C. Law 1-90, amended the schedule of pay rates in subsec. (a) generally.

1975—Section 11 of Act Jan. 3, 1975, Pub. L. 93-635, effective on and after September 3, 1974, amended the salary schedule that became effective on the first day of the first pay period beginning on or after January 1, 1975, by striking out "9.61" in step 1 for Teachers in Adult Education Schools and inserting in lieu thereof "9.67".

1974—Section 202(3) of Act Sept. 3, 1974, Pub. L. 93-407, amended the schedule of pay rates in subsec. (a) generally, effective the first day of the first pay period beginning on or after September 1, 1974.

Section 202(4) of such Act amended the schedule of pay rates in subsec. (a) generally, effective the first day of the first pay period beginning on or after January 1, 1975.

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of section, see secs. 2(3) and 3 of the Emergency Additional Teachers' Salary Act Amendments of 1976 (D.C. Act 1-199, Jan. 11, 1977, 23 DCR 5030, 5031).

1976—For temporary amendment of section, see secs. 2(2) and 3 of the Emergency District of Columbia Teachers' Salary Amendments of 1976 (D.C. Act 1-110, Apr. 27, 1976, 22 DCR 6180, 6186) and the Second Emergency District of Columbia Teachers' Salary Act Amendments of

1976 (D.C. Act 1-138, July 2, 1976, 23 DCR 1075, 1076) and secs. 2(5) and 3 of the Third Emergency District of Columbia Teachers' Salary Act Amendments of 1976 (D.C. Act 1-156, Oct. 8, 1976, 23 DCR 2579, 2580) and the Fourth Emergency District of Columbia Teachers' Salary Act Amendments of 1976 (D.C. Act 1-183, Dec. 28, 1976, 23 DCR 4925, 4926).

EFFECTIVE DATES OF 1977 AMENDMENTS

Section 2(b) of act May 18, 1977, D.C. Law 2-1, provided in part that the amendment of the schedule of pay rates is effective on the first day of the first pay period beginning on or after October 1, 1976.

For the effective date of act May 18, 1977, D.C. Law 2-1, see sec. 5 of such act set out as a note under § 31-1501.

Section 2(5) of act Mar. 29, 1977, D.C. Law 1-90, provided in part that the amendment of the schedule of pay rates is effective on the first day of the first pay period beginning on or after January 1, 1976.

For effective date of act Mar. 29, 1977, D.C. Law 1-90, see sec. 4 of such act set out as a note under § 31-1501.

§ 31-1542a. Summer school salaries—Appropriation
chargeable.

Compensation payable to personnel employed in the summer school program of the public school system of the District of Columbia is hereby authorized to be charged to the appropriation for the fiscal year in which the pay periods end. (Oct. 26, 1973, Pub. L. 93-140, § 22, 87 Stat. 508.)

CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Salary Act of 1955, as amended, which comprises this chapter.

APPROPRIATIONS

See note under § 1-226a.

§ 31-1543. Salary payable in semimonthly install-
ments—Employee election.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 16.—PUBLIC HIGHER EDUCATIONAL
INSTITUTIONS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 31-1717.

SUBCHAPTER I.—FEDERAL CITY COLLEGE

§ 31-1601. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-1602. Board of Higher Education—Composition—
Appointment of members—Chairman—Tenure—
Vacancies — Compensation — Removal — Immu-
nity from liability.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Abolishment of Board of Higher Education and transfer of functions, see § 31-1718.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-1601, 31-1702.

NOTES TO DECISIONS

Board members—Personal liability

Refusal of defendant who had recently assumed presidency of Federal City College to reopen case of dismissed college employee with view towards reinstatement did not render president individually liable to dismissed employee, in absence of president playing any part in employee's termination. *H. Pinkney v. District of Columbia et al.* (1977, 439 F. Supp. 519).

§ 31-1603. Powers and duties of Board—Development of plans, establishment of College, and administration, generally.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Abolishment of Board of Higher Education and transfer of functions, see § 31-1718.

Ceremonial expenses, see § 31-1121.

Official expenses, see § 31-1122.

NOTES TO DECISIONS

Employees—Constitutional rights

Dismissed employee of Federal City College did not have reasonable expectation of continued employment amounting to property protected by due process clause, even though his employment agreement had been renewed twice before, where no statutory provision guaranteed indefinite future employment to employees such as plaintiff working under contract with College, no administrative regulation touched on whether college employee could expect to remain employed for indefinite term, and there was no informal institutional policy creating system of implied tenure for college employees. *H. Pinkney v. District of Columbia et al.* (1977, 439 F. Supp. 519).

Although public employee had choice of either contesting his proposed removal by disclosing information about pending criminal charges, thereby exposing himself to potential self-incrimination, or remaining silent and thereby sacrificing his right to hearing and, through that, chance of retaining his job, the choice did not give rise to constitutional proportions under the Fifth Amendment and Constitution does not prevent government from discharging employee for refusing to divulge information sought. *Id.*

In suit against Board of Higher Education for equitable relief and actual, compensatory and punitive damages on theory that Board breached plaintiff's one-year employment contract to serve as college president's assistant for community affairs by withholding paychecks, by reassigning him to another position, by willfully and maliciously denying him a step increase in salary and failing to renew contract, findings that no adverse actions had occurred and thus that Board's resolution did not require that there be an adverse action proceeding are supported by substantial evidence and are not clearly erroneous. *S. L. Roberson, Jr. v. District of Columbia Board of Higher Education et al.* (D.C. App. 1976, 359 A.2d 28).

—Dismissal

Under provision of employment agreement with Board of Higher Education providing for dismissal for "misconduct in office," termination would be justified only on finding of wrongdoing and not simply on accusation made against employee of wrongdoing; thus discharge of employee on basis of indictment alone breached contract. *H. Pinkney v. District of Columbia et al.* (1977, 439 F. Supp. 519).

Dismissal of employee of Federal City College did not violate Board of Education regulations requiring that no-

tice of termination contain statement of reasons and be specific and in detail, where notice sent to plaintiff specifically stated that indictment against him provided basis for termination, enumerated offenses with which plaintiff was charged and enclosed copy of indictment itself. *Id.*

Where delay in noting appeal to Board of Higher Education was kept to minimum by dismissed employee of Federal City College and was traceable to assertion of Fifth Amendment rights, uncertainty created by Board resolution giving employees right to appeal decisions removing them but not placing limitations on time within which appeals had to be taken would not be construed so as to deny employee chance to present his side of case on appeal, especially where subject to be aired was matter of enduring importance to employee. *Id.*

While, under employment contract, indictment against employee of Federal City College did not constitute ground for removal, once the contract expired, college was free to decide not to reappoint employee if it so chose; thus employee was not entitled to reinstatement and lost wages inasmuch as that would assume, wrongly, that if college had not terminated agreement prematurely, it automatically would have chosen to renew it. *Id.*

—Employment contracts

Board of Higher Education's denial of step increase in salary to plaintiff and failure to renew his one-year employment contract to serve as college president's assistant for community affairs did not violate plaintiff's due process or other constitutional rights. *S. L. Roberson, Jr. v. District of Columbia Board of Higher Education et al.* (D.C. App. 1976, 359 A.2d 28).

Personnel records—Defamation

Dismissed employee of Federal City College is not entitled to recover from officials on theory that they wrongfully contributed to threatened publication of employee's dismissal to prospective employers, where there was no indication that college did anything more than retain allegedly defamatory statements in its files. *H. Pinkney v. District of Columbia et al.* (1977, 439 F. Supp. 519).

Review

Although employee of Federal City College was wrongfully denied right to posttermination hearing and that denial deprived him of opportunity to clear his name and, through that, the chance of convincing appropriate authorities that he should be retained in College's employ despite indictment against him, nature of deprivation required remanding case back to Board of Higher Education since it, not court, is body charged with responsibility of making personnel decisions according to best interests of College, but court could guarantee that process for rendering decision is fair. *H. Pinkney v. District of Columbia et al.* (1977, 439 F. Supp. 519).

Dismissed Federal City College employee was not precluded from maintaining action challenging dismissal on theory that he had failed to timely pursue his administrative remedies by waiting until after criminal charges against him had been dismissed before appealing his removal to the College and Board of Higher Education, where from very outset District authorities were alerted to circumstances behind employee's dispute with city, and employee, after indictment was dismissed, promptly pursued his administrative remedies and then furnished formal notice of his intention to take case to court. *Id.*

§ 31-1604. Space and facilities.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-1605. Fiscal accountability.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER II.—WASHINGTON TECHNICAL INSTITUTE

§ 31-1621. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-1622. Board of Vocational Education—Composition—Appointment of members—Chairman—Tenure — Vacancies — Compensation — Removal — Immunity from liability.

CROSS REFERENCE

Abolishment of Vocational Board and transfer of functions, see § 31-1718.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-1621, 31-1702.

§ 31-1623. Powers and duties of Board—Development of plans, establishment of Institute, and administration, generally.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Abolishment of Vocational Board and transfer of functions, see § 31-1718.

Ceremonial expenses, see § 31-1121.

Official expenses, see § 31-1122.

NOTES TO DECISIONS

Jurisdiction of court

Complaint in which nontenured teacher at Washington Technical Institute of higher learning asserted that nonrenewal of her teaching contract without statement of reasons or opportunity for pretermination hearing violated her right of procedural due process was sufficient to invoke jurisdiction of federal district court under statute endowing district court with jurisdiction of civil actions arising under the Constitution, even though resolution of the due process issue required examination of legitimacy of her assertion of an expectancy of continued employment and that matter appeared to turn on questions of local law. *L. T. M. Cardinale v. Washington Technical Institute et al.* (1974, 500 F. 2d 791, 163 U.S. App. D.C. 123).

§ 31-1624. Space and facilities.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-1625. Fiscal accountability.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 17.—PUBLIC POSTSECONDARY EDUCATION REORGANIZATION

SUBCHAPTER I.—GENERAL PROVISIONS

Sec.

31-1701. Declaration of purpose.

31-1702. Definitions.

SUBCHAPTER II.—UNIVERSITY OF THE DISTRICT OF COLUMBIA

31-1711. Establishment of Board of Trustees and University.

31-1712. Board of Trustees Nominating Committee.

31-1713. Suspension, removal, and termination of Trustees.

31-1714. Compensation of Trustees.

31-1715. Consolidation of existing public institutions of postsecondary education.

31-1716. Duties of Trustees.

31-1717. Personnel system.

31-1718. Transfer of functions, personnel, property, assets, and liabilities.

31-1719. Establishment as land-grant university.

31-1720. Same; State consent.

SUBCHAPTER III.—AUTHORIZATIONS

31-1721. Appropriations.

SUBCHAPTER IV.—MISCELLANEOUS

31-1731. Meetings of Trustees.

31-1732. Advisory committees.

31-1733. Gifts and contributions.

31-1734. Annual report.

31-1735. Authority of Board of Education.

31-1736. Authority of Council of the District of Columbia.

SUBCHAPTER I.—GENERAL PROVISIONS

§ 31-1701. Declaration of purpose.

It is the intent of Congress to authorize a public land-grant university through the reorganization of the existing local institutions of public postsecondary education in the District of Columbia. It is the clear and specific intent of the Congress that vocational and technological education, as well as liberal arts, sciences, teacher education, and graduate and postgraduate studies, within the University be given at all times its proper priority in terms of funding with other units within the University, and that the land-grant funds be utilized by the University in accordance with the provisions of the Act of July 2, 1862 (7 U.S.C. 301-305, 307, 308) (known as the First Morrill Act). (Oct. 26, 1974, Pub. L. 93-471, title I, § 102, 88 Stat. 1423.)

INTENT OF COUNCIL

Section 2 of act Sept. 9, 1975, D.C. Law 1-12, provided: "It is the intent of the Council of the District of Columbia to approve the Congressional intent (expressed in section 102 of the District of Columbia Public Postsecondary Education Reorganization Act [D.C. Code, § 31-1701 et seq.]) to authorize a public land grant university through the reorganization of the existing institutions of public postsecondary education in the District of Columbia. It is the clear and specific intent of the Council that the University provide a range of programs and studies designed to reach the widest possible number of citizens and residents of the District of Columbia including career and technological education, liberal arts, sciences, teacher education, and graduate and postgraduate studies."

Section 2 of act Nov. 1, 1975, D.C. Law 1-36, provided: "It is the intent of the Council of the District of Colum-

bia to approve the Congressional intent expressed in section 102 of the District of Columbia Public Postsecondary Education Reorganization Act (D.C. Code, secs. 31-1701 et seq.) (hereinafter referred to as the 'Act') to authorize a public land-grant University through the reorganization of the existing local institutions of public post secondary education in the District of Columbia, and that the land-grant funds shall be utilized by the University in accordance with the provisions of the Act of July 2, 1862 (7 U.S.C. 301-305, 307, 308) (known as the First Morrill Act). Additionally it is the clear and specific intent of the Council of the District of Columbia that the University provide a range of programs, studies and degrees designed to reach the widest possible number of citizens and residents of the District of Columbia including career and technological education, liberal arts, sciences, teacher education; and associate, graduate, post graduate and professional degrees and studies. Central to this is a governing board with the authority to provide a policy framework and such administration as are necessary to carry out such policies under the law. The function of the board is to build a University to serve the residents of the District of Columbia consisting of, but not limited to, strong programs of liberal arts studies and vocational-technical education in accordance with the provisions of this Act."

EFFECTIVE DATE OF 1975 ACTS

Section 4 of act Sept. 9, 1975, D.C. Law 1-12, 22 DCR 1807, provided: "This act, including the amendments [to § 31-1711 and 31-1717, and to sec. 407 of Pub. L. 93-471, set out as a note under this section] made by this act, shall be effective at the end of the 30 day period provided for Congressional review of acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

Section 6 of act Nov. 1, 1975, D.C. Law 1-36, 22 DCR 2935, provided: "This act [amending §§ 31-1702, 31-1711 to 31-1721, 31-1731 to 31-1736, and provisions set out in notes under this section] shall become effective on the day following the 30-day Congressional review period required of Council legislation under section 602 of the Self-Government and Governmental Reorganization Act [§ 1-147]."

EFFECTIVE DATE

Section 407 of Act Oct. 26, 1974, Pub. L. 93-471, title IV, 88 Stat. 1430, provided: "This Act [enacting this chapter] shall take effect July 1, 1975, unless the Council, after January 2, 1975, adopts legislation, in accordance with the District of Columbia Self-Government and Governmental Reorganization Act [Pub. L. 93-198], repealing this Act prior to July 1, 1975. In any case in which the Council adopts any such legislation amending or otherwise modifying this Act (other than its repeal), the foregoing provisions of this Act as so amended or modified shall take effect on July 1, 1975, unless the Council provides, by such legislation, for an effective date other than that provided by this section, in which case this Act, as so amended or modified take effect on the date prescribed by such legislation of the Council."

Section 407 of Act Oct. 26, 1974, was temporarily amended by section 3(d) of the University of the District of Columbia Effective Date Act (D.C. Act 1-25, June 19, 1975, 22 DCR 575) by striking out "July 1, 1975" each place it appeared and inserting in lieu thereof "July 1, 1976".

Section 407 of Act Oct. 26, 1974, was amended by section 3(d) of Act Sept. 9, 1975, D.C. Law 1-12, 22 DCR 1807, by striking out "July 1, 1975" each place it appeared and inserting in lieu thereof "July 1, 1976".

Section 407 of Act Oct. 26, 1974, was amended by act Nov. 1, 1975, D.C. Law 1-36, 22 DCR 2934, to read as follows: "Title I [subchapter I of this chapter] and section 202 of this act [§ 31-1712] shall be effective immediately. All other provisions of this Act [this chapter] shall be effective on January 2, 1976."

SHORT TITLES

The first section of act Apr. 6, 1977, D.C. Law 1-99, provided "That this act [amending §§ 31-1711 and 31-1715] may be cited as the 'University of the District of Columbia Scheduling Act of 1976'."

The first section of act Nov. 1, 1975, D.C. Law 1-36, provided: "That this act [amending §§ 31-1702, 31-1711 to 31-1721, 31-1731 to 31-1736, and provisions set out in notes under this section] may be cited as "The District of Columbia Public Postsecondary Education Reorganization Act Amendments'."

The first section of act Sept. 9, 1975, D.C. Law 1-12, provided: "That this act [amending §§ 31-1711 and 31-1717, and provisions set out in a note under this section] may be cited as the 'University of the District of Columbia Effective Date Act'."

Section 101 of act Oct. 26, 1974, Pub. L. 93-471, title I, 88 Stat. 1423, provided: "This Act [enacting this chapter and provisions set out in notes under this section] may be cited as the 'District of Columbia Public Postsecondary Education Reorganization Act'."

§ 31-1702. Definitions.

For the purpose of this chapter—

(a) The term "Trustees" means the Board of Trustees established under subchapter II of this chapter.

(b) The term "chief executive officer" means the chief executive and administrative officer of the University.

(c) The term "University" means the University of the District of Columbia authorized and directed to be established under subchapter II of this chapter.

(d) The term "academic and administrative head" means the academic and administrative head of each of the components of the University.

(e) The term "Mayor" means the Office of the Mayor of the District of Columbia established by section 1-161.

(f) The term "Council" means the Council of the District of Columbia established by section 1-141.

(g) The term "Board of Higher Education" means the Board of Higher Education established under section 31-1602.

(h) The term "Vocational Board" means the Board of Vocational Education established under section 31-1622.

(i) The term "Board" means the District of Columbia Board of Education established under section 31-101.

(j) The term "financial institution" means an insured bank as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813], or a savings and loan association as defined in section 401 of the National Housing Act [12 U.S.C. 1724].

(k) The term "component" means that segment of the whole University such as a school, college, branch or campus, which, because of its nature, the Board of Trustees specifies as constituting an identifiable entity for the purpose of, but not limited to, being administered by an academic and administrative head. (Oct. 26, 1974, Pub. L. 93-471, title I, § 103, 88 Stat. 1424; Nov. 1, 1975, D.C. Law 1-36, § 3, 22 DCR 2909.)

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, substituted a definition of "chief executive officer" for "President" in subsec. (b); substituted a definition of "academic and administrative head" for "Provost" in subsec. (d); and added subsec. (k) defining "component".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

SUBCHAPTER II.—UNIVERSITY OF THE DISTRICT OF COLUMBIA

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 31-1702.

§ 31-1711. Establishment of Board of Trustees and University.

(a) There is hereby established a body corporate by name of the Board of Trustees of the University of the District of Columbia and by that name and style shall have perpetual succession. It shall be charged with the responsibility of governing the University of the District of Columbia and shall possess all the powers necessary or convenient to accomplish the objects and perform the duties prescribed by this section. Pursuant to this section and sections 31-1716 and 31-1733, it shall have the power to adopt, alter, and use a corporate seal which shall be judicially noticed; and to make contracts; to sue and be sued, to complain and defend in its own name in any court of competent jurisdiction; to make, deliver, and receive deeds, leases and other instruments and to take title to real and other property in its own name; and to adopt, prescribe, amend, repeal, and enforce such by-laws, rules, and regulations as it may deem necessary for the governance and administration of the University.

(b) There is hereby authorized to be established an independent agency of the government of the District of Columbia known as the University of the District of Columbia which shall be governed by the Board of Trustees as established in subsection (a) of this section.

(c) Except as provided in subsection (d) of this section, such Board of Trustees shall consist of fifteen voting members selected in the following manner:

(1) eleven members shall be appointed by the Mayor by and with the advice and consent of the Council;

(2) one member shall be appointed by the student community of the University and shall be a full time student at the University; and

(3) three members shall be appointed by the alumni associations in the following manners:

(A) one member of the Trustees appointed by the Alumni Association of the District of Columbia Teachers College, with notice thereof to the Mayor within forty-five days after the effective date of this section;

(B) one member of the Trustees appointed by the Alumni Association of Federal City College, with notice thereof to the Mayor within forty-five days after the effective date of this section; and

(C) one member of the Trustees appointed by the Alumni Association of the Washington Technical Institute, with notice thereof to the Mayor within forty-five days after the effective date of this section.

(d) Prior to consolidation as authorized in section 31-1715, the Board of Trustees shall consist of seventeen voting members selected in the following manner:

(1) eleven members shall be selected in the same manner as in paragraph (1), subsection (c) of this section;

(2) three members shall be selected in the same manner as in paragraph (3), subsection (c) of this section; and

(3) three members shall be appointed by the Mayor *Provided* that one of such members shall be a full time student at Washington Technical Institute, one of such members shall be a full time student at Federal City College and one of such members shall be a full time student at the District of Columbia Teachers College.

(e) In the event that the appointments referred to in paragraphs (2) and (3) of subsection (c) of this section are not made within the time specified, the Mayor shall make the appointments.

(f) As the initial terms of the alumni members expire, the three alumni trustees shall be appointed by the Alumni Association of the University or the Mayor if no alumni association of such University exists.

(g) The Trustees shall hold the first meeting no later than thirty days after the confirmation and or appointment of eleven of its members. The first meeting of the Trustees shall be convened by a member of the Trustees designated by the Mayor.

(h) The student member of the Trustees shall serve a one-year term of office; all Trustees may be selected to serve one successive term.

(i) The terms of non-student Trustees shall be for 5 years; except that the terms of office of the non-student members first taking office shall be determined by lots to provide:

(1) Seven of such members shall serve for two years.

(2) Seven of such members shall serve for three years.

(j) Any Trustee selected to fill a vacancy shall be selected only for the remainder of the term for which his or her predecessor was selected and in the same manner as the original selection. A Trustee may serve after the expiration of his term until his successor has qualified to take office.

(k) A Chairperson and Vice Chairperson (1) shall be selected by the Trustees from among the District of Columbia resident members (2) shall serve a one-year term as Chairperson or Vice Chairperson (3) may be reselected, and (4) cannot serve in such capacity beyond their term as member.

(l) Members of the Trustees may be employees of the United States or of the District of Columbia Government, unless they hold positions in clear conflict of interest.

(m) The chief executive officer of the University shall be a non-voting ex-officio member of the Trustees.

(n) All appointments under this section shall be made not later than forty-five days after the effective date of this section. (Oct. 26, 1974, Pub. L. 93-471, title II, § 201, 88 Stat. 1424; Sept. 9, 1975, D.C. Law 1-12, § 3 (a), (b), 22 DCR 1806; Nov. 1, 1975, D.C. Law 1-36, § 4, 23 DCR 2911; Apr. 6, 1977, D.C. Law 1-99, § 2 (b), 23 DCR 8729.)

REFERENCE IN TEXT

For "the effective date of this section" referred to in subssecs. (c) (3) and (n), see Effective Date note under § 31-1701.

AMENDMENTS

1977—Act Apr. 6, 1977, D.C. Law 1-99, amended subsec. (1) by amending pars. (1) and (2) generally and by deleting pars. (3) and (4).

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally.

Act Sept. 9, 1975, D.C. Law 1-12, amended subsecs. (b) and (c) by striking out "August 2, 1975", "June 30, 1976", and "September 2, 1975" and inserting in lieu thereof "August 2, 1976", "June 30, 1977", and "September 2, 1976", respectively.

EMERGENCY ACT AMENDMENTS

1976—For temporary provisions relating to the terms of office of non-student members, see sec. 2(a) of the Emergency District of Columbia Public Postsecondary Education Reorganization Act Amendments Act of 1976 (D.C. Act 1-119, May 14, 1976, 22 DCR 6578); the Emergency District of Columbia Public Postsecondary Education Reorganization Act Amendments Extension Act of 1976 (D.C. Act 1-145, Aug. 12, 1976, 23 DCR 1601); and the Second Emergency District of Columbia Public Postsecondary Education Reorganization Act Amendments Extension Act of 1976 (D.C. Act 1-166, Nov. 2, 1976, 23 DCR 3205).

1975—For temporary amendment of subsecs. (b) and (c), see sec. 3(a), (b) of the University of the District of Columbia Effective Date Act (D.C. Act 1-25, June 19, 1975, 22 DCR 574).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 3 of act Apr. 6, 1977, D.C. Law 1-99, provided: "This act [amending this section and § 31-1715] shall take effect as provided for acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

EFFECTIVE DATE OF 1975 AMENDMENTS

See notes under § 31-1701.

§ 31-1712. Board of Trustees Nominating Committee.

(a) There is established within the Government of the District of Columbia a committee to be known as the University of the District of Columbia Board of Trustees Nominating Committee (hereinafter in this chapter referred to as the "Committee").

(b) The Committee shall consist of five members to be appointed as follows:

(1) Two members shall be appointed by the Mayor within thirty days after the effective date of this section.

(2) Three members shall be appointed by the Chairman of the Council of the District of Columbia, with the approval of the Council, within thirty days after the effective date of this section.

(c) No individual may be appointed as a member of the Committee unless he or she—

(1) is a citizen of the United States;

(2) is a resident of the District of Columbia and has maintained his or her domicile within the District of Columbia for the twelve months immediately preceding the effective date of this section; and

(3) is not a member of the Council of the District of Columbia or an officer or an employee of the Government of the District of Columbia (including the judicial branch).

(d) Members of the Committee shall serve for terms of five years, except that of the members first appointed pursuant to paragraph (b) (1) of this section, one shall serve for one year and one for five years, as designated at the time of appointment; and

of the members appointed pursuant to paragraph (b) (2) of this section, one shall serve for two years, one for three years and one for four years, as designated at the time of appointment.

(e) Whenever a vacancy on the Committee occurs, such vacancy shall be filled in the same manner in which the original appointment was made. Any individual appointed to fill a vacancy, occurring other than upon the expiration of a term shall serve only for the remainder of the term of such individual's predecessor.

(f) Within ten days following the date on which a majority of the members are first appointed pursuant to this section, such members so appointed shall hold their first meeting as members of the Committee.

(g) Except as otherwise provided in this section, the Committee shall act only at meetings called by the Chairperson of the Committee or a majority of the members thereof and only after notice has been given of such meeting to all members of the Committee.

(h) The Committee shall choose annually from among its members a Chairperson and such other officers as it deems necessary. The Committee may adopt such rules of procedure as may be necessary to govern the business of the Committee.

(i) Each agency of the Government of the District of Columbia shall furnish to the Committee, upon request, such records, information, services and such other assistance and facilities as may be necessary to enable the Committee to perform its function properly. Any information furnished to the Committee designated "confidential" by the person furnishing it to the Committee shall be treated by the Committee as privileged and confidential.

(j) The Committee shall have the function of nominating individuals to the Mayor for appointment as members of the Board of Trustees of the University of the District of Columbia other than the members of the Trustees appointed by the alumni associations and the student community and the three student Trustees appointed prior to consolidation. Additionally, the Committee shall fill any and all vacancies other than the alumni and student members occurring on such Board after the date on which a majority of the members first appointed pursuant to this section hold their first meeting as members of the Board of Trustees.

(k) The Committee shall develop a list of names of not less than twenty-five persons, who must be residents of the District of Columbia and have maintained their domicile within the District of Columbia for one year immediately preceding the effective date of this section and who, in the opinion of the Committee, are qualified and available to be appointed to the Board of Trustees. The Committee is to transmit the list of names to the Mayor within thirty days from the date of the last appointment to the Committee.

(l) In the event of any vacancy on the Board of Trustees of the University of the District of Columbia, the Committee shall, within thirty days after such vacancy occurs, submit a list of three persons as nominees for appointment by the Mayor to fill the vacancy. If more than one such vacancy exists at

the same time, the Committee shall submit a separate list of nominees for appointment to fill each such vacancy, and no individual's name shall appear on more than one such list. In filling such vacancy, the Mayor may appoint more than one individual from any list currently before the Mayor.

(m) Whenever a vacancy on the Board of Trustees is to occur as a result of the expiration of a term of a member, the Committee shall transmit a list of names to the Mayor of three nominees for appointment to fill such vacancy, at least thirty days prior to the expiration of such member's term.

(n) All Mayoral appointments which are subject to the provisions of this section shall be drawn from among the names of the persons transmitted to the Mayor by the Committee. (Oct. 26, 1974, Pub. L. 93-471, title II, § 202, 88 Stat. 1425; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2916.)

REFERENCE IN TEXT

For "the effective date of this section", referred to in subsecs. (b)(1), (2), (c)(2), and (k), see Effective Date note under § 31-1701.

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally. Prior to amendment, section related to suspension and removal of Trustees which is now covered by § 31-1713.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

§ 31-1713. Suspension, removal, and termination of Trustees.

(a) Any Trustee shall be automatically suspended from serving as such member after he has been found guilty of a felony by a court of competent jurisdiction. Upon a final determination of his guilt or innocence, the term of such member shall automatically terminate or be reinstated.

(b) The Board of Trustees shall have the power to remove any member, after fair notice and an opportunity to be heard, at any time for adequate cause which relates to such members' character or efficiency as a Trustee.

(c) The tenure of the student member shall automatically terminate if the status of such member ceases to be that of a full time student at the University. (Oct. 26, 1974, Pub. L. 93-471, title II, § 203, 88 Stat. 1425; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2921.)

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally. Prior to amendment, section related to compensation of Trustees which is now covered by § 31-1714.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

PRIOR PROVISIONS

Provisions similar to those now contained in this section were contained in section 202 of Act Oct. 26, 1974, Pub. L. 93-471, title II, 88 Stat. 1425 (D.C. Code § 31-1712), prior to the general amendment of this subchapter by section 4 of D.C. Law 1-36.

§ 31-1714. Compensation of Trustees.

Trustees shall serve without compensation, but may be reimbursed for their expenses, including per diem in lieu of subsistence, at the maximum rate equal to the daily equivalent provided for by grade 18 of the General Schedule established under section

5332 of title 5 of the United States Code, with a limit of \$1,000 per annum, while actually engaged in service for the Trustees. (Oct. 26, 1974, Pub. L. 93-471, title II, § 204, 88 Stat. 1426; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2292.)

AMENDMENT

1975—Act Nov. 1, D.C. Law 1-36, amended section generally. Prior to amendment, section related to consolidation of existing public institutions of postsecondary education which is now covered by § 31-1715.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

PRIOR PROVISIONS

Provisions similar to those now contained in this section were contained in section 203 of Act Oct. 26, 1974, Pub. L. 93-471, title II, 88 Stat. 1425 (D.C. Code § 31-1713), prior to the general amendment of this subchapter by section 4 of D.C. Law 1-36.

CROSS REFERENCE

Applicability of section to compensation of members of Board of Education, see § 31-1735.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1735.

§ 31-1715. Consolidation of existing public institutions of postsecondary education.

The Trustees shall by August 1, 1977, consolidate the existing public institutions of postsecondary education in the District of Columbia under a single management system to be called the University of the District of Columbia, with several programs, schools, colleges, institutes, campuses and other components that offer a comprehensive program of public postsecondary education. The institutions of public postsecondary education in the District of Columbia existing immediately prior to such consolidation shall be deemed abolished on the effective date of the consolidation. Thereafter, any reference in any law, rule, regulation, or other document of the United States or of the District of Columbia to such institutions shall be deemed to be a reference to the University of the District of Columbia. (Oct. 26, 1974, Pub. L. 93-471, title II, § 205, 88 Stat. 1426; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2922; Apr. 6, 1977, D.C. Law 1-99, § 2(a), 23 DCR 8729.)

AMENDMENTS

1977—Act Apr. 6, 1977, D.C. Law 1-99, amended section by substituting "August 1, 1977" for "September 1, 1976".

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally. Prior to amendment, section related to duties of Trustees which is now covered by § 31-1716.

EMERGENCY ACT AMENDMENTS

1976—For temporary provisions relating to the date of consolidation, see sec. 2(b) of the Emergency District of Columbia Public Postsecondary Education Reorganization Act Amendments Act of 1976 (D.C. Act 1-119, May 14, 1976, 22 DCR 6579); the Emergency District of Columbia Public Postsecondary Education Reorganization Act Amendments Extension Act of 1976 (D.C. Act 1-145, Aug. 12, 1976, 23 DCR 1602); and the Second Emergency District of Columbia Public Postsecondary Education Reorganization Act Amendments Extension Act of 1976 (D.C. Act 1-166, Nov. 2, 1976, 23 DCR 3206).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 3 of act Apr. 6, 1977, D.C. Law 1-99, set out as a note under § 31-1711.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

PRIOR PROVISIONS

Provisions similar to those now contained in this section were contained in section 204 of Act Oct. 26, 1974, Pub. L. 93-471, title II, 88 Stat. 1426 (D.C. Code § 31-1714), prior to the general amendment of this subchapter by section 4 of D.C. Law 1-36.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1711.

§ 31-1716. Duties of Trustees.

It shall be the duty of the Trustees to—

(a) Review the existing public institutions of postsecondary education with respect to (1) accreditation, (2) present programs and functions, and (3) actual and potential capabilities, and (4) educational policies and procedures.

(b) (1) Establish the University of the District of Columbia consisting of, but not limited to, two major components, liberal and fine arts and vocational and technical education.

(2) Prepare and, from time to time, revise a long-range plan for the development of the University which shall include the type and scope of programs offered and envisioned. Such plan shall also include the development, expansion, integration, coordination and efficient use of the facilities, physical plant, curricula, and standards of public postsecondary education. Such initial plan and any revisions thereof shall be made available to the public, the Council of the District of Columbia and the Mayor for a period of not less than sixty days prior to its implementation and the Trustees shall hold such hearings and public forums as may be necessary to receive public response and comment on such plans.

(c) Establish or approve policies and procedures governing admissions, curricula, programs, graduation, the awarding of degrees, and general policy making for the components of the University.

(d) Prepare and submit to the Mayor, on a date fixed by the Mayor, an annual budget for the fiscal year beginning October 1, 1977. Such budget shall include a proposed financial operating plan for such fiscal year, and a capital and educational improvements plan for such fiscal year and the succeeding four fiscal years for the University. The Mayor and the Council shall, after review and consideration of the budget submitted by the Trustees, establish the maximum amount of funds for each of the major components of the University and the total University budget which will be allocated to the Trustees.

(e) The Trustees may transfer, during the fiscal year, any appropriation balance available for one item of appropriation to another item of appropriations or to a new program in an amount not to exceed \$50,000.

(f) Enter into negotiations and binding contracts pursuant to Council regulations regarding contracting with the governments of the United States and District of Columbia and other public and private agencies.

(g) Enter into negotiations and binding contracts pursuant to Council regulations to perform organized research, training and demonstrations on a reimbursable basis for the United States and the government of the District of Columbia and other public and private agencies.

(h) Fix tuition for students attending the University.

(i) Fix fees, in addition to tuition, to be paid by resident and nonresident students attending the University. Receipts from these fees shall be deposited in a revolving fund in one or more financial institutions in the District of Columbia, and shall be available for such purposes as the Trustees shall approve, without fiscal year limitation.

(j) Select, appoint, and fix the compensation for a chief executive officer of the University and of such staff for the Board of Trustees as it deems necessary and approve the appointment and compensation of the academic and administrative heads of each of the components of the University and of such other officers as it deems necessary, including legal counsel. In no case shall any such compensation be fixed in an amount in excess of that provided for the Mayor unless specifically authorized by legislative act of the Council. The chief executive officer shall serve at the pleasure of the Trustees.

(k) Procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at daily rates for individuals not in excess of the maximum daily rate for GS-18 of the General Schedule under section 5332 of such title.

(l) Submit recommendations to the Mayor and the Council of the District of Columbia from time to time relating to legislation affecting the administration and programs of the University.

(m) Develop and define, in conjunction with the faculty, a policy governing academic freedom for the University and establish mechanisms to ensure its protection and enforcement.

(n) Perform such duties and make such rules and regulations as may be necessary to carry out the purposes of this chapter.

(o) Seek to establish with the Board a Coordination Committee to determine areas of cooperation, coordination and assistance.

(p) Utilize the services and seek the counsel and advice of the District of Columbia Commission on Postsecondary Education in planning the development of a program for public postsecondary education in the District of Columbia.

(q) Generally determine, control, supervise, manage, and govern all affairs of the University of the District of Columbia. Toward this end the Trustees are authorized to adopt such policies and regulations as it may deem wise. (Oct. 26, 1974, Pub. L. 93-471, title II, § 206, 88 Stat. 1427; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2923.)

AMENDMENT

1975—Nov. 1, 1975, D.C. Law 1-36, amended section generally. Prior to amendment, section related to the personnel system which is now covered by § 31-1717.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

PRIOR PROVISIONS

Provisions similar to those now contained in this section were contained in section 205 of Act Oct. 26, 1974, Pub. L. 93-471, title II, 88 Stat. 1426 (D.C. Code § 31-1715), prior to the general amendment of this subchapter by section 4 of D.C. Law 1-36.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1711.

§ 31-1717. Personnel system.

(a) Notwithstanding any other provision of law, the Trustees are hereby authorized to establish, not earlier than one year and not later than five years after the effective date of this chapter, a personnel system (setting forth minimum standards) for all employees of components, facilities, and programs of the University, including but not limited to pay, contract terms, vacations, and sabbaticals, leave, residence, retirement, health and life insurance, employee disability, and death benefits, all at least equal to those provided by legislation enacted by Congress, or regulations adopted pursuant thereto, and applicable to such officers and employees immediately prior to the effective date of the system established pursuant to this section. Any provision in the personnel system established by the Trustees under this section requiring employees to be residents of the District of Columbia shall apply only to employees hired after the effective date of such system.

(b) The personnel policies of the Trustees shall incorporate policies developed by the Trustees to guarantee collective bargaining rights of employees subject to this section.

(c) The personnel system which the Board of Trustees is authorized to establish under this section shall be submitted to the Mayor. Upon approval of the personnel system by the Mayor, it shall be transmitted to the Chairman of the Council and shall take effect at the end of the sixty day period beginning on the day that the personnel system is transmitted to the Chairman of the Council unless the Council during such sixty day period adopts a resolution disapproving, in whole or in part, such personnel system.

(d) Personnel legislation and policies in effect including without limitation, legislation and policies relating to tenure, appointments, promotions, discipline, separation pay, unemployment compensation, health disability and death benefits, leave, retirement, insurance and veterans preference applicable to such employees, shall continue to be applicable until such time as the Trustees shall, pursuant to this section, provide for coverage under a new personnel system.

(e) All actions affecting such personnel and such members shall, until such time as a personnel system is established by the Trustees superseding such laws and establishing a permanent personnel system for all employees of the University, continue to be subject to the provisions of Acts of Congress relating to the appointment, promotion, discipline, separation, and other conditions of employment applicable to officers and employees of the District government, and where applicable, to the provisions of the joint agreement between the Commissioners and the Civil Service Commission authorized by Executive Order Numbered 5491 of November 18, 1930, relating to the appointment of District personnel. (Oct. 26, 1974, Pub. L. 93-471, title II, § 207, 88 Stat. 1428; Sept. 9, 1975, D.C. Law 1-12, § 3(c), 22 DCR 1807; Nov 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2927.)

REFERENCE IN TEXT

For "the effective date of this chapter" referred to in subsec. (a), see Effective Date note under § 31-1701.

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally. Prior to amendment, section related to transfer of functions, personnel, property, assets, and liabilities, which is now covered by § 31-1718.

Act Sept. 9, 1975, D.C. Law 1-12, amended section by striking out "June 30, 1977" and inserting in lieu thereof "June 30, 1977".

EMERGENCY ACT AMENDMENT

1975—Section 3(c) of the University of the District of Columbia Effective Date Act (D.C. Act 1-25, June 19, 1975, 22 DCR 575) amended section by substituting "June 30, 1977" for "June 30, 1976".

EFFECTIVE DATE OF 1975 AMENDMENTS

See notes under § 31-1701.

PRIOR PROVISIONS

Provisions similar to those now contained in this section were contained in section 206 of Act Oct. 26, 1974, Pub. L. 93-471, title II, 88 Stat. 1427 (D.C. Code § 31-1716), prior to the general amendment of this subchapter by section 4 of D.C. Law 1-36.

CROSS REFERENCE

District government merit system, see § 1-162.

§ 31-1718. Transfer of functions, personnel, property, assets, and liabilities.

The Board of Higher Education and the Vocational Board shall be abolished on the day that the Board of Trustees convenes its first meeting. Except as provided by this chapter all functions, powers, and duties of the Board of Higher Education and the Vocational Board under chapter 16 of this title shall be vested in and exercised by the Trustees. All employees, property (real and personal), and unexpended balances (available or to be made available) of appropriations, allocations, and all other funds and assets and liabilities of the Board of Higher Education and Vocational Board are authorized to be transferred to the Trustees, except the functions of licensing institutions to confer degrees as authorized by section 29-415. All rules, orders, obligations, determinations and any other understandings of the Board of Higher Education and the Board of Vocational Education shall remain in effect until such time as they may be lawfully amended, modified or repealed by the Trustees. (Oct. 26, 1974, Pub. L. 93-471, title II, § 208, 88 Stat. 1428; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2929.)

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally. Prior to amendment, section related to establishment of land-grant university which is now covered by § 31-1719.

EMERGENCY ACT AMENDMENTS

1977—For temporary provisions relating to the power of the Board of Trustees to license educational institutions, see sec. 2 of the Third Emergency District of Columbia Public Postsecondary Education Reorganization Act Amendments Extension Act of 1977 (D.C. Act 2-6, Feb. 15, 1977, 23 DCR 6967) and the Emergency Education Licensure Commission Act of 1977 (D.C. Act 2-66, Aug. 2, 1977, 24 DCR 1220).

1976—For temporary provisions relating to the power of the Board of Trustees to license educational institutions, see sec. 2 of the Licensure of Postsecondary Educational Institutions Emergency Act (D.C. Act 1-123, May 24, 1976, 22 DCR 6628) and sec. 3 of the Emergency District of Columbia Public Postsecondary Education Reorganization Act Amendments Extension Act of 1976 (D.C. Act 1-145, Aug. 12, 1976, 23 DCR 1602) and the Second Emergency District of Columbia Public Postsecondary Education Re-

organization Act Amendments Extension Act of 1976 (D.C. Act 1-166, Nov. 2, 1976, 23 DCR 3206).

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

PRIOR PROVISIONS

Provisions similar to those now contained in this section were contained in section 207 of Act Oct. 26, 1974, Pub. L. 93-471, title II, 88 Stat. 1428 (D.C. Code § 31-1717), prior to the general amendment of this subchapter by section 4 of D.C. Law 1-36.

CROSS REFERENCE

For transfer of functions from Office of Youth Opportunity Services to the School of Continuing Education, Federal City College, University of the District of Columbia, see § 6-2003.

§ 31-1719. Establishment as land-grant university.

(a) In the administration of—

(1) the Act of August 30, 1890 (7 U.S.C. 321-326, 328) (known as the Second Morrill Act),

(2) the tenth paragraph under the heading "Emergency Appropriations" in the Act of March 4, 1907 (7 U.S.C. 322) (known as the Nelsen amendment),

(3) section 22 of the Act of June 29, 1935 (7 U.S.C. 329) (known as the Bankhead-Jones Act),

(4) the Act of March 4, 1940 (7 U.S.C. 331), and

(5) the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627),

the University shall be considered to be a university established for the benefit of agriculture and the mechanic arts in accordance with the provisions of the Act of July 2, 1862 (7 U.S.C. 301-305, 307, 308) (known as the First Morrill Act); and the term "State" as used in the laws and provisions of law listed in the preceding paragraphs of this section shall include the District of Columbia.

(b) In the administration of the Act of May 8, 1914 (7 U.S.C. 341-346, 347a-349) (known as the Smith-Lever Act)—

(1) the University shall be considered to be a university established for the benefit of agriculture and the mechanic arts in accordance with the provisions of the Act of July 2, 1862 (7 U.S.C. 301-305, 307, 308); and

(2) the term "State" as used in such Act of May 8, 1914,¹ shall include the District of Columbia, except that the District of Columbia shall not be eligible to receive any sums appropriated under section 3 of such Act [7 U.S.C. 343].

(c) In lieu of an authorization of appropriations for the District of Columbia under section 3 of such Act of May 8, 1914 [7 U.S.C. 343], there is authorized to be appropriated such sums as may be necessary to provide cooperative agricultural extension work in the District of Columbia under such Act. Such sums may be used to pay no more than one-half of the total cost of providing such extension work. Any reference in such Act (other than section 3 thereof) to funds appropriated under such Act shall in the case of the District of Columbia be considered a reference to funds appropriated under this subsection.

(d) Four per centum of the sums appropriated under subsection (c) for each fiscal year shall be allotted to the Federal Extension Service of the De-

partment of Agriculture for administrative, technical, and other services provided by the Service in carrying out the purposes of this section. (Oct. 26, 1974, Pub. L. 93-471, title II, § 209(a)-(d), formerly § 208(a)-(d), 88 Stat. 1428; renumbered Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2911.)

CODIFICATION

Section is comprised of subssecs. (a)-(d) of sec. 209 (formerly sec. 208) of Act Oct. 26, 1974. Subsection (e) of that section amended section 361a of title 7, United States Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1720.

§ 31-1720. Same; State consent.

The enactment of this chapter shall, as respects the District of Columbia, be deemed to satisfy any requirement of State consent contained in any of the laws or provisions of law referred to in section 31-1719. (Oct. 26, 1974, Pub. L. 93-471, title II, § 210, formerly § 209, 88 Stat. 1429; renumbered Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2911.)

SUBCHAPTER III.—AUTHORIZATIONS

§ 31-1721. Appropriations.

(a) There are authorized to be appropriated out of any money in the Treasury to the credit of the District of Columbia such sums as may be necessary for carrying out the purposes of this chapter.

(b) The chief executive officer is authorized to provide for the expenditure of funds, in amounts not to exceed a total of \$5,000, for such purposes as may be deemed necessary within limits that may be specified in annual appropriations. The chief executive officer shall be personally responsible for the expenditure of appropriations made pursuant to this section, and such expenditures shall be supported by vouchers and shall be audited by the District of Columbia Auditor. (Oct. 26, 1974, Pub. L. 93-471, title III, § 301, 88 Stat. 1429; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2930.)

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, substituted "chief executive officer" for "President" in subsec. (b), and increased the authorization from \$2,000 to \$5,000.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

CROSS REFERENCE

District of Columbia Auditor, generally, see § 47-120.

SUBCHAPTER IV.—MISCELLANEOUS

§ 31-1731. Meetings of Trustees.

Meetings may be called by the Chairperson or a majority of the members of the Trustees. No official action may be taken by the Trustees except at a meeting of the Trustees at which a quorum is present. Eleven members shall constitute a quorum but a lesser number may hold hearings. Each meeting of the Trustees shall be open to the public and held in the District of Columbia with appropriate notice of each such meeting given to the general public, except a majority of the Trustees may elect to go into executive session to take action on personnel matters. The Trustees shall meet at stated times

¹ So in original. Probably should be "1914".

established by the Board of Trustees, but not less frequently than four times a year. (Oct. 26, 1974, Pub. L. 93-471, title IV, § 401, 88 Stat. 1429; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2931.)

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally, to increase from eight to eleven the members constituting a quorum and to add the last sentence relating to meetings at stated times at least four times a year.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

§ 31-1732. Advisory committees.

The Trustees shall appoint such advisory committees as are necessary to advise on educational policy. Such advisory committees may consist of members of the Trustees, students, faculty members, parents, governmental, education, business, industrial, labor, and community representatives. (Oct. 26, 1974, Pub. L. 93-471, title IV, § 402, 88 Stat. 1429; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2931.)

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally without making change.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

§ 31-1733. Gifts and contributions.

(a) The Trustees may accept services, moneys, gifts, endowments, donations, and bequests. The Trustees may in their discretion retain or not retain such in the form in which they are made.

(b) The Trustees shall establish in one or more financial institutions in the District of Columbia the District of Columbia Postsecondary Education Fund. There shall be deposited in such fund all gifts and contributions in whatever form, funds in receipt of services rendered, other than tuition, and all moneys not included in the annual operating and capital and educational improvements funds appropriated by Congress. Moneys deposited therein shall be available for investment and shall be distributed in such amounts and in such manner as the Trustees may determine. The Trustees are authorized to administer such fund in whatever manner the Trustees may deem wise and prudent, provided that such administration is lawful and does not impose any fiscal burden on the District of Columbia.

(c) It is not the intent that any income derived as a result of such fund shall take the place of any District or Federal appropriations or any part thereof but that it shall supplement such appropriations to the end that the University may improve and increase its functions, may enlarge its areas of service and may become more useful to a greater number of people. Nothing in this section shall be construed to prevent the Trustees from receiving gifts, donations, and bequests from any source and from using the same for such lawful purposes as the donor or donors designate. (Oct. 26, 1974, Pub. L. 93-471, title IV, § 403, 88 Stat. 1429; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2932.)

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1711.

§ 31-1734. Annual report.

The Trustees shall make an annual report to the general public, Mayor, Council, and the Congress on December 31 of each year on the operation of programs and the expenditure of all funds for public postsecondary education in the District of Columbia. Such annual report shall include but not be limited to the source, amount, distribution and expenditure of all funds whatever the source; and general student enrollment data, including but not limited to race, sex, age, major area of study, previous and current residency and upon graduation or termination of study, employment placement data (consistent with existing statutes and Department of Health, Education and Welfare regulations). (Oct. 26, 1974, Pub. L. 93-471, title IV, § 404, 88 Stat. 1430; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2933.)

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally. The date of the annual report was changed from November 1 to December 31 of each year, and the second sentence relating to matters to be covered in the report was added.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

§ 31-1735. Authority of Board of Education.

(a) The Board may transfer, during the fiscal year, any appropriation balance available for one item of appropriation to another item of appropriation or to a new program in an amount not to exceed \$50,000.

(b) The Board may enter into negotiations and binding contracts pursuant to Council regulations regarding contracting with the governments of the United States and District of Columbia and other public and private agencies to render and receive services.

(c) The provisions in section 31-1714, relating to compensation of the Trustees, shall apply to the members of the Board of Education. (Oct. 26, 1974, Pub. L. 93-471, title IV, § 405, 88 Stat. 1430; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2934.)

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally to add a new subsec. (c).

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

CROSS REFERENCE

Agreements between United States and District of Columbia for reimbursable services, generally, see § 1-826.

§ 31-1736. Authority of Council of the District of Columbia.

Notwithstanding any other provision of law, or any rule of law, nothing in this chapter shall be construed as limiting the authority of the Council to enact any act or resolution, after January 2, 1975, pursuant to the District of Columbia Self-Government and Governmental Reorganization Act with respect to any matter covered by this chapter.

(Oct. 26, 1974, Pub. L. 93-471, title IV, § 406, 88 Stat. 1430; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2934.)

REFERENCE IN TEXT

The District of Columbia Self-Government and Governmental Reorganization Act, referred to in text, is the Act of Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 774. For classification of the Act to the Code, see the Parallel Reference Tables.

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally without making any change.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

Chapter 18.—INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

Sec.

- 31-1801. Authority to enter into agreement.
- 31-1802. Designated State official.
- 31-1803. Filing and publication of contracts.
- 31-1804. Definition.

§ 31-1801. Authority to enter into agreement.

The Mayor of the District of Columbia is authorized to enter into and execute on behalf of the District of Columbia an agreement with any State or States legally joining therein in the form substantially as follows. (Dec. 7, 1974, Pub. L. 93-515, title I, § 101, 88 Stat. 1612.)

"THE INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

"Article I—Purpose, Findings, and Policy

"1. The States party to this Agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this Agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the States party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

"2. The party States find that included in the large movement of population among all sections of the Nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from State to State in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other States. As a consequence, a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their States of origin, can increase the available educational resources. Participation in this Agreement can increase the availability of educational manpower.

"Article II—Definitions

"As used in this Agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

"1. 'Educational personnel' means persons who must meet requirements pursuant to State law as a condition of employment in educational programs.

"2. 'Designated State official' means the education official of a State selected by that State to negotiate and enter into, on behalf of his State, contracts pursuant to this Agreement.

"3. 'Accept', or any variant thereof, means to recognize and give effect to one or more determinations of another

State relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving State.

"4. 'State' means a State, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico.

"5. 'Originating State' means a State (and the subdivision thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

"6. 'Receiving State' means a State (and the subdivisions thereof) which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

"Article III—Interstate Educational Personnel Contracts

"1. The designated State official of a party State may make one or more contracts on behalf of his State with one or more other party States providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the States whose designated State officials enter into it, and the subdivisions of those States, with the same force and effect as if incorporated in this Agreement. A designated State official may enter into a contract pursuant to this Article only with States in which he finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on basis sufficiently comparable, even though not identical to that prevailing in his own State.

"2. Any such contract shall provide for:

"(a) Its duration.

"(b) The criteria to be applied by an originating State in qualifying educational personnel for acceptance by a receiving State.

"(c) Such waivers, substitutions, and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice of basic educational standards.

"(d) Any other necessary matters.

"3. No contract made pursuant to this Agreement shall be for a term longer than five years by any such contract may be renewed for like or lesser periods.

"4. Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating State approval of the program or programs involved can have occurred. No contract made pursuant to this Agreement shall require acceptance by a receiving State of any person qualified because of successful completion of a program prior to January 1, 1954.

"5. The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving State.

"6. A contract committee composed of the designated State officials of the contracting States or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting States.

"Article IV—Approved and Accepted Programs

"1. Nothing in this Agreement shall be construed to repeal or otherwise modify any law or regulation of a party State relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that State.

"2. To the extent that contracts made pursuant to this Agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

"Article V—Interstate Cooperation

"The party States agree that:

"1. They will, so far as practicable, prefer the making of multilateral contracts pursuant to Article III of this Agreement.

"2. They will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

"Article VI—Agreement Evaluation

"The designated State officials of any party States may meet from time to time as a group to evaluate progress under the Agreement, and to formulate recommendations for changes.

"Article VII—Other Arrangements

"Nothing in this Agreement shall be construed to prevent or inhibit other arrangements or practices of any party State or States to facilitate the interchange of educational personnel.

"Article VIII—Effect and Withdrawal

"1. This Agreement shall become effective when enacted into law by two States. Thereafter it shall become effective as to any State upon its enactment of this Agreement.

"2. Any party State may withdraw from this Agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing State has given notice in writing of the withdrawal to the Governors of all other party States.

"3. No withdrawal shall relieve the withdrawing State of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

"Article IX—Construction and Severability

"This Agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Agreement shall be severable and if any phrase, clause, sentence, or provision of this Agreement is declared to be contrary to the constitution of any State or of the United States, or the application thereof to any Government, agency, person, or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any Government, agency, person, or circumstance shall not be affected thereby. If this Agreement shall be held contrary to the constitution of any State participating therein, the Agreement shall remain in full force and effect as to the State affected as to all severable matters."

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-1802. Designated State official.

The "designated State official" for the District of Columbia shall be the Superintendent of Schools of the District of Columbia. The Superintendent shall enter into contracts pursuant to Article III of the Agreement only with the approval of the specific text thereof by the Board of Education of the District of Columbia. (Dec. 7, 1974, Pub. L. 93-515, title I, § 102, 88 Stat. 1615.)

§ 31-1803. Filing and publication of contracts.

True copies of all contracts made on behalf of the District of Columbia pursuant to the Agreement shall be kept on file in the office of the Board of Education of the District of Columbia and in the office

of the Mayor of the District of Columbia. The Superintendent of Schools shall publish all such contracts in convenient form. (Dec. 7, 1974, Pub. L. 93-515, title I, § 103, 88 Stat. 1615.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-1804. Definition.

As used in the Interstate Agreement on Qualification of Educational Personnel, the term "Governor" when used with reference to the District of Columbia shall mean the Mayor of the District of Columbia. (Dec. 7, 1974, Pub. L. 93-515, title I, § 104, 88 Stat. 1615.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 19.—COMMISSION ON THE ARTS AND HUMANITIES

Sec.

31-1901. Authority of Council.

31-1902. Definitions.

31-1903. Establishment of Commission.

31-1904. Powers.

31-1905. Administration.

31-1906. Miscellaneous.

§ 31-1901. Authority of Council.

The enactment of this chapter by the Council is done pursuant to the authority vested in the Council under section 1-144(b). (Oct. 21, 1975, D.C. Law 1-22, § 2, 22 DCR 2083.)

SHORT TITLE

The first section of act Oct. 21, 1975, D.C. Law 1-22, provided "That this act [enacting this chapter] may be cited as the 'Commission on the Arts and Humanities Act'."

REPEALERS; TRANSFER OF PROPERTY ETC.

Section 8 of act Oct. 21, 1975, D.C. Law 1-22, provided: "The order of the Commission[er] of the District of Columbia, numbered 74-4, issued January 7, 1974, is hereby repealed and the Commission on the Arts and Humanities established by that order is abolished. All property, records, and unexpended balances of appropriations and other money available to that Commission on the Arts and Humanities is transferred to the Commission established by this act."

§ 31-1902. Definitions.

As used in this chapter—

(1) The term "Mayor" means the Mayor of the District of Columbia established under section 1-161.

(2) The term "Council" means the Council of the District of Columbia established under section 1-141.

(3) The term "Commission" means the Commission on the Arts and Humanities established by section 31-1903.

(4) The term "arts" includes but is not limited to music (instrumental and vocal), dance, drama, folk art, creative writing, architecture and allied fields, painting, sculpture, photography, graphic and craft

arts, industrial design, costume and fashion design, motion pictures, television, radio, tape and sound recording, and the arts related to the presentation, performance, execution, exhibition of those major art forms, and the study and application of the arts to the human environment.

(5) The term "humanities" includes, but is not limited to, the study of the following: language, both modern and classical; linguistics; literature; history; jurisprudence; philosophy; archeology; comparative religion; ethics; the history, criticism, theory, and practice of the arts; those aspects of the social sciences which have humanistic content and employ humanistic methods; and the study and application of the humanities to the human environment with particular attention to the relevance of the humanities to the current conditions of national life. (Oct. 21, 1975, D.C. Law 1-22, § 3, 22 DCR 2083.)

§ 31-1903. Establishment of Commission.

(a) In order to evaluate and initiate action on matters relating to the arts, to encourage programs and the development of programs which promote progress in the arts, there is established, in the Office of the Mayor, in the District of Columbia, a commission to be known as the Commission on the Arts and Humanities. The Commission shall consist of eighteen members appointed by the Mayor, with the advice and consent of the Council. Each member appointed to the Commission shall be a person who has displayed an interest or an ability in one of the various fields of the arts or humanities and/or has been active in the furtherance of the arts or humanities in the District of Columbia. Members shall be appointed to ensure that they are representative of all the various geographic areas and neighborhoods within the District of Columbia.

(b) Members of the Commission shall serve terms of three years; except, of the members first appointed, six members shall be appointed for one year, six members shall be appointed for two years, and six shall be appointed for three years, as determined by the Mayor. Members of the Commission may be reappointed, but cannot serve more than two consecutive terms. Terms shall regularly begin on 1 July and end on 30 June of the respective calendar years, including the members first appointed.

(c) Should a vacancy occur, a successor shall be appointed by the Mayor within 30 days, with the advice and consent of the Council to serve until the end of the term of the member whom that successor succeeds. Failing to receive the nomination within the 30 days, the Council shall appoint a person to fill the vacancy. Members of the Commission on the Arts and Humanities established under Organization Order number 74-4 of January 7, 1974, issued by the Commissioner of the District of Columbia, shall continue to serve until the members of the Commission established under this chapter are appointed and qualify. The Mayor shall nominate members to the new commission within thirty days of October 21, 1975.

(d) The Mayor shall nominate the chairperson for the Commission.

(e) Members of the Commission shall serve without compensation, but shall be entitled to receive, in accordance with applicable District of Columbia

regulations, reimbursement for expenses incurred while actually performing duties vested in the Commission. (Oct. 21, 1975, D.C. Law 1-22, § 4, 22 DCR 2084.)

CODIFICATION

In subsec. (c), "October 21, 1975" has been substituted for "enactment of this act".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1902.

§ 31-1904. Powers.

The Commission shall—

(a) take action concerning the needs of the residents of the District of Columbia for activities in the arts and humanities, and concerning the development and improvement of activities in the arts and humanities in the District of Columbia;

(b) prepare an annual plan of artistic projects and productions in the District of Columbia meeting the requirements of sections 5(c) and 5(g) of the National Foundation on the Arts and Humanities Act of 1973, and act as the designated State agency for the District of Columbia, as referred to in Section 5(g) (2) (A) of the Foundation on Arts and Humanities Act of 1965, as amended;

(c) make grants to individuals and groups of individuals for projects and productions in the arts and humanities;

(d) cooperate with governmental departments and agencies, private organizations, and residents of the District of Columbia to develop and undertake programs which will encourage maximum participation in activities in the arts and humanities and promote greater appreciation and enjoyment of the arts and humanities;

(e) accept gifts, contributions and bequests of money and property to carry out the purposes of this chapter, which gifts shall be deposited in any depository in compliance with the laws of the District of Columbia;

(f) be empowered to appoint advisory panels in the various fields of the arts and humanities, as the Commission may deem necessary, the members of which shall serve without compensation;

(g) adopt and modify by-laws and be empowered to adopt regulations as authorized by law. (Oct. 21, 1975, D.C. Law 1-22, § 5, 22 DCR 2086.)

REFERENCES IN TEXT

Sections 5(c) and 5(g) of the National Foundation on the Arts and Humanities Act of 1973, referred to in subsec. (b), is probably a reference to sections 5(c) and 5(g) of the National Foundation on the Arts and the Humanities Act of 1965, Pub. L. 89-209, 79 Stat. 846, which are classified to section 954(c) and (g) of title 20, U.S. Code. Section 954(c) and (g) was amended by section 2(a) (3), (4) of the National Foundation on the Arts and the Humanities Amendments of 1973, Pub. L. 93-133, 87 Stat. 462, 463.

Section 5(g) (2) (A) of the Foundation on Arts and Humanities Act of 1965, as amended, referred to in subsec. (b), is probably a reference to section 5(g) (2) (A) of the National Foundation on the Arts and the Humanities Act of 1965, Pub. L. 89-209, 79 Stat. 846, which is classified to section 954(g) (2) (A) of title 20, U.S. Code.

§ 31-1905. Administration.

(a) There shall be an executive director for the Commission who shall be appointed by the Commission. The executive director shall be the chief administrative officer of the Commission and shall be

responsible for supervising the remainder of the staff of the Commission. He shall report regularly to the Commission on his activities. The executive director shall receive annual compensation fixed in accordance with chapter 51 of Title 5, U.S. Code.

(b) The Commission shall meet monthly, except when a meeting is cancelled by the chairperson and a majority of the Commission. Special meetings of the Commission may be called by the Mayor, Council, chairperson of the Commission, or upon the request of five members of the Commission.

(c) The Commission shall prepare and submit to the Mayor an annual budget to be included in the regular budget process of the District of Columbia developed in accordance with subchapter I of chapter 2A of title 47.

(d) The Chairperson shall submit to the Mayor and the Council the annual reports of the Commission's activities, and its plans, recommendations, and projections for the following year. These reports shall accompany the budget request in subsection (c). (Oct. 21, 1975, D.C. Law 1-22, § 6, 22 DCR 2087.)

§ 31-1906. Miscellaneous.

(a) The Mayor shall instruct the Office of Management and Budget Systems to coordinate with the Commission the establishment of a bookkeeping and accounting system to allow for swift transference of grants monies from the District Government to a recipient, and shall instruct that Office, in concert with the Commission, to establish a voucher system which would also allow for the swift transference of funds from the District Government to grant recipients.

(b) Nominees for the Commission shall be residents of the District of Columbia.

(c) The Commission shall establish procedures in its by-laws to handle conflicts of interest in the awarding of grants, when any commissioner has either a structural or fiduciary relationship with a grantee. (Oct. 21, 1975, D.C. Law. 1-22, § 7, 22 DCR 2088.)

Chapter 20.—EDUCATIONAL INSTITUTION LICENSURE COMMISSION

Sec.

- 31-2001. Purpose.
- 31-2002. Definitions.
- 31-2003. Establishment of Commission.
- 31-2004. Membership—Qualifications—Term of office—
Vacancies—Officers—Meetings—Quorum—
Compensation—Travel expenses.
- 31-2005. Transfer of positions—Appointment and compensation of staff—Establishment of panels for inspection, evaluation, and recommendations.
- 31-2006. Council approval of regulations—Review of licensed institutions—Validity of current licenses—Standards and fees for licensed institutions located outside the District.
- 31-2007. Functions of Commission.
- 31-2008. Supplemental funding.

§ 31-2001. Purpose.

The purpose of this chapter is to provide for the protection, education, and welfare of the citizens of the District of Columbia, it's private educational institutions, and it's students, by:

(a) establishing minimum standards concerning quality of education, ethical and business practices,

health and safety, and fiscal responsibility, to protect against substandard, transient, unethical, deceptive, or fraudulent institutions and practices;

(b) prohibiting the granting of false or misleading educational credentials;

(c) regulating the use of academic terminology in naming or otherwise designating educational institutions;

(d) prohibiting misleading literature, advertising, solicitation, or representation by educational institutions or their agents;

(e) providing for the preservation of essential academic records;

(f) advising the Mayor and Council of the District of Columbia periodically as to the educational and vocational training needs of the District of Columbia; and

(g) serving as the state approving agency for veterans benefits. (Apr. 6, 1977, D.C. Law 1-104, title I, § 101, 23 DCR 8734.)

EFFECTIVE DATE

Section 9 of act Apr. 6, 1977, D.C. Law 1-104, provided: "This act [enacting this chapter], including the amendments [to §§ 29-415 to 29-418] made by this act, shall become law according to the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act Apr. 6, 1977, D.C. Law 1-104, provided "That this act [enacting this chapter and amending §§ 29-415 to 29-418] may be cited as the 'Education Licensure Commission Act of 1976'."

§ 31-2002. Definitions.

For the purposes of this chapter:

(a) "Agent"—Any person owning any interest in, employed by, or representing for remuneration,¹ an educational institution, whether such institution is located within or outside the District, and who solicits or offers to enroll in the District students or enrollees for such institution, or who holds himself or herself out to residents of the District of Columbia as representing an educational institution for any such purpose.

(b) "District"—The District of Columbia.

(c) "Person"—Includes, but is not limited to, any individual, group of individuals, firm, partnership, corporation, association, company, society, trust, or any other entity whatsoever.

(d) "Educational Institution"—A private-school, high school, middle school, elementary school, academy, institute, junior college, college, university, or proprietary school in the District, or any branch, extension or facility operating in the District, of an institution chartered elsewhere, or, any branch, extension or facility operating elsewhere of a facility chartered in the District, which furnishes or offers to furnish instruction or educational services leading toward a high school diploma degree; or purporting to lead to college level credit, or prerequisite to an academic, business or professional degree beyond the secondary school level; or which offers for consideration, resident or correspondence courses or training or instruction for the purpose of enabling an individual to improve his

¹ So in original. Probably should be "remuneration".

intellectual aptitude, or which purports to prepare or qualify individuals for employment in any occupation or trade or work requiring mechanical, technical, artistic, or clerical skills; except that such term shall not include:

(1) Any course of instruction offered by the District or Federal Government or any instrumentality thereof.

(2) Schools conducted by any person solely for the training of the employees of the person, and for which no fee is charged.

(3) Education solely avocational or recreational in nature, as determined by the Commission, and institutions offering such education exclusively.

(4) Education offered by eleemosynary institutions, organizations, or agencies, so recognized by the Commission, provided no fee is charged for such education and such education is not advertised or promoted as leading toward educational credentials.

(e) "Degree"—Any designation, mark, appellation, series of letters or words, academic or honorary title, diploma, certificate, or other symbols which signify, purports or is generally taken to signify satisfactory completion of the requirements of an academic, educational, vocational or professional program of study beyond the secondary level.

(f) "To Grant or to confer"—Includes awarding, selling, conferring, bestowing, or giving.

(g) "Education" or "educational services" or like term—Includes, but is not limited to, any class, course, or program of training, supervision, instruction or study.

(h) "To offer"—Includes, in addition to its usual meanings, advertising, publicizing, soliciting, or encouraging any person, directly or indirectly, in any form, to perform the act described.

(i) "Chairman of Council"—Chairman of the Council of the District of Columbia.

(j) "Commission"—Educational Institution Licensure Commission.

(k) "To operate" or "operating"—When applied to an educational institution mean to establish, keep, or maintain any facility or location in the District, or to establish, keep or maintain any facility or location chartered in the District where from or through which, education is offered or given, or educational credentials are offered or granted, and includes contracting with any person, group, or entity to perform any such act.

(l) "License" or "to license"—The granting of approval to operate by the Commission to any educational institution covered under this chapter. Such approval shall be contingent upon said educational institution's compliance with all rules, regulations and criteria promulgated by the Commission, as well as compliance with all other applicable D.C. laws and regulations.

(m) "Proprietary School"—A privately-owned school in the District, or any branch, extension, or facility in the District of a proprietary school located elsewhere, which offers for a consideration, resident or correspondence courses or training or instruction for the purpose of enabling an individual to improve his appearance, social aptitude, social skills, intellectual aptitude, personality, or other personal attributes or which purports to pre-

pare or qualify individuals for employment in any occupation or trade or in work requiring mechanical, technical, artistic, or clerical skills. (Apr. 6, 1977, D.C. Law 1-104, title II, § 201, 23 DCR 8734.)

§ 31-2003. Establishment of Commission.

There is hereby established for the District of Columbia an Educational Institution Licensure Commission (hereinafter in this chapter referred to as the "Commission") which shall license private educational institutions, and their agents, ensure authenticity and legitimacy of private educational institutions, serves as the state approving agency for veterans benefits, for persons choosing private educational institutions and programs, and provide and promulgate standards, criteria, rules and regulations therefor, including rules of procedure for the Commission which will ensure adequate public notice of each meeting of the Commission. (Apr. 6, 1977, D.C. Law 1-104, § 3, 23 DCR 8734.)

CROSS REFERENCE

Licensing of institutions of learning to confer degrees, see §§ 29-415 to 29-418.

§ 31-2004. Membership — Qualifications — Term of office — Vacancies — Officers — Meetings — Quorum — Compensation — Travel expenses.

(a) The Commission shall consist of five members who shall be appointed by the Mayor.

(b) Each member of the Commission shall be a bona fide resident of the District of Columbia and shall serve for a term of five years, except that of the members first appointed to the Commission, three members shall be appointed to serve for a term of two years and two members shall be appointed to serve for a term of three years, to be determined by lot. Members may be appointed to serve for only one term, except that the initial appointees may be reappointed to a second term. Any person appointed to fill a vacancy on the Commission shall be appointed only to fill the remainder of the term for which his or her predecessor was appointed and shall be appointed in the same manner as the original selection. Persons appointed to fill the remainder of a term, where such remainder is equal to less than one half of the original term, may be reappointed to fill one additional full term.

(c) No officer, employee, trustee, or member of the governing board of any educational institution operating in the District of Columbia who is currently serving or who has served in such capacity, for the last 12 months or any member of the Board of Education of the District of Columbia, or any individual having a substantial financial interest in my educational institution operating in the District of Columbia, shall be considered to serve as a member of the Commission.

(d) The Commission shall choose annually from among its members, a Chairperson and such other Officers as it deems necessary. All meetings of the Commission shall be called by the Chairperson or a majority of the members, except the first meeting of the Commission shall be called by the Mayor.

(e) Three members shall constitute a quorum of the Commission and no official action of the Commission shall be taken except in an open meeting of the Commission with a quorum present.

(f) Members of the Commission shall each be entitled to receive \$100 a day, prorated, for each day spent in conducting the business of the Commission, up to a maximum of \$4000.00 for any year. While away from their homes or regular places of business in the performance of the duties of the Commission, members, including the Chairperson of the Commission, shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703(b) ¹ of title 5, of the United States Code. (Apr. 6, 1977, D.C. Law 1-104, § 4, 23 DCR 8734.)

§ 31-2005. Transfer of positions—Appointment and compensation of staff—Establishment of panels for inspection, evaluation, and recommendations.

(a) There shall be transferred to the Commission such positions and their funding that formerly were assigned to the Board of Higher Education for the approval and licensure of post-secondary institutions.

(b) The Commission may appoint such personnel as it deems necessary. Compensation shall be fixed in accordance with the merit promotion system of the Federal Civil Service Commission, established under sections 5335 and 5336 of title 5 of the United States Code, within the limits of funds available to the Commission, except that such positions shall be excepted.

(c) The Commission may set up panels of persons qualified to inspect, evaluate and make recommendations concerning the approval for licensure of the several kinds of institutions covered by this chapter. These persons shall be employed on a per diem basis at rates to be set by the Commission in accordance with the provisions of title 5, of the United States Code. (Apr. 6, 1977, D.C. Law 1-104, § 5, 23 DCR 8734.)

EMERGENCY ACT AMENDMENTS

1977—For temporary provisions relating to the power of the Board of Trustees of the University of the District of Columbia to license educational institutions, see sec. 2 of the Third Emergency District of Columbia Public Postsecondary Education Reorganization Act Amendments Extension Act of 1977 (D.C. Act 2-6, Feb. 15, 1977, 23 DCR 6967) and the Emergency Education Licensure Commission Act of 1977 (D.C. Act 2-66, Aug. 2, 1977, 24 DCR 1220).

1976—For temporary provisions relating to the power of the Board of Trustees of the University of the District of Columbia to license educational institutions, see sec. 2 of the Licensure of Postsecondary Educational Institutions Emergency Act (D.C. Act 1-123, May 24, 1976, 22 DCR 6628) and sec. 3 of the Emergency District of Columbia Public Postsecondary Education Reorganization Act Amendments Extension Act of 1976 (D.C. Act 1-145, Aug. 12, 1976, 23 DCR 1602) and the Second Emergency District of Columbia Public Postsecondary Education Reorganization Act Amendments Extension Act of 1976 (D.C. Act 1-166, Nov. 2, 1976, 23 DCR 3206).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-2007.

§ 31-2006. Council approval of regulations—Review of licensed institutions—Validity of current licenses—Standards and fees for licensed institutions located outside the District.

(a) Any regulation promulgated by the Commission on or after April 6, 1977, shall be submitted by

the Chairperson of the Commission to the Council. Such regulation shall become effective at the end of a 30-day period beginning on the date of transmission, unless during such period the Council disapproves such regulation by resolution.

(b) The Commission shall establish policies and procedures which shall be applied by the Commission in conducting periodic on-site reviews of the educational institutions operating under licenses granted by the Commission, or operating under licenses granted prior to April 6, 1977, by either the Board of Education, or the Board of Higher Education, the Department of Economic Development, or operating with no license at all.

(c) Nothing in this chapter shall be construed as invalidating the current license to operate an educational institution held by any agent in the District of Columbia on April 6, 1977.

(d) In the case of an educational institution which is licensed under this chapter, and is operating an educational facility pursuant to such license in a location outside of the District of Columbia, such educational institution shall be responsible for paying the costs of the Commission in conducting its periodic review of such facility and shall establish to the satisfaction of the Commission that the program offered will be in accordance with the educational standards of the jurisdiction in which it is operated and in no case lower than the educational standards of the District of Columbia. (Apr. 6, 1977, D.C. Law 1-104, § 6(b)-(e), 23 DCR 8734.)

CODIFICATION

In subsecs. (a), (b), and (c), "April 6, 1977" has been substituted for "the effective date of this act".

CROSS REFERENCE

Licensing of institutions of learning to confer degrees, see §§ 29-415 to 29-418.

§ 31-2007. Functions of Commission.

In addition to those duties specified in section 31-2005, the Commission shall:

(a) Advise the Mayor and the Council periodically with respect to the educational and vocational training needs of the District of Columbia;

(b) File with the Council and the Mayor quarterly reports (the first such report being filed within 90 days after April 6, 1977) relating to—

(1) the educational institutions granted or denied licenses under this chapter during the reporting period; and

(2) such other matters as come under the Commission's purview;

(c) As soon as possible after April 6, 1977, submit recommendations to the Council of appropriate penalties that should be enacted relating to violations of the provisions of this chapter and to violations of any regulations or orders of the Commission;

(d) As soon as possible after April 6, 1977, submit to the Council a proposed fee schedule for the administration of this chapter; and

(e) Receive and cause to be maintained as a permanent file, copies of academic and institutional records in conformity with the following provisions: In the event any educational institutions now or hereafter operating in the District, or any educational institution licensed under this chapter now or

¹ So in original. There is no subsec. (b).

hereafter operating elsewhere, proposes to discontinue its operation, the Chief Administrative Officer, by whatever title designated, of such institution shall cause to be filed with the Commission the original or legible true copies of all such academic and fiscal records of such institution as may be specified by the Commission. Such records shall include, at a minimum, such academic information as is customarily required by educational institutions when considering students for admission and, as a separate document, the academic record of each former student. In the event it appears to the Commission that any such records of an institution discontinuing its operations are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the Commission, the Commission may seize and take possession of such records, on its own motion, and without

order of court. The Commission shall maintain or cause to be maintained a permanent file of such records coming into its possession. (Apr. 6, 1977, D.C. Law 1-104, § 7, 23 DCR 8734.)

CODIFICATION

In subsecs. (b), (c), and (d), "April 6, 1977" has been substituted for "the effective date of this act".

CROSS REFERENCE

Licensing of institutions of learning to confer degrees, see §§ 29-415 to 29-418.

§ 31-2008. Supplemental funding.

The Mayor and the Council shall be authorized to obtain supplemental funding for the Commission. The Council shall approve the receipt or any such supplemental funding. (Apr. 6, 1977, D.C. Law 1-104, § 8, 23 DCR 8734.)

TITLE 32.—ELEEMOSYNARY, CURATIVE, CORRECTIONAL, AND PENAL INSTITUTIONS

Chap.	Sec.
12. Uniform Management of Institutional Funds	32-1201
13. D.C. General Hospital Commission.....	32-1301

Chapter 1.—ASSOCIATION FOR WORKS OF MERCY

Sec.

32-101 to 32-104. Repealed.

§§ 32-101 to 32-104. Repealed. Oct. 1, 1976, D.C. Law 1-87, § 35, 23 DCR 2544.

Sections 32-101 to 32-104, Act Oct. 12, 1888, 25 Stat. 554, ch. 1095, as amended Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116; July 29, 1970, Pub. L. 91-358, title I, § 158(b), 84 Stat. 576.

Section 32-101 related to the procedure for the Association for Works of Mercy to obtain custody and control of girls under 18 years of age.

Section 32-102 related to the commitment of girls under 18 years of age who had been convicted of a crime to the custody and control of the association.

Section 32-103 related to the discharge of girls from the institution.

Section 32-104 related to the appointment by probate courts of the association as guardian for girls.

Chapter 2.—WASHINGTON HUMANE SOCIETY

§ 32-208. Society authorized to prevent cruelty to children.

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 32-209. Commissioner to aid in enforcing laws affecting children—Detailing of police to assist society—Arrest of offenders—Children in house of ill-fame.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Age of majority, see § 21-101 note.

§ 32-210. Detailing of police to aid in enforcement of laws relating to cruelty to animals.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 3.—HOSPITALS AND ASYLUMS—GENERAL PROVISIONS

Sec.

32-305a. Report of loss of privileges to practice granted to health care providers by licensed institutions.

32-322. Fees for clinical services for non-indigent persons—Free clinical health services.

Sec.

32-327 to 32-329. Repealed.

32-331. Payments to needy patients.

32-332. Care of patients in sectarian and nonsectarian institutions.

32-333. Stipends for patients.

32-334. Benefits in lieu of salary for certain workers in District facilities.

§ 32-301. Private hospitals and asylums—To be licensed.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-303. Penalties for violation of sections 32-301, 32-302 or regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-304. District of Columbia Council to make regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-305a. Report of loss of privileges to practice granted to health care providers by licensed institutions.

Each health care institution licensed under the provisions of this chapter shall report in writing to the Commission on Licensure of the Healing Art any revocation, suspension, or restriction of privileges granted to an individual health care provider to practice in the institution. (Apr. 6, 1977, D.C. Law 1-106, § 8, 23 DCR 8736.)

CODIFICATION

"Provisions of this chapter" has been substituted for "statutes codified in sections 32-301, et seq., of the District of Columbia Code,".

EFFECTIVE DATE

See section 9 of act Apr. 6, 1977, D.C. Law 1-106, set out as a note under § 2-103.

CROSS REFERENCE

Commission on Licensure to Practice the Healing Art, see § 2-103.

§ 32-306. Smallpox hospital—Regulations.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-308. Admission of pay patients to psychopathic ward of Gallinger Hospital.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Rate schedule for District of Columbia General Hospital, see § 47-2213.

NOTES TO DECISIONS**Quality of care**

In action against District of Columbia Government, evidence established that treatment and care of patients in facilities at General Hospital fell well below any acceptable level of quality and efficiency and that the hospital had failed to provide adequate medical care and service to patients in accordance with recognized standards of medical practice in community; and D.C. Government would be required to submit to district court a detailed plan of corrective action and would be required to take immediate steps to fill all budgeted positions then vacant at hospital. *Greater Washington D. C. Area Council of Senior Citizens et al. v. District of Columbia Government et al.* (1975, 406 F. Supp. 768).

§ 32-309. Admission of pay patients to contagious-disease ward of Gallinger Hospital.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Rate schedule for District of Columbia General Hospital, see § 47-2213.

NOTES TO DECISIONS**Quality of care**

In action against District of Columbia Government, evidence established that treatment and care of patients in facilities at General Hospital fell well below any acceptable level of quality and efficiency and that the hospital had failed to provide adequate medical care and service to patients in accordance with recognized standards of medical practice in community; and D.C. Government would be required to submit to district court a detailed plan of corrective action and would be required to take immediate steps to fill all budgeted positions then vacant at hospital. *Greater Washington, D.C. Area Council of Senior Citizens et al. v. District of Columbia Government et al.* (1975, 406 F. Supp. 768).

§ 32-310. Admission of pay patients to Tuberculosis Hospital.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Rate schedule for Glenn Dale Hospital, see § 47-2215.

§ 32-312. Children's Tuberculosis Sanatorium—Construction and equipping authorized.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-313. Admission of pay patients to Children's Tuberculosis Sanatorium.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Rate schedule for Glenn Dale Hospital, see § 47-2215.

§ 32-316. Providence and Garfield Memorial Hospitals to accept contagious-disease cases sent by Commissioner.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-318a. Charges for treatment of patients.**CROSS REFERENCES**

Rate schedule for District of Columbia General Hospital, see § 47-2213.

Rate schedule for District of Columbia Village, see § 47-2214.

Rate schedule for Glenn Dale Hospital, see § 47-2215.

§ 32-322. Fees for clinical services for non-indigent persons—Free clinical health services.

(a) A fee, based on rates to be established by the Mayor, shall be charged to persons who are not indigent for all clinical services provided at District of Columbia health clinics, including the outpatient clinic at District of Columbia General Hospital, except that the Mayor's authority to set such fees at the outpatient clinic at District of Columbia General Hospital shall terminate on the date that the D.C. General Hospital Commission holds its first meeting pursuant to the provisions of sections 32-1311 and 32-1316(b). No fee for clinical services shall be charged where so specified by an agreement with the federal government or where the provision of a specified clinical service has been determined to be in the public interest pursuant to subsection (b) of this section. No person shall be denied clinical services because he or she is unable to pay for those services. The Mayor shall file with the Council of the District of Columbia notice of a proposed rate or a change in a rate at least thirty (30) days prior to its effective date.

(b) The following clinical health services shall be provided by the Mayor in the public interest, without charge, at District of Columbia health clinics,

including the outpatient clinic at the District of Columbia General Hospital:

- (1) Screening Services
 - (A) Hypertension
 - (B) Sick cell anemia
- (2) Screening and Treatment Services
 - (A) Drug addiction
 - (B) Lead poisoning
 - (C) Venereal disease
 - (D) Tuberculosis outpatient care
 - (E) Forensic psychiatry
- (3) Immunization Services
 - (A) Communicable disease in adults and children
 - (B) Rabies in animals

(c) The Mayor is hereby authorized to add to or delete from those services specified in subsection (b) such other clinical health services he determines to be necessary on the basis of any of the following health factors:

- (1) threat of communicable disease; or
- (2) danger to the public health; or
- (3) mortality and morbidity related to specific disease.

(d) At the beginning of each fiscal year, commencing with the fiscal year beginning October 1, 1977, the Mayor shall cause to be published in the District of Columbia Register such additions to or deletions from those services specified in subsection (b) as he may propose. If no such additions or deletions are proposed for any given fiscal year, a statement to that effect shall be published in the District of Columbia Register. (July 9, 1946, 60 Stat. 511, ch. 544, § 1; June 15, 1977, D.C. Law 2-9, § 2, 24 DCR 1215; Sept. 28, 1977, D.C. Law 2-24, § 4, 24 DCR 3343.)

AMENDMENTS

1977—Act Sept. 28, 1977, D.C. Law 2-24, amended subsection (a) generally.

Act June 15, 1977, D.C. Law 2-9, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATES OF 1977 AMENDMENTS

For act Sept. 28, 1977, D.C. Law 2-24, see section 5 of that act set out as a note under § 47-2213.

Section 4 of act June 15, 1977, D.C. Law 2-9, provided: "This act [amending § 32-322] shall be effective at the end of the period provided for Congressional review of acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act June 15, 1977, D.C. Law 2-9, provided "That this act [amending § 32-322] may be cited as the 'Clinical Health Services Act of 1977'."

SUPERSURE OF INCONSISTENT LAWS BY D.C. LAW 2-9

Section 3 of act June 15, 1977, D.C. Law 2-9, provided: "To the extent that the provisions of this act [amending § 32-322] are inconsistent with the provisions of any other act, regulation, resolution, or executive order, the provisions of this act shall be deemed to supersede the provisions of such other act, regulation, resolution, or executive order."

§ 32-323. Conveyance of property to Columbia Hospital.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-326. Standards of indigency—Emergency patients.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§§ 32-327 to 32-329. Repealed. June 28, 1977, D.C. Law 2-12, § 6(g), 24 DCR 1442.

Sections 32-327 to 32-329, Act Aug. 3, 1951, 65 Stat. 161, ch. 292, § 1.

Section 32-327 authorized the Mayor to accept volunteer services for medical services in the Health Department.

Section 32-328 authorized the Mayor to accept volunteer services for the Glenn Dale Tuberculosis Sanatorium.

Section 32-329 authorized the Mayor to accept volunteer services for Gallinger Municipal Hospital and the Tuberculosis Hospital.

For general authority to accept volunteer services, see §§ 1-215a et seq.

§ 32-331. Payments to needy patients.

The Mayor of the District of Columbia, pursuant to regulations prescribed by the Council of the District of Columbia, is authorized to furnish cash payments to needy patients in hospitals operated by or under contract (relating to the care of needy patients) with the District of Columbia in such amounts and at such times as he may determine. (Oct. 26, 1973, Pub. L. 93-140, § 4, 87 Stat. 504.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

APPROPRIATIONS

See note under § 1-226a.

§ 32-332. Care of patients in sectarian and nonsectarian institutions.

Notwithstanding any other provision of law, the Mayor of the District of Columbia, pursuant to regulations prescribed by the Council of the District of Columbia, is authorized from time to time to enter into contracts with institutions under sectarian and nonsectarian control, and to make payments to such institutions, for the care of indigent and medically indigent patients in hospitals and for the care and maintenance of persons who are a responsibility of the District of Columbia. The Council shall, in determining the level of payment to sectarian and nonsectarian institutions, take into consideration average costs in caring for like persons in area institutions, and in no event shall such payment for medical services exceed reasonable costs as determined under the District of Columbia Medicaid program. (Oct. 26, 1973, Pub. L. 93-140, § 5, 87 Stat. 505.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

APPROPRIATIONS

See note under § 1-226a.

§ 32-333. Stipends for patients.

The Mayor of the District of Columbia is authorized, pursuant to regulations prescribed by the Council of the District of Columbia, to provide for the payment of stipends to patients and residents employed in institutions of or under programs sponsored by the government of the District of Columbia as an aid to their rehabilitation or for training purposes. Nothing contained herein shall be construed as conferring employee status on any person covered by this section. (Oct. 26, 1973, Pub. L. 93-140, § 6, 87 Stat. 505.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

APPROPRIATIONS

See note under § 1-226a.

§ 32-334. Benefits in lieu of salary for certain workers in District facilities.

Notwithstanding any other provision of law, the Mayor of the District of Columbia is authorized to furnish, pursuant to regulations prescribed by the Council of the District of Columbia, subsistence, living quarters, and laundry in lieu of salary to persons authorized by the Mayor to work in facilities of the government of the District of Columbia for the purposes of securing training and experience in their future vocations. Nothing contained herein shall be construed as conferring employee status on any person covered by this section, nor as superseding the requirements of sections 5352 and 5353 of title 5, United States Code, relating to student employees specified therein who are assigned or attached to a hospital, clinic, or medical or dental laboratory. (Oct. 26, 1973, Pub. L. 93-140, § 7, 87 Stat. 505.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

APPROPRIATIONS

See note under § 1-226a.

Chapter 4.—SAINT ELIZABETHS HOSPITAL

§ 32-401. Expense of indigent insane admitted to Saint Elizabeths Hospital from District of Columbia—Admission.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Rewards for apprehension of fugitives from welfare institutions, see § 24-426.

§ 32-404. Reimbursements on account of expenditures for care of insane to be credited to the District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-405. Admission of indigent insane of District of Columbia—"Indigent insane person" defined.

NOTES TO DECISIONS

Adequacy of treatment facilities

Before trial court exercises any authority it may have to order 14-year-old involuntarily committed orphan treated at public expense outside the District of Columbia, on ground that no suitable facilities are available within the District, the District is entitled to reasonable time to attempt to design a program for alternate local care and court is also to consider the public's as well as the patient's interest; public interest requires that a request for commitment of an extraordinary amount of public funds for treatment of a single patient be given closest administrative and judicial scrutiny. *District of Columbia v. In the Matter of H. J. B.* (D.C. App. 1976, 359 A. 2d 285).

Constitutionality

Section 21-551 providing that a person committed to a public hospital but found not to be a resident of the District of Columbia is to be transferred to his state of residence if an appropriate institution in that state is willing to accept him may not be used to bar claim of a newly-arrived resident for medical public assistance since to do so would be unjustifiably discriminatory in violation of Fifth Amendment right to due process; also, resort to this section providing that all indigent insane persons residing in the District at the time they become insane are entitled to benefits of St. Elizabeths Hospital would also be invalid for such reason. *District of Columbia v. In the Matter of H. J. B.* (D.C. App. 1976, 359 A. 2d 285).

Residence

In view of fact that custodian of mentally retarded orphan, who was brought to the United States for purpose of adoption, was a District of Columbia corporation, the orphan acquired a colorable claim to District of Columbia "residence" for purpose of medical treatment at public expense once she was placed directly in custody of officials operating from corporation's District of Columbia office absent evidence that transfer from New York office was intended as anything less than an indefinite arrangement for her care or some residue of permanent attachment to another jurisdiction, the District is liable for her care. *District of Columbia v. In the Matter of H. J. B.* (D.C. App. 1976, 359 A.2d 285).

§ 32-416. Regulations relating to Board of Public Welfare—District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 5.—INDUSTRIAL HOME SCHOOL

§ 32-501. Control and management—Board of Public Welfare—Supplies—Disposition of income.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-503. Exchange of portion of Naval Observatory grounds for portion of Industrial Home School site—Sale of balance of tract—Use of land if not sold—Funds available for new school site.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 6.—FOREST HAVEN

§ 32-601. Authority to acquire site, erect buildings for home and school—Title to land—Property under jurisdiction of Commissioner of the District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-602. Control and supervision of institution—Name.

CROSS REFERENCES

Commitment of substantially retarded persons, see § 21-1101 et seq.

Rewards for apprehension of fugitives from welfare institutions, see § 24-426.

§ 32-604. Rules and regulations to be prescribed—Annual reports—Inventory.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-605. Superintendent—Appointment and qualifications.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 7B.—PLACEMENT OF CHILDREN IN FAMILY HOMES

§ 32-782. Child-placing agency—License.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-783. Appointment of supervisory committee by Commissioner—Composition and tenure—Chairman—Promulgation of rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-784. Application for license—Form—Investigation by Board—Provisional license—Term and renewal.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-785. Persons authorized to place children—Custody, control, supervision, and visitation by agency—Confidential records.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-785a. Agreements with child placement agencies outside of the District—Authority of Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-786. Agency vested with parental rights—Consent to adoption—Adoption petition—Parents' relinquishment of rights—Recordation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3-114, 3-115, 3-117, 16-304.

NOTES TO DECISIONS

Liability for medical assistance

Grant to a child-placing agency of parental rights, as opposed to parental duties, is primarily for purpose of vesting agency with authority to consent to adoption and does not, of its own force, expand schedule of liabilities in section 21-586 governing District of Columbia's right to reimbursement for treatment of persons involuntarily confined to a public hospital for the mentally ill, at least where the agency has acquired its most recent custodial relation by default of an adoption proceeding outside the District and has been unable to find an alternative placement because of a disability unknown at time the child

was released to the preadoptive family. *District of Columbia v. In the Matter of H. J. B.* (D.C. App. 1976, 359 A.2d 285).

Although charitable corporation was organized to accept custody and control of children brought into the country for adoption and was authorized to do any acts which would prevent such individuals from becoming public charges, such objectives do not, of themselves, create a parental relation between the committee and those children who might come into its care and do not create third-party rights in District of Columbia to reimbursement for expenses incurred in connection with involuntary commitment of mentally retarded orphan who had been brought into the United States by the corporation for purpose of adoption. *Id.*

Regardless of fact that proceeding involving involuntary commitment of mentally retarded child was not brought under authority of child neglect statute, sections 16-2301 et seq., such statute furnished no ground for charging charitable organization, which had arranged for child's adoption, with costs of her commitment since section 21-586 governing right of District of Columbia to reimbursement is controlling where neglect proceedings are suspended because of incompetency of the child and such section did not provide a claim for reimbursement against the organization. *Id.*

Where only by default on collapse of the adoption did custody of mentally retarded child, who was brought to the United States for purposes of adoption, fall to the charitable committee which had arranged for the adoption, custody had been maintained because of inability to locate a permanent arrangement because of the severe infirmity and committee had not been a penurious provider during its custodianship, doctrine of equitable estoppel furnishes no basis for claim of reimbursement against committee for maintenance of child during involuntary commitment to District of Columbia hospital for the mentally ill. *Id.*

Parental rights—Termination

The Superior Court exceeded its statutory grant of rule-making power by enacting procedural rule which abridged substantive right of a parent, i.e., rule permitting severance of parent-child relationship in a nonadoption proceeding. *In the Matter of C. A. P.* (D.C. App. 1976, 356 A.2d 335).

Superior Court's *parens patriae* power is insufficient authority for its enactment of rule permitting termination of parental rights in nonadoption proceedings. *Id.*

Court of Appeal's holding that Superior Court's adoption of rule permitting termination of parental rights based on neglect was in excess of its statutory authority would be given prospective application only. *In the Matter of C. A. P.* (D.C. App. 1976, 359 A.2d 11).

§ 32-787. Revocation of license of child-placing agency—Notice—Reinstatement.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-790. Compensation for services in connection with child placement.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-791. "Commissioner" defined—Delegation of functions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 10.—MISCELLANEOUS

Sec.

32-1006. Repealed.

§ 32-1001. Visitation of charities supported in whole or in part by District revenues by Commissioner of the District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-1002. Visitorial power of Commissioner over certain designated organizations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-1006. Repealed. June 28, 1977, D.C. Law 2-12, § 6(f), 24 DCR 1442.

Section, Act May 18, 1910, 36 Stat. 409, ch. 248, § 1, authorized the Mayor to accept voluntary medical service for public charitable institutions. For general authority to accept volunteer services, see §§ 1-215a et seq.

EFFECTIVE DATE OF REPEAL

See section 9 of act June 28, 1977, D.C. Law 2-12, set out as a note under § 1-215a.

§ 32-1009. Sale of products of Home for Aged and Infirm.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-1010. Admission of pay patients to Home for Aged and Infirm.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 11.—INTERSTATE COMPACT ON JUVENILES

§ 32-1102. Authority to enter into compact.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Consent of District to return

District's consent to rendition of juvenile to another state under Interstate Compact on Juveniles cannot properly be exercised by assistant corporation counsel absent express delegation of such power, nor by trial judge; instead, remand is required to enable trial court to identify "compact administrator" under Compact and to solicit his grant or denial of District's consent to rendition. *In the Matter of G. C. S.* (D.C. App. 1976, 360 A.2d 498).

Right of consent to rendition of juvenile to another jurisdiction under Interstate Compact on Juveniles is not that of a fugitive juvenile but that of District, and is unqualified under Compact. *Id.*

§ 32-1103. Compact administrator—Appointment—Authority — Duties — Supplementary agreements — Payments.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Consent to return

District's consent to rendition of juvenile to another state under Interstate Compact on Juveniles cannot properly be exercised by assistant corporation counsel absent express delegation of such power, nor by trial judge; instead, remand is required to enable trial court to identify "compact administrator" under Compact and to solicit his grant or denial of District's consent to rendition. *In the Matter of G. C. S.* (D.C. App. 1976, 360 A.2d 498).

Chapter 12.—UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS

Sec.

- 32-1201. Definitions.
- 32-1202. Expenditure of net appreciation of the assets of endowment funds.
- 32-1203. Restrictions on expenditure of net appreciation by gift instruments—Implication and construction of restrictions.
- 32-1204. Investments authorized for institutional funds.
- 32-1205. Delegation of authority to manage investment of institutional funds.
- 32-1206. Standard of care for administration of certain powers over institutional funds.
- 32-1207. Release of restrictions imposed by gift instruments on use or investment of institutional funds.
- 32-1208. Severability.
- 32-1209. Construction.

§ 32-1201. Definitions.

In this chapter:

(a) "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes.

(b) "Institutional fund" means a fund held by an institution for its exclusive use, benefit, or purposes, but does not include—

(1) a fund held for an institution by a trustee that is not an institution or

(2) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

(c) "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

(d) "Governing board" means the body responsible for the management of an institution or of an institutional fund.

(e) "Historic dollar value" means the aggregate fair value in dollars of—(1) an endowment fund at the time it became an endowment fund, (2) each subsequent donation to the fund at the time it is made, and (3) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive.

(f) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing, or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund. (Apr. 6, 1977, D.C. Law 1-103, § 2, 23 DCR 8733.)

EFFECTIVE DATE

Section 11 of act Apr. 6, 1977, D.C. Law 1-103, provided: "This act [enacting this chapter] shall take effect pursuant to the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act Apr. 6, 1977, D.C. Law 1-103, provided "That this act [enacting this chapter] may be cited as the 'Uniform Management of Institutional Funds Act'."

§ 32-1202. Expenditure of net appreciation of the assets of endowment funds.

The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by section 32-1206. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution. (Apr. 6, 1977, D.C. Law 1-103, § 3, 23 DCR 8733.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32-1203.

§ 32-1203. Restrictions on expenditure of net appreciation by gift instruments—Implication and construction of restrictions.

Section 32-1202 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after April 6, 1977. (Apr. 6, 1977, D.C. Law 1-103, § 4, 23 DCR 8733.)

CODIFICATION

"April 6, 1977" has been substituted for "the effective date of this act".

§ 32-1204. Investments authorized for institutional funds.

In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than law relating to investments a fiduciary may—

(a) invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures, and other securities of profit or non-profit corporations, shares in or obligations of associations, partnerships, or individuals, and obligations of any government or subdivision or instrumentality thereof;

(b) retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

(c) include all or any part of an institutional fund in any pooled or common fund maintained by the institution; and

(d) invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interest in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board. (Apr. 6, 1977, D.C. Law 1-103, § 5, 23 DCR 8733.)

§ 32-1205. Delegation of authority to manage investment of institutional funds.

Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may—

(a) delegate to its committees, officers or employees of the institutions, or the fund, or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds;

(b) contract with independent investment advisers, and investment counsel or managers, banks, or trust companies, so to act,

(c) authorize the payment of compensation for investment advisory or management services. (Apr. 6, 1977, D.C. Law 1-103, § 6, 23 DCR 8733.)

§ 32-1206. Standard of care for administration of certain powers over institutional funds.

In the administration of the powers to appropriate appreciation, to make and retain investments, and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long- and-short term needs of the institution in carrying out its educational, religious, charitable, or other

eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions. (Apr. 6, 1977, D.C. Law 1-103, § 7, 23 DCR 8733.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32-1202.

§ 32-1207. Release of restrictions imposed by gift instruments on use or investment of institutional funds.

(a) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(b) If written consent of the donor cannot be obtained by reason of his death, disability, unavailability, or impossibility of identification, the governing board may apply, in the name of the institution, to the Superior Court of the District of Columbia for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The Corporation Counsel of the District of Columbia shall be notified of the application and shall be given an opportunity to be heard. The Attorney General of the United States shall be notified of the application and shall be given an opportunity to be heard when a Federal interest in the application or the institution is asserted. If the court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

(c) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

(d) This section does not limit the application of the doctrine of cy pres. (Apr. 6, 1977, D.C. Law 1-103, § 8, 23 DCR 8733.)

§ 32-1208. Severability.

If any provision of this chapter, or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared severable. (Apr. 6, 1977, D.C. Law 1-103, § 9, 23 DCR 8733.)

§ 32-1209. Construction.

This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those States which enact it. (Apr. 6, 1977, D.C. Law 1-103, § 10, 23 DCR 8733.)

Chapter 13.—D.C. GENERAL HOSPITAL COMMISSION

SUBCHAPTER I.—GENERAL PROVISIONS

Sec.

32-1301. Findings and purposes.

32-1302. Definitions.

SUBCHAPTER II.—D.C. GENERAL HOSPITAL COMMISSION

Sec.

- 32-1311. Establishment of Commission.
- 32-1312. Membership.
- 32-1313. Qualifications for membership.
- 32-1314. Term of office.
- 32-1315. Appointments to vacancies.
- 32-1316. Rules of procedure.
- 32-1317. Selection, responsibility and terms of officers.
- 32-1318. Removal of Commissioners.
- 32-1319. Compensation.
- 32-1320. Duties and powers.
- 32-1321. Commission staff.
- 32-1322. Access to government information.
- 32-1323. Liability of Commissioners.
- 32-1324. Notice of rate changes.

SUBCHAPTER III.—HOSPITAL PERSONNEL

- 32-1331. Executive Director—Appointment—Functions.
- 32-1332. Medical Director—Appointment—Functions.
- 32-1333. Hospital staff—Employment.
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SUBCHAPTER I.—GENERAL PROVISIONS

§ 32-1301. Findings and purposes.

(a) The Council of the District of Columbia hereby finds that—

(1) comprehensive health care and treatment are essential to the protection and promotion of health, safety and welfare of the residents of the District of Columbia;

(2) rapidly escalating health care and hospital costs often impose overwhelming financial burdens on persons suffering major illnesses or injuries;

(3) inability to pay should not preclude the right to quality hospital care and treatment;

(4) there is an urgent need to improve the city's ability to provide comprehensive quality hospital care services to the poor and medically needy in a proficient manner;

(5) a system permitting fiscal, administrative and managerial flexibility is necessary; and

(6) the special and unique needs of D.C. General Hospital require that it be run independently of a government bureaucracy so that it has the authority and flexibility to ensure that it receives the staff, supplies, services and other attention required to serve its clients and the city.

(b) In order to provide quality public hospital care and services, and to eliminate the disparity in quality between public and private hospital care in the District of Columbia, it is the purpose of this chapter to establish the D.C. General Hospital Com-

mission to ensure that any D.C. resident needing medical care and unable to obtain it elsewhere can be treated and, if necessary, admitted to the Hospital, and to ensure that he will receive efficient, economical, quality hospital care and services. No D.C. resident will be refused care because he is unable to pay. In addition, the Commission shall study the needs of low income hospital users in the District of Columbia, develop plans to ensure adequate facilities and personnel to meet these needs, insure that maximum efficiency and economy is provided in the administration of public health care in D.C. General Hospital, and give careful consideration to the future of the Hospital. (May 13, 1977, D.C. Law 1-134, title I, § 101, 24 DCR 406.)

EFFECTIVE DATE

Section 508 of act May 13, 1977, D.C. Law 1-134, title V, provided: "This act [enacting this chapter] shall be effective as provided in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act May 13, 1977, D.C. Law 1-134, provided "That this act [enacting this chapter] may be cited as the 'D.C. General Hospital Commission Act'."

§ 32-1302. Definitions.

For the purposes of this chapter;

(a) The term "Commission" means the D.C. General Hospital Commission established under the provisions of subchapter II of this chapter.

(b) The term "Commissioner" means a member of the D.C. General Hospital Commission.

(c) The term "Council" means the Council of the District of Columbia.

(d) The term "Mayor" means the Mayor of the District of Columbia.

(e) The term "Fund" means the D.C. General Hospital Fund established under the provisions of section 32-1342. (May 13, 1977, D.C. Law 1-134, title I, § 102, 24 DCR 406.)

SUBCHAPTER II.—D.C. GENERAL HOSPITAL COMMISSION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 32-1302.

§ 32-1311. Establishment of Commission.

On October 1, 1977, there shall be established, as an independent agency of the District of Columbia government, the D.C. General Hospital Commission, to govern D.C. General Hospital, to develop broad policies for the Hospital, and to analyze the role of the Hospital as part of the District of Columbia public health care system. (May 13, 1977, D.C. Law 1-134, title II, § 201, 24 DCR 406.)

EFFECTIVE DATE

See note under § 32-1301.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32-322, 47-2215b.

§ 32-1312. Membership.

(a) The Commission shall consist of eleven commissioners appointed in the following manner: Within 90 days after May 13, 1977, the Mayor shall appoint, by and with the consent of the Council,

eleven individuals to serve as members of the Commission. Two such members shall be individuals with proven expertise in business and management. Two members shall be health providers, one representing each university affiliated with D.C. General Hospital. Two members will be health consumers. One member shall be a member of the Unified Bar of the District of Columbia who is knowledgeable in health law. The remaining four members may represent the health profession generally and/or may be members of the general public. No person shall be eligible for appointment to this Commission who is (1) a member of any other D.C. government board or Commission (including purely advisory ones); (2) the spouse of the head of a department or agency of the District of Columbia; or (3) the spouse of an elected official of the District of Columbia.

(b) the Executive Director and Medical Director of the Hospital and the President of the Medical Staff shall be Ex-Officio Members of the Commission. (May 13, 1977, D.C. Law 1-134, title II, § 202, 24 DCR 406.)

CODIFICATION

In subsec. (a), "May 13, 1977" has been substituted for "the effective date of this act".

§ 32-1313. Qualifications for membership.

(a) Each Commissioner shall be a resident of the District of Columbia. In making appointments to the Commission, the Mayor shall give due consideration to achieving fair representation of all geographic areas of the city.

(b) No person shall be appointed to the Commission who is a member of the Council or an officer or employee of the government of the District of Columbia. (May 13, 1977, D.C. Law 1-134, title II, § 203, 24 DCR 406.)

§ 32-1314. Term of office.

Commissioners shall serve terms of six years except that, in making initial appointments, the Mayor shall appoint four members to serve terms of two years, three members to serve terms of four years, and four members to serve terms of six years. Each full-term Commissioner appointed thereafter shall be appointed in a manner consistent with the original appointment for a term of six years and shall serve until his or her successor is appointed and confirmed. No individual shall serve on the Commission for more than twelve years. (May 13, 1977, D.C. Law 1-134, title II, § 204, 24 DCR 406.)

§ 32-1315. Appointments to vacancies.

When a vacancy occurs on the Commission, the Mayor shall, by and with the consent of the Council within 30 days of such vacancy, nominate a successor who shall represent the same group as the member he or she is replacing. The appointment shall be for the remainder of the term of the vacated position. (May 13, 1977, D.C. Law 1-134, title II, § 205, 24 DCR 406.)

§ 32-1316. Rules of procedure.

(a) The Commission shall develop its own rules of procedure, except that such rules shall provide that the Commission shall meet at least once every month.

(b) The Commission shall hold its first official meeting on or before October 5, 1977, at which time members shall elect a Chairperson and a Secretary and any other officers as members deem necessary.

(c) Commission meetings shall be held at D.C. General Hospital at a regularly scheduled time to be decided by the Commission at its first meeting. Additional meetings may be called by the Chairperson of the Commission or by a majority of its members. No official action may be taken by the Commission except at a meeting of the Commission at which a quorum is present. Six members shall constitute a quorum but a lesser number may hold hearings. Each meeting of the Commission shall be open to the public with appropriate notice of each meeting given to the general public, except that a majority of Commissioners may elect to go into executive session to take action on personnel matters.

(d) The Commission shall meet at least once every two months with the Executive Staff of the Hospital. The Commission shall hold two public meetings each year for the entire Hospital staff¹

(e) The Commission shall consider holding public hearings on the operating and capital budgets of the Hospital prior to submitting them to the Mayor. (May 13, 1977, D.C. Law 1-134, title II, § 206, 24 DCR 406.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32-322, 47-2215b.

§ 32-1317. Selection, responsibility and terms of officers.

(a) The Commission shall select its own Chairperson, by vote, except that prior to the first meeting of the Commission, the Mayor shall name one of the Commissioners to chair the first Commission meeting until the selection of a Chairperson.

(b) The Chairperson shall preside over all Commission meetings and shall have such other duties as the Commissioners may decide.

(c) The Commission shall select its own Secretary who shall keep minutes of all the Commission's proceedings and perform such other duties as may be prescribed by the Commission.

(d) Officers shall be elected for two-year terms and shall be eligible for re-election. (May 13, 1977, D.C. Law 1-134, title II, § 207, 24 DCR 406.)

§ 32-1318. Removal of Commissioners.

(a) Any member of the Commission shall be automatically suspended from serving on the Commission after he has been indicted for the commission of a felony. Upon a final determination of his guilt or innocence, the term of such member shall automatically terminate or he shall be reinstated.

(b) The Mayor may remove any Commissioner whom he determines is guilty of misconduct or malfeasance in office after providing said Commissioner with a copy of the charges. Within ten days of receipt of such notice, the Commissioner may request a hearing before an independent hearing examiner. (May 13, 1977, D.C. Law 1-134, title II, § 208, 24 DCR 406.)

¹ So in original. There probably should be a period.

§ 32-1319. Compensation.

Members of the Commission shall be reimbursed for actual and necessary expenses, while actually engaged in services for the Commission including per diem at the maximum rate equal to the daily equivalent provided for by grade 18 of the General Schedule established under section 5332 of title 5 of the United States Code, with a limit of \$4,000 per annum. (May 13, 1977, D.C. Law 1-134, title II, § 209, 24 DCR 406.)

§ 32-1320. Duties and powers.

In addition to those powers conferred elsewhere in this chapter, the Commission is hereby charged with the duty to govern all affairs of D.C. General Hospital and shall have all powers necessary or convenient to carry out the purposes of this chapter including, but not limited to the following;

(1) To establish hospital policies to insure quality patient care.

(2) To undertake health service planning and evaluation of hospital services.

(3) To determine the scope of services to be offered by the Hospital.

(4) To ensure that proper professional standards are maintained in the care of the sick at the Hospital.

(5) To perform such duties and adopt such rules and regulations as may be necessary to carry out the purposes of this chapter.

(6) To accept gifts, grants, donations and bequests on behalf of, and for the use of, D.C. General Hospital to be placed in the D.C. General Hospital Fund.

(7) To coordinate professional interests with administrative, financial and community needs.

(8) To enter into negotiations and binding contracts pursuant to Council regulations to achieve any or all of its purposes, including arrangements for certain services to be provided by other hospitals if economy or sophistication of required service so dictate; *Provided*, That nothing in this section shall be construed to alter the contracting responsibilities of the Department of General Services with respect to capital construction projects.

(9) To conclude agreements of affiliation.

(10) To consult on a regular basis with officials of public and private long-term care facilities in the District of Columbia.

(11) To seek independent funding for, and undertake needed studies of D.C. General Hospital Services.

(12) To sue and be sued in its official capacity.

(13) To procure insurance, or obtain indemnification, against any loss in connection with the assets of the D.C. General Hospital Fund as established in section 32-1342, or any liability in connection with Hospital or Commission activities, such insurance or indemnification to be procured in such amounts, and from such sources, as the Commission deems appropriate.

(14) To select an Executive Director and a Medical Director for D.C. General Hospital and establish the division of responsibility between the Executive Director and the Medical Director.

(15) Prepare and submit to the Mayor, on a date fixed by the Mayor, and in the form prescribed by the Mayor, an annual budget for D.C. General Hospital. Such budget shall include a proposed financial operating plan for such fiscal year and a capital improvements plan. The Mayor and the Council shall, after review and consideration of the budget submitted by the Commission, establish the maximum amount of funds for the total budget which will be allocated to the Hospital, and the maximum number of positions. The Mayor and Council shall also approve capital construction by specific project.

(16) To establish rates for the provision of health and medical services by the Hospital, and for the provision of non-medical services, provided to other city institutions. Such rates shall be adjusted to reflect actual costs at least annually.

(17) To submit recommendations to the Mayor and the Council of the District of Columbia for legislation affecting D.C. General Hospital.

(18) To explore the possibility of granting hospital privileges to non-staff doctors and to develop criteria for such admission.

(19) To perform such other functions as are needed to ensure the provision of quality patient care and the maintenance and operation of a quality hospital.

(20) Enter into negotiations and contracts with labor unions on all issues except pay.

(May 13, 1977, D.C. Law 1-134, title II, § 210, 24 DCR 406.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32-1341.

§ 32-1321. Commission staff.

Staff members may be hired to assist the Commission in carrying out its responsibilities. Staff shall be hired in accordance with positions and funding approved in the annual Hospital budget and applicable D.C. personnel laws and regulations except they shall have no tenure rights. (May 13, 1977, D.C. Law 1-134, title II, § 211, 24 DCR 406.)

§ 32-1322. Access to government information.

Each agency of the District of Columbia government shall furnish to the Commission, upon request, such records, information, services and such other assistance as may be necessary to enable the Commission to perform its function properly. Any information furnished to the Commission and all information produced by the Commission shall be released to the public under terms and conditions of subchapter II of chapter 15 of title 1. (May 13, 1977, D.C. Law 1-134, title II, § 212, 24 DCR 406.)

CODIFICATION

"Subchapter II of chapter 15 of title 1" has been substituted for "Commissioner's Order No. 76-109 or such superseding order or legislation as sets forth the right of the public to government information". Act Mar. 29, 1977, D.C. Law 1-96, enacted subchapter II of chapter 15 of title 1 which relates to freedom of information and section 4 of that act which is set out as a note under § 1-1504 repealed Mayor's Order No. 76-109.

§ 32-1323. Liability of Commissioners.

No Commissioner may be held personally liable for any action taken in the course of carrying out his

official duties and responsibilities as set forth in this chapter. (May 13, 1977, D.C. Law 1-134, title II, § 213, 24 DCR 406.)

§ 32-1324. Notice of rate changes.

All proposed changes in rates to be charged patients of D.C. General Hospital shall, at least 30 days prior to their effective date, be published in the D.C. Register, with a copy filed with the Council and the Mayor. Prior to adoption of the changed rates a public hearing shall be held. (May 13, 1977, D.C. Law 1-134, title II, § 214, 24 DCR 406.)

SUBCHAPTER III.—HOSPITAL PERSONNEL

§ 32-1331. Executive Director — Appointment — Functions.

(a) The Commission shall appoint an Executive Director of the Hospital who shall serve at the pleasure of the Commission and who shall be the chief administrative officer of the Hospital. His appointment or termination shall require the concurrence of a majority of the Commission.

(b) The Executive Director shall have the authority to perform the following functions or to delegate any of the following powers and responsibilities to members of his staff:

(1) To operate, manage and superintend D.C. General Hospital and enforce hospital policies.

(2) To bill and collect fees and reimbursements for services provided by the Hospital either from those able to pay directly or from third party sources.

(3) To manage the D.C. General Hospital Fund created under section 32-1342.

(4) To oversee hospital accounting and record-keeping.

(5) To repair, maintain and supply D.C. General Hospital.

(6) To restructure hospital services according to utilization, as needed.

(7) To establish patient identification techniques, in particular to determine source of payment.

(8) To provide such other services and perform such other functions as are needed to provide quality care and effective and efficient administration of the Hospital.

(9) To recruit, hire, and terminate employees of the Hospital, except the Commission staff, in accordance with D.C. personnel laws and regulations and any relevant agreements with medical schools, except that the hiring or termination of the Medical Director shall require the concurrence of a majority of the Commission.

(May 13, 1977, D.C. Law 1-134, title III, § 301, 24 DCR 406.)

EFFECTIVE DATE

See note under § 32-1301.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32-1334.

§ 32-1332. Medical Director — Appointment — Functions.

After consultation with the Executive Director and the executive committee of the medical staff, the Commission shall appoint a full-time Medical

Director of the Hospital who shall serve at the pleasure of the Commission. The Medical Director shall be responsible for the coordination of ambulatory services, in-patient services, medical audit, medical research, medical education and other medical professional services of the hospital. (May 13, 1977, D.C. Law 1-134, title III, § 302, 24 DCR 406.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32-1334.

§ 32-1333. Hospital staff—Employment.

The Hospital staff shall be hired in accordance with applicable D.C. personnel laws and regulations and shall be considered regular D.C. Government employees. (May 13, 1977, D.C. Law 1-134, title III, § 303, 24 DCR 406.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32-1334.

§ 32-1334. Personnel system—Benefits.

Except as provided in sections 32-1331, 32-1332, and 32-1333 D.C. General Hospital personnel shall be employees of the District of Columbia government, and, as such, shall receive all benefits including, but not limited to, tenure, leave, retirement, health and life insurance, and employee disability and death benefits. (May 13, 1977, D.C. Law 1-134, title III, § 304, 24 DCR 406.)

§ 32-1335. Transfer of positions and funds.

(a) The Mayor shall transfer to the Commission not later than October 5, 1977 all positions and funds allocated for D.C. General Hospital as shown in the fiscal 1977 budget for the Hospital (\$40,685,700 and 2264 positions), plus the cost of the October 1976 pay raise attached to D.C. General positions, plus all additional personnel and other funds approved for the Hospital by the Congress in the D.C. Appropriation Act for fiscal 1978, plus the following positions and associated funding:

(1) 20 positions from the personnel staff, including labor relations positions, from the Office of Administration, Executive Direction and Support, as follows:

1	-----	GS 14
1	-----	GS 13
4	-----	GS 11's
2	-----	GS 9's
5	-----	GS 7's
5	-----	GS 5's
2	-----	GS 4's

(2) 65 positions, maintenance personnel, 62 as set forth in the proposed fiscal 1978 budget plus 3 GS 4 messenger positions, from the Office of Administration, Executive Direction and Support;

(3) 23 positions, billings and collections personnel, from Payments Assistance Administration, as follows:

1	-----	GS 11
2	-----	GS 9's
2	-----	GS 8's
8	-----	GS 7's
8	-----	GS 5's
2	-----	GS 4's

(4) 2 positions, GS 9, from the procurement and supply staff, Office of Administration, plus 5 GS 7 typists and 4 GS 4 clerks.

(b) Such positions and personnel may be reclassified, realigned, or found in excess and separated from the service. (May 13, 1977, D.C. Law 1-134, title III, § 305, 24 DCR 406.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32-1342.

§ 32-1336. Non-discrimination.

All appointments made pursuant to this chapter shall be made without regard to race, color, religion, national origin, sex, sexual preference, age, marital status, or political affiliation. It shall be unlawful to discriminate against any individual, with respect to his compensation, terms, conditions, or privileges of employment, including promotion; or to limit, segregate, or classify an employee in any way, which would deprive or tend to deprive him of employee opportunities, or otherwise adversely affect his status as an employee. (May 13, 1977, D.C. Law 1-134, title III, § 306, 24 DCR 406.)

SUBCHAPTER IV.—HOSPITAL FINANCES

§ 32-1341. Annual appropriation.

(a) The Commission shall submit to the Mayor a consolidated budget covering all anticipated income, expenses, and capital outlays of D.C. General Hospital, medical, nursing, health and allied medical programs related thereto, of any comprehensive health plans and services provided in accordance with such plans, of any agreement or contract with public or private nonprofit hospitals or health care facilities, and of all Commission expenses, which budget shall show the net amount for which it requests an appropriation. Said budget shall be submitted to the Mayor on the date that all District Government agencies are required to submit their budget to the Mayor. The Mayor shall transmit to the Council the budget as requested by the Commission. The Mayor may also submit such modified budget as he deems appropriate. The net amount for which the Commission requests and appropriation shall be the difference between the anticipated expenses for the coming fiscal year, including debt service for capital expenses and a reserve for bad debts, as shown in the consolidated budget, and the anticipated income shown in that budget. The net amount should represent as closely as possible the anticipated cost of providing services to those city residents for whom there is no other payment source, plus the cost of any services rendered free because they have been determined in the public interest under D.C. law. Said appropriation shall be in the form of one lump-sum amount and shall be transferred to the D.C. General Hospital Fund in quarterly installments. Upon final determination of the amount of such appropriation by the Council, the Commission shall support such amount in all further budgetary deliberations.

(b) The Commission shall provide the Council, for budget or appropriations purposes, with reasonable information on medical, personnel and related matters as the Council may request, to allow for review of the request, consistent with section 32-1320

(15), and shall, for information purposes only, transmit its appropriation request in a form that reflects the utilization of program performance and cost effectiveness principles as provided by law applicable to the city.

(c) The Commission shall bill the District of Columbia government for services rendered persons eligible for payment of medical expenses under the D.C. state plans for Title XIX of the Social Security Act (Medicaid) [42 U.S.C. 1396 et seq.], and Title V of that Act (Maternal and Child health) [42 U.S.C. 701 et seq.].

(d) The Commission shall bill the Federal government directly for services rendered persons eligible for payment of medical expenses under Title XVIII of the Social Security Act (Medicare) [42 U.S.C. 1395 et seq.].

(e) The Commission shall bill private insurance companies for services rendered patients insured by them, and shall bill patients directly for any uninsured costs of services delivered to them by the Hospital. (May 13, 1977, D.C. Law 1-134, title IV, § 401, 24 DCR 406.)

EFFECTIVE DATE

See note under § 32-1301.

§ 32-1342. Establishment of D.C. General Hospital Fund—Transfer of unexpended funds—Spending limitations.

(a) A D.C. General Hospital Fund shall be established to receive all funds for the operation of D.C. General Hospital and to pay the operating and capital expenses of D.C. General Hospital. All funds generated by services provided at the Hospital will be deposited in the D.C. General Hospital Fund, except as otherwise provided in this section for the transfer year.

(b) Any monies of the Hospital, from whatever source derived, shall except as otherwise provided in this chapter, be for the sole use of the D.C. General Hospital Fund and shall be deposited as soon as practicable in that Fund. Said monies of the Fund shall be paid out in checks signed by the D.C. Treasurer. All deposits of such monies shall be secured in a manner consistent with deposits made by the government of the District of Columbia, regarding the deposit of revenue.

(c) At the time of transfer, all unexpended operating funds in the Department of Human Resources and in other agencies of the District government allocated to D.C. General Hospital, including unexpended appropriations for positions transferred in accordance with section 32-1335, shall be, and hereby are transferred to the D.C. General Hospital Fund.

(d) The Commission shall be responsible for all billings for services effective with the date of transfer, but until the beginning of the next fiscal year following the transfer receipts from billings under Title V and Title XIX of the Social Security Act [42 U.S.C. 701 et seq. and 1396 et seq.] shall be deposited or credited in the way such Hospital receipts were deposited or credited prior to the establishment of the Commission.

(e) During the fiscal year in which transfer occurs any capital debt service allocable to D.C. General

Hospital shall continue to be paid out of the general appropriation for D.C. government debt service.

(f) Nothing in this chapter shall be construed as affecting the applicability to the Commission of the provisions of section 3679 of the Revised Statutes of the United States Code¹ (31 U.S.C. 665), the so-called Anti-Deficiency Act. (May 13, 1977, D.C. Law 1-134, title IV, § 402, 24 DCR 406.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32-1302, 32-1320, 32-1331.

§ 32-1343. Audits.

(a) The Municipal Audit Division of the Office of Budget and Management Systems shall audit any and all funds expended during fiscal 1977, whether appropriated or grant, District or other, for D.C. General Hospital and related activities, including capital projects, and shall submit a report of the audit to the Mayor and to the Council within 90 days of May 13, 1977, and to the D.C. General Hospital Commission upon its establishment.

(b) The Municipal Auditor of the Office of Budget and Management Systems or his legally authorized representative, shall examine annually the accounts and records of financial transactions of the D.C. General Hospital Fund including its receipts, disbursements, contracts, resources, sinking funds and any other matter relating to its financial operation and standing.

(c) Provision may also be made by the Commission for an audit of the books and financial transactions of the Fund at intervals of not less than three years by a firm of certified public accountants selected by the Commission. (May 13, 1977, D.C. Law 1-134, title IV, § 403, 24 DCR 406.)

CODIFICATION

In subsec. (a), "May 13, 1977" has been substituted for "the effective date of this act".

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of section, see sec. 2 of the D.C. General Hospital Audit Amendment Emergency Act of 1977 (D.C. Act 2-89, Oct. 13, 1977, 24 DCR 3194) and the D.C. General Hospital Audit Amendment Second Emergency Act of 1977 (D.C. Act 2-123, Dec. 27, 1977, 24 DCR 5548).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32-1354.

SUBCHAPTER V.—MISCELLANEOUS PROVISIONS

§ 32-1351. Purchasing.

(a) No Commissioner, officer or employee designated to do purchasing for the Commission shall have any material interest, either directly or indirectly, in any contract for our¹ purchase of supplies, materials, equipment or services. The Commission shall, in respect to all contracts for supplies, material or work involving an expenditure of \$5,000 or more, let such contracts formally to the lowest reasonable bidder after advertising for bids once in the D.C. Register and in two newspapers of general circulation in the city, excepting: (1) work requiring

personal confidence, (2) the service of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part, (3) necessary supplies under the control of monopolies where competitive bidding is impossible, and (4) equipment and machinery for which ease of repair, reliability and ease of operation are critical for efficient and accurate delivery of care to hospital patients. Such contracts shall be signed on behalf of the Commission by the Chairperson of the Commission and by any other officer as the Commission may designate.

(b) The Commission shall develop standards for the supplies, materials and equipment as is consistent with the efficient operation of the Hospital and by the promulgation of written specifications describing such standards permitting competitive bids. Requirements of less than \$5,000 may be solicited informally by sending notices by mail and telephone to prospective suppliers, provided that no requirement shall be split or divided in order to evade formal competition and newspaper advertisement. Any or all bids or parts thereof may be rejected under such regulations as the Commission may adopt. Emergency purchases shall be allowed with specific approval of the Executive Director and/or the Chairperson of the Commission, and a full written account of the circumstances necessitating any such emergency purchase together with the purchase documents shall be immediately open to public inspection.

(c) Nothing in this section shall abrogate the right of the Commission to participate in General Services Administration purchasing.

(d) At the end of each of the first 3 fiscal years, the D.C. Auditor shall review the Hospital's procurement experience for the year and determine whether the system is proving to be efficient for the Hospital and economical for the city. His report shall be filed with the Commission, the Mayor, and the Council, and shall include a recommendation whether such Commission shall retain its contracting authority. (May 13, 1977, D.C. Law 1-134, title V, § 501, 24 DCR 406.)

EFFECTIVE DATE

See note under § 32-1301.

§ 32-1352. Annual reports.

Within one hundred twenty days after the end of the fiscal year, the Commission shall submit to the Mayor, the Director of the Office of Budget and Management Systems, the Council and the Auditor of the District of Columbia, a complete and detailed report setting forth:

(1) A description of D.C. General Hospital operations and accomplishments during the year, with emphasis on steps taken to insure the continuous delivery of quality hospital care including an objective evaluation of the degree of success attained in the accomplishment of that objective;

(2) Receipts and expenditures of the D.C. General Hospital Fund during the year in accordance with categories or classifications established by the Commission;

(3) The assets and liabilities of the Fund at the end of the fiscal year; and

(4) Such other information relating to the operations of the Commission and the Fund as shall

¹ So in original. "Code" probably should be omitted.

¹ So in original.

be deemed pertinent by the Commissioners, the Mayor, the Director of the Office of Budget and Management Systems, the Council or the Auditor of the District of Columbia.

(May 13, 1977, D.C. Law 1-134, title V, § 502, 24 DCR 406.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32-1354.

§ 32-1353. Special report.

Within six months after May 13, 1977, the Commission shall appoint a Task Force on the Future of D.C. General Hospital which will, separate from the daily responsibilities of the Commission for governance of D.C. General Hospital, study future options available for the Hospital including the feasibility of establishing a community hospital, and the relationships between other public health institutions and the Hospital. The Task Force shall submit its report and recommendations to the D.C. General Hospital Commission no later than 18 months following the establishment of the Task Force. (May 13, 1977, D.C. Law 1-134, title V, § 503, 24 DCR 406.)

CODIFICATION

"May 13, 1977" has been substituted for "the effective date of this act.."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32-1354.

§ 32-1354. Disclosure of reports.

All reports produced pursuant to sections 32-1343, 32-1352, and 32-1353 shall be available for public inspection during business hours in the Commissioner's office. Such reports shall also be available for reproduction at the expense of the requesting party. (May 13, 1977, D.C. Law 1-134, title V, § 504, 24 DCR 406.)

§ 32-1355. Confidentiality of medical records.

Medical records and other information and/or materials pertaining to any patient provided care at D.C. General Hospital shall not be disclosed to any person for any reason other than the medical care of the patient without the informed, written consent of the patient or his legally authorized representative. Any such informed consent must be in

response to a specific request of the hospital, its staff or response to a specific request of the hospital,¹ its staff or the patient or legally authorized representative; no blanket consent may be secured. For utilization review and research, medical records without names may be made available to Federal, state, and local agencies authorized to conduct such reviews and research or to researchers receiving prior consent of the Commission. (May 13, 1977, D.C. Law 1-134, title V, § 505, 24 DCR 406.)

§ 32-1356. Coordination.

The Commission shall offer advisory information and suggest programs for the development of policy and planning to coordinate the activities of D.C. General Hospital with other hospital facilities, clinics and medical programs within the District of Columbia. The Commission will coordinate D.C. General Hospital services with health care services provided by other public health care agencies and institutions in the District of Columbia to promote continuity of care and to insure the nonduplication of hospital care services. Specifically, continuing liaison shall be maintained and services shall be coordinated with home care services, neighborhood health centers, D.C. Village, and Glenn Dale Hospital. Such liaison shall insure:

(a) that medical and other personnel who worked with patients prior to their admission to D.C. General Hospital shall consult, as needed, with personnel at the Hospital, and

(b) that medical and other personnel who work with D.C. General Hospital patients shall consult, as needed, with personnel working with such patients subsequent to their release from the Hospital, and

(c) that there shall be cooperation in the exchange of medical information between such facilities.

(May 13, 1977, D.C. Law 1-134, title V, § 506, 24 DCR 406.)

§ 32-1357. Severability.

If any provision of this chapter is declared invalid, all other provisions shall remain in effect. (May 13, 1977, D.C. Law 1-134, title V, § 507, 24 DCR 406.)

¹ So in original.

TITLE 33.—FOOD AND DRUGS

Chap. Sec.
8. Prescription Drug Price Information..... 33-801

Chapter 1.—ADULTERATION

Sec.
33-111. Omitted.

§ 33-104. Rules and regulations for collecting and examining drugs and food.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-111. Omitted.

Section, which related to special services for detection of adulteration of drugs, foods, etc., is omitted as it was not continued by the District of Columbia Appropriation Act, 1975. Previously it was continued for the fiscal years, and by the statutes, listed below. For further details for prior years, see the "Similar Provisions" and "Continuation of 1960 Act" notes under this section in the main edition of the Code.

1974—Aug. 14, 1973, Pub. L. 93-91, § 10, 87 Stat. 310.

1973—July 10, 1972, Pub. L. 92-344, § 11, 86 Stat. 455.

Chapter 3.—MILK, CREAM, AND ICE CREAM

Sec.
33-322. Omitted.

§ 33-302. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-303. Dairy requirements—Permit—Application.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-304. Suspension of permit—Statement of reasons—Notice.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-305. Shipment of dairy products into District permitted under certain conditions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-307. Dairy products to be seized if brought into District illegally—Owner to be notified of seizure—Destruction.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-308. Rules and regulations to protect supply—Publication.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 33-309. Seller of dairy products in District to determine that shipper has permit.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-322. Omitted.

Section, which authorized an automobile allowance for dairy inspectors, is omitted as it was not continued by the District of Columbia Appropriation Act, 1975. Previously it was continued for the fiscal years, and by the statutes, listed below under the heading "Continuation of 1960 Act". For prior years, see statutes listed below under the heading "Prior Provisions".

CONTINUATION OF 1960 ACT

Section 10 of the District of Columbia Appropriation Act, 1974 approved Aug. 14, 1973, Pub. L. 93-91, 87 Stat. 310, provided in part:

"Except as otherwise provided herein, limitations and legislative provisions contained in the District of Columbia Appropriation Act, 1961, shall be applicable during the current fiscal year."

Similar provisions were contained in the following prior appropriation acts:

1973—July 10, 1972, Pub. L. 92-344, § 11, 86 Stat. 455.

1972—Dec. 18, 1971, Pub. L. 92-202, § 13, 85 Stat. 687.

1971—July 16, 1970, Pub. L. 91-337, § 14, 84 Stat. 437.

1970—Dec. 24, 1969, Pub. L. 91-155, § 15, 83 Stat. 433.

1969—Aug. 10, 1968, Pub. L. 90-473, § 15, 82 Stat. 700.

1968—Nov. 13, 1967, Pub. L. 90-134, § 15, 81 Stat. 441.

1967—Nov. 2, 1966, 80 Stat. 1173, Pub. L. 89-743, § 15.

1966—July 16, 1965, 79 Stat. 242, Pub. L. 89-75, § 15.
 1965—Aug. 22, 1964, 78 Stat. 593, Pub. L. 88-479, § 15.
 1964—Dec. 30, 1963, 77 Stat. 840, Pub. L. 88-252, § 15.
 1963—Oct. 23, 1962, 76 Stat. 1155, Pub. L. 87-867, § 15.
 1962—Sept. 21, 1961, 75 Stat. 564, Pub. L. 87-265, § 15.

PRIOR PROVISIONS

1961—Apr. 8, 1960, 74 Stat. 21, Pub. L. 86-412, § 1.
 1960—July 23, 1959, 73 Stat. 229, Pub. L. 86-104, § 1.
 1959—Aug. 6, 1958, 72 Stat. 502, Pub. L. 85-594, § 1.
 1958—June 27, 1957, 71 Stat. 196, Pub. L. 85-61, § 1.
 1957—June 29, 1956, 70 Stat. 444, ch. 479, § 1.
 1956—July 5, 1955, 69 Stat. 251, ch. 272, § 1.
 1955—July 1, 1954, 68 Stat. 383, ch. 499, § 1.
 1954—July 31, 1953, 67 Stat. 284, ch. 299, § 1.
 1953—July 5, 1952, 66 Stat. 379, ch. 576, § 1.
 1952—Aug. 3, 1951, 65 Stat. 161, ch. 292, § 1.
 1951—July 18, 1950, 64 Stat. 356, ch. 467, § 1.
 1950—June 29, 1949, ch. 279, § 1, 63 Stat. 312.
 1949—June 19, 1948, ch. 555, § 1, 62 Stat. 546.
 1948—July 25, 1947, ch. 324, § 1, 61 Stat. 436.
 1947—July 9, 1946, ch. 544, § 1, 60 Stat. 511.
 1946—June 30, 1945, ch. 209, § 1, 59 Stat. 282.
 1945—June 28, 1944, ch. 300, § 1, 58 Stat. 518.
 1944—July 1, 1943, ch. 184, § 1, 57 Stat. 327.
 1943—June 27, 1942, ch. 452, § 1, 56 Stat. 439.
 1942—July 1, 1941, ch. 271, § 1, 55 Stat. 517.
 1941—June 12, 1940, ch. 333, § 1, 54 Stat. 323.

Chapter 4.—NARCOTIC DRUGS

§ 33-401. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Cannabis

Prohibition of this section and section 32-402 of possession of marijuana, like similar federal statute, prohibits possession of those parts of marijuana plant containing tetrahydrocannabinol. *A. L. Thomas v. United States* (D.C. App. 1976, 352 A. 2d 390).

Testimony that over 50% of substance seized from defendant was marijuana containing characteristic compound tetrahydrocannabinol, cannabinol and cannabidiol, is sufficient to sustain Government's burden of proving, in prosecution for possession of marijuana, that defendant possessed parts of marijuana plant prohibited by this section and section 33-402. *Id.*

Evidence sustained defendant's conviction for unlawful distribution of marijuana even though the marijuana which he concededly sold to undercover officer was not necessarily of the species *Cannabis sativa* L., the only species of marijuana which is specifically named in federal statutes and local statutes of the District of Columbia. *United States v. S. A. Walton* (1975, 514 F. 2d 201, 168 U.S. App. D.C. 305).

Congress in enacting provision proscribing possession of narcotic drug, which was defined as including "cannabis" which was in turn defined as including all parts of the plant *Cannabis sativa* L., did not intend to declare contraband only one particular species of cannabis and legalize the possession in the District of Columbia of all other species, if any, of cannabis; Congress intended to ban the manufacture, use and possession of all of chemical THC contained in and extractable from cannabis plants. *United States v. V. H. Johnson* (D.C. App. 1975, 333 A. 2d 393).

§ 33-402. Acts declared unlawful.

NOTES TO DECISIONS

Abuse of discretion

In prosecution for possession of narcotics, trial court did not abuse its discretion in denying defendant's motion of acquittal, even though trial court had granted judgment of acquittal in the case of two codefendants. *United States v. R. Johnson* (1977, 561 F. 2d 832, 182 U.S. App. D.C. 383; cert. denied 97 S. Ct. 2953, 432 U.S. 907).

In prosecution for possession of marijuana, trial judge did not abuse discretion in prompting prosecution to produce evidence relating to chain of custody of marijuana seized from defendant. *G. H. Perry v. United States* (D.C. App. 1976, 364 A.2d 617).

Appeal and error

Where, although defendants in joint drug prosecution failed in trial court to raise contention that joinder of both federal and District of Columbia charges deprived them of equal protection of laws, such issue presented sole question of law which would not be materially illuminated by development of further record in trial court, Court of Appeals would consider such issue despite its being raised for first time on appeal. *United States v. G. E. Jones* (1975, 527 F. 2d 817, 174 U.S. App. D.C. 34).

Even though government presented strong case against defendant, error in permitting reference to statement made by defendant at the time he was arrested to the effect that he was addicted, which statement had not been disclosed to defendant despite requests, could not be held harmless as the statement not only impeached defendant's credibility but undermined a significant element in his defense, i.e., that he had not been addicted at the time of his arrest. *United States v. S. J. Lewis* (1975, 511 F. 2d 798, 167 U.S. App. D.C. 232).

Assistance of counsel

Defense counsel should familiarize himself with all reports serving as foundation for sentence sufficiently in advance of sentencing hearing, assuming access to such reports, and should attempt to verify information contained therein so as to be able to supplement reports when incomplete and challenge them when inaccurate. *United States v. R. L. Pinkney* (1976, 551 F.2d 1241, 179 U.S. App. D.C. 282).

Conviction of defendant who did not at any time make a positive demand upon trial court for leave to proceed without counsel would not be revised on the basis of defendant's contention that court's denial of his pretrial pro se motions requesting that his court appointed attorney be dismissed and replaced with another deprived him of the right to conduct his own defense. *G. H. Perry v. United States* (D.C. App. 1976, 364 A.2d 617).

Reversible error occurred when defendant was sentenced in absence of trial counsel. *G. A. Hockaday v. United States* (D.C. App. 1976, 359 A. 2d 146).

Constitutionality

Trial court, which dismissed prosecutions for unlawful possession of marijuana on ground that statutory scheme of criminal prohibitions and penalties for mere possession is unconstitutional under the Eighth Amendment, misconceived its function in its approach to the constitutionality of the statute when it weighed evidence as to harmful effects of use of marijuana and resolved the conflict to its own satisfaction; since matter was at least debatable, court should have deferred to congressional judgments and, in any event, since subject matter was under consideration by Congress judicial action constituted unwarranted intrusion into the legislative province. *United States v. I. D. Thorne et ano.* (D.C. App. 1974, 325 A.2d 764).

Construction

Proscription of this section of possession of narcotic drugs proscribes possession of marijuana itself, not its constituent chemicals, and does not require the prosecution to separate and quantify the substance's active agents in order to demonstrate that the specimen found in defendant's possession is sufficiently potent to produce a narcotic sensation; nor is such quantification required by decisions holding that proof of violation of the section requires evidence demonstrating that defendant possessed a "usable amount" of the controlled narcotic; Government is required to prove only that the substance itself, as opposed to its active agents, was present in usable amount. *V. D. Blakeney v. United States* (D.C. App. 1976, 366 A. 2d 447).

Congress in enacting provision proscribing possession of narcotic drug, which was defined as including "cannabis" which was in turn defined as including all parts of the plant *Cannabis sativa* L., did not intend to declare contraband only one particular species of cannabis and legalize the possession in the District of Columbia of all

other species, if any, of cannabis; Congress intended to ban the manufacture, use and possession of all of chemical THC contained in and extractable from cannabis plant. *United States v. V. H. Johnson* (D.C. App. 1975, 333 A. 2d 393).

Cross-examination

Where prosecutor received only one and one-half or two hours notice of defendant's intention to call particular witness and confusion resulting from hasty check of witness' prior criminal record resulted in prosecutor asking witness whether he had been convicted of robbery in 1969, while in fact witness had been convicted of robbery in 1961 and had been convicted of petit larceny in 1969, cross-examination did not prejudice defendant, particularly in view of fact that witness testified untruthfully that he had no criminal record beyond 1961 robbery conviction. *United States v. M. L. Johnson* (1976, 527 F. 2d 1381, 174 U.S. App. D.C. 72).

Defense of addiction

Even if Court of Appeals is not statutorily precluded from permitting criminal defendant charged with possession of heroin for personal use or possession of narcotics paraphernalia to raise affirmative defense of lack of common-law criminal responsibility due to heroin addiction, Court would not upset balance of multipronged effort to reduce heroin addiction through law enforcement and treatment. *L. F. Gorham v. United States* (D.C. App. 1975, 339 A. 2d 401).

Congress' avowed intent to prosecute and convict drug users where indicated for all crime nullifies authority of Court of Appeals to formulate a new common-law rule of criminal responsibility which would insulate those same drug users from criminal punishment. *Id.*

Decision permitting a defendant charged with possession of narcotics and narcotics paraphernalia to raise affirmative defense that he lacked capacity to refrain from using narcotics by reason of drug addiction can not be rested on trial court record which does not disclose basis for expert witness' conclusion that defendant had an overwhelming compulsion psychologically to use heroin and there was no showing whether finding of addiction related to criminal responsibility or only to habitual use. *W. R. Franklin v. United States* (D.C. App. 1975, 339 A. 2d 398).

Dismissal

Motions judge erred in dismissing prosecutions for possession of narcotics with prejudice for want of prosecution after arresting officer failed to appear at hearing on accused's motion to suppress following dismissal of prior prosecution for want of prosecution because of officer's failure to appear at trial where accused made no proffer of evidence that he had been prejudiced by delay and advanced no claim that he had been denied a speedy trial and less than one year had elapsed between date of arrest and hearing on motion to suppress. *United States v. R. W. Mack* (D.C. App. 1972, 298 A. 2d 509).

Double jeopardy

Where trial court was informed when defendant failed to appear for trial that defendant was in jail, was suffering from heroin withdrawal symptoms and was quite ill and defendant might have been unable to attend trial for several days, grant of mistrial was not unreasonable and retrial was not barred by the double jeopardy clause. *M. R. Glover v. United States* (D.C. App. 1973, 301 A. 2d 219).

Entrapment

Evidence including statement of person to police that defendant could probably get some marijuana or probably had some, that when officers entered defendant's apartment they observed a "roach slip" such as used in smoking marijuana cigarettes and that defendant responded favorable to officers' statement that they wished marijuana was sufficient to defeat defense of entrapment to charge of unlawful possession of marijuana by defendant who claimed he was a mere conduit in the delivery of marijuana to officers who had been introduced to defendant by person who claimed to be a friend of defendant. *United States v. J. L. Tyson* (1972, 470 F.2d 381, 152 U.S. App. D.C. 233; cert. denied 93 S. Ct. 1512, 410 U.S. 985).

Evidence—Admissibility

When testimony is offered or admissible solely for impeachment purposes, limiting instruction may be required because evidence does not have and cannot be given any substantive effect, but where testimony is probative of commission of offense by accused, it is properly admitted for that substantive purpose and there is no need for instruction cautioning against such inferences. *United States v. J. R. Herron* (1977, 567 F. 2d 510, — U.S. App. D.C. —).

In light of fact that at no stage of criminal proceeding prior to rehearing en banc had defendant claimed that any legal injury was inflicted upon him by police officer's action in looking through basement window after police department had received anonymous tip that narcotics operation could be seen through such window, admission of testimony of police officer concerning what he saw through window did not constitute plain error affecting substantial rights requiring reversal of conviction of possession of narcotics, even though police officer had stepped off walkway a few feet onto private property in order to look through such basement window. *United States v. R. Johnson* (1977, 561 F. 2d 832, 182 U.S. App. D.C. 383; cert. denied 97 S. Ct. 2953, 432 U.S. 907).

In proceeding in which defendants were convicted of unlawful possession of narcotic drug and carrying pistol without license, admission of coparticipant's testimony that "Initially, I believe it was [certain officer] who said we were under arrest for robbery, I believe. This was at the scene, by the truck. When we got to the station, I was told of other charges" was not plain error on ground that it involved reference to crime for which defendants were not indicted, in light of fact that reason for defendant's arrest was never again mentioned and they were impeached by prior convictions. *J. R. Lewis v. United States* (D.C. App. 1977, 379 A. 2d 1168).

In prosecution for unlawful possession of a narcotic drug, admission of bottlecap "cooker" and syringe, which had been found in pickup truck occupied by accused, was not prejudicial, in view of fact that ample evidence to support a charge of narcotics possession had been introduced before such evidence of narcotic paraphernalia was admitted. *Id.*

In narcotics prosecution, trial court committed reversible error in admitting into evidence hearsay rent and utility receipts bearing defendant's name for purpose of showing who was living in apartment where drugs were found. *United States v. S. E. Watkins* (1975, 519 F. 2d 294, 171 U.S. App. D.C. 158).

Where government had stated, in response to motion to suppress written statements made by defendant at the time of his arrest, that defendant did not make any statements at the time of his arrest which government intended to use against him and where neither police report given to defendant nor grand jury and preliminary hearing testimony indicated that defendant made any statements to arresting officers, trial court should have excluded any reference to oral statement made at time of arrest by defendant, that he used narcotics and that he "shot" in his ankle. *United States v. S. J. Lewis* (1975, 511 F. 2d 798, 167 U.S. App. D.C. 232).

Where police officer approached automobile stopped in left lane of road on driver's side to inform driver that she could not make left turn, observed driver smoking colored cigarette, smelled strange odor of cigarette, observed furtive motions, ordered occupants from automobile, and looked in automobile to assure that no weapons were present, vial of marijuana in plain view on floor of automobile was admissible. *United States v. J. A. Burton and J. L. Burton* (D.C. App. 1974, 327 A. 2d 308).

Evidence of defendant's 11-month-old conviction for possession of heroin was admissible in prosecution for possession of marijuana as substantive evidence of defendant's predisposition to commit the offense thereby rebutting his entrapment defense. *United States v. J. L. Tyson* (1972, 470 F. 2d 381, 152 U.S. App. D.C. 233; cert. denied 93 S. Ct. 1512, 410 U.S. 985).

Where issue of defendant's prior involvement with narcotics was raised by him in his direct testimony in prosecution for possession of marijuana, and he attempted to

convey to jury an impression of innocence of prior narcotics trafficking, evidence of recent conviction for possession of heroin was admissible to challenge the inference defendant sought to suggest. *Id.*

Where officers, when they arrived to execute search warrant, expected another person to be residing at address, and instead discovered that premises were occupied by defendant, who was not then there, and when defendant arrived he was asked to accompany officers to a bedroom, and there he was confronted with narcotics and paraphernalia and asked if he recognized the items and if they were his, there was no custodial interrogation of kind limited in Miranda decision, and inculpatory statements made by defendant were admissible. *J. B. N. Tyler v. United States* (D.C. App. 1972, 298 A. 2d 224).

— Expert testimony

In prosecution for possession of marijuana, permitting witness, whose job it was to analyze seized substances and testify as to his findings, who had bachelor of science degree in chemistry, who received on-the-job training in analysis of narcotics and further training in microscopic analysis of plant substances, who performed over 500 analyses and who qualified 39 times as analytical chemistry expert in Superior Court, to testify to presence of cystolith hairs in substance found in accused's possession and to absence of foreign adulterating substances was not abuse of discretion, though he was not a botanist. *M. A. Moore v. United States* (D.C. App. 1977, 374 A.2d 299).

In prosecution for, inter alia, possessing narcotics for distribution, police officer's expert testimony concerning whether or not person carrying amount of drugs found on defendant would be user or seller of narcotics does not amount to opinion as to ultimate issue of case and impermissibly invade province of jury, particularly in view of fact that defendant was acquitted of possessing narcotics for distribution and convicted solely for simple possession. *United States v. M. L. Johnson* (1976, 527 F.2d 1381, 174 U.S. App. D.C. 72).

— Sufficiency

Evidence including evidence that particular defendant lived in apartment, was physically present there, literally in middle of all seized contraband drugs and drug paraphernalia, and could observe what was all about him in his apartment permitted jury to conclude that such defendant was in control and that presence of drugs was known to him and that defendant and roommate were in position to exercise dominion and control over the drugs, though it was roommate and not particular defendant who disclosed to police presence of large amount of marijuana in closet and LSD in refrigerator. *United States v. J. B. Davis* (1977, 562 F. 2d 681, 183 U.S. App. D.C. 162).

Evidence, consisting of positive results in a microscopic test and three chemical tests, is sufficient, standing alone, to prove beyond reasonable doubt that substance found in accused's possession was marijuana so as to sustain his conviction of possession of marijuana. *M. A. Moore v. United States* (D.C. App. 1977, 374 A.2d 299).

Evidence in prosecution which resulted in conviction for carrying a pistol without a license and possession of marijuana was sufficient for jury. *G. H. Perry v. United States* (D.C. App. 1976, 364 A. 2d 617).

In case in which approximately eight grams of marijuana was found on defendant at his arrest and police officer testified that such amount could have formed three to five marijuana cigarettes, and in light of chemist's testimony as to the tetrahydrocannabinol content of that marijuana, defendant was not entitled to acquittal on basis of Government's failure to quantify the amount of tetrahydrocannabinol in the marijuana. *V. D. Blakeney v. United States* (D.C. App. 1976, 366 A. 2d 447).

Defendant's conviction of possessing usable quantity of marijuana is supported by evidence that defendant was found by police officer to be smoking pipe in which later tests detected marijuana resin. *A. Richardson v. United States* (D.C. App. 1976, 366 A. 2d 433).

Testimony that over 50% of substance seized from defendant was marijuana containing characteristic compound tetrahydrocannabinol, cannabinal and cannabidiol, is sufficient to sustain Government's burden of proving,

in prosecution for possession of marijuana, that defendant possessed parts of marijuana plant prohibited by this section and section 33-401. *A. L. Thomas v. United States* (D.C. App. 1976, 352 A.2d 390).

Evidence in prosecution for possession of narcotics was insufficient to show that defendant had constructive possession thereof where such evidence consisted only of showing that defendant was present in apartment where narcotics were found. *United States v. S. E. Watkins* (1975, 519 F. 2d 294, 171 U.S. App. D.C. 158).

Conviction of defendant of unlawful possession of narcotic drugs was supported by evidence that, while one police officer was momentarily distracted while questioning defendant in her apartment, second officer waiting outside saw packet of heroin being thrown from defendant's window. *United States v. M. J. Belt* (1975, 514 F. 2d 837, 169 U.S. App. D.C. 1).

Evidence sustained defendant's conviction for unlawful distribution of marijuana even though the marijuana which he concededly sold to undercover officer was not necessarily of the species *Cannabis sativa* L., the only species of marijuana which is specifically named in federal statutes and local statutes of the District of Columbia. *United States v. S. A. Walton* (1975, 514 F. 2d 201, 168 U.S. App. D.C. 305).

Evidence that defendant when arrested had bottle "filled to the brim" with greenish weed and that he had twice attempted to scatter and contaminate contents by spilling them on floor sustained conviction for possession of marijuana, although only 16 milligrams remained for use at trial. *C. C. Jones v. United States* (D.C. App. 1974, 318 A. 2d 888).

Record sustained finding that minor defendant, who produced witness who recalled events of day in question and exculpated defendant, was not prejudiced, in offering defense, by delay between sale and arrest, though last two months of delay between sale and arrest was questionably unreasonable. *In the Matter of G. T.* (D.C. App. 1973, 304 A. 2d 865).

— Suppression

Upon motion to suppress evidence obtained without search warrant, although trial court improperly ruled that defendant had burden of establishing that his rights were violated, such error was harmless, where prosecutor made the arresting officer, whom he was apparently about to call for the State, available for examination by defense counsel, who was permitted to treat him as adverse witness, and where prosecutor also turned over for inspection and possible use for impeachment by the defense the arrest reports which would ordinarily not be given to the defense until after direct examination. *R. D. Malcolm v. United States* (D.C. App. 1975, 332 A. 2d 917).

At suppression hearing, defendant was not entitled to search warrant affidavits in which informant provided a "tip" which triggered police action, which affidavits were filed in previous cases. *Id.*

The decision authorizing warrantless search of hotel room in which sawed-off shotgun had been observed did not require court to reverse decision which had suppressed narcotics seized in warrantless search of hotel room in which narcotics had been observed. *United States v. A. J. Costa and V. J. Barnes* (1973, 356 F. Supp. 606; aff'd 479 F. 2d 922, 156 U.S. App. D.C. 200).

Officer who observed defendant, a high school student outside school building, trying to stuff some money into envelope similar to those used in other narcotics transactions at the school and who saw a known narcotics addict approach defendant who started to run when officer reached for the envelope and tore a portion of the envelope from defendant's hand did not have probable cause to arrest defendant at the moment the envelope was seized, and heroin found in the envelope should have been suppressed. *F. L. Waters v. United States* (D.C. App. 1973, 311 A. 2d 835).

Failure of trial court to consider tardy oral motion to suppress evidence did not vitate conviction where court permitted counsel to develop point respecting validity of seizure and there was no showing that seizure was invalid. *G. F. Thompson v. United States* (D.C. App. 1973, 307 A. 2d 764).

— Transmittal to jury

Where sole issue before jury at defendant's trial for possession of a narcotic drug was whether defendant knew he possessed heroin concededly found in his sock, and where needles and syringe hose found in his sock were admitted at trial and where his admitted statement made at moment of arrest strongly suggested that defendant must have known he was carrying objects in his sock, erroneous transmission to jury room of unadmitted package containing syringes which package was also found in defendant's sock was cured by instruction to jury to disregard such package. *T. E. Vaughn v. United States* (D.C. App. 1977, 367 A. 2d 1291).

Guilty plea

Trial judge's abuse of discretion in refusing to accept tendered plea of guilty to charge of possession of marijuana in prosecution for carrying pistol without license and possession of marijuana did not constitute prejudicial error, in view of fact that evidence of guilt of carrying pistol without license was overwhelming and in view of fact that evidence of admitted possession of marijuana might have been admissible at trial even if defendant's guilty plea had been accepted. *R. B. Punch v. United States* (D.C. App. 1977, 377 A.2d 1353).

While plea to one count of indictment, leaving to be tried legally unrelated count, may involve tactical advantage to one side or the other, it is not actually characterized as a "plea bargain." *Id.*

Trial court in criminal prosecution abused its discretion in engaging in blanket refusal to hear from either prosecution or defense concerning defendant's proffered guilty pleas; judge's apparent belief that trial had been "too much trouble" presents inadequate justification for perfunctory denial of prosecutor's prerogative to negotiate plea. *G. A. Hockaday v. United States* (D.C. App. 1976, 359 A. 2d 146).

Harmless error

Any error in marijuana possession prosecution in failure to give proffered instruction relating to burden of proving possession of usable quantity of narcotics was harmless where instruction was in some respect lacking factual predicate, counsel vigorously argued theory, and instructions given were marginally adequate. *C. C. Jones v. United States* (D.C. App. 1974, 318 A. 2d 888).

Impeachment

In prosecution for, inter alia, drug offense, prosecutor's attempt to impeach defendant's claim that she had never been convicted of drug offense, based on erroneous record of conviction was not improper, in view of fact that when prosecutor was informed by defense counsel that recorded conviction was erroneous, he agreed not to inquire further concerning that conviction. *United States v. M. L. Johnson* (1976, 527 F.2d 1381, 174 U.S. App. D.C. 72).

Inferences

In prosecution for possession of narcotics for distribution wherein defense witnesses testified that around time of defendant's arrest there were three men in building looking for woman who had allegedly sold them bad narcotics, trial court did not err in permitting prosecutor to ask jury to draw inference that defendant had been same narcotics dealer who had sold drugs to those three men. *United States v. M. L. Johnson* (1976, 527 F.2d 1381, 174 U.S. App. D.C. 72).

Instructions

In narcotics prosecution, erroneous instruction on term "reasonable doubt" was harmless error beyond reasonable doubt, in light of strong evidence against defendant. *United States v. J. R. Herron* (1977, 567 F. 2d 510, — U.S. App. D.C. —).

In narcotics prosecution, trial court's failure to give "informer" instruction with respect to testimony of witness who testified in exchange for immunity from prosecution was not plain error, in light of strong evidence against defendant. *Id.*

Although court prefaced story illustrating reasonable doubt with direct statement concerning Government's burden of proof, where example comprised major portion of reasonable doubt instruction, illustration was final mention made of standard of proof before jury retired, evidence on count charging possession of phenmetrazine

with intent to distribute was closely balanced with credibility being primary issue, giving of instruction constituted plain error requiring reversal of conviction on that count. *United States v. R. L. Pinkney* (1976, 551 F.2d 1241, 179 U.S. App. D.C. 282).

Joinder

Where, although defendants were prosecuted in single proceeding in federal district court both for possession of heroin with intent to distribute in violation of Comprehensive Drug Abuse Prevention and Control Act of 1970 and for possession of heroin in violation of this section, they were convicted and sentenced only under this section, there was no impermissible joinder of judgments. *United States v. G. E. Jones* (1975, 527 F. 2d 817, 174 U.S. App. D.C. 34).

Mistrial

Where defendant's incarceration on other charge, hospitalization and illness due to heroin withdrawal symptoms had prevented his attendance at trial, there was manifest necessity which permitted retrial even though trial court failed to consult defense counsel regarding feasibility of a continuance before mistrial was granted in prosecution for unlawful possession of heroin. *M. R. Glover v. United States* (D.C. App. 1973, 301 A. 2d 219).

Defendant was not entitled to claim for first time on appeal that the information concerning defendant's health on which trial court declared mistrial was erroneous and that double jeopardy barred the reprosecution of defendant on possession of heroin charge. *Id.*

Plain error

In prosecution for carrying a dangerous weapon, assaulting a police officer, and unlawful possession of narcotic drug, sustaining as valid Fifth Amendment privilege claimed by defense witness called to corroborate testimony of defendant, who did not claim infringement of his own Fifth Amendment privilege against self-incrimination, was not plain error, on theory that he was denied a fair trial, where there was no pretense the record would support an inference of prosecutorial misconduct or that Government's case was buttressed by the witness' exercise of the privilege against self-incrimination, and where witness was called by defense counsel with full prior knowledge that privilege would be invoked. *R. W. Mack v. United States* (D.C. App. 1973, 310 A. 2d 234).

Plea Bargaining

Where plea bargaining agreement provided that after six months of successful participation in pretrial narcotics diversion project without having been rearrested defendant could move to withdraw guilty plea without government opposition and that defendant would be terminated from program if he was rearrested and if prosecutor, after hearing, determined that there was probable cause for the arrest and where defendant was arrested five months after plea bargaining agreement was approved, government did not breach its part of the agreement when prosecutor then terminated defendant from program even though defendant was tried for offense for which he was arrested and was found not guilty by reason of insanity. *W. L. Green, Jr. v. United States* (D.C. App. 1977, 377 A. 2d 1132).

Possession

Position of dominion or control over narcotics should not be lightly imputed to one found in another's apartment or home; if inference of constructive possession must be made, jury must have before it information about regularity with which person in question occupied place and about his special relationship with owner or renter. *United States v. S. E. Watkins* (1975, 519 F. 2d 294, 171 U.S. App. D.C. 158).

Probable cause

Where police officer knew that defendant was driving car with altered temporary tags and that defendant had previously been arrested for carrying a pistol without a license, where police officer had seen front seat passenger reach forward or lean down and then sit upright after car had passed officer's marked police cruiser and come to a stop at a traffic light, and where police officer had probable cause to arrest defendant for driving without an operator's permit, officer was justified in examining under

driver's seat of vehicle, seat closest to defendant, to look for weapons, especially when three other persons were seated in vehicle. *R. B. Punch v. United States* (D.C. App. 1977, 377 A. 2d 1353).

Where police officer observed defendant holding a small manila envelope in one hand and a small piece of white paper in the other, and defendant appeared to be preparing to roll a cigarette, and in light of officer's extensive experience with marijuana arrests, initial request that defendant's car pull over and stop was both reasonable and legally justified; further, where officer smelled marijuana and noticed "un-uniform" shaped cigarette, probable cause existed for defendant's arrest and search. *A. O. Thompson v. United States* (D.C. App. 1977, 368 A.2d 1148).

Where concededly reliable informant told police officer that defendant was at his girlfriend's residence and would be leaving within one hour with quantity of heroin, informant gave officer description of defendant and his automobile, and officer had personal knowledge of defendant's prior convictions and reputation as narcotics offender, officer had probable cause to arrest defendant when he observed him leaving girlfriend's apartment within one hour and enter automobile described by informant. *United States v. C. W. Myers* (1976, 538 F.2d 424, 176 U.S. App. D.C. 76; cert. denied 97 S.Ct. 1179, 430 U.S. 908).

Where police had report from store which had been robbed several times during prior few months that several men appeared to be "casing" it for a robbery, and observed automobile with extinguished headlights, engine running, apparently nervous occupants, and then saw a man rushing to the car with a bag, though from an apartment complex rather than from the nearby store, officers had sufficient specific and articulable facts warranting inquiry of the occupants of the car. *W. F. Johnson v. United States* (D.C. App. 1977, 367 A. 2d 1316).

Where officer, squeezing paper bag to determine if it contained a weapon, felt that it contained soft, loosely packed material which was likely to have been marijuana, and had previously observed defendant attempt to push the bag away from himself and his attitude of resignation in response to question about bag's contents, officer had probable cause to believe that defendant had contraband narcotics in his possession, and thus to open the bag. *Id.*

Where informant supplied police officer with detailed information relating to possession of marijuana by defendant and every aspect of such information, including place, time, and physical appearance, was checked and verified by police officer, police officer had probable cause for arrest. *United States v. R. D. Malcolm* (D.C. App. 1975, 331 A. 2d 329).

Actions of marijuana-sniffing dog regularly used at port of entry and found to be consistently reliable furnished probable cause for issuance of warrant for search of footlockers at bus terminal. *United States v. S. M. Fulero* (1974, 498 F. 2d 748, 162 U.S. App. D.C. 206).

Where a concededly reliable informer gave tip based on personal knowledge which described defendant in great detail, and he gave defendant's alias and his present location and before arrest officers were able to corroborate the informant's tip in every detail with the exception of actual possession of narcotics, probable cause was established and narcotic and implement seized from defendant at time of arrest did not need to be suppressed. *R. Banks v. United States* (D.C. App. 1973, 305 A. 2d 256).

Where police officer trained in field of narcotics viewed photographs taken by another officer and was of firm belief that plants depicted in photographs were marijuana plants and on personally observing the yard such officer saw one plant growing and that plants growing in flowerpots in yard as depicted in photographs had been removed to rear of porch and several plants were missing altogether, there was probable cause for issuance of warrant to search both yard and premises. *United States v. M. E. McMillon* (1972, 350 F. Supp. 593).

Officer's observations of defendant, who was standing beside sink in his employer's restroom and appeared startled upon seeing policeman, who had entered in order to use the restroom, of defendant's freezing against the wall and of coin purse located on sink and similar to those in which officer had found narcotics in the past did not constitute probable cause for officer, who admitted that

he had no reason to believe a crime was being committed when he looked into coin purse, to arrest defendant prior to the search, and search, which revealed narcotics paraphernalia and heroin, was therefore invalid. *L. D. McWilliams v. United States* (D.C. App. 1972, 298 A. 2d 38).

Prosecution

No substantial constitutional question is presented by policy of prosecutor in refusing first offender treatment, in which certain first offenders are diverted from criminal trial, if defendant litigates any issue in his or her case, notwithstanding contention that the policy encourages defendants to waive their constitutional rights. *United States v. J. H. Smith* (D.C. App. 1976, 354 A.2d 510).

Factors to be considered on contention of unreasonable delay in prosecution of narcotics charge are: (1) reasonableness of delay, (2) plausibility of prejudice to defendant, and (3) reliability of government's techniques and proof of defendant's identity. *In the Matter of G. T.* (D.C. App. 1973, 304 A. 2d 865).

Prosecutor's comments

In prosecution for possession of narcotics for distribution and carrying pistol without license, prosecutor's statements in rebuttal concerning present and future generations of citizens in city, whether conscientious jury could be "conned" into rendering verdict of not guilty and concerning defense witness who was "conjured up" an hour and a half before trial, were not impermissibly prejudicial. *United States v. M. L. Johnson* (1976, 527 F.2d 1381, 174 U.S. App. D.C. 72).

Right to privacy

Where yard was enclosed by stake fence approximately six feet in height and overgrown with vines and bushes, and police officers who took pictures of marijuana plants growing in yard and on porch of dwelling while standing on porch of adjacent home with owner's permission did not physically intrude into the defendant's premises, there was no violation of defendant's right to privacy. *United States v. M. E. McMillon* (1972, 350 F. Supp. 593).

Fact that officers who, with permission of owner, used adjacent porch to see into yard surrounded by stake fence approximately six feet in height had to stand on their toes, or lean around side of partition, or stand on box did not preclude their observations from being within scope of "plain view" doctrine. *Id.*

Right to remain silent

Unacceptable burden upon defendant's Fifth Amendment privilege to remain silent was imposed by trial court in narcotics prosecution when, after admitting hearsay rent receipts, court stated that defendant would have opportunity to rebut probative value of receipts when she testified. *United States v. S. E. Watkins* (1975, 519 F.2d 294, 171 U.S. App. D.C. 158).

Search and seizure

Where police officer, acting upon anonymous tip, saw what appeared to be major narcotics-packaging operation in progress in basement of house and where police properly made warrantless entry of premises, police were justified in searching premises for narcotics and narcotics paraphernalia and contraband found was thus admissible, particularly in view of fact that contraband was found in immediate vicinity of arrests of those present and in the close environs of the point where contraband had first been seen. *United States v. R. Johnson* (1977, 561 F. 2d 832, 182 U.S. App. D.C. 383; cert. denied 97 S. Ct. 2953, 432 U.S. 907).

Where there was no circumstances indicating any compelling need for split-second action by police officers, nor any suggestion that defendants were armed, and there was no information available regarding veracity of informant, nor any evidence indicating how informant obtained her information or on what grounds she concluded that defendants were selling narcotics, and informant's tip did not describe criminal activity in sufficient detail to remedy this defect, police did not act reasonably in conducting warrantless search of defendants in reliance upon informant's tip concerning illegal sale of narcotics. *B. Rushing v. United States* (D.C. App. 1977, 381 A. 2d 252).

If statement by police officer that, prior to conducting warrantless search of defendant pursuant to informant's

tip he had seen defendant drop orange pill, could be considered by court and given full weight, probable cause for warrantless search and seizure would exist. *Id.*

Seizure of handgun and dollar bill after officer observed butt end of handgun on floor of pickup truck when he approached open passenger door and observed that neatly folded dollar bill was lodged between armrest and the open door was valid under plain view exception to warrant requirement. *J. R. Lewis v. United States* (D.C. App. 1977, 379 A.2d 1168).

Routine inventory search, which was made of pickup truck containing valuable tools and equipment after lawful impoundment of truck subsequent to arrest of occupants and during which police discovered syringe, bag of white powder, folded dollar bill containing white powder, and burned bottle cap with traces of heroin and quinine, was a valid search; evidence obtained during search is admissible in criminal proceeding. *Id.*

Where all occupants of vehicle were under arrest and vehicle lacked valid tags, it was proper to impound vehicle. Once vehicle was properly impounded, inventory of its contents leading to discovery of hats and masks was proper. *R. B. Punch v. United States* (D.C. App. 1977, 377 A.2d 1353).

Where defendant, at the time of his arrest in apartment, told police officers he wanted to change his pants and began moving toward the edge of a double bed, where one officer told him to "Hold it" and, as a precaution, the officer looked under the mattress where he found a gun, and where defendant was known to have used a gun before and was believed to be dangerous, the gun was lawfully seized; the police were not required to risk their safety on the chance that they, by a larger force, could control the situation if defendant should try to arm himself. *J. A. Haltiwaner v. United States* (D.C. App. 1977, 377 A.2d 1142).

Trial court did not err in considering for sentencing purposes admissions by defendant, appearing in presentence report, that he had acted as "go-between" in narcotics transactions in case in which defendant had pleaded guilty to misdemeanor information charging possession of heroin. *M. L. Butler v. United States* (D.C. App. 1977, 379 A.2d 948).

Observation of officer, who executed affidavit for search of apartment, of a "controlled buy" provided a reasonable basis for officer's belief that informant was possessed of accurate information and an independent ground for magistrate's conclusion that apartment was a place where narcotic substances were being sold. *United States v. J. P. Branch* (1976, 545 F.2d 177, 178 U.S. App. D.C. 99).

Under circumstances, including, inter alia, fact that officers searched every person who came to apartment that evening, even if defendant had made telephone call which was intercepted by officer conducting search of apartment under a warrant, officer lacked probable cause to arrest defendant who arrived at apartment while it was being searched for narcotics, and thus search of defendant's shoulder bag was not justified as incident to a valid arrest. *Id.*

Warrantless search of defendant found on premises named in search warrant was proper in view of section 23-524 which allows officer executing search warrant to search any person on premises to extent reasonably necessary to find property enumerated in warrant which may be concealed upon the person, and in view of officer's knowledge of information from informant that person fitting defendant's general description had been seen selling narcotics on named premises. *A. L. Thomas v. United States* (D.C. App. 1976, 352 A.2d 390).

Record supports finding that officer reasonably considered his safety in jeopardy; thus, arresting officer was justified in making warrantless search of grocery bag accessible to automobile driver who had been stopped for a traffic violation. *W. T. Johnson v. United States* (D.C. App. 1976, 350 A.2d 738).

Fact that accused was accompanied by woman when he walked up alley at night in high crime area of city and moved his right arm to left side of his coat upon hearing unidentified person yell "police officers" did not constitute reasonable grounds for initial seizure of accused by police officers, and thus any subsequent search of accused

flowing from unreasonable seizure cannot be sustained. *A. E. Curtis v. United States* (D.C. App. 1975, 349 A.2d 469).

Where police acted upon information received from an informant, whose reliability had been established by prior contacts with the police and since information furnished by him proved accurate, describing in detail the activities of the defendant, his physical description, his present location, and that narcotics were contained in a cigarette package in his possession, the information supplied by the informant was sufficient to establish probable cause to apprehend the defendant and seize the contraband heroin and fact that defendant was not formally placed under arrest until contraband heroin was seized from his pocket is not material. *E. Smith v. United States* (D.C. App. 1975, 348 A.2d 891).

Police who came to defendant's house with arrest warrant for defendant's brother, who was charged with a violent crime, were not required to accept as true defendant's statement that brother was not home and were entitled to search the home for the suspect and to seize marijuana which was in plain view within the home. *V. S. Hawkins v. United States* (D.C. App. 1974, 319 A.2d 328; cert. denied 95 S. Ct. 233, 419 U.S. 969).

Where hotel registration slip showed registration at 1:55 a.m., April 30th, at daily rate of \$23 plus tax, receipt dated April 30th, showed occupant of room was being charged for two days, hotel had not removed occupant's belongings at time search was made after normal check-out time, possession of room had not reverted to hotel and was still vested in registered occupant and hotel manager could not validly consent to warrantless search of room. *United States v. A. J. Costa and V. J. Barnes* (1973, 356 F. Supp. 606; aff'd 479 F.2d 922, 156 U.S. App. D.C. 200).

Following arrest of defendant under warrant for operating motor vehicle after revocation of operator's permit, police officer was authorized to conduct "full field search" of defendant, remove envelope from pocket inside coat and open it to determine if it contained narcotics. *United States v. K. C. Simmons* (D.C. App. 1973, 302 A.2d 728).

Where police officer who had heard radio broadcast stating that three subjects were using narcotics in automobile parked at rear of warehouse went to the location and saw three persons seated in automobile matching description which had been broadcast, officer had justification for further affirmative action and his determination to identify himself as police officer and open the car's door simultaneously, while directing the occupants to get out, was permissible, and upon observing bottle-top cooker and full syringe on floor of the car, seizure of the evidence and arrest of the subjects became appropriate and there was no violation of constitutional right to be protected against unreasonable search and seizure. *United States v. E. Mitchell* (D.C. App. 1973, 299 A.2d 540).

Police officer who, while walking his beat in an area considered high in narcotic traffic, noticed defendant and two other young men standing in the shadows of a building, who observed that their hands were "passing and changing" among them, who crossed the street to investigate whereupon defendant began to walk away rapidly, who called out "I would like to talk with you a minute," in response to which defendant, within the earshot of pedestrians, shouted a four-letter expletive and ran, had probable cause to arrest defendant for disorderly conduct; thus, the ensuing search for weapons incident to the arrest, which search yielded a bag of heroin, was likewise lawful. *W. Von Sleichter v. United States* (1972, 472 F.2d 1244, 153 U.S. App. D.C. 169; aff'g 267 A.2d 336; cert. denied 93 S.Ct. 555, 409 U.S. 1063).

Where on executing warrant authorizing search of after-hours club or bar for a "gaming table and other related gambling paraphernalia," police officers knocked twice and announced they were police officers with a search warrant, after hearing someone run away from the door, officers waited approximately 30 seconds and then forced door open and from previous observations police had probable cause to believe that extensive gambling was being carried on, police had sufficient grounds to search the individuals present and tinfoil packet found on in-depth search of an occupant was properly seized and

would be admissible in prosecution for possession of heroin; officers had reasonable cause to believe that occupants possessed, concealed and were about to remove or destroy evidence for which they had a search warrant. *United States v. W. Miller* (D.C. App. 1972, 298 A. 2d 34).

Where person who gave consent to search apartment was lawful cotenant who had right to be present in at least the jointly shared areas of the apartment, defendant by sharing his apartment ran risk that cotenant would consent to search of common areas of that abode and marijuana found in the apartment was admissible. *B. F. Villine v. United States* (D.C. App. 1972, 297 A. 2d 785).

Where police officer was told by another that defendant, whom officer had questioned, had a syringe under wig, officer's momentary stopping of defendant, inquiry about wig, and request to defendant to remove her hat were reasonable, and defendant's denial of wearing a wig and its obvious presence furnished independent observation and corroboration which gave rise to a reasonable basis to arrest defendant and seize contents of her hand, which she had removed from beneath wig and which contained syringe and a bag of methadone, and to seize tinfoil pack, which apparently contained heroin, from starch box from which defendant began to eat at police station. *United States v. S. P. Oliver* (D.C. App. 1972, 297 A. 2d 778).

— Return of property

District Court in criminal case has jurisdiction and duty to return to defendant property seized from him in the investigation but which was not alleged to be stolen or contraband and which was not needed or is no longer needed as evidence, and return of which had been sought before sentencing, despite contention that Court lacks ancillary jurisdiction to dispose of the property after sentencing. *United States v. L. R. Wilson, Jr.* (1976, 540 F. 2d 1100, 176 U.S. App. D.C. 321).

Once a court's need for property seized from defendant terminates, it has both jurisdiction and duty to return the property, which was not alleged to be stolen or contraband, regardless and independently of the validity or invalidity of the underlying search and seizure, and thus despite any waiver by plea of guilty of claim of unlawfulness of the search and seizure. *Id.*

Claim by owner for return of property cannot be successfully resisted by the Government by asserting that the property is subject to forfeiture; if the Government seeks to forfeit the property, a proper proceeding should be instituted to accomplish that purpose. *Id.*

Sentence

Imposition of concurrent five-year sentences on conviction of receiving, concealing and facilitating concealment of narcotic drugs, in violation of federal law, and of knowingly possessing narcotic drugs, in violation of local law, did not constitute cruel and unusual punishment; however, sentence was to be vacated and case, which grew out of indictment filed in September of 1970, was to be remanded to permit full consideration of disposition under Narcotic Addict Rehabilitation Act. *United States v. M. A. Hunter* (1973, 485 F. 2d 1035, 158 U.S. App. D.C. 256).

§ 33-405. Use of official written orders.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-409. Professional use of narcotic drugs—Return of unused drugs.

(a) Physicians and dentists.—A physician or a dentist, in good faith and in the course of his professional practice only, may prescribe by a written or oral prescription, administer, and dispense narcotic drugs, or he may cause the same to be admin-

istered by a nurse, certified emergency medical technician/paramedic, or interne under his direction and supervision. Each written prescription shall be dated and signed by the person prescribing on the day when issued and shall bear the full name and address of the patient for whom the narcotic drug is prescribed and the full name, address, and registry number under the federal narcotic laws of the person prescribing, provided he is required by those laws to be so registered. In issuing an oral prescription, the physician or dentist shall furnish the apothecary with the same information as is required by law or regulation in the case of a written prescription for narcotic drugs and compounds, except for the requirement of the written signature of the prescriber.

* * * * *

(As amended Sept. 28, 1977, D.C. Law 2-25, § 5, 24 DCR 3718.)

AMENDMENT

1977—Act Sept. 28, 1977, D.C. Law 2-25, amended subsec. (a) by inserting “, certified emergency medical technician/paramedic,” immediately following “nurse”.

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of subsec. (a), see sec. 5 of the Emergency Advanced Life Support Act of 1977 (D.C. Act 2-55, July 8, 1977, 24 DCR 816).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 6 of act Sept. 28, 1977, D.C. Law 2-25, set out as a note under § 2-142.

§ 33-416a. Vagrancy—Narcotic drug user—Penalties—Conditions imposed.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-422. Enforcement—Employees of Board of Pharmacy—Salaries—Cost of forms.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-423. Penalties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Standing

Challenge to punishment provision for unlawful possession of marijuana as constituting cruel and unusual punishment was premature where no defendant had been convicted or sentenced for possession; defendants, who had not been tried on the information, had no standing to argue that the maximum penalties constituted cruel and unusual punishment. *United States v. I. D. Thorne et ano.* (D.C. App. 1974, 325 A.2d 764).

§ 33-424. Effect of acquittal or conviction under Federal narcotic laws.

NOTES TO DECISIONS

Appeal and error

Where, although defendants in joint drug prosecution failed in trial court to raise contention that joinder of both federal and District of Columbia charges deprived them of equal protection of laws, such issue presented sole question of law which would not be materially illuminated by development of further record in trial court, Court of Appeals would consider such issue despite its being raised for first time on appeal *United States v. G. E. Jones* (1975, 527 F. 2d 817, 174 U.S. App. D.C. 34).

Chapter 5.—MEATS AND MEAT PRODUCTS

§ 33-502. Same—District of Columbia Council to make regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 7.—REGULATION AND CONTROL OF CERTAIN DRUGS OTHER THAN NARCOTICS

§ 33-701. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-702. Prohibited acts.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Abuse of discretion

In view of evidence of guilt in prosecution for unlawful possession of dangerous drug and in view of dubious value of rebuttal testimony which had been given by the Government, i.e., detective's testimony that one defendant appeared to be in "narcotics stupor" and only partially coherent at time of arrest, it was not reversible error for trial judge to refuse to allow continuance so that defense might locate unidentified expert witness who assertedly could give surrebuttal testimony concerning results of chemical test performed on such defendant the morning following his arrest. *D. T. Holt v. United States* (D.C. App. 1978, 381 A. 2d 1388).

Trial court did not abuse its discretion in failing to request presentence report, in prosecution for possession of narcotics paraphernalia and possession of dangerous drug, where information developed concerning defendant was sufficient so that judge could impose appropriate sentence without use of such report. *C. E. Rosser v. United States* (D.C. App. 1974, 313 A. 2d 876).

Assistance of counsel

Defense counsel should familiarize himself with all reports serving as foundation for sentence sufficiently in advance of sentencing hearing, assuming access to such reports, and should attempt to verify information contained therein so as to be able to supplement reports when incomplete and challenge them when inaccurate. *United States v. R. L. Pinkney* (1976, 551 F.2d 1241, 179 U.S. App. D.C. 282).

Evidence—Admissibility

When testimony is offered or admissible solely for impeachment purposes, limiting instruction may be required because evidence does not have and cannot be given any substantive effect, but where testimony is probative of commission of offense by accused, it is properly admitted for that substantive purpose and there is no need for instruction cautioning against such inferences. *United States v. J. R. Herron* (1977, 567 F. 2d 510, — U.S. App. D.C. —).

Where detective testified only as to his opinion of defendant's condition at time of dangerous drug offense and at no time had any knowledge of results of subsequent chemical test, there was no abuse of discretion in refusing to admit test results during cross-examination of detective. *D. T. Holt v. United States* (D.C. App. 1978, 381 A. 2d 1388).

Refusal to allow accused and two other defense witnesses to testify on direct examination as to their respective prior criminal conviction was error in prosecution for possession of amphetamine, but the error was harmless, in light of fact that the defense testimony was inconsistent, that there was substantial evidence supporting conviction and that it was highly doubtful as to whether admission of such direct testimony would have altered jury's evaluation of the credibility of accused and the two witnesses. *J. T. Kitt, Jr. v. United States* (D.C. App. 1977, 379 A. 2d 973).

Arrest report of fellow officer was admissible under "past memory recorded" test where arresting officer testified that police lieutenant described each of the subjects to her just prior to the arrest, that report was prepared the same day as the arrest, that she knew the details told her by the lieutenant on that day, that though she could give a partial description, she couldn't be completely sure of everything that she said, and that she read report at the time it was prepared and that it was a true reflection of the events on the day of the arrest. *J. J. Mitchell v. United States* (D.C. App. 1977, 368 A.2d 514).

—Discovery

Defendant charged with possession of a dangerous drug is not entitled to discovery of chemist's rough notes made during testing of the seized drug. *A. Waldron v. United States* (D.C. App. 1977, 370 A.2d 1372).

—Sufficiency

In prosecution for possession of a dangerous drug and possession of narcotics paraphernalia, evidence was sufficient to support finding that defendant had knowing dominion and control over dangerous drugs found in bedside stand located a few feet from dresser in bedroom in which police also found defendant's army uniforms and military papers bearing defendant's name, personal papers on which defendant's name appeared, and items of men's clothing. *H. D. Hooker v. United States* (D.C. App. 1977, 372 A.2d 996).

In prosecution for possession of narcotics paraphernalia and possession of dangerous drug, desoxyn, government established unbroken chain of custody as matter of reasonable probability, in view of testimony showing that envelopes had not been tampered with and sufficiently explaining any reason for delay in delivery. *C. E. Rosser v. United States* (D.C. App. 1974, 313 A. 2d 876).

—Suppression

Where although trial court observed that evidence, i.e., cigarette package-sized item wrapped in white handkerchief, was "handed" to officer and that defendant succeeded in divesting himself of possession by giving item to female, trial court did not rule on issue of consent to search, remand for that purpose was required in view of fact that officers did not otherwise have probable cause to arrest defendant and seize item. *R. L. Vicks v. United States* (D.C. App. 1973, 310 A. 2d 247).

Informants

In prosecution for possession of a dangerous drug and possession of narcotics paraphernalia, trial court did not abuse its discretion in refusing to direct disclosure of identity of informant who was not a witness to the offense charged, in view of fact that search warrant

was based on sales of heroin from defendant's home by a woman and in view of fact that drugs possessed by defendant were barbituates. *H. D. Hooker v. United States* (D.C. App. 1977, 372 A.2d 996).

Instructions

In narcotics prosecution, erroneous instruction on term "reasonable doubt" was harmless error beyond reasonable doubt, in light of strong evidence against defendant. *United States v. J. R. Herron* (1977, 567 F. 2d 510, — U.S. App. D.C. —).

In narcotics prosecution, trial court's failure to give "informer" instruction with respect to testimony of witness who testified in exchange for immunity from prosecution was not plain error, in light of strong evidence against defendant. *Id.*

Although court prefaced story illustrating reasonable doubt with direct statement concerning Government's burden of proof, where example comprised major portion of reasonable doubt instruction, illustration was final mention made of standard of proof before jury retired, evidence on count charging possession of phenmetrazine with intent to distribute was closely balanced with credibility being primary issue, giving of instruction constituted plain error requiring reversal of conviction on that count. *United States v. R. L. Pinkney* (1976, 551 F.2d 1241, 179 U.S. App. D.C. 282).

Where defendant was charged with possession of dangerous drug, based upon finding in his jacket a lady's change purse containing a pill, defendant contended that just prior to his apprehension, he had met an old girl friend who had given him purse and explained that she was going out with new boyfriend who always took money from her, so that if she were to testify, her testimony would be self-incriminating and defendant had been unable to subpoena her or otherwise secure her voluntary appearance in case, she was not peculiarly within defendant's power to produce and adverse missing witness instruction should not have been given. *P. A. Carver v. United States* (D.C. App. 1973, 312 A. 2d 773.)

Probable cause

Officers who observed defendant walking down sidewalk in area that had high level of narcotics traffic and who observed defendant exchange small items for currency had probable cause to arrest defendant who fled when officers attempted to question him. *C. W. Tobias v. United States* (D.C. App. 1977, 375 A. 2d 491).

Officer who arrested defendant on basis of tip from a paid informant was adequately apprised of the "underlying circumstances" revealing the informant's past reliability and, even assuming initial deficiency as to reliability, the specific tip was of sufficient detail as to adequately verify itself. *A. Waldron v. United States* (D.C. App. 1977, 370 A.2d 1372).

Arrest and search incident to arrest were valid, notwithstanding claim that arresting officer lacked probable cause where information was received from a police lieutenant who had received his information from a "reliable source" who was not identified to arresting officer, where arresting officer was able to corroborate informant's information before arrest since, in addition to finding two men on steps at address as informant related, both men appeared and were dressed in manner described and, most importantly, accuracy of information was further established when arresting officer noticed a bulge in "right, pants pocket" of one individual and, on making a justified frisk, found there a pistol mentioned by informant. *J. J. Mitchell v. United States* (D.C. App. 1977, 368 A.2d 514).

Where police officers proceeding in unmarked police car in high narcotics area observed one of several men hand defendant some money, on observing officers defendant began to walk away and then attempted to hand female a white handkerchief containing item similar in size to package of cigarettes, there was no probable cause to arrest defendant and seize handkerchief; there was no two-way exchange of money for an item and desoxyyn, which was found in handkerchief, was not in plain view. *R. L. Vicks v. United States* (D.C. App. 1973, 310 A. 2d 247).

Search and seizure

Where three policemen alighted from two squad cars near where defendant was standing and one demanded

identification from him, this was show of authority sufficient to restrain his liberty and was "seizure." *W. J. Crowder v. United States* (D.C. App. 1977, 379 A. 2d 1183).

Where occupants of automobile had not been arrested, officers had no probable cause or belief that automobile contained contraband, contents of medicine vial on front seat of car were not in plain view, and officer had no probable cause to believe that vial, which bore an old prescription label, contained contraband or in any way endangered the officer's safety, officer had no authority to seize the vial and examine its contents, though the vial was in plain view. *R. G. Christmas v. United States* (D.C. App. 1974, 314 A. 2d 473).

Sentence

Following refusal to sentence defendant, who had been sentenced for possession of a controlled substance with intent to distribute in violation of federal statute, on guilty verdict to charge of unlawful possession of same drugs under this section, trial judge should have entered proper judgment discharging defendant in all respects from District of Columbia charge. *United States v. R. Moore, Jr.* (1976, 533 F. 2d 1238, 175 U.S. App. D.C. 103).

§ 33-703. Drugs exempted.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-706. Inspection.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-707. Regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-708. Penalties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 8.—PRESCRIPTION DRUG PRICE INFORMATION

SUBCHAPTER I.—GENERAL PROVISIONS

Sec.

33-801. Definitions.

SUBCHAPTER II.—PRESCRIPTION DRUG PRICE POSTING

- 33-811. List of most commonly used prescription drugs.
- 33-812. Posters listing most commonly used prescription drugs to be furnished pharmacies—Style—Information required.
- 33-813. Completion and display of posters by pharmacies.
- 33-814. Quotation of cost of prescription drugs by pharmacies upon request required.

Sec.

- 33-815. Sale of drugs by pharmacies required to conform to posted prices and costs—Exception.
 33-816. Adjustment of posted information required for change of price or other costs.

SUBCHAPTER III.—ADVERTISING

- 33-821. Interference with disclosure of prescription drug price information prohibited.

SUBCHAPTER IV.—SUBSTITUTION OF THERAPEUTICALLY EQUIVALENT DRUGS

- 33-831. Publication of formulary of equivalent drug products—Procedure for determining contents—Annual review.
 33-832. Substitution of equivalent drugs by pharmacists—Lowest priced drug to be dispensed.
 33-833. Substitution of equivalent drugs prohibited.
 33-834. Records and labeling required for substitution of drugs.
 33-835. Substitution of drugs not to be considered practice of medicine or evidence of negligence—Failure to certify specific brand not to be considered evidence of negligence.

SUBCHAPTER V.—ENFORCEMENT

- 33-841. Penalty for sale of legend drug in violation of sections 33-813 to 33-815.
 33-842. Treble damages for interference with disclosure of cost of drugs or price-setting, substitution, or marketing policies.
 33-843. Inspection of pricing records and practices—Cease and desist orders.

SUBCHAPTER I.—GENERAL PROVISIONS

§ 33-801. Definitions.

As used in this chapter, the term—

(a) "issue date" means the first day of the fourth full calendar month after the effective date of this act, and the day following the end of each year after the first such issue date.

(b) "most commonly used prescription drugs" means the prescription drug products which were most frequently paid for by the Medicaid program operated by the District of Columbia Government under a State plan filed in accordance with section 1902 of the Social Security Act (42 U.S.C. 1396a), in the three consecutive months ending sixty days before an issue date.

(c) "pharmacy" means a shop or other place at which drugs, chemicals, or poisons, as those terms are used in chapter 6 of title 2, are sold at retail.

(d) Repealed. Apr. 7, 1977, D.C. Law 1-114, § 2(a), 23 DCR 8743.

(e) "person" means any individual, partnership, corporation, organization, or association.

(f), (g) Repealed. Apr. 7, 1977, D.C. Law 1-114, § 2(a), 23 DCR 8743.

(h) "professional and convenience services" includes, but is not limited to:

- (1) patient consultations;
- (2) patient profiles;
- (3) prescription charting;
- (4) emergency prescription service;
- (5) personal delivery;
- (6) mail delivery;
- (7) credit services;
- (8) staying open 24 hours per day;

(i) "current selling price" means all charges of a particular pharmacy to a consumer with respect to a prescribed drug, except additional charges for professional and convenience services;

(j) Repealed. Apr. 7, 1977, D.C. Law 1-114, § 2(a), 23 DCR 8743.

(Sept. 10, 1976, D.C. Law 1-81, § 2, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 2, 23 DCR 8743.)

REFERENCE IN TEXT

For the effective date of this act, referred to in par. (a), see Effective Date note set out below.

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-114, amended subsec. (b) generally and repealed subsecs. (d), (f), (g), and (j).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 6 of act Apr. 7, 1977, D.C. Law 1-114, provided: "This act [amending §§ 33-801, 33-811 to 33-815, 33-831 to 33-833, 33-835, and material set out as a note under § 33-801] shall be effective immediately following the period provided for Congressional review in section 602 (c) (1) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c) (1)]."

EFFECTIVE DATE

Section 404 of act Sept. 10, 1976, D.C. Law 1-81, title IV, provided: "This act [enacting this chapter] shall take effect immediately after the period provided for Congressional review in section 602(c) (1) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c) (1)]."

Section 404 of act Sept. 10, 1976, D.C. Law 1-81, title IV, was amended by section 5 of act April 7, 1977, D.C. Law 1-114, 23 DCR 8743, to read as follows: "This act shall become effective upon the effective date of the act entitled 'Prescription Drug Price Information Amendments' [April 7, 1977]."

SHORT TITLES

The first section of act Apr. 7, 1977, D.C. Law 1-114, provided "That this act [amending §§ 33-801, 33-811 to 33-815, 33-831 to 33-833, 33-835, and material set out as a note under § 33-801] may be cited as the 'Prescription Drug Price Information Amendments'."

The first section of act Sept. 10, 1976, D.C. Law 1-81, provided: "That this act [enacting this chapter] may be cited as the 'District of Columbia Prescription Drug Price Information Act'."

SUBCHAPTER II.—PRESCRIPTION DRUG PRICE POSTING

§ 33-811. List of most commonly used prescription drugs.

Thirty days prior to each issue date, the Department of Human Resources shall furnish to the Office of Consumer Protection a list of the 100 most commonly used prescription drugs. (Sept. 10, 1976, D.C. Law 1-81, title I, § 101, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 3(a), 23 DCR 8743.)

CODIFICATION

"Office of Consumer Protection" has been substituted for "Office of Consumer Affairs". See Codification note under § 33-843.

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-114, amended section by inserting "prescription" immediately after "most commonly used".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 6 of act Apr. 7, 1977, D.C. Law 1-114, set out as a note under § 33-801.

EFFECTIVE DATE

See note under § 33-801.

§ 33-812. Posters listing most commonly used prescription drugs to be furnished pharmacies—Style—Information required.

Ten days prior to each issue date, the Office of Consumer Protection shall furnish to each pharmacy

in the District a poster suitable for display, of a type style and size so as to be easily readable at a reasonable distance, which—

(a) lists the 100 most commonly used prescription drugs in two commonly prescribed quantities, with space for the current selling price of each quantity;

(b) lists professional and convenience services, with space for each pharmacy to indicate:

(1) whether it offers each service;

(2) the additional charge, if any, for that service;

(c) a heading stating "OUR CURRENT PRESCRIPTION PRICES" and containing spaces for the insertion of the name and address of each pharmacy;

(d) indicates in simple language that:

(1) the price of a prescription drug is often different at different pharmacies, and that the consumer may want to make a comparison on the cost of a prescription;

(2) the pharmacy may be able to substitute a less expensive drug which is therapeutically equivalent to the one prescribed by the consumer's doctor, unless the consumer does not approve;

(3) the consumer has the right to know the exact price of a prescription before it is filled;

(e) provides space for each pharmacy to indicate the eligibility and terms of any discount it offers on legend drugs. (Sept. 10, 1976, D.C. Law 1-81, title I, § 102, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 3(c), 23 DCR 8743.)

CODIFICATION

"Office of Consumer Protection" has been substituted for "Office of Consumer Affairs". See Codification note under § 33-843.

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-114, amended par. (a) generally.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 6 of act Apr. 7, 1977, D.C. Law 1-114, set out as a note under § 33-801.

§ 33-813. Completion and display of posters by pharmacies.

On and after each issue date, each pharmacy shall legibly post on the poster its current selling prices for the 100 most commonly used prescription drugs, the professional and convenience services it offers and the additional charges therefor, and the eligibility and terms of any discount it offers on prescription drugs. The completed poster shall be displayed prominently in the immediate vicinity of the prescription drug service area in such a manner as to be easily visible to consumers without having to obtain permission or assistance of an employee of the pharmacy. (Sept. 10, 1976, D.C. Law 1-81, title I, § 103, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 3(a), (b), 23 DCR 8743.)

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-114, amended section by inserting "prescription" immediately after "most commonly used" and substituting "prescription" for "legend".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 6 of act Apr. 7, 1977, D.C. Law 1-114, set out as a note under § 33-801.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33-841.

§ 33-814. Quotation of cost of prescription drugs by pharmacies upon request required.

The current selling price of all prescription drugs (including those not required to be posted) dispensed by each pharmacy, and the pharmacy's discounts and professional and convenience services and charges therefor, shall be available and be quoted, correctly and free of charge, by the pharmacy upon request identifying the name, strength, and quantity prescribed by a physician, whether the request is made in person, in writing or by telephone. (Sept. 10, 1976, D.C. Law 1-81, title I, § 104, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 3(b), (d), 23 DCR 8743.)

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-114, amended section by substituting "prescription" for "legend" and "in writing or by telephone" for "in writing, by telephone, or in any other manner".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 6 of act Apr. 7, 1977, D.C. Law 1-114, set out as a note under § 33-801.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33-841.

§ 33-815. Sale of drugs by pharmacies required to conform to posted prices and costs—Exception.

No pharmacy may fail to provide to any consumer the discounts and services stated on the poster, under the eligibility, price, and other terms there stated. Every sale of one of the 100 most commonly used prescription drugs, in a quantity and strength which requires the price of the drug to be posted, shall be at the posted price, unless a decrease in price is authorized by subchapter IV of this chapter. (Sept. 10, 1976, D.C. Law 1-81, title I, § 105, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 3(a), 23 DCR 8743.)

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-114, amended section by inserting "prescription" immediately after "most commonly used".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 6 of act Apr. 7, 1977, D.C. Law 1-114, set out as a note under § 33-801.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33-841.

§ 33-816. Adjustment of posted information required for change of price or other costs.

A pharmacy may charge any current selling price, discount, service availability or service charge, at any time, *Provided*, that the poster and sources of consumer information are adjusted accordingly. (Sept. 10, 1976, D.C. Law 1-81, title I, § 106, 23 DCR 2460.)

SUBCHAPTER III.—ADVERTISING

§ 33-821. Interference with disclosure of prescription drug price information prohibited.

No person may directly or indirectly prohibit, hinder or restrict or attempt to prohibit or restrict, the disclosure by any pharmacy, government agency, or other person, of accurate price information regarding prescription drugs, including such disclosure

made by means of advertisements in print or broadcast media, or by other means. (Sept. 10, 1976, D.C. Law 1-81, title II, § 201, 23 DCR 2460.)

EFFECTIVE DATE

See note under § 33-801.

SUBCHAPTER IV.—SUBSTITUTION OF THERAPEUTICALLY EQUIVALENT DRUGS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 33-815.

§ 33-831. Publication of formulary of equivalent drug products—Procedure for determining contents—Annual review.

The Department of Human Resources shall publish a formulary of drug products, with the chemical or generic name of each, that are determined to be therapeutically equivalent to specified brand name drug products. The Department shall determine the contents of the formulary only after recommendations are made by a committee of nine members appointed by the Director of that Department. The committee shall consist of one licensed physician and one licensed pharmacist employed by the Department, two licensed physicians and three licensed pharmacists in private practice in the District, and two pharmacologists on the faculty of a university in the District. The recommendations of the committee shall require concurrence of a majority of the members of the committee. The committee's recommendations shall be published in the District of Columbia Register as proposed regulations of the Department. The Department's determinations shall be made in accordance with sections 1-1503 and 1-1504 through 1-1506 and published in the District of Columbia Register as final regulations. The committee shall review the published formulary annually, or whenever an amendment to it appears necessary. The committee shall publish its first recommendations no later than eight months after the effective date of this act. (Sept. 10, 1976, D.C. Law 1-81, title III, § 301, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 4(a), 23 DCR 8743.)

REFERENCE IN TEXT

For the effective date of this act, referred to in the text, see Effective Date note under § 33-801.

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-114, amended section generally.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 6 of act Apr. 7, 1977, D.C. Law 1-114, set out as a note under § 33-801.

EFFECTIVE DATE

See note under § 33-801.

§ 33-832. Substitution of equivalent drugs by pharmacists—Lowest priced drug to be dispensed.

(a) When a pharmacist receives a prescription for a brand name drug for which one or more equivalent drugs are listed in the formulary prepared by the Department of Human Resources, the pharmacist may dispense any one of the listed equivalent products, and, if a listed equivalent product is dispensed, the pharmacist must dispense the product in stock having the lowest current selling price. The

pharmacist shall do so if the purchaser so requests, except as provided in section 33-833.

(b) When a pharmacist receives a prescription for a drug by generic name, the pharmacist shall dispense the listed product in stock having the lowest current selling price.

(c) Until the first promulgation of the formulary by the Department of Human Resources, pharmacists licensed in the District shall have the same power which they had prior to September 10, 1976, to exercise their professional judgment in selecting the drug product to be dispensed. (Sept. 10, 1976, D.C. Law 1-81, title III, § 302, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 4(a), 23 DCR 8743.)

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-114, amended section generally.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 6 of act Apr. 7, 1977, D.C. Law 1-114, set out as a note under § 33-801.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 33-833 to 33-835.

§ 33-833. Substitution of equivalent drugs prohibited.

The pharmacist shall not dispense an equivalent drug product under section 33-832 if—

(a) The person purchasing the drug product or the patient for whom it is intended indicates a preference for the drug product actually prescribed.

(b) The prescriber, in the case of a written prescription order signed by the prescriber, writes in the prescriber's own handwriting "dispense as written" or "D.A.W." or a similar notation. A procedure for checking or initialing a box, preprinted or stamped on a prescription form, will not constitute an acceptable notation.

(c) The prescriber, in the case of a prescription communicated by telephone, expressly indicates the prescription is to be dispensed as communicated, and this indication is noted in the pharmacist's own handwriting in the manner provided in subsection (b). (Sept. 10, 1976, D.C. Law 1-81, title III, § 303, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 4(a), 23 DCR 8743.)

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-114, amended section generally.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 6 of act Apr. 7, 1977, D.C. Law 1-114, set out as a note under § 33-801.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33-832.

§ 33-834. Records and labeling required for substitution of drugs.

When a drug is substituted under section 33-832, the pharmacist shall record on the prescription form the drug substituted by name and manufacturer, and retain the form for inspection by District officials. The pharmacist shall also label the prescription container with the name of the drug substituted, unless the prescribing physician writes "do not label", or words of similar import, on the prescription, or, in communicating the prescription by telephone, orders that the container not be so labelled. (Sept. 10, 1976, D.C. Law 1-81, title III, § 304, 23 DCR 2460.)

§ 33-835. Substitution of drugs not to be considered practice of medicine or evidence of negligence.— Failure to certify specific brand not to be considered evidence of negligence.

(a) The substitution of therapeutically equivalent drugs by a licensed pharmacist under section 33-832 shall not constitute the practice of medicine.

(b) Substitution of drugs made in accordance with section 33-832 shall not constitute evidence of negligence or improper pharmacy practice if the substitution was made within reasonable and prudent pharmacy practice or if the prescribed and substituted drugs were therapeutically equivalent drugs as determined under this chapter.

(c) Failure of a licensed physician to specify that a specific brand is necessary for the particular patient shall not constitute evidence of negligence unless the physician had reasonable cause to believe that the health of the patient required the use of that brand and no other. (Sept. 10, 1976, D.C. Law 1-81, title III, § 305, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 4(b), 23 DCR 8743.)

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-114, amended subsec. (b) by substituting "determined under" for "defined in" and subsec. (c) by substituting "that brand" for "a certain drug product".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 6 of act Apr. 7, 1977, D.C. Law 1-114, set out as a note under § 33-801.

SUBCHAPTER V.—ENFORCEMENT

§ 33-841. Penalty for sale of legend drug in violation of sections 33-813 to 33-815.

Any pharmacy which sells a legend drug in violation of sections 33-813, 33-814, or 33-815 is liable to the buyer, or the provider or insurer of the buyer, for the full amount charged for the drug. (Sept. 10, 1976, D.C. Law 1-81, title IV, § 401, 23 DCR 2460.)

EFFECTIVE DATE

See note under § 33-801.

§ 33-842. Treble damages for interference with disclosure of cost of drugs or price-setting, substitution, or marketing policies.

Any person who, by any means, interferes with, prevents, discourages, or attempts to interfere with, prevent, or discourage:

(a) any disclosure of, or attempt to disclose, or action necessary to disclose, substantially accurate prices, discounts, services, or other information concerning any prescription drug, whether or not such disclosure is authorized or directed in this

chapter, or is through any media or other form of communication, or is made or to be made by any publisher, broadcaster, pharmacy, pharmacist, advertiser, drug manufacturer, wholesaler, or chain, government agency, or any other person, or

(b) any retail drug price-setting, substitution, or marketing policy or action required, encouraged or permitted by, or consistent with this chapter, has committed a restraint of trade, and has caused a tortious injury in the District of Columbia as described in section 13-423(a) (3) and (4), and shall be liable for treble civil damages to each and every person (including a pharmacy or pharmacist), health insurer, and government agency the object of or injured by such interference, prevention, discouragement, or attempt to interfere, prevent, or discourage. Any action which jeopardizes in any way, or raises the net price of, the supply from manufacturers or wholesalers of drugs to any pharmacy, government agency, health insurer, or person providing or paying for a drug in the District, may comprise such an interference, prevention, discouragement, or attempt. (Sept. 10, 1976, D.C. Law 1-81, title IV, § 402, 23 DCR 2460.)

§ 33-843. Inspection of pricing records and practices—Cease and desist orders.

After reasonable notice, the Office of Consumer Protection may inspect the pricing records and practices of any pharmacy or other person, to assure compliance with this chapter. After appropriate notice and hearing, the Office may, if it finds that any person has violated this chapter, issue a cease and desist order against continued or future violation, and such other orders as may otherwise be within powers of that Office. (Sept. 10, 1976, D.C. Law 1-81, title IV, § 403, 23 DCR 2460.)

CODIFICATION

"Office of Consumer Protection" has been substituted for "Office of Consumer Affairs". See following note.

Section consists of the first two sentences of section 403 of act Sept. 10, 1976, D.C. Law 1-81, title IV. The last sentence of section 403 which provided that if the Office of Consumer Affairs is abolished, and the Office of Consumer Protection proposed to be established in Council Bill No. 1-253 has been established, then all references in this chapter to the Office of Consumer Affairs shall be deemed to be references to the Office of Consumer Protection. Council Bill No. 1-253 was enacted on July 22, 1976, as D.C. Law 1-76 which is classified to title 28 Appendix. Section 3(f) of title 28 Appendix abolished the Office of Consumer Affairs and section 3(a) of title 28 Appendix established the Office of Consumer Protection.

TITLE 34.—HOTELS AND LODGING-HOUSES

Chapter 1.—RIGHTS AND LIABILITIES

§ 34—107. Lien of hotels, motels, and innkeepers—Retention of property of guest or patron—Satisfaction of lien by public sale—Notice—Application of proceeds.

CROSS REFERENCE

Service by publication on nonresidents and absent defendants, see § 13-336.

§ 34—108. Sale by hotels, motels, and innkeepers of unclaimed property—Notice—Application of proceeds.

CROSS REFERENCE

Service by publication on nonresidents and absent defendants, see § 13-336.

TITLE 35.—INSURANCE

Chap.	Sec.
18. Insurance Guaranty Association.....	35-1801
19. Holding Company System.....	35-1901

Chapter 1.—INSURANCE DEPARTMENT—GENERAL PROVISIONS

§ 35-101. Department of Insurance created—Superintendent of Insurance—Subject to supervision of Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-102. Duties of Superintendent—Copy of charters to be filed—Foreign companies to file power of attorney—Service of process—Superintendent to make rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Taxicab insurance, delegation of Council's authority to Superintendent, see § 44-308.

NOTES TO DECISIONS

Authority of District Council

Fact that no previous cases upheld the municipality's exercise of police power to regulate insurance did not compel conclusion that the District Council was without such power. *Firemen's Insurance Company of Washington, D.C. v. W. E. Washington et al.* (1973, 483 F. 2d 1323, 157 U.S. App. D.C. 320).

District of Columbia regulation generally precluding the insurance company from considering geographic location in determining whether to insure or continue to insure auto, fire and casualty risks in district and prohibiting cancellation of those policies for other than specified conditions do not conflict with specific provisions of the District of Columbia Insurance Code or the Automobile Insurance Plan and were not preempted thereby; with respect to basic property insurance regulation prohibiting geographic discrimination did conflict with and was preempted by the District of Columbia Insurance Placement Act. *Id.*

§ 35-105. Statement of business in District of Columbia.

Every insurance company and association doing business in the District of Columbia shall, through its local agents or representatives, furnish to the superintendent, during the month of January of each year, a statement of its business in said District, setting forth specifically the net amount of its premium receipts, the amount of losses paid, the

amount of expenses incurred, respecting the business done in the District during the calendar year next preceding, and said superintendent shall preserve a separate record of the same in his office for convenient reference, showing the ratio of such losses and expenses, respectively, to said premium receipts, and all insurance companies of every description, except mutual fire insurance companies, shall pay to the collector of taxes before March first of each year a sum equal to two per centum of said premium receipts of the last preceding calendar year, in lieu of all other taxes, except taxes upon real estate and any license fees provided for in sections 35-1201 and 35-1202; and upon the failure of any company to pay said taxes before March first, as aforesaid, the license of said company shall be revoked and a penalty of eight per centum per month shall be charged against the company, which, together with said taxes, shall be collected before said company shall be allowed to resume business. (Mar. 3, 1901, 31 Stat. 1291, ch. 854, § 650; June 30, 1902, 32 Stat. 534, ch. 1329; Aug. 17, 1937, 50 Stat. 676, ch. 690, title II, § 6; Apr. 19, 1977, D.C. Law 1-124, title X, § 1000, 23 DCR 8749.)

CODIFICATION

"Two per centum" was substituted for "one and one-half per centum" to conform to act Aug. 17, 1937, as amended by act Apr. 19, 1977, D.C. Law 1-124, relating to taxation of insurance companies. See § 47-1806.

CROSS REFERENCE

Installment payment of taxes, see § 47-1806.

§ 35-106. Superintendent to make annual report.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2.—PROVISIONS APPLICABLE TO MORE THAN ONE KIND OF INSURANCE

SUBCHAPTER I.—GENERAL PROVISIONS

§ 35-201. Life and fire insurance companies to maintain reinsurance reserves—Suspension of license upon impairment of capital stock—Penalty for acting for unlicensed company—Superintendent may make examination to determine impairment in capital, or insolvency.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-202. Health, accident, and life insurance companies defined—Assets and capital stock required—Amount of policies—Taxation—Reports to Superintendent of Insurance—Examination by Superintendent of Insurance—Appeal to Commissioner—Fraternal beneficial and certain other organizations exempt.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-203. Copy of application to be delivered with policy—Statements in application as defense.

NOTES TO DECISIONS

Medical authorization

In light of fact that medical authorization form signed by insured did not contain or call for any information, failure to attach the form to life policy was immaterial and did not bring into play bar of statute requiring an insurance company to include with issued policy a copy of application made by insured, or preclude insurer from defending on ground of insured's failure to disclose his medical history. *L. Blair v. The Prudential Insurance Co. of America* (1972, 472 F. 2d 1356, 153 U.S. App. D.C. 281).

Purpose

This section requiring an insurance company to include with issued policy a copy of application made by insured was enacted for protection of insured, not the insurance company. *L. Blair v. The Prudential Insurance Co. of America* (1972, 472 F. 2d 1356, 153 U.S. App. D.C. 281).

Recovery

Even though application for life insurance did not accurately reveal decedent's medical history, and even though there was no showing of fraud and false recording by insurer's agent, named beneficiary was entitled to recover on policy, in view of facts that application was filled out by agent in accordance with standard company practice, not by insured, that application form was highly technical and difficult to understand, that deceased did not study responses with any care but relied on agent before he signed, that deceased revealed name and address of his doctor and insurer made no inquiry of the doctor, and that application form attached to policy when delivered was so reduced in size as to be practically illegible. *L. Blair v. Prudential Insurance Company* (1973, 366 F. Supp. 859; rev'd and rem'd 506 F. 2d 1321, 165 U.S. App. D.C. 282).

§ 35-204. Principal office to be in District of Columbia—Keeping and removing of records—Reincorporation of companies chartered by special acts—Penalties—Prosecutions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER II.—DOMESTIC STOCK INSURANCE COMPANIES

§ 35-222. Rules and regulations—Revocation or suspension of certificate—Notice and hearing—Penalties—Exemption of certain companies.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-223. Registration requirements of beneficial owners, directors, etc.—Sales restriction—Definition—Exemption—Rules and regulations—Penalty—Effective date of section.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-224. Preservation of authority—Delegation of functions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 3.—LIFE INSURANCE—DEFINITIONS

§ 35-302. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1901.

Chapter 4.—DEPARTMENT OF INSURANCE WITH RESPECT TO LIFE COMPANIES

§ 35-401. Insurance department—Superintendent of Insurance — Oath — Bond — Assistants—Seal—Sealed instruments as evidence—Annual report—Attendance at conventions—Visits—Expenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-403. Refunds of excess in fees, charges, or taxes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-407. Annual statement—Verification—Failure to make.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-414. False statements in application for insurance.

NOTES TO DECISIONS

Construction

Provision of this section stating that falsity of a statement in application for any policy shall not bar right to recovery thereunder unless such false statement was made with intent to deceive or unless it materially affected either acceptance of risk or hazard assumed by insurer is without ambiguity, and did not require life insurer to prove that applicant's false statement, which was conceded to materially affect the risk assumed, was made with intent to deceive. *M. W. Hill, Administratrix etc. v. The Prudential Insurance Company of America* (D.C. App. 1974, 315 A.2d 146).

Estoppel

Where insured signed application for life policy and received copy which remained in his possession until his death, insured did not provide agent with information regarding his health, agent was not aware of insured's poor physical condition and agent did not deliberately record false information or induce or coerce insured to sign form without reading it or without disclosing pertinent information about his health, insured was inexcusably negligent in failing to become aware of responses on application and was chargeable with knowledge of all that reading should have revealed; thus doctrine of equitable estoppel could not be invoked to excuse insured's failure to read the application. *Metropolitan Life Insurance Company v. A. Johnson* (D.C. App. 1976, 363 A.2d 984).

Incontestability clause

Where premiums on life policy were paid on October 1, 1973 and monthly thereafter, and policy anniversaries were measured from such date and such date determined loan and cash values on policy, dividends, paid-up insurance, extended insurance and grace periods, October 1, 1973 was when policy became effective, rather than November 16, 1973, which was designated by policy as date of issue, and, under section 35-703 which provides for incontestability after two years from date of policy, policy became incontestable two years from October 1, 1973. *The Manufacturers Life Insurance Company v. Capitol Datsun, Inc., et al.* (1977, 566 F. 2d 354, 184 U.S. App. D.C. —).

Misrepresentation

Insured has duty to read policy application which he signs, or, if necessary, to have it read to him and to report any misrepresentation or omissions to the insurer, he is held to know contents of his application and is bound thereby, regardless of whether he has actual knowledge of such at time he signed the form. *Metropolitan Life Insurance Company v. A. Johnson* (D.C. App. 1976, 363 A.2d 984).

— Intent to deceive

Life policy, which provided that statements made in an application for insurance "shall be deemed representations and not warranties," did not require insurer to show that applicant's false statement, which was conceded to materially affect the risk assumed, was made with intent to deceive. *M. W. Hill, Administratrix etc. v. The Prudential Insurance Company of America* (D.C. App. 1974, 315 A.2d 146).

— Material

Proof that an application for insurance contains a false statement which materially affects acceptance of risk or hazard assumed is sufficient to defeat a claim under the policy. *M. W. Hill, Administratrix etc. v. The Prudential Insurance Company of America* (D.C. App. 1974, 315 A.2d 146).

Notice to insurer

Under District of Columbia law, insurer could not successfully interpose defense of misstatement of, or omission to state, material medical facts in application form, where applicant, at request of insurer's agent, signed ap-

plication form in blank, applicant and his wife orally gave truthful and full answers to questions on application form as they were propounded by the agent, the agent himself recorded one or more material misstatements of fact on the application form or omitted to record material information, and neither the applicant nor his wife knew of the agent's entry on the application form of any such misstatement or of the agent's omission of any material information, or read the application form either before its submission to insurer, or after policy was issued and returned to insured with application form in reduced form attached to and made part of the issued policy. *L. Blair v. The Prudential Insurance Co. of America* (1972, 472 F. 2d 1356, 153 U.S. App. D.C. 281).

Recovery

Even though application for life insurance did not accurately reveal decedent's medical history, and even though there was no showing of fraud and false recording by insurer's agent, named beneficiary was entitled to recover on policy, in view of facts that application was filled out by agent in accordance with standard company practice, not by insured, that application form was highly technical and difficult to understand, that deceased did not study responses with any care but relied on agent before he signed, that deceased revealed name and address of his doctor and insurer made no inquiry of the doctor, and that application form attached to policy when delivered was so reduced in size as to be practically illegible. *L. Blair v. Prudential Insurance Company* (1973, 366 F. Supp. 859; rev'd and rem'd 506 F. 2d 1321, 165 U.S. App. D.C. 282).

§ 35-416. Custody of general deposits—Collection of income—Substitution of securities—Required securities.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-418. Examinations—Reports—Verification—Hearing upon—Publication—Expense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1906.

§ 35-419. Superintendent may take possession of property of company and conduct its business—Conditions precedent—Procedure—Injunction—Resumption of possession by company—Order for liquidation—Appointment of deputies—Expense of liquidation—Bond—Annual report.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-425. General agent, agent, solicitor—License required—Application—Contents—Applicant vouched for by company—Placement of excess or rejected risks—Expiration and renewal of license—Officers and traveling salaried employees excepted—Notice of termination of employment—Information privileged.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

**§ 35-428. Brokers—License—Application—Contents—
Person vouched for—Examination—Issuance—
Effect of revocation—Appeal from refusal to issue—
Renewal annually—Penalty for violation.**

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-432. Appeal from superintendent to Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 5.—DOMESTIC LIFE COMPANIES

§ 35-508. Capital-stock requirements.

(a) A domestic capital-stock company organized under chapters 3-8 of this title shall have a paid-up capital stock of not less than \$1,000,000. Each domestic capital-stock company organized under chapters 3-8 of this title, in addition to the paid-up capital stock shall have a surplus paid up equal to at least 50 per centum of such capital stock. Each domestic mutual company organized or doing business under chapters 3-8 of this title shall at all times have a surplus as defined by chapters 3-8 of this title of not less than \$1,500,000.

(b) No company shall be exempt from the provisions of this section by reason of its having been incorporated in the District or elsewhere prior to the effective date of this subsection or subsequent amendment, except that in the case of companies authorized in the District of Columbia on (date of passage) and continuously authorized thereafter without any increase or broadening of authority, the minimum capital required of a stock company, or the minimum surplus required of a mutual company shall not be increased by this section. (June 19, 1934, 48 Stat. 1145, ch. 672, Ch. III, § 8; May 4, 1950, 64 Stat. 104, ch. 157, § 4; Aug. 31, 1964, 78 Stat. 764, Pub. L. 88-556, § 1; Aug. 14, 1973, Pub. L. 93-89, title II, § 201(1), (2), 87 Stat. 303.)

AMENDMENT

1973—Section 201(1) (2) of Act Aug. 14, 1973, Pub. L. 93-89, amended section as follows:

(1) In subsec. (a), by substituting "\$1,000,000" and "\$1,500,000" for "\$200,000" and "\$150,000", respectively.

(2) In subsec. (b), by inserting "or subsequent amendment" immediately after "subsection"; and by inserting "or the minimum surplus required of a mutual company" immediately after "stock company".

EFFECTIVE DATE OF 1973 AMENDMENT

Section 202 of title II of Act Aug. 14, 1973, Pub. L. 93-89, provided: "The amendment made by this title [amending §§ 35-508 and 35-535] shall take effect thirty days after the date of enactment of this Act."

§ 35-519. Conversion of a stock life company into a mutual life company—Plan for acquisition of capital stock—Conditions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-535. Investment of funds of domestic companies.

A domestic company shall invest its funds only in—

* * * * *

(10) (a) Common stocks of any solvent corporation (other than its own) created under the laws of the United States, or of any State thereof, or the District of Columbia, or the Dominion of Canada, or any Province thereof, which shall have paid common dividends in cash for not less than five years next preceding the purchase of such stocks, and where the bonds and other evidences of indebtedness, if any, and the preferred stock, if any, of such corporation are eligible as investments under the provisions of subsections (7) and (9), respectively, of this section, and where the total investment in the common stock of any one corporation does not exceed 1 per centum of the investing company's admitted assets.

(b) In addition to the investments authorized in paragraph (10) (a), common stocks of any insurance company (other than as prohibited in section 35-540) created under the laws of the United States, or by any State thereof, or the District of Columbia: *Provided, however*, That stocks may be acquired under this paragraph (10) (b) only (i) with the intention of ultimately acquiring ownership or control of the issuing corporation as an affiliate or a subsidiary, (ii) if such acquisition will not cause the acquiring company's aggregate cost of investments under this paragraph to exceed, in the case of a capital stock company, the amount of capital, surplus, and contingency reserves in excess of \$1,500,000, or, in the case of a mutual company, the amount of surplus and contingency reserves in excess of \$1,500,000 and (iii) after the Superintendent of Insurance of the District of Columbia has been furnished with such information as he may require and has given to the acquiring company his written approval of the proposed acquisition stating his opinion that it will not substantially lessen competition, will not tend to create a monopoly in any line of insurance, and will not impair the financial stability of the acquiring company.

* * * * *

(15) Any domestic life insurance company may also lend or invest its funds, to an extent that the cost of such investments shall not exceed in the aggregate the lesser of (i) 5 per centum of its total admitted assets, or (ii) in the case of a capital stock company, the amount of capital, surplus, and contingency reserves in excess of \$1,500,000 or, in the case of a mutual company, the amount of surplus and contingency reserves in excess of \$1,500,000, in loans or investments (other than common stocks of insurance companies) not otherwise permitted under this section: *Provided, however*, That no company shall invest in excess of 1 per centum of its admitted assets in any one such loan or investment. The company shall keep a separate record of all loans

and investments made under this subsection. In the event that, subsequently to being made under the provisions of this subsection, a loan or investment is determined to have become qualified under some other part of this section, the company may consider such loan or investment as being held under the applicable provision and such loan or investment shall no longer be considered as having been made under this subsection.

* * * *

(As amended Aug. 14, 1973, Pub. L. 93-89, title II, § 201(3), (4), 87 Stat. 303.)

AMENDMENT

1973—Section 201(3) (4) of Act Aug. 14, 1973, Pub. L. 93-89, amended section as follows:

(1) In subsec. (10) (b) (ii), by substituting "\$1,500,000" for "\$300,000" and "\$150,000".

(2) In subsec. (15) (ii), by substituting "\$1,500,000" for "\$300,000" and "\$150,000".

EFFECTIVE DATE OF 1973 AMENDMENT

See note under § 35-508.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-510, 35-541, 35-1902.

§ 35-541. Variable contracts—Separate accounts—Assets of accounts to equal obligations for variable payments—Issuance by foreign companies—Standards of qualification—Reports—Regulations—Investment limitations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-2401, 35-1902.

Chapter 7.—PROVISIONS RELATING TO ALL LIFE INSURANCE COMPANIES

§ 35-701. Superintendent to value policies—Legal standard of valuation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-703. Standard provisions required in life insurance policies.

NOTES TO DECISIONS

Incontestability clause

Where premiums on life policy were paid on October 1, 1973 and monthly thereafter, and policy anniversaries were measured from such date and such date determined loan and cash values on policy, dividends, paid-up insurance, extended insurance and grace periods, October 1, 1973 was when policy become effective, rather than November 16, 1973, which was designated by policy as date of issue, and, under this section which provides for incontestability after two years from date of policy, policy became incontestable two years from October 1, 1973. *The Manufacturers Life Insurance Company v. Capitol Datum, Inc., et al.* (1977, 566 F. 2d 354, 184 U.S. App. D.C. —).

§ 35-705b. Standard nonforfeiture law.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-710. Group life insurance.

No policy of group life insurance shall be delivered in the District unless it conforms to one of the following descriptions:

(1) A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustee shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

* * * *

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees. No policy may be issued which provides term insurance on any employee which together with any other term insurance under any group life-insurance policy or policies issued to the employers or any of them or to the trustees of a fund established in whole or in part by the employers or any of them exceeds \$30,000 unless 300 per centum of the annual compensation of a covered employee, exceeds \$30,000, in which event all such insurance shall not exceed \$100,000, or 300 per centum of such annual compensation, whichever is less.

* * * *

(3) A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements:

* * * *

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union. No policy may be issued which provides term insurance on any union member which together with any other term insurance under any group life insurance policies exceeds \$30,000 unless 300 per centum of the annual compensation of a covered union member exceeds \$30,000, in which event all such insurance shall not exceed \$100,000, or 300 per centum of such annual compensation, whichever is less.

(4) A policy issued to the trustees of a fund established by two or more employers in the same industry or by one or more labor unions, or by one or more employers and one or more labor unions, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

* * * *

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions. No policy may be issued which provides term insurance on any person which together with any other term insurance under any group life-insurance policy or policies issued to the employers, or any of them, or to the trustees of a fund established in whole or in part by the employers, or any of them, exceeds \$30,000 unless 300 per centum of the annual compensation of a covered person exceeds \$30,000, in which event all such insurance shall not exceed \$100,000, or 300 per centum of such annual compensation, whichever is less.

(6) A policy issued to an association whose eligible members have the same profession, trade, or occupation which has been organized and is maintained for purposes other than that of obtaining insurance, which shall be deemed the policyholder, to insure members, or employees of members, of such association for the benefit of persons other than the association, or any of its officials, representatives, or agents, subject to the following requirements:

(d) The amounts of insurance under the policy must be based on some plan precluding individual selection either by the members or employees, or by the association. No policy may be issued which provides term insurance on any association member or employee which, together with any other term insurance under any group life insurance policy or policies, exceeds \$30,000, unless 300 per centum of the annual compensation of such person exceeds \$30,000, in which event all such term insurance shall not exceed \$100,000, or 300 per centum of such annual compensation, whichever is less.

(9) A policy issued to a duly organized national veterans' organization which has been organized and is maintained for purposes other than that of obtaining insurance, which shall be deemed the policyholder, to insure members of such organization for the benefit of persons other than the organization, or any of its officials, representatives, or agents, subject to the following requirements:

(d) The amounts of insurance under the policy must be based on some plan precluding individual selection either by the members, or by the organization. No policy may be issued which provides term insurance on any organization member which, together with any other term insurance under any group life insurance policy or policies, exceeds \$30,000, unless 300 per centum of the annual compensation of such person exceeds \$30,000, in which event all such term insurance shall not exceed \$100,000, or 300 per centum of such annual compensation, whichever is less.

(As amended Aug. 14, 1973, Pub. L. 93-89, title III, § 301, 87 Stat. 304.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1973—Section 301 of Act Aug. 14, 1973, Pub. L. 93-89, amended subsecs. (1) (d), (3) (d), (4) (d), (6) (d), and (9) (d) as follows: (1) by striking out "\$20,000" each place it appeared and inserting in lieu thereof "\$30,000"; (2) by striking out "\$40,000" each place it appeared and inserting in lieu thereof "\$100,000"; and (3) by striking out "150" each place it appeared and inserting in lieu thereof "300".

§ 35-711. Standard provisions for policies of group life insurance.

No policy of group life insurance shall be delivered in the District unless it contains in substance the following provisions, or provisions which in the opinion of the superintendent are more favorable to the persons insured, or at least as favorable to the persons insured and more favorable to the policyholder:

Provided, however, (a) That provisions (6) to (10), inclusive, shall not apply to policies issued to a creditor to insure debtors of such creditor, or to policies issued pursuant to section 35-710(8); (b) that the standard provisions required for individual life-insurance policies shall not apply to group life-insurance policies; (c) that if the group life-insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the superintendent is or are equitable to the insured persons and to the policyholder, but nothing herein shall be construed to require that group life-insurance policies contain the same nonforfeiture provisions as are required for individual life-insurance policies; and (d) that subject to the terms of the policy any person insured under a group life insurance contract, whether issued before or after August 14, 1973, may make to any person, other than his employer, an absolute or collateral assignment of any or all the rights and benefits conferred on him by any provision of such policy or by law, including specifically, but not by way of limitation, any right to designate a beneficiary or beneficiaries thereunder and any right to have an individual policy issued upon termination either of employment or of said policy of group life insurance, but nothing herein shall be construed to have prohibited an insured from making an assignment of all or any part of his rights and privileges under the policy before August 14, 1973, and, subject to the terms of the policy, an assignment by an insured before or after August 14, 1973, is valid for the purposes of vesting in the assignee all rights and privileges so assigned, but without prejudice to the insurer on account of any payment it may make or individual policy it may issue prior to receipt of notice of the assignment:

(As amended Aug. 14, 1973, Pub. L. 93-89, title III, § 302, 87 Stat. 304.)

CODIFICATION

In clause (d), "August 14, 1973" has been substituted for "the effective date of this clause".

AMENDMENT

1973—Section 302 of Act Aug. 14, 1973, Pub. L. 93-89, amended section by (1) striking out "and" at the end of clause (b), (2) striking out the colon at the end of clause (c) and inserting a semicolon in lieu thereof, and (3) inserting immediately thereafter a new clause (d).

§ 35-712. Individual Accident and Sickness Policy Provisions.

* * * * *

2. Form of Policy

(a) No policy of accident and sickness insurance shall be delivered or issued for delivery to any person in the District unless—

* * * * *

(7) it contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the Superintendent; and

(8) it contains no provision which would restrict access to psychologists or optometrists. When a policy relating to health insurance requires payment or reimbursement for services which may be performed by a duly licensed psychologist or optometrist, any person covered by the policy shall be free to select and have direct access to such psychologist or optometrist without supervision or referral by a practitioner of the healing art and shall be entitled under the policy, if applicable, to have payment or reimbursement made for services performed.

* * * * *

(As amended Feb. 19, 1976, D.C. Law 1-46, § 2, 22 DCR 4680.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act. Feb. 19, 1976, D.C. Law 1-46, amended subsec. (a) under the heading "2. Form of Policy" by substituting "; and" for the period at the end of par. (7) and adding par. (8).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 3 of act Feb. 19, 1976, D.C. Law 1-46, provided: "This act [amending this section] shall take effect as provided for acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act Feb. 19, 1976, D.C. Law 1-46, provided: "That this act [amending this section] may be cited as the 'Access to Psychologists and Optometrists Act'."

§ 35-715. Discriminations prohibited.

NOTES TO DECISIONS

Rebates

In action brought by corporate insurance broker against its officer and against insured seeking recovery for breach of fiduciary duty, inducement of such breach, civil conspiracy, interference with corporate opportunity, and unfair competition, based on, inter alia, alleged plan whereby officer would supervise administration of policies as employee of insured thereby depriving broker of commissions, broker failed to meet burden under rule pertaining to summary judgment of "setting forth specific facts" showing insured's compensation was excessive in relation to services it performed and thus is not entitled to recover on theory that administrative allowances obtained by insured included unlawful commissions and rebates. *International Underwriters, Inc. v. M. A. Boyle et al.* (D.C. App. 1976, 365 A.2d 779).

Chapter 9.—FRATERNAL BENEFIT ASSOCIATIONS

§ 35-914. Neglect to report—Effect—Injunction—Penalty for violating injunction.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 12.—INSURANCE AGENTS OTHER THAN LIFE

§ 35-1201. Insurance agents to secure licenses—Commissions to unlicensed agents prohibited—Penalties.

NOTES TO DECISIONS

Rebates

In action brought by corporate insurance broker against its officer and against insured seeking recovery for breach of fiduciary duty, inducement of such breach, civil conspiracy, interference with corporate opportunity, and unfair competition, based on, inter alia, alleged plan whereby officer would supervise administration of policies as employee of insured thereby depriving broker of commissions, broker failed to meet burden under rule pertaining to summary judgment of "setting forth specific facts" showing insured's compensation was excessive in relation to services it performed and thus is not entitled to recover on theory that administrative allowances obtained by insured included unlawful commissions and rebates. *International Underwriters, Inc. v. M. A. Boyle et al.* (D.C. App. 1976, 365 A.2d 779).

Chapter 13.—FIRE, CASUALTY, AND MARINE INSURANCE

SUBCHAPTER I.—FIRE, CASUALTY, AND MARINE INSURANCE, GENERALLY

§ 35-1303. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1401, 35-1901.

§ 35-1304. Records of Insurance Department—Power to make rules.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1313. Examinations—Production of books and papers—Expenses—False statements, reports, or entries—Penalties—Foreign or alien companies, acceptance of examinations made by other authorities.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1303, 35-1906.

§ 35-1316. Capital and surplus, minimum requirements.

Every stock company authorized to do business in the District shall have and shall at all times maintain a paid-up capital stock of not less than \$300,000, and a surplus of not less than \$300,000. Every domestic mutual company and every domestic reciprocal company shall have and shall at all times maintain a surplus of not less than \$300,000 and every foreign or alien mutual company and every foreign or alien reciprocal company shall have and shall at all times maintain a surplus of not less than \$400,000. (Oct. 9, 1940, 54 Stat. 1070, ch. 792, Ch. II, § 13; Apr. 16, 1966, 80 Stat. 121, Pub. L. 89-399, § 1(b); Aug. 14, 1973, Pub. L. 93-89, title IV, § 401, 87 Stat. 304.)

AMENDMENT

1973—Section 401 of Act Aug. 14, 1973, Pub. L. 93-89, amended section as follows:

(1) In the first sentence, by striking out "\$150,000" wherever it appeared and inserting "\$300,000" in lieu thereof; and by striking out ", except that every domestic stock company authorized to do a fidelity or surety business in the District shall have and shall at all times maintain a paid-up capital stock of not less than \$500,000, and a surplus of not less than \$250,000".

(2) In the second sentence, by striking out "\$150,000" and "\$200,000" and inserting "\$300,000" and "\$400,000", respectively, in lieu thereof.

§ 35-1317. Existing companies, application of act—Capital and surplus requirements.

No company shall be exempt from the provisions of this subsection by reason of its having been incorporated in the District or elsewhere prior to the effective date of this subsection, except that, in the case of companies authorized in the District on October 9, 1940, and continuously thereafter without any increase of authority, the minimum capital and surplus required of a stock company, and the minimum surplus required of a mutual or reciprocal company, or of a Lloyd's organization by the laws of the District heretofore applicable shall not be increased by this subsection, and provided also that in the case of such continuously authorized companies the provisions of section 35-1328 relating to the names of companies, and the provisions of section 35-1329 relating to the amount of surplus necessary to the issuance of policies having no provision for contingent liability, shall not be applicable. (Oct. 9, 1940, 54 Stat. 1070, ch. 792, Ch. II, § 14; Aug. 14, 1973, Pub. L. 93-89, title IV, § 401, 87 Stat. 304.)

REFERENCE IN TEXT

"Effective date of this subsection", referred to in the text, probably means the effective date of Act Oct. 9, 1940. See Effective Date note post.

AMENDMENT

1973—Section 401 of Act Aug. 14, 1973, Pub. L. 93-89, amended section by striking out "chapter" wherever it appeared and inserting "subsection" in lieu thereof, and by striking out "authorized" immediately after "continuously".

EFFECTIVE DATE

Chapter effective 30 days after Oct. 9, 1940, see section 48 of Act Oct. 9, 1940, set out as a note under section. 35-1301.

§ 35-1321. Investments permitted, domestic companies—Real estate, insurance on improvements required—Real estate required to be unencumbered, "encumbrances" defined—Stock and bonds, investments may not be made when dividends or interest have not been paid—Foreign investments—Approval of directors or supervising committee—Joint investments forbidden.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1902.

§ 35-1327. Process, service upon foreign or alien companies by service on Superintendent—Force and effect—Registered letter to company—Proof of service—Penalty for failure to designate attorney for service of process.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1326.

§ 35-1329. Premiums of mutual companies—Maximum required to be stated—Contingent premiums.

The maximum premium shall be expressed in the policy of a mutual company, and it may be solely a cash premium, or may be a cash premium and an additional contingent premium, which contingent premium shall be not less than the cash premium, but no mutual company, except as otherwise provided in section 35-1317, shall issue any policy for a cash premium without an additional contingent premium until and unless it possesses a surplus of not less than \$600,000. (Oct. 9, 1940, 54 Stat. 1076, ch. 792, Ch. II, § 25; Aug. 14, 1973, Pub. L. 93-89, title IV, § 401, 87 Stat. 305.)

AMENDMENT

1973—Section 402 of Act Aug. 14, 1973, Pub. L. 93-89, substituted "\$600,000" for "\$300,000".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1317.

§ 35-1334. Agents and brokers—Policies to be executed by licensed and authorized agents—All agreements contained in policy—Rebates prohibited—List of agents to be filed—Payment of premium to broker—Soliciting agent may not sign policy—Life, title, and ocean marine agents excepted.

NOTES TO DECISIONS

Agency relationship

Where property owner did not respond to insurance broker's communications offering to place fire insurance, or otherwise give any indication of intention to accept offer or to again employ broker as owner's agent for such purpose, there was, at time of subsequent telephone conversation, no agency relationship between owner and broker. *J. Gallun et al. v. The McLaughlin Company et ano.* (D.C. App. 1974, 321 A.2d 216).

When broker procured insurance, agency relationship was terminated and broker owed owner no further duty

in respect to such insurance until another agency relationship was created. *Id.*

§ 35-1348. Appeal from Superintendent to Commissioner—Time for—Hearing on appeal—Effect of Commissioner's decision.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER II.—INSURANCE PREMIUM FINANCE COMPANIES

§ 35-1365. Revocation and suspension of licenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1367. Power to make rules.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 14.—REGULATION OF FIRE INSURANCE RATES

§ 35-1403. Adjustment of rates—Powers and duties of Superintendent—Removal of discriminations—Appeal from Superintendent's rulings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1404. Organization of rating bureau—Membership—Powers and duties—Apportionment of expenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 15.—REGULATION OF CASUALTY AND OTHER INSURANCE RATES

§ 35-1503. Making of rates.

NOTES TO DECISIONS

Geographic discrimination

Fact that no previous cases upheld the municipality's exercise of police power to regulate insurance did not compel conclusion that the District Council was without such power. *Firemen's Insurance Company of Washington, D.C.*

v. W. E. Washington et al. (1973, 483 F. 2d 1323, 157 U.S. App. D.C. 320).

District of Columbia regulation generally precluding the insurance company from considering geographic location in determining whether to insure or continue to insure auto, fire and casualty risks in district and prohibiting cancellation of those policies for other than specified conditions do not conflict with specific provisions of the District of Columbia Insurance Code or the Automobile Insurance Plan and were not preempted thereby; with respect to basic property insurance regulation prohibiting geographic discrimination did conflict with and was preempted by the District of Columbia Insurance Placement Act. *Id.*

§ 35-1505. Cooperative and concerted action authorized.

NOTES TO DECISIONS

Geographic discrimination

Fact that no previous cases upheld the municipality's exercise of police power to regulate insurance did not compel conclusion that the District Council was without such power. *Firemen's Insurance Company of Washington, D.C. v. W. E. Washington et al.* (1973, 483 F. 2d 1323, 157 U.S. App. D.C. 320).

District of Columbia regulation generally precluding the insurance company from considering geographic location in determining whether to insure or continue to insure auto, fire and casualty risks in district and prohibiting cancellation of those policies for other than specified conditions do not conflict with specific provisions of the District of Columbia Insurance Code or the Automobile Insurance Plan and were not preempted thereby; with respect to basic property insurance regulation prohibiting geographic discrimination did conflict with and was preempted by the District of Columbia Insurance Placement Act. *Id.*

§ 35-1508. Authority and duty of Superintendent.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 16.—CREDIT LIFE, ACCIDENT, AND HEALTH INSURANCE

§ 35-1602. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1612. Judicial review.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 17.—INSURANCE PLACEMENT

§ 35-1702. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1703. Industry placement facility.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1704. Fair access to insurance requirements.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Authority of District Council

Fact that no previous cases upheld the municipality's exercise of police power to regulate insurance did not compel conclusion that the District Council was without such power. *Firemen's Insurance Company of Washington, D.C. v. W. E. Washington et al.* (1973, 483 F. 2d 1323, 157 U.S. App. D.C. 320).

District of Columbia regulation generally precluding the insurance company from considering geographic location in determining whether to insure or continue to insure auto, fire and casualty risks in district and prohibiting cancellation of those policies for other than specified conditions do not conflict with specific provisions of the District of Columbia Insurance Code or the Automobile Insurance Plan and were not preempted thereby; with respect to basic property insurance regulation prohibiting geographic discrimination did conflict with and was preempted by the District of Columbia Insurance Placement Act. *Id.*

§ 35-1705. Joint Underwriting Association.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1706. Examination by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1708. Annual reports by Joint Underwriting Association.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1709. Appeals.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1710. Reimbursement for reinsurance provided under National Insurance Development Program.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1711. Delegation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 18.—INSURANCE GUARANTY ASSOCIATION

Sec.

- 35-1801. Declaration of purpose.
- 35-1802. Scope of chapter.
- 35-1803. Definitions.
- 35-1804. Creation of the Association.
- 35-1805. Board of directors.
- 35-1806. Powers and duties of the Association.
- 35-1807. Plan of operation—Notice of claims.
- 35-1808. Powers and duties of the Mayor.
- 35-1809. Effect of paid claims.
- 35-1810. Nonduplication of recovery.
- 35-1811. Prevention of insolvencies.
- 35-1812. Examination of the Association.
- 35-1813. Tax exemption.
- 35-1814. Recognition of assessments in rates.
- 35-1815. Immunity.
- 35-1816. Stay of proceedings—Reopening of default judgments.
- 35-1817. Termination—Distribution of account funds.

§ 35-1801. Declaration of purpose.

The purpose of this chapter is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers. (Aug. 14, 1973, Pub. L. 93-89, title I, § 102, 87 Stat. 297.)

SHORT TITLE

The first section of Act Aug. 14, 1973, Pub. L. 93-89, provided: "That this Act [enacting this chapter and amending §§ 1-804a, 1-805, 35-508, 35-535, 35-710, 35-711, 35-1316, 35-1317, 35-1329] may be cited as the 'District of Columbia Insurance Act'."

Section 101 of title I of the same Act provided: "This title [enacting this chapter] shall be known and may be cited as the 'District of Columbia Insurance Guaranty Association Act'."

§ 35-1802. Scope of chapter.

This chapter shall apply to all kinds of direct insurance, except life, title, disability, and mortgage guaranty insurance. (Aug. 14, 1973, Pub. L. 93-89, title I, § 103, 87 Stat. 297.)

§ 35-1803. Definitions.

As used in this chapter—

(1) The term "Mayor" means the Mayor of the District of Columbia or his designated agent.

(2) The term "covered claim" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if such insurer becomes an insolvent insurer after August 14, 1973, and (a) the claimant or insured is a resident of the District of Columbia at the time of the insured event; or (b) the property from which the claim arises is permanently located in the District of Columbia. Such term shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise.

(3) The term "insolvent insurer" means (a) an insurer authorized to transact insurance in the District of Columbia, either at the time the policy was issued or when the insured event occurred, who has been determined to be insolvent by a court of competent jurisdiction.

(4) The term "member insurer" means any person who (a) writes any kind of insurance to which this chapter applies, including the exchange of reciprocal or interinsurance contracts, and (b) is licensed to transact insurance in the District of Columbia.

(5) The term "net direct written premiums" means direct gross premiums written in the District on insurance policies to which this chapter applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. Such term does not include premiums on contracts between insurers or reinsurers.

(6) The term "person" includes individuals, corporations, associations, exchanges, and partnerships. (Aug. 14, 1973, Pub. L. 93-89, title I, § 104, 87 Stat. 297.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

In par. (2), "August 14, 1973" has been substituted for "the effective date of this title".

DELEGATION OF FUNCTIONS

Reorg. Ord. No. 43, as amended Oct. 15, 1973, set out in the appendix to title 1, delegated to the Superintendent of Insurance the duties and functions vested in the Mayor by this chapter.

CROSS REFERENCE

Definition of "Association" and "Board", see § 35-1804.

§ 35-1804. Creation of the Association.

There is created a nonprofit unincorporated legal entity to be known as the District of Columbia Insurance Guaranty Association (hereafter in this chapter referred to as the "Association"). All member insurers shall be and remain members of the Association as a condition of their authority to

transact insurance in the District of Columbia. The Association shall perform its functions under a plan of operation established and approved by the Mayor and shall exercise its powers through a Board of Directors (hereafter in this chapter referred to as the "Board"). For purposes of administration and assessment, the Association shall be divided into three separate accounts: (a) the workmen's compensation insurance account; (b) the automobile insurance account; and (c) the account for all other insurance to which this chapter applies. (Aug. 14, 1973, Pub. L. 93-89, title I, § 105, 87 Stat. 297.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1817.

§ 35-1805. Board of directors.

(a) The Board shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The members of the Board shall be selected by member insurers subject to the approval of the Mayor. Vacancies on the Board shall be filled for the remaining period of the term in the same manner as initial appointments. If no members are selected within sixty days after August 14, 1973, the Mayor may appoint the initial members of the Board.

(b) In approving selections to the Board, the Mayor shall consider among other things whether all member insurers are fairly represented.

(c) Members of the Board may be reimbursed from the assets of the Association for expenses incurred by them as members of the Board. (Aug. 14, 1973, Pub. L. 93-89, title I, § 106, 87 Stat. 298.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

In subsec. (a), "August 14, 1973" has been substituted for "the effective date of this title".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1807.

§ 35-1806. Powers and duties of the Association.

(a) The Association shall—

(1) be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within thirty days after the determination of insolvency, or before the policy expiration date if less than thirty days after the determination, or before the insured replaces the policy or causes its cancellation, if he does so within thirty days of the determination, but such obligation shall include only that amount of each covered claim which is in excess of \$100 and is less than \$300,000, except that the Association shall pay the full amount of any covered claim arising out of a workmen's compensation policy; except in no event shall the Association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises;

(2) be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(3) allocate claims paid and expenses incurred among the three accounts separately, and assess member insurers separately, according to subsection (b) of this section, for each account amounts necessary to pay the obligations of the Association under paragraph (1) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under section 35-1811 and other expenses authorized by this chapter;

(4) investigate claims brought against the Association and adjust, compromise, settle, and pay covered claims to the extent of the Association's obligation and deny all other claims and may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested;

(5) notify such persons as the Mayor directs under section 35-1808(b) (1);

(6) handle claims through its employees or through one or more insurers or other persons designated, subject to the approval of the Mayor, as servicing facilities, except such designation may be declined by a member insurer; and

(7) reimburse each servicing facility for obligations of the Association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the Association, and pay the other expenses of the Association authorized by this chapter.

(b) The assessments of each member insurer under paragraph (3) of subsection (a) of this section shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the preceding calendar year on the kinds of insurance in the account. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year on any account an amount greater than 2 per centum of that member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the Association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The Association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact

insurance. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer if they are chargeable to the account for which the assessment is made.

(c) The Association may—

(1) employ or retain such persons as are necessary to handle claims and perform other duties of the Association;

(2) borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation;

(3) sue or be sued;

(4) negotiate and become a party to such contracts as are necessary to carry out the purpose of this chapter;

(5) perform such other acts as are necessary or proper to effectuate the purpose of this chapter; and

(6) refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the Board finds that the assets of the Association in any account exceed the liabilities of that account as estimated by the Board for the coming year.

(Aug. 14, 1973, Pub. L. 93-89, title I, § 107, 87 Stat. 298.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1807.

§ 35-1807. Plan of operation—Notice of claims.

(a) (1) The Board shall submit to the Mayor a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the Association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the Mayor.

(2) If the Board fails to submit a suitable plan of operation within ninety days following August 14, 1973, or if at any time thereafter the Board fails to submit suitable amendments to the plan, the Mayor shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this chapter. Such rules shall continue in force until modified by the Mayor or superseded by a plan submitted by the Board and approved by the Mayor.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation shall—

(1) establish the procedures whereby all the powers and duties of the Association under section 35-1806 will be performed;

(2) establish procedures for handling assets of the Association;

(3) establish the amount and method of reimbursing members of the Board under section 35-1805;

(4) establish procedures by which claims may be filed with the Association and establish acceptable forms of proof of covered claims;

(5) establish regular places and times for meetings of the Board;

(6) establish procedures for records to be kept of all financial transactions of the Association, its agents, and the Board;

(7) provide that any member insurer aggrieved by a final action or decision of the Association may appeal to the Mayor within thirty days after the action or decision;

(8) establish the procedures whereby selections for the Board will be submitted to the Mayor; and

(9) contain additional provisions necessary or proper for the execution of the powers and duties of the Association.

(d) The plan of operation may provide that any or all powers and duties of the Association, except those under section 35-1806 (a) (3) and (c) (2), are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this Association, or its equivalent, in two or more States. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the Association. A delegation under this subsection shall take effect only with the approval of both the Board and the Mayor, and may be made only to a corporation, association, or organization which extends protection in a manner substantially similar to that provided by this chapter.

(e) Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the Association or its agent and a list of such claims shall be periodically submitted to the Association or similar organization in another State by the receiver or liquidator. (Aug. 14, 1973, Pub. L. 89-93, title I, § 108, 87 Stat. 299.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

In subsec. (a) (2), "August 14, 1973" has been substituted for "the effective date of this title".

§ 35-1808. Powers and duties of the Mayor.

(a) The Mayor shall—

(1) notify the Association of the existence of an insolvent insurer not later than three days after he receives notice of the determination of the insolvency; and

(2) upon request of the Board provide the Association with a statement of the net direct written premiums of each member insurer.

(b) The Mayor may—

(1) require that the Association notify the insureds of the involvement¹ insurer and any other interested parties of the determination of insolvency and of their rights under this chapter by mail at their last known address, where available, or by publication in a newspaper of general circulation, if sufficient information for notification by mail is not available;

(2) suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in the District of Columbia of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation, or levy a fine on any member insurer which fails to pay an assessment when due, except such fine shall not exceed 5 per centum of the unpaid assessment per month, except that no fine shall be less than \$100 per month; and

(3) revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

(c) All final orders or decisions of the Mayor made under this chapter shall be subject to review in accordance with section 1-1510. (Aug. 14, 1973, Pub. L. 93-89, title I, § 109, 87 Stat. 300.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1806.

§ 35-1809. Effect of paid claims.

(a) Any person recovering under this chapter shall be deemed to have assigned his rights under the policy to the Association to the extent of his recovery from the Association. Every insured or claimant seeking the protection of this chapter shall cooperate with the Association to the same extent as such person would have been required to cooperate with the insolvent insurer. The Association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the Association shall not operate to reduce the insured's liability to the receiver, liquidator, or statutory successor for unpaid assessments.

(b) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the Association or a similar organization in another State. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer.

(c) The Association shall periodically file with the receiver or liquidator of the insolvent insurer state-

¹ So in original. Probably should be "insolvent".

ments of the covered claims paid by the Association which shall preserve the rights of the Association against the assets of the insolvent insurer. (Aug. 14, 1973, Pub. L. 93-89, title I, § 110, 87 Stat. 301.)

§ 35-1810. Nonduplication of recovery.

(a) Any person having a claim against an insurer under any provision in an insurance policy, other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under such insurance policy.

(b) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property, and if it is a workmen's compensation claim, he shall seek recovery first from the association of the residence of the claimant. Any recovery under this chapter shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent. (Aug. 14, 1973, Pub. L. 93-89, title I, § 111, 87 Stat. 301.)

§ 35-1811. Prevention of insolvencies.

(a) To aid in the detection and prevention of insurer insolvencies—

(1) it shall be the duty of the Board, upon majority vote, to notify the Mayor of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public; and

(2) the Board may, upon majority vote, request that the Mayor order an examination of any member insurer which the Board in good faith believes may be in a financial condition hazardous to the policyholders or the public.

(b) An examination may be conducted, under this section, as a National Association of Insurance Commissioner examination or may be conducted by such person as the Mayor designates. The cost of such examination shall be paid by the Association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the Board prior to its release to the public, but this shall not preclude the Mayor from complying with subsection (c) of this section. The Mayor shall notify the Board when the examination is completed. The request for an examination shall be kept on file by the Mayor but it shall not be open to public inspection prior to the release of the examination report to the public.

(c) It shall be the duty of the Mayor to report to the Board when he has reasonable cause to believe that any member insurer examined or being examined at the request of the Board may be insolvent or in a financial condition hazardous to the policyholders or the public.

(d) The Board may, upon majority vote, make reports and recommendations to the Mayor upon any

matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

(e) The Board may, upon majority vote, make recommendations to the Mayor for the detection and prevention of insurer insolvencies.

(f) The Board shall, at the conclusion of any insurer insolvency in which the Association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the Association, and submit such report to the Mayor. (Aug. 14, 1973, Pub. L. 93-89, title I, § 112, 87 Stat. 301.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1806.

§ 35-1812. Examination of the Association.

The Association shall be subject to examination and regulation by the Mayor. The Board shall submit, not later than March 30 of each year, a financial report for the preceding calendar year on a form approved by the Mayor. (Aug. 14, 1973, Pub. L. 93-89, title I, § 113, 87 Stat. 302.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1813. Tax exemption.

The Association shall be exempt from payment of all fees and taxes levied or collected by the District of Columbia, except taxes levied on real or personal property. (Aug. 14, 1973, Pub. L. 93-89, title I, § 114, 87 Stat. 302.)

§ 35-1814. Recognition of assessments in rates.

The rates and premiums charged for insurance policies to which this chapter applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the Association by the member insurer less any amounts returned to the member insurer by the Association and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer. (Aug. 14, 1973, Pub. L. 93-89, title I, § 115, 87 Stat. 302.)

§ 35-1815. Immunity.

There shall be no liability on the part of and no cause of action of any nature shall rise against any member insurer, the Association or its agents or employees, the Board, or the Mayor or his representatives for any action taken by them in the performance of their powers and duties under this chapter. (Aug. 14, 1973, Pub. L. 93-89, title I, § 116, 87 Stat. 302.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1816. Stay of proceedings—Reopening of default judgments.

All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in the District of Columbia shall be stayed for sixty days from the date the insolvency is determined to permit proper defense by the Association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured, the Association either on its own behalf or on behalf of such insured may apply to have such judgment, order, decision, verdict, or finding set aside by the same court or administrator that made such judgment, order, decision, verdict, or finding and shall be permitted to defend against such claim on the merits. (Aug. 14, 1973, Pub. L. 93-89, title I, § 117, 87 Stat. 302.)

§ 35-1817. Termination—Distribution of account funds.

(a) The Mayor shall by order terminate the operation of the District of Columbia Insurance Guaranty Association as to any kind of insurance afforded by property or casualty insurance policies with respect to which he has found, after hearing, that there is in effect a statutory or voluntary plan which—

(1) is a permanent plan which is adequately funded or for which adequate funding is provided; and

(2) extends or will extend to District of Columbia policyholders and residents protection and benefits with respect to insolvent insurers not substantially less favorable and effective to such policyholders and residents and the protection and benefits provided with respect to such kind of insurance under this chapter.

(b) The Mayor shall by the same such order authorize discontinuance of future payments by insurers to the District of Columbia Insurance Guaranty Association with respect to the same kinds of insurance, except assessments and payments shall continue, as necessary, to liquidate covered claims of insurers adjudged insolvent prior to said order and the related expenses not covered by such other plan.

(c) In the event the operation of any account of the District of Columbia Insurance Guaranty Association shall be so terminated as to all kinds of insurance otherwise within its scope, the Association as soon as possible thereafter shall distribute the balance of moneys and assets remaining in said account (after discharge of the functions of the Association with respect to prior insurer insolvencies not covered by such other plan, together with related expenses) to the insurers which are then writing in the District of Columbia policies of the kinds of insurance covered by such account, and which had made payments into such account, pro rata upon the basis of the aggregate of such payments made by

the respective insurers to such account during the period of five years next preceding the date of such order. Upon completion of such distribution with respect to all of the accounts specified in section 35-1804, this chapter shall be deemed to have expired. (Aug. 14, 1973, Pub. L. 93-89, title I, § 118, 87 Stat. 302.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 19.—HOLDING COMPANY SYSTEM

Sec.

- 35-1901. Definitions.
- 35-1902. Subsidiaries of insurers.
- 35-1903. Acquisition of control of or merger with domestic insurer.
- 35-1904. Registration of insurers.
- 35-1905. Standards.
- 35-1906. Examination.
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- 35-1910. Criminal proceedings.
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- 35-1913. Judicial review—Mandamus.
- 35-1914. Conflict with other laws.
- 35-1915. Separability.

§ 35-1901. Definitions.

As used in this chapter, unless the context otherwise requires—

(a) "affiliate" (an "affiliate" of, or person "affiliated" with a specific person), means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by or is under common control with, the person specified;

(b) "Mayor" means the Mayor of the District of Columbia or his designated agent;

(c) "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10 per centum or more of the voting securities of any other person;

(d) "District" means the District of Columbia;

(e) "insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer;

(f) "insurer" includes any company defined by sections 35-302 and 35-1303, authorized to do the business of insurance in the District, except that it shall not include agencies, authorities, or instrumentalities of the United States, its possessions

and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a State or political subdivision of a State;

(g) "person" is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function;

(h) "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing;

(i) "subsidiary" of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries; and

(j) "voting security" includes any security convertible into or evidencing a right to acquire a voting security.

(Aug. 24, 1974, Pub. L. 93-388, § 2, 88 Stat. 752.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EFFECTIVE DATE

Section 17, Act Aug. 24, 1974, Pub. L. 93-388, 88 Stat. 763 provided: "This Act [enacting this chapter] shall take effect thirty days after the date of its enactment."

DELEGATION OF FUNCTIONS

Reorg. Ord. No. 43, as amended Nov. 6, 1974, set out in the appendix to title 1, delegated to the Superintendent of Insurance the duties and functions vested in the Commissioner by this chapter.

SHORT TITLE

The first section of Act Aug. 24, 1974, Pub. L. 93-388, 88 Stat. 752, provided: "That this Act [enacting this chapter] may be cited as the 'Holding Company System Regulatory Act'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1904.

§ 35-1902. Subsidiaries of insurers.

(a) *Authorization*.—Any domestic insurer, either by itself or in cooperation with one or more persons, may, subject to the limitation stated in subsection (b) of this section, organize or acquire one or more subsidiaries. Such subsidiaries may conduct any kind of business or businesses and their authority to do so shall not be limited by reason of the fact that they are subsidiaries of a domestic insurer.

(b) *Limited additional investment authority*.—
(1) The total amount which a domestic insurer may invest in the common stock, preferred stock, debt obligations, and other securities of the subsidiaries referred to in subsection (a) of this section shall not exceed the lesser of (A) 5 per centum of such insurer's assets, or (B) in the case of a capital stock company, 50 per centum of the excess of its capital, surplus, and contingency reserves over the then required statutory minimum capital and surplus, or, in the case of a mutual company, 50 per centum of

the excess of its surplus and contingency reserves over the then required statutory minimum surplus.

(2) In calculating the amount of such investments, there shall be included (A) total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary, whether or not represented by the purchase of capital stock or issuance of other securities, and (B) all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities, and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation.

(c) *Exemptions from investment restrictions*.—The investments permitted under this section shall be in addition to the investments in common stock, preferred stock, debt obligations, and other securities permitted under sections 35-535, 35-541, and 35-1321, and the investments under this section shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in the aforesaid sections of law applicable to such investments of insurers.

(d) *Qualifications of investment: when determined*.—Whether any investment pursuant to this section meets the applicable requirements thereof is to be determined immediately after such investment is made, taking into account the then outstanding principal balance of all previous investments and debt obligations and the value of all previous investments in equity securities as of the date of the new investment.

(e) *Cessation of control*.—If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three years from the time of the cessation of control or within such further time as the Mayor may prescribe, unless at any time after such investment was made, such investment meets the requirements for investment under sections 35-535, 35-541, and 35-1321, and the insurer has notified the Mayor thereof. (Aug. 24, 1974, Pub. L. 93-388, § 3, 88 Stat. 753.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia as established by Reorg. Plan No. 3 of 1967 were abolished as of noon Jan. 2 1975 by § 1-131 and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1905.

§ 35-1903. Acquisition of control of or merger with domestic insurer.

(a) *Filing requirements*.—No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement to merge with or

otherwise to acquire control of a domestic insurer, unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the Mayor and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement, or acquisition has been approved by the Mayor in the manner hereinafter prescribed. For purposes of this section a domestic insurer shall include any other person controlling a domestic insurer unless such other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(b) *Content of statement.*—The statement to be filed with the Mayor hereunder shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) is to be effected (hereinafter called "acquiring party"), and

(A) If such person is an individual, his principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years;

(B) If such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subparagraph (A) of this subsection.

(2) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration: *Provided*, That where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement.

(4) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person,

or to make any other material change in its business or corporate structure or management.

(5) The number of shares of any security referred to in subsection (a) which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (a), and a statement as to the method by which the fairness of the proposal was arrived at.

(6) The amount of each class of any security referred to in subsection (a) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(7) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (a) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into.

(8) A description of the purchase of any security referred to in subsection (a) during the twelve calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

(9) A description of any recommendations to purchase any security referred to in subsection (a) made during the twelve calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

(10) Copies of all tender offers for, requests or invitations for tenders of exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (a), and (if distributed) of additional soliciting material relating thereto.

(11) The terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (a) for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto.

(12) Such additional information as the Mayor may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest. If the person required to file the statement referred to in subsection (a) is a partnership, limited partnership, syndicate, or other group, the Mayor may require that the information called for by paragraphs (1) through (12) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement referred to in subsection (a) is a corporation, the Mayor may require that the information called for by paragraphs (1) through (12) shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly

or indirectly the beneficial owner of more than 10 per centum of the outstanding voting securities of such corporation. If any material change occurs in the facts set forth in the statement filed with the Mayor and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Mayor and sent to such insurer within two business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

(c) *Alternative filing materials.*—If any offer, request, invitation, agreement, or acquisition referred to in subsection (a) is proposed to be made by means of a registration statement under the Securities Act of 1933 (15 U.S.C. 77a et seq.) or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), or under a State law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (a) may utilize such documents in furnishing the information called for by that statement.

(d) *Approval by Mayor; hearings.*—

(1) The Mayor shall approve any merger or other acquisition of control referred to in subsection (a) unless, after a public hearing thereon, he finds that:

(A) After the change of control the domestic insurer referred to in subsection (a) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(B) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in the District or tend to create a monopoly therein;

(C) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of any remaining security holders who are unaffiliated with such acquiring party;

(D) The terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (a) are unfair and unreasonable to the securityholders of the insurer;

(E) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest; or

(F) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer or of the public to permit the merger or other acquisition of control.

(2) The public hearing referred to in paragraph (1) shall be held within thirty days after the statement required by subsection (a) is filed, and at least twenty days' notice thereof shall be

given by the Mayor to the person filing the statement. Not less than seven days' notice of such public hearing shall be given by the person filing the statement to the insurer and to such other person as may be designated by the Mayor. The insurer shall give such notice to its securityholders. The Mayor shall make a determination within thirty days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments, and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the Superior Court of the District of Columbia. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.

(e) *Mailings to shareholders; payment of expenses.*—All statements, amendments, or other material filed pursuant to subsection (a) or (b), and all notices of public hearings held pursuant to subsection (d), shall be mailed by the insurer to its shareholders within five business days after the insurer has received such statements, amendments, other material, or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the Mayor an acceptable bond or other deposit in an amount to be determined by the Mayor.

(f) *Exemptions.*—The provisions of this section shall not apply to—

(1) any offers, requests, invitations, agreements, or acquisitions by the person referred to in subsection (a) of any voting security referred to in subsection (a) which, immediately prior to the consummation of such offer, request, invitation, agreement, or acquisition, was not issued and outstanding;

(2) any offer, request, invitation, agreement, or acquisition if, under the terms thereof, the consummation of the transaction contemplated thereunder would result in the ownership by security holders of the domestic insurer of stock processing¹ at least 80 per centum of the total combined voting power of all classes of stock of the acquiring party entitled to vote, or at least 80 per centum of the total combined voting power of all classes of stock of the person in control of the acquiring party entitled to vote; and

(3) any offer, request, invitation, agreement, or acquisition which the Mayor by order shall exempt therefrom as (A) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (B) as otherwise not comprehended within the purposes of this section.

(g) *Violations.*—The following shall be violations of this section:

¹ So in original, probably should be "possessing".

(1) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection (a) or (b); or

(2) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the Mayor has given his approval thereto.

(h) *Jurisdiction; consent to service of process.*—

The Superior Court of the District of Columbia is hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in the District who files a statement with the Mayor under this section, and over all actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the Mayor to be his true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the Mayor and transmitted by registered or certified mail by the Mayor to such person at his last known address. (Aug. 24, 1974, Pub. L. 93-388, § 4, 88 Stat. 753.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1909.

§ 35-1904. Registration of insurers.

(a) *Registration.*—Every insurer which is authorized to do business in the District and which is a member of an insurance holding company system shall register with the Mayor, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this chapter. Any insurer which is subject to registration under this section shall register within sixty days after the effective date of this chapter or fifteen days after it becomes subject to registration, whichever is later, unless the Mayor for good cause shown extends the time for registration, and then within such extended time. The Mayor may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

(b) *Information and form required.*—Every insurer subject to registration shall file a registration statement on a form provided by the Mayor, which shall contain current information about—

(1) the capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(2) the identity of every member of the insurance holding company system;

(3) the following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its affiliates;

(A) loans, other investments, or purchases, sales or exchanges or securities of the affiliates by the insurer or of the insurer by its affiliates;

(B) purchases, sales, or exchanges of assets;

(C) transactions not in the ordinary course of business;

(D) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(E) all management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles; and

(F) reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company.

(4) other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the Mayor.

(c) *Materiality.*—No information need be disclosed on the registration statement filed pursuant to subsection (b) if such information is not material for the purposes of this section. Unless the Mayor by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans, or extensions of credit, or investments, involving one-half of 1 per centum or less of an insurer's admitted assets as of the thirty-first day of December next preceding shall not be deemed material for purposes of this section.

(d) *Amendments to registration statements.*—Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the Mayor within fifteen days after the end of the month in which it learns of each such change or addition: *Provided*, That subject to subsection (c) of section 35-1905, each registered insurer shall so report all dividends and other distributions to shareholders within two business days following the declaration thereof.

(e) *Termination of registration.*—The Mayor shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(f) *Consolidated filing.*—The Mayor may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(g) *Alternative registration.*—The Mayor may allow an insurer which is authorized to do business in the District and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) and to file all information and material required to be filed under this section.

(h) *Exemptions.*—The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the Mayor by rule, regulation, or order shall exempt the same from the provisions of this section.

(i) *Disclaimer.*—The presumption of control as defined by section 35-1901(c), may be rebutted by a showing made in the manner herein provided that control does not exist in fact. The Mayor may determine, after furnishing all persons in interest notice and an opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect. Any person may file with the Mayor a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the Mayor disallows the disclaimer. The Mayor shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(j) *Violations.*—The failure to file a registration statement or any amendment thereto required by this section within the time specified for such filing shall be a violation of this section. (Aug. 24, 1974, Pub. L. 93-388, § 5, 88 Stat. 757.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1905, 35-1906, 35-1907.

§ 35-1905. Standards.

(a) *Transactions with affiliates.*—Material transactions by registered insurers with their affiliates shall be subject to the following standards:

- (1) the terms shall be fair and reasonable;
- (2) the books, accounts, and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions; and
- (3) the insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) *Adequacy of surplus.*—For the purposes of this section in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(2) the extent to which the insurer's business is diversified among the several lines of insurance;

(3) the number and size of risks insured in each line of business;

(4) the extent of the geographical dispersion of the insurer's insured risks;

(5) the nature and extent of the insurer's reinsurance program;

(6) the quality, diversification, and liquidity of the insurer's investment portfolio;

(7) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(8) the surplus as regards policyholders maintained by other comparable insurers;

(9) the adequacy of the insurer's reserves; and

(10) the quality and liquidity of investments in subsidiaries made pursuant to section 35-1902. The Mayor may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants.

(c) *Dividends and other distributions.*—(1) No insurer subject to registration under section 35-1904 shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until (A) thirty days after the Mayor has received notice of the declaration thereof and has not within such period disapproved such payment, or (B) the Mayor shall have approved such payment within such thirty-day period.

(2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the greater of (A) 10 per centum of such insurer's surplus as regards policyholders as of the thirty-first day of December next preceding or (B) the net gain from operations of such insurer, if such insurer is a life insurer, or the net investment income, if such insurer is not a life insurer, for the twelve-month period ending the thirty-first day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the Mayor's approval thereof, and such a declaration shall confer no rights upon shareholders until (A) the Mayor has approved the payment of such dividend or distribution or (B) the Mayor has not disapproved such payment within the thirty-day period referred to above. (Aug. 24, 1974, Pub. L. 93-388, § 6, 88 Stat. 759.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1904.

§ 35-1906. Examination.

(a) *Power of Mayor.*—Subject to the limitation contained in this section and in addition to the powers which the Mayor has under the insurance laws of the District relating to the examination of insurers, the Mayor shall also have the power to order any insurer registered under section 35-1904 to produce such records, books, papers or other information in the possession of the insurer or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the Mayor shall have the power to examine such affiliates to obtain such information.

(b) *Purpose and limitation of examination.*—The Mayor shall exercise his power under subsection (a) only if the examination of the insurer under and as is provided for by the insurance laws of the District is inadequate or the interests of the policyholders of such insurer may be adversely affected.

(c) *Use of consultants.*—The Mayor may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the Mayor's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (a). Any persons so retained shall be under the direction and control of the Mayor and shall act in a purely advisory capacity.

(d) *Expenses.*—Each registered insurer producing for examination records, books, and papers pursuant to subsection (a) shall be liable for and shall pay the expense of such examination in accordance with the provisions of sections 35-418 and 35-1313, pertaining to examination expense. (Aug. 24, 1974, Pub. L. 93-388, § 7, 88 Stat. 760.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1907.

§ 35-1907. Confidential treatment.

All information, documents, and copies thereof obtained by or disclosed to the Mayor or any other person in the course of an examination or investigation made pursuant to section 35-1906 and all information reported pursuant to section 35-1904, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the Mayor or any other person, except to insurance departments of other States, without the prior written consent of the insurer to which it pertains unless the Mayor, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event he may publish all or any part thereof

in such manner as he may deem appropriate. (Aug. 24, 1974, Pub. L. 93-388, § 8, 88 Stat. 761.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1908. Rules and regulations.

The Mayor may, upon notice and opportunity of all interested persons to be heard, issue such rules, regulations, and orders as shall be necessary to carry out the provisions of this chapter. (Aug. 24, 1974, Pub. L. 93-388, § 9, 88 Stat. 761.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1909. Injunctions—Prohibitions against voting securities—Sequestration of voting securities.

(a) Whenever it appears to the Mayor that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this chapter or of any rule, regulation, or order issued by the Mayor hereunder, the Mayor may apply to the Superior Court of the District of Columbia for an order enjoining such insurer of such director, officer, employee, or agent thereof from violating or continuing to violate this chapter or any such rule, regulation, or order, and for such other equitable relief as the failure of the case and the interests of the insurer's policyholders, creditors, shareholders, or the public may require.

(b) No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this chapter or of any rule, regulation, or order issued by the Mayor hereunder may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the Superior Court of the District of Columbia has so ordered. If an insurer or the Mayor has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this chapter or of any rule, regulation, or order issued by the Mayor hereunder the insurer or the Mayor may apply to the Superior Court of the District of Columbia to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of section 35-1903 of any rule, regulation, or order issued by the Mayor thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and

the interests of the insurer's policyholders, creditors, shareholders, or the public may require.

(c) In any case where a person has or is proposing to acquire any voting securities in violation of this chapter or any rule, regulation, or order issued by the Mayor hereunder, the Superior Court of the District of Columbia may, on such notice as the court deems appropriate, upon the application of the insurer or the Mayor seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this chapter. Notwithstanding any other provisions of law, for the purposes of this chapter the situs of the ownership of the securities of domestic insurers shall be deemed to be in the District. (Aug. 24, 1974, Pub. L. 93-388, § 10, 88 Stat. 761.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1910. Criminal proceedings.

Whenever it appears to the Mayor that any insurer or any director, officer, employee, or agent thereof has committed a willful violation of this chapter, the Mayor may cause criminal proceedings to be instituted in the District against such insurer or the responsible director, officer, employee, or agent thereof. Any insurer which willfully violates this chapter may be fined not more than \$1,000. Any individual who willfully violates this chapter may be fined not more than \$1,000 or, if such willful violation involves the deliberate perpetration of a fraud upon the Mayor, imprisoned not more than two years or both. (Aug. 24, 1974, Pub. L. 93-388, § 11, 88 Stat. 762.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1911. Receivership.

Whenever it appears to the Mayor that any person has committed a violation of this chapter which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, the Mayor may proceed as provided under the insurance laws of the District to take possession of the property of such domestic insurer and to conduct the business thereof. (Aug. 24, 1974, Pub. L. 93-388, § 12, 88 Stat. 762.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1912. Revocation, suspension, or non-renewal of insurer's license.

Whenever it appears to the Mayor that any person has committed a violation of this chapter which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the Mayor may, after giving notice and an opportunity to be heard, suspend, revoke, or refuse to renew such insurer's license or authority to do business in the District for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law. (Aug. 24, 1974, Pub. L. 93-388, § 13, 88 Stat. 762.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1913. Judicial review—Mandamus.

(a) Any person aggrieved by any act, determination, rule, regulation, or order or any other action of the Mayor pursuant to this chapter may appeal therefrom to the District of Columbia Court of Appeals, in accordance with the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510).

(b) Any person aggrieved by any failure of the Mayor to act or make a determination required by this chapter may petition the Superior Court of the District of Columbia for a writ in the nature of a mandamus or a peremptory mandamus directing the Mayor to act or make such determination forthwith. (Aug. 24, 1974, Pub. L. 93-388, § 14, 88 Stat. 762.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1914. Conflict with other laws.

All laws and parts of laws of the District inconsistent with this chapter are hereby superseded with respect to matters covered by this chapter. (Aug. 24, 1974, Pub. L. 93-388, § 15, 88 Stat. 763.)

§ 35-1915. Separability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and for this purpose the provisions of this chapter are separable. (Aug. 24, 1974, Pub. L. 93-388, § 16, 88 Stat. 763.)

TITLE 36.—LABOR

Chap.	Sec.	
2. Employment of Minors.....	36-201	
3. Miscellaneous Employment Provisions.....	36-301	
7. Public Employment Service.....	36-701	

Chapter 1A.—VOLUNTARY APPRENTICES

Sec.
36-125a. Transfer of functions—Abolition of office of Director of Apprenticeship.

§ 36-122. Apprenticeship Council—Membership—Term—Compensation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-123. Director of Apprenticeship—Assistance furnished.

CROSS REFERENCE

Transfer of functions and abolition of office of Director of Apprenticeship, see § 36-125a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36-125a.

§ 36-124. Meetings of Apprenticeship Council—Rules and regulations—Reports.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-125. Administration of chapter—Responsibility of Board of Education.

CROSS REFERENCE

Transfer of functions and abolition of office of Director of Apprenticeship, see § 36-125a.

§ 36-125a. Transfer of functions—Abolition of office of Director of Apprenticeship.

All functions of the Secretary of Labor and of the Director of Apprenticeship under this chapter are transferred to and shall be exercised by the Mayor. The office of Director of Apprenticeship provided for in section 36-123 is abolished. (Dec. 24, 1973, Pub. L. 93-198, title II, § 204(d), 87 Stat. 783.)

CODIFICATION

Section was enacted as part of the District of Columbia Self-Government and Governmental Reorganization Act, and not as a part of the Act of May 21, 1946, which comprises this chapter.

EFFECTIVE DATE

Section effective July 1, 1974, see sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

TRANSFER OF EXISTING PERSONNEL, PROPERTY, RECORDS, AND FUNDS

See note under § 36-701.

§ 36-130. Violations of agreements—Hearings—Determinations—Appeals.

(a) Upon the complaint of any interested person or upon his own initiative, the Director may investigate to determine if there has been a violation of the terms of an apprenticeship agreement made under this chapter, and he may hold hearings, inquiries, and other proceedings necessary to such investigation and determination. The parties to such an agreement shall be given a fair and impartial hearing after reasonable notice thereof. All such hearings, investigations, and determinations shall be made under authority of reasonable rules and procedures prescribed by the Apprenticeship Council, subject to the approval of the Secretary of Labor.

(b) The determination of the Director shall be filed with the council. If no appeal therefrom is filed with the council within ten days after the date thereof, as herein provided, such determination shall become the order of the council. Any person aggrieved by any determination or action of the Director may appeal therefrom to the council, which shall hold a hearing thereon after due notice to the interested parties. Any person aggrieved by the action of the Council may appeal as provided in the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510). (May 21, 1946, 60 Stat. 206, ch. 267, § 10; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, title I, § 163(e), 84 Stat. 583.)

CODIFICATION

Section is set out in this Supplement to correct a typographical error in the main edition.

Chapter 2.—EMPLOYMENT OF MINORS

Sec.

- 36-201. Employment of minors under fourteen years of age—Distribution of newspapers permitted.
- 36-202. Employment of minors under eighteen years of age—Hours of employment—Notice to be posted in place of employment—List of minors employed.
- 36-203. Employment dangerous or prejudicial to life prohibited—Board of Education to prohibit such employment by general or special order.
- 36-204. Employment of minors under sixteen years of age prohibited in certain occupations.
- 36-205. Employment of minors under eighteen years of age prohibited in certain occupations.
- 36-206, 36-207. Repealed.
- 36-207a. Theatrical permits for minors under eighteen years of age for performances and professional sports activities.
- 36-208. Work or vacation permit—Procurement by employer.
- 36-209. Permit issued by Board of Education—Contents—Record of applicants to be kept.

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- 36-210. Application for permit—Employer's statement—Evidence required—Parent's consent—School record—Physician's certificate.
- 36-211. Evidence of age.
- 36-212. Vacation permits.
- 36-213. Repealed.
- 36-214. Employer to furnish, on demand, proof of age of employee.
- 36-215. Penalties.
- 36-216. Board of Education to enforce law—Inspection of places in which minors are employed.
- 36-217. Limitations on employment in stuffing newspapers—Sale of newspapers and merchandise or exercise of trades in streets—Distribution of papers on fixed routes—Distribution of political literature.
- 36-218. Repealed.
- 36-219. Badge to be obtained.
- 36-220. Street-trades badges—Evidence upon which issued.
- 36-221. Information to be contained on badges—Record to be kept—Badges not transferable.
- 36-222. Violation of sections 36-217 to 36-224—Revocation of badge or work permit.
- 36-223. Persons selling merchandise to minor under sixteen years of age for resale or distribution in public place to ascertain that minor wears badge—Penalties.
- 36-224. Loitering around business establishments prohibited during school hours—Penalty.
- 36-225. Repealed.
- 36-226. Separability of provisions.
- 36-227. Administration by Board of Education—Regulations—Delegation of functions—Appointment of inspectors.
- 36-228. Prosecutions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 31-211.

§ 36-201. Employment of minors under fourteen years of age—Distribution of newspapers permitted.

Except as provided in sections 36-207a and 36-208, no minor under fourteen years of age shall be employed, permitted, or suffered to work in the District of Columbia, in, about, or in connection with any gainful occupation, with the exemption of housework performed outside of school hours in the home of the minor's parent or legal guardian or agricultural work performed outside of school hours in connection with the minor's own home and directly for the minor's parent or legal guardian: *Provided*, That minors ten years of age and over may be employed outside of school hours in the distribution or sale of newspapers, subject to the provisions or sections 36-217 to 36-224. (May 29, 1928, 45 Stat. 998, ch. 908, § 1; June 15, 1976, D.C. Law 1-68, § 2(1), 23 DCR 512.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-68, amended section by (A) substituting "Except as provided in sections 36-207a and 36-208, no minor" for "No child", (B) substituting "minor's" for "child's", (C) substituting "minors" for "boys", and (D) making technical changes to reflect the renumbering of sections 36-217 to 36-224.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 3 of act June 15, 1976, D.C. Law 1-68, provided: "The amendments made by this act [for classification of act see Parallel Reference Tables] shall take effect on the first day of the first month which begins thirty days after the date this act becomes law according to section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLES

The first section of act June 15, 1976, D.C. Law 1-68, provided: "That this act [for classification of act see

Parallel Reference Tables] may be cited as the 'Child Labor Amendments of 1976'."

Section 26 of act May 29, 1928, ch. 908, as added June 15, 1976, D.C. Law 1-68, § 2(30), provided that "This Act [enacting this chapter] may be cited as the 'District of Columbia Employment of Minors Act'."

§ 36-202. Employment of minors under eighteen years of age—Hours of employment—Notice to be posted in place of employment—List of minors employed.

Except as provided in section 36-207a, no minor under eighteen years of age shall be employed, permitted, or suffered to work in, about, or in connection with any gainful occupation, except in agricultural work, or housework, or in the distribution or sale of newspapers, as prescribed in section 36-201, and except in newspaper stuffing, subject to the provisions of section 36-216,¹ more than six consecutive days in any one week, or more than forty-eight hours in any one week, or more than eight hours in any one day, nor shall any minor sixteen or seventeen years of age be employed, permitted, or suffered to work before the hour of six o'clock in the morning or after the hour of ten o'clock in the evening of any day; nor shall any minor under sixteen years of age be employed, permitted, or suffered to work before the hour of seven o'clock in the morning or after the hour of seven o'clock in the evening of any day, except during the summer (June 1 through Labor Day) when the evening hour shall be nine o'clock. Every employer shall post and keep conspicuously posted in the establishment, in or about which any minor is employed, permitted, or suffered to work, a printed notice, furnished by the official authorized to enforce this chapter, setting forth the legal regulations governing the employment and hours of work of minors and occupations prohibited to minors in such establishments, and, in addition, shall keep accessible in the place of employment a list of minors under eighteen employed, permitted, or suffered to work, and an accurate time record showing the hours of beginning and ending work each day. The presence of any such minor in the place of work for a longer time in the day or week than stated in the printed regulation hours shall be prima facie evidence of a violation of the provisions of this section (May 29, 1928, 45 Stat. 999, ch. 908, § 2; June 15, 1976, D.C. Law 1-68, § 2(2), 23 DCR 512.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-68, amended section as follows: (A) by substituting "Except as provided in section 36-207a, no" for "No" in the first sentence; (B) by substituting "36-216" for "36-217" in the first sentence; (C) by substituting "nor shall any minor sixteen or seventeen years of age be employed, permitted, or suffered to work before the hour of six o'clock in the morning or after the hour of ten o'clock in the evening of any day; nor shall any minor under sixteen years of age be employed, permitted, or suffered to work before the hour of seven o'clock in the morning or after the hour of seven o'clock in the evening of any day, except during the summer (June 1 through Labor Day) when the evening hour shall be nine o'clock" for "nor shall any girl under eighteen years of age or boy under sixteen years of age be so employed, permitted, or suffered to work before the hour of seven o'clock in the morning or after the hour of seven o'clock in the evening of any day, nor shall any boy between sixteen and eighteen years of age be so employed before the hour of six o'clock

¹ So in original. Probably should be "36-217".

in the morning or after the hour of ten o'clock in the evening of any day"; and (D) by striking out at the end of the second sentence "and the hours when the time allowed for meals begins and ends for said minors".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

§ 36-203. Employment dangerous or prejudicial to life prohibited—Board of Education to prohibit such employment by general or special order.

No minor shall be employed, permitted, or suffered to work in any place of employment, or at any employment, dangerous or prejudicial to the life, health safety or welfare of such minor. It shall be the duty of the Board of Education of the District of Columbia and the said board shall have the power, jurisdiction and authority, after hearing duly held, to issue general or special orders prohibiting the employment of such minors in any employment or at any place of employment dangerous or prejudicial to the life, health, safety, or welfare of such minors: *Provided*, That no such order shall permit the employment of any minor at any employment specified in sections 36-204 through 36-207a at a lower age than the age therein specified: *Provided further*, That no hearing shall be necessary for the issuance of an order prohibiting employment in any occupation found by the Secretary of Labor under the authority of the Fair Labor Standards Act [29 U.S.C. 201 et seq.] to be particularly hazardous for minors under eighteen years of age or detrimental to their health and well-being. (May 29, 1928, 45 Stat. 999, ch. 908, § 3; June 15, 1976, D.C. Law 1-68, § 2(3), 23 DCR 514.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-68, amended section by substituting "through 36-207a" for "to 36-207" and by adding the second proviso.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

§ 36-204. Employment of minors under sixteen years of age prohibited in certain occupations.

No minor under sixteen years of age shall be employed, permitted, or suffered to work at any of the following occupations: (1) In the operation of any machinery operated by power other than hand or foot power; or (2) in oiling, wiping, or cleaning machinery or assisting therein. This section does not apply to any duly approved vocational education program or training under the auspices of the Board of Education or the Trustees of the University. (May 29, 1928, 45 Stat. 999, ch. 908, § 4; June 15, 1976, D.C. Law 1-68, § 2(4), 23 DCR 514.)

REFERENCE IN TEXT

Trustees of the University, referred to in text, probably refers to the Board of Trustees of the University of the District of Columbia established by section 31-1711.

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-68, amended section by adding the second sentence.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

§ 36-205. Employment of minors under eighteen years of age prohibited in certain occupations.

No minor under eighteen years of age shall be employed, permitted, or suffered to work at operating any freight or non-automatic elevator, or in any quarry, tunnel, or excavation. (May 29, 1928, 45 Stat. 999, ch. 908, § 5; June 15, 1976, D.C. Law 1-68, § 2(5), 23 DCR 514.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-68, substituted "at operating any freight or non-automatic elevator, or in any quarry, tunnel, or excavation" for "(1) at operating any freight or passenger elevator, or (2) in any quarry, tunnel, or excavation, or (3) in any tobacco warehouse or cigar or other factory or place where tobacco is manufactured or prepared. No girl under the age of eighteen years shall be employed, permitted, or suffered to work in any retail cigar or tobacco store, or in any hotel or for any apartment house, or as an usher, attendant, or ticket seller in any theater or place of amusement, or as a messenger in the distribution or delivery of goods or messages for any person, firm, or corporation engaged in the business of transmitting or delivering messages".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

§§ 36-206, 36-207. Repealed. June 15, 1976, D.C. Law 1-68, § 2 (6), (7), 23 DCR 514, 515.

Section 36-206, Act May 29, 1928, 45 Stat. 1000, ch. 908, § 6, prohibited the employment of messengers between the ages of eighteen and twenty-one during certain hours.

Section 36-207, Acts May 29, 1928, 45 Stat. 1000, ch. 908, § 7; Dec. 26, 1941, 55 Stat. 863, ch. 632, § 1, prohibited the employment or exhibition of minors under sixteen years of age as a performer.

EFFECTIVE DATE OF REPEAL

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

§ 36-207a. Theatrical permits for minors under eighteen years of age for performances and professional sports activities.

The Board of Education is authorized to issue a theatrical permit to any minor under eighteen years of age authorizing and permitting said minor to appear on the stage of a licensed legitimate or vaudeville theatre within the District of Columbia in any professional theatrical production or act; or in a musical or dance recital or concert; or to participate in a professional sports activity, circus, radio or television program, motion picture, or to appear as a fashion model: *Provided*, That such minor is at least seven years of age: *Provided further*, That such minor shall not appear in more than two performances in any one day; nor more than eight performances in any one week, and shall not appear in any performance after the hour of eleven-thirty in the evening. Application for a theatrical permit shall be made by the parent or guardian or agent of such minor to the Board of Education. The Board may issue such a permit if satisfied that the parent or guardian or agent of the minor has made adequate provisions for the educational instruction of such minor, and for safeguarding the minor's health, and for the proper supervision of the minor. (May 29, 1928, ch. 908, § 6, formerly § 7a, as added Dec. 26, 1941, 55 Stat. 863, ch. 632, § 2, and amended July 3, 1952, 66 Stat. 329, ch. 569, § 1; renumbered

and amended June 15, 1976, D.C. Law 1-68, § 2(8), 23 DCR 515.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-68, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-201 to 36-203, 36-215.

§ 36-208. Work or vacation permit—Procurement by employer.

No minor under eighteen years of age shall be employed, permitted, or suffered to work in, about, or in connection with any gainful occupation, except in agricultural work or housework as specified in section 36-201, unless the employer procures and keeps on file and accessible to any attendance officer, inspector or other person authorized to enforce this chapter a work or vacation permit issued as hereinafter prescribed, except that minors under eighteen years of age may be employed without a permit outside of school hours in irregular or casual work usual to the home of the employer: *Provided*, That such employment shall not be in connection with nor form a part of the business, trade, profession, or occupation of the employer: *And provided further*, That such employment shall not be specifically prohibited by any provision of this chapter or by any order issued under the authority of section 36-203. (May 29, 1928, 45 Stat. 1000, ch. 908, § 7, formerly § 8; renumbered and amended June 15, 1976, D.C. Law 1-68, § 2(9), 23 DCR 516.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-68, amended section by (A) substituting "minors" for "children", (B) substituting "the" for "his" immediately following "section 36-201, unless", and (C) substituting "under" for "between fourteen and".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-201, 36-215.

§ 36-209. Permit issued by Board of Education—Contents—Record of applicants to be kept.

The work or vacation permit required by this chapter shall be issued by the Board of Education and shall state the name, sex, date, and place of birth, and place of residence of the minor, the grade last completed by said minor, and the kind of evidence of age accepted, and such other details as may be necessary for the identification of the minor. It shall certify that all the requirements for issuing a work or vacation permit under the provisions of this chapter have been fulfilled and shall be signed by the person issuing it. It shall state the name and address of the employer for whom and the nature of the specific occupation in which the work permit authorizes the minor to be employed, and no permit shall be valid except for the employer so named and for the occupation so designated. It shall bear a number, shall show the date of its issue, and shall be signed by the minor for whom it is

issued in the presence of the person issuing it, and shall be mailed or delivered to the employer. The Board shall maintain an office record for each applicant containing the minor's name, sex, date and place of birth; evidence of age, residence, name and address of the employer; and nature of the specific occupation in which the minor is employed; the grade and school last attended by the minor; the employer's statement of intention to employ, and the parent's guardian's or custodian's written consent if such written consent is required. (May 29, 1928, 45 Stat. 1000, ch. 908, § 8, formerly § 9; renumbered and amended June 15, 1976, D.C. Law 1-68, § 2(10), 23 DCR 516.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-68, amended section as follows:

(A) In the first sentence, substituted "by the Board of Education" for "only by the director of the department of school attendance and work permits created under the board of education according to the provisions of section 31-211 to 31-213, or by any person duly authorized by said director"; and deleted "color," immediately after "sex,".

(B) In the fourth sentence, substituted "mailed or delivered to the employer" for "mailed to the employer by the issuing officer, and in no case given to the minor".

(C) Amended fifth sentence generally.

(D) Deleted last sentence which required that lists be sent weekly to each school during the school term giving the names and addresses of all children from that school to whom permits had been issued or refused.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36-215.

§ 36-210. Application for permit—Employer's statement—Evidence required—Parent's consent—School record—Physician's certificate.

The Board of Education shall issue a work or vacation permit only upon application in person of the minor desiring employment, and upon submission to and approval by the Board of the following:

(a) A statement signed by the prospective employer or the employer's authorized agent, stating that the employer expects to give such minor present employment, setting forth the specific nature of the occupation in which such minor will be employed, and the number of hours per day and of days per week which said minor will be employed.

(b) Evidence of age as provided in section 36-211.

(c) Written consent, of the parent, guardian, or custodian, if the minor is under sixteen years of age, specifying permission for employment of such minor: *Provided*, That if such minor is withdrawing from school for purposes of employment, the parent, guardian or custodian must appear in person before the issuing officer and sign the consent form.

(d) A school record, if the minor is under sixteen years of age and is withdrawing from school for purposes of employment, signed by the principal of the public, private or parochial school last attended by the minor, or by a person duly authorized by said principal. The school record shall certify that the minor has completed the eighth grade or the equivalent thereof in a public

school, or has regularly received in a private or parochial school, instruction deemed equivalent by the Board of Education to that prescribed for the completion of the eighth grade in the public school of the District of Columbia. The school record shall contain also the full name, date of birth, grade last completed, and residence of the minor as shown on the records of the school.

(e) A certificate, if the person is less than sixteen years of age, of physical fitness for the employment specified in the statement submitted in accordance with subsection (a). Such certificate shall be signed by a licensed physician.

(May 29, 1928, 45 Stat. 1001, ch. 908, § 9, formerly § 10; renumbered and amended June 15, 1976, D.C. Law 1-68, § 2(11), 23 DCR 517.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-68, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

§ 36-211. Evidence of age.

The evidence of age required by this chapter shall consist of one of the following proofs of age, which shall be required in the order herein designated:

(a) A birth certificate or attested transcript issued by a registrar of vital statistics or other officer charged with the duty of recording births.

(b) A record of age as given in the records of the school first attended by the minor, if obtainable, or in the earliest available school census.

(c) A baptismal record or duly certified transcript thereof showing the date of birth and place of baptism of the minor.

(d) A bona fide contemporary record of the date and place of the minor's birth kept in the Bible in which the records of the births in the family of the minor are preserved, or other documentary evidence satisfactory to the Board of Education, such as a passport showing the age of the minor, a certificate of arrival in the United States issued by the United States immigration officers and showing the age of the minor, or a life-insurance policy.

(May 29, 1928, 45 Stat. 1001, ch. 908, § 10, formerly § 11; renumbered and amended June 15, 1976, D.C. Law 1-68, § 2(12), 23 DCR 519.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-68, amended section as follows:

(1) Struck out subpar. (d) and the last par.

(2) Redesignated subpars. (b) and (c) as (c) and (d), and added a new subpar. (b).

(3) In subpar. (d), as redesignated, substituted "Board of Education" for "director of the department of school attendance and work permits"; substituted "minor" or "minor's" for "child" or "child's" each place it appeared; and struck out the colon and the provisos at the end and inserted a period in lieu thereof.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-210, 36-212, 36-215.

§ 36-212. Vacation permits.

The Board of Education shall have authority to issue a vacation permit to a minor between the age of fourteen and sixteen years, permitting employment during the regular summer vacation period of the public schools, or during the school term at such time as the public schools are not in session, if the age of such minor has been proved according to section 36-211, and such minor has in all other respects, except as to completion of the eighth grade, fulfilled the requirements for a work permit specified in this chapter. These permits shall be different in color from the work permit allowing employment while school is in session and shall state the periods during which its use is valid. (May 29, 1928, 45 Stat. 1002, ch. 908, § 11, formerly § 12; renumbered and amended June 15, 1976, D.C. Law 1-68, § 2(13), 23 DCR 520.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-68, amended section by substituting "The Board of Education" for "The director of the department of school attendance and work permits, or any person duly authorized by him," and by making technical changes to reflect the renumbering of section 36-211.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36-215.

§ 36-213. Repealed. June 15, 1976, D.C. Law 1-68, § 2(14), 23 DCR 520.

Section, Act May 29, 1928, 45 Stat. 1002, ch. 908, § 13, required employers to provide notification of the commencement and termination of a minor's employment and limited the issuance of new certificates.

EFFECTIVE DATE OF REPEAL

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

§ 36-214. Employer to furnish, on demand, proof of age of employee.

Whenever any person authorized to enforce this chapter shall have reason to doubt that any minor employed in any occupation for which a permit is required by this chapter, and for whom a work permit or vacation permit is not on file, has reached the age of eighteen years, such person may make demand on such minor's employer that such employer shall either furnish him within ten days the evidence required for a work permit showing that the minor is in fact eighteen years of age, or shall refuse to employ or permit or suffer such minor to work. In case such evidence is not furnished to such person within ten days after such demand, the employer shall not thereafter continue to employ such minor or permit or suffer such minor to work in such establishment. Proof of the making of such demand and of failure to deliver such proof of age shall be prima facie evidence, in any prosecution brought for violation of this chapter, that such minor is under eighteen years of age and is unlawfully employed. (May 29, 1928, 45 Stat. 1002, ch. 908, § 12, formerly § 14; renumbered and amended June 15, 1976, D.C. Law 1-68, § 2(15), 23 DCR 521.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-68, amended section by substituting "minor" for "child".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

§ 36-215. Penalties.

Whoever employs or permits or suffers any minor to be employed or to work in violation of any of the provisions of sections 36-201 to 36-214, or of any order issued under the provisions of section 36-203, or interferes with, obstructs, or hinders the Board of Education, its officers or agents, or any other person authorized to inspect places of employment under this chapter and whoever, having under their control or custody any minor, permits or suffers the minor to be employed or to work in violation of any of the provisions of sections 36-201 to 36-214, shall for a first offense be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment not less than ten days nor more than thirty days, or in the discretion of the court by both such fine and imprisonment, and for any subsequent offense shall be punished by a fine of not less than \$50 nor more than \$300, or by imprisonment not less than thirty days nor more than ninety days, or in the discretion of the court by both such fine and imprisonment. Every day during which any violation of this chapter continues shall constitute a separate and distinct offense. (May 29, 1928, 45 Stat. 1003, ch. 908, § 13, formerly § 15; renumbered and amended June 15, 1976, D.C. Law 1-68, § 2(16), 23 DCR 521.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-68, amended section by (A) substituting "Board of Education" for "department enforcing the child labor law", (B) substituting "\$300" for "\$200", (C) substituting "their" for "his", (D) substituting "the minor" for "him", and (E) making technical changes to reflect the renumbering of section 36-214.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

§ 36-216. Board of Education to enforce law—Inspection of places in which minors are employed.

It shall be the duty of the Board of Education to cause all the provisions of this chapter to be enforced, to make complaints against persons violating its provisions, and to prosecute violations of the same. The Board of Education, its inspectors, and agents are empowered and instructed to visit and inspect at any time, and as often as shall be necessary in order effectively to enforce the provisions of this chapter, all places where minors are employed, and shall have authority to enter any place or establishment covered by the terms of this chapter, and to have access to work or vacation permits kept on file by the employer and such other records as may aid in the enforcement of this chapter. (May 29, 1928, 45 Stat. 1003, ch. 908, § 14, formerly § 16; renumbered and amended June 15, 1976, D.C. Law 1-68, § 2(17), 23 DCR 521.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-68, amended section by substituting "Board of Education" for "director of the department of school attendance and work permits organized under the Board of Education of the District of Columbia and of the authorized inspectors and agents of said department" and "director of the said depart-

ment"; and by striking out the last sentence relating to inspection of places in which minors are employed.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36-202.

§ 36-217. Limitations on employment in stuffing newspapers—Sale of newspapers and merchandise or exercise of trades in streets—Distribution of papers on fixed routes—Distribution of political literature.

No minor under sixteen years of age shall be employed in the stuffing of newspapers, nor shall the work of any minor sixteen or seventeen employed stuffing newspapers exceed forty hours in any one week, nor shall such minor be employed on more than one night in any week. No minor under twelve years of age shall distribute, sell, expose, or offer for sale any newspapers, magazines, periodicals, or any other articles or merchandise of any description, or distribute handbills or circulars, except political literature as specified below, in any street or public place, or exercise the trade of bootblack or any other trade, in any street or public place: *Provided*, That the provisions of this chapter shall not apply to minors ten years of age and over engaged in the distribution of newspapers, magazines, or periodicals on fixed routes: *Provided further*, That no minor under sixteen years of age shall be employed or permitted or suffered to work at any of the trades or occupations mentioned in this section, in any street or public place, after the hour of seven in the evening or before the hour of six in the morning, or, unless holding a work permit issued in accordance with the provisions of this chapter, during the hours when such minor's school is in session. Nothing in this section shall be construed as prohibiting the distribution or circulation, by a minor, of political literature or petitions, or such other materials, for which the minor receives no pecuniary compensation. (May 29, 1928, 45 Stat. 1003, ch. 908, § 15, formerly § 17; renumbered and amended June 15, 1976, D.C. Law 1-68, § 2(18), 23 DCR 522.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-68, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36-201, 36-219 to 36-223.

§ 36-218. Repealed. June 15, 1976, D.C. Law 1-68, § 2(19), 23 DCR 523.

Section, Act May 29, 1928, 45 Stat. 1003, ch. 908, § 18, limited the hours of employment and required a permit for certain hours of employment of minors under the age of sixteen in certain occupations.

EFFECTIVE DATE OF REPEAL

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

§ 36-219. Badge to be obtained.

No minor under sixteen years of age shall work at any time, or be employed or permitted or suffered

to work at any time, in any of the trades or occupations mentioned in section 36-217, unless such minor shall have procured and shall wear in plain sight while so working a badge as hereinafter provided, issued by the Board of Education, and unless the minor complies with all the legal requirements concerning school attendance. (May 29, 1928, 45 Stat. 1004, ch. 908, § 16, formerly § 19; renumbered and amended June 15, 1976, D.C. Law 1-68, § 2(20), 23 DCR 523.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-68, amended section by (A) substituting "minor" for "boy", (B) substituting "Board of Education" for "director of the department of school attendance and work permits, or some person duly authorized by him", (C) substituting "such minor" for "he", (D) substituting "wear" for "carry on his person", (E) substituting "the minor" for "he", and (F) making technical changes to reflect the renumbering of section 36-217.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

§ 36-220. Street-trades badges—Evidence upon which issued.

The Board of Education shall issue a street-trades badge only upon the application of the minor desiring it, with the written consent of the parent, guardian, or custodian of such minor, and upon proof that the minor is of the age required by section 36-217, which shall consist of the same evidence as is required for a work permit under this chapter. A work permit issued as required by this chapter may be accepted in lieu of any other requirements for said badge. (May 29, 1928, 45 Stat. 1004, ch. 908, § 17, formerly § 20; renumbered and amended June 15, 1976, D.C. Law 1-68, § 2(21), 23 DCR 524.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-68, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

§ 36-221. Information to be contained on badges—Record to be kept—Badges not transferable.

Such badge shall bear a number, and every such badge on its reverse side shall be signed in the presence of the officer issuing the same by the minor in whose name it is issued and shall contain the minor's name, address and date of birth and such other information as the officer issuing the same shall deem necessary. A complete record of badges issued and refused, and of the facts relating thereto, including the name and address of the parent, guardian, or custodian, the day, year, and month of birth of the minor, the date of issuance and kind of evidence of age accepted, and school grade and name of school attended, shall be kept by the Board of Education. No minor to whom such badge is issued shall give, lend, sell, or otherwise transfer it to any other person, or be engaged in any of the trades or occupations mentioned in section 36-217 without wearing such badge, and such minor shall exhibit the same upon demand to any police or attendance officer, or to any person charged with the duty of enforcing this chapter. (May 29, 1928, 45 Stat. 1004,

ch. 908, § 18, formerly § 21; renumbered and amended June 15, 1976, D.C. Law 1-68, § 2(22), 23 DCR 524.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-68, amended section as follows:

(A) In the first sentence, inserted "name," immediately after "minor's".

(B) In the second sentence, struck out "the height and weight of the minor,"; and substituted "by the Board of Education" for "in the office of the director of the department of school attendance and work permits".

(C) In the third sentence, substituted "section 36-217" for "this section"; substituted "wearing" for "having conspicuously on his person"; and substituted "such minor" for "he".

(D) Struck out the last four sentences which read: "Lists shall be sent weekly to each school during the school term, giving the names and addresses of all minors to whom street trades badges have been issued and refused. The principal of each school shall keep a complete list of all minors in his school to whom badges, as herein required, have been issued, and whenever in the opinion of said principal the possession of any such permit and badge is detrimental to the school standing or well-being of any such minor, shall recommend to the officer issuing the same that the badge of such minor be revoked. All such badges shall expire annually on the 1st day of January. The color of the badge shall be changed each calendar year."

EFFECTIVE DATE OF 1976 AMENDMENT

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

§ 36-222. Violation of sections 36-217 to 36-224—Revocation of badge or work permit.

The Board of Education shall order any minor found to be engaged in any of the trades or occupations mentioned in section 36-217, in violation of any of the provisions of sections 36-217 through 36-224, to cease and desist from engaging in such trade or occupation, and the parent, guardian, or custodian of such minor shall be notified by the Board of its order. The Board of Education may also revoke the badge or work permit of any minor who violates any provision of this chapter, or who fails to comply with all legal requirements concerning school attendance for such period as the Board may require. Upon revocation, the Board shall so notify the parent, guardian, or custodian of such minor, and it shall thereupon become the duty of said parent, guardian, or custodian to surrender or require said minor to surrender said badge or work permit to the Board. After notice to the minor and the parent, guardian, or custodian of the revocation of such badge or work permit, said minor shall be deemed to be in the same status as a minor without a badge. The refusal of any such minor to surrender the badge upon such revocation shall be deemed a violation of this chapter. (May 29, 1928, 45 Stat. 1004, ch. 908, § 19, formerly § 22; July 29, 1970, Pub. L. 91-358, title I, § 159(j)(1), 84 Stat. 578; renumbered and amended June 15, 1976, D.C. Law 1-68, § 2(23), 23 DCR 525.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-68, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

§ 36-223. Persons selling merchandise to minor under sixteen years of age for resale or distribution in public place to ascertain that minor wears badge—Penalties.

Any person who either personally or as agent of any other person, or of any firm, corporation, or company, furnishes or sells or offers for sale to any minor under sixteen any article of any description to be used for the purpose of sale or distribution in any public place, shall first ascertain that said minor wears the badge issued by the Board of Education in plain sight as herein provided, and if said minor has no badge, no article shall be furnished or sold to the minor. Any person who fails to comply with the foregoing provision, or who furnishes or sells or offers for sale to any minor any article of any description, with the knowledge that the minor intends to sell or distribute such article in violation of any provision of this chapter, or after having received written notice from any officer charged with the enforcement of this chapter, that such minor is selling such article in violation of any provision of said chapter, or any person who procures any minor to violate any provision of this chapter, shall for a first offense be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment for not less than ten nor more than thirty days, or by both such fine and imprisonment, and for any subsequent offense shall be punished by a fine of not less than \$50 nor more than \$300, or by imprisonment for not less than thirty nor more than ninety days, or by both such fine and imprisonment. Whoever, having under control or custody any minor, permits or consents to the violation by such minor of any of the provisions of sections 36-217 to 36-223, shall for a first offense be punished by a fine of not less than \$5 nor more than \$100, or by imprisonment of not less than five nor more than thirty days, or by both such fine and imprisonment, and for any subsequent offense shall be punished by a fine of not less than \$10 nor more than \$200, or by imprisonment for not less than ten nor more than sixty days, or by both such fine and imprisonment. Nothing in this section shall be construed as prohibiting the distribution or circulation, by a minor, of political literature or petitions, or such other materials, for which the minor receives no pecuniary compensation. (May 29, 1928, 45 Stat. 1005, ch. 908, § 20, formerly § 23; June 15, 1976, D.C. Law 1-68, § 2(24), 23 DCR 526.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-68, amended section by (A) substituting “personally” for “for himself”, (B) substituting “the badge issued by the Board of Education” for “his badge”, (C) substituting at the end of the first sentence “the minor” for “him”, (D) substituting in the second sentence “the minor” for “he”, (E) substituting “\$300” for “\$200”, (F) striking out “his” immediately preceding “control or custody” in the second sentence, (G) making technical changes to reflect the renumbering of sections 36-217 to 36-223, (H) substituting “\$200” for “\$100” the second time it appeared, and (I) adding the last sentence.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

§ 36-224. Loitering around business establishments prohibited during school hours—Penalty.

No owner or employee of a business establishment shall permit a minor under the age of sixteen, having reasonable grounds to believe that such minor is a truant or unlawfully absent from school, to loiter on the premises of such business establishment during those hours when school is in session. Any person violating the provisions of this section may be fined not less than \$25 nor more than \$300, or may be imprisoned for not less than ten days or longer than thirty days. (May 29, 1928, 45 Stat. 1006, ch. 908, § 21, formerly § 24; renumbered and amended June 15, 1976, D.C. Law 1-68, § 2(25), 23 DCR 527.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-68, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

§ 36-225. Repealed. June 15, 1976, D.C. Law 1-68, § 2(26), 23 DCR 527.

Section, Act May 29, 1928, 45 Stat. 1006, ch. 908, § 25, authorized the Board of Education to appoint inspectors and specified certain procedures for the appointments.

EFFECTIVE DATE OF REPEAL

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

§ 36-226. Separability of provisions.

If any provision of this chapter or the application of such provision to certain circumstances be held invalid, the remainder of this chapter and the application of such provision to circumstances other than those as to which it is held invalid shall not be affected thereby. (May 29, 1928, 45 Stat. 1006, ch. 908, § 24, formerly § 28; renumbered June 15, 1976, D.C. Law 1-68, § 2(28), 23 DCR 528.)

§ 36-227. Administration by Board of Education—Regulations—Delegation of functions—Appointment of inspectors.

The Board of Education of the District of Columbia is hereby empowered to carry out and enforce the provisions of this chapter, and is authorized to promulgate such regulations as may be necessary to effectuate the purposes of this chapter. The Board of Education is further authorized to delegate the performance of any of its functions and duties under this chapter to any officer, agent, or department of the Board, and to appoint such number of child labor inspectors or other employees as may be necessary to carry out the provisions of this chapter. (May 29, 1928, 45 Stat. 1006, ch. 908, § 25, formerly § 29; renumbered and amended June 15, 1976, D.C. Law 1-68, § 2(29), 23 DCR 528.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-68, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

§ 36-228. Prosecutions.

Prosecutions for violations of any of the provisions of this chapter, or of any regulation made by the Board of Education under authority of this chapter, shall be on information filed in the Superior Court of the District of Columbia in the name of the District of Columbia by the Corporation Counsel or any assistants. (May 29, 1928, 45 Stat. 1006, ch. 908, § 22, formerly § 26; July 29, 1970, Pub. L. 91-358, title I, § 159(j) (2), 84 Stat. 578; renumbered and amended June 15, 1976, D.C. Law 1-68, § 2(27), 23 DCR 527.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-68, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1976 AMENDMENT

See section 3 of act June 15, 1976, D.C. Law 1-68, set out as a note under § 36-201.

Chapter 3.—MISCELLANEOUS EMPLOYMENT PROVISIONS

Sec.

36-301 to 36-309a. Repealed.

36-310. Employers to furnish seats for employees.

§§ 36-301 to 36-309a. Repealed. Oct. 1, 1976, D.C. Law 1-87, § 36, 23 DCR 2544.

Sections 36-301 to 36-309a, Act Feb. 24, 1914, 38 Stat. 291, ch. 28, as amended June 1, 1943, 57 Stat. 93, ch. 109; Apr. 27, 1945, 59 Stat. 95, ch. 97; Oct. 15, 1966, 80 Stat. 970, Pub. L. 89-684, § 3.

Section 36-301 related to the hours of employment of females in certain establishments.

Section 36-302 related to the hours of employment of females under 18 years of age in certain establishments.

Section 36-303 related to the hours of continuous employment of females in certain establishments.

Section 36-304 related to the posting of a notice of the requirements for hours of employment of females and the period allowed for meals.

Section 36-305 required employers to keep a time book for female employees.

Section 36-306 authorized the appointment of three inspectors.

Section 36-307 authorized inspectors to enter buildings where labor was being performed by females.

Section 36-308 required inspectors to inspect certain establishments, enforce the employment of females provisions, and report violations of the employment provisions.

Section 36-309 provided penalties for violations of the employment of females provisions.

Section 36-309a authorized exceptions to the employment of females provisions for certain occupations.

§ 36-310. Employers to furnish seats for employees.

All employers of persons in stores, shops, offices, or manufactories as clerks, assistants, operatives, or helpers in any business, trade, or occupation carried on or operated by them in the District of Columbia, shall be required to procure and provide proper and suitable seats for all such employees and shall permit the use of such seats, rests, or stools, as may be necessary, and shall not make any rules, regulations, or orders preventing the use of such stools or seats when any such employees are not actively employed in their work in such business or employment. (Mar. 2, 1895, 28 Stat. 964, ch. 192,

§ 1; Oct. 1, 1976, D.C. Law 1-87, § 37(a), 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by substituting "All employers of persons" for "All persons who employ females" and "all such employees" for "all such females" and by striking "female" preceding "employees are".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36-311.

§ 36-311. Penalty.

If any employer in the District of Columbia, shall neglect or refuse to provide seats, as provided in sections 36-310 and 36-311, or shall make any rules, orders, or regulations in his shop, store, or other place of business, requiring employees to remain standing when not necessarily employed in service or labor therein, he shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be liable to a fine therefor in a sum not to exceed twenty-five dollars, with costs, in the discretion of the court. (Mar. 2, 1895, 28 Stat. 964, ch. 192, § 2; Oct. 1, 1976, D.C. Law 1-87, § 38, 23 DCR 2544.)

AMENDMENT

1976—Act of Oct. 1, 1976, D.C. Law 1-87, amended section by striking "of female help" following "If any employer" and by substituting "employees" for "females".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

Chapter 4.—MINIMUM WAGES AND INDUSTRIAL SAFETY

SUBCHAPTER I.—MINIMUM WAGES

§ 36-401. Findings and declaration of policy.

NOTES TO DECISIONS

Construction

Opinion which interpreted D.C. Minimum Wage Act and which was published by United States Court of Appeals for the District of Columbia after effective date of Judicial Reorganization Act and at time when District of Columbia Court of Appeals had final authority to interpret a District of Columbia enactment did not constitute controlling precedent for the District of Columbia Court of Appeals, even though leave to appeal in the case had been granted prior to effective date of the Judicial Reorganization Act. *District of Columbia et al. v. Schwerman Trucking Company* (D.C. App. 1974, 327 A. 2d 818).

Bus drivers who were engaged in interstate commerce and who regularly spent more than 50% of their work week in District of Columbia were entitled to benefits of District of Columbia Minimum Wage Act [this subchapter]. *K. C. Williams et al. v. W. M. A. Transit Company* (1972, 472 F. 2d 1258, 153 U.S. App. D.C. 183; rev'g 268 A. 2d 261).

Statutory interpretations by D.C. Minimum Wage Board and Corporation Counsel were entitled to weight as construction of D.C. code unless plainly unreasonable or contrary to ascertainable legislative intent. *Id.*

§ 36-402. Definitions.

As used in this subchapter—

(1) the term "Mayor" means the Mayor of the District of Columbia or his designated agent or rep-

representative including the Minimum Wage and Industrial Safety Board.

* * * * *

(5) The term "employee" includes any individual employed by an employer, except that such term shall not include—

(A) any individual who, without payment and without expectation of any gain, directly or indirectly, volunteers to engage in the activities of an educational, charitable, religious, or nonprofit organization;

(B) any lay member elected or appointed to office within the discipline of any religious organization and engaged in religious functions; or

(C) any individual employed casual babysitters,¹ in or about the residence of the employer.

* * * * *

(As amended Nov. 1, 1975, D.C. Law 1-32, § 2 (b), (c), 22 DCR 2549.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-32, amended par. (1) generally, and amended par. (5)(C) by substituting "casual babysitters" for "in domestic service or otherwise employed".

EFFECTIVE DATE OF 1975 AMENDMENT

Section 4 of act Nov. 1, 1975, D.C. Law 1-32, provided that "This act [partially repealing § 36-403(d) and amending §§ 36-402 and 36-403] shall become effective at the end of the thirty day period provided for congressional review of acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

NOTES TO DECISIONS

Construction

Opinion which interpreted D.C. Minimum Wage Act and which was published by United States Court of Appeals for the District of Columbia after effective date of Judicial Reorganization Act and at time when District of Columbia Court of Appeals had final authority to interpret a District of Columbia enactment did not constitute controlling precedent for the District of Columbia Court of Appeals, even though leave to appeal in the case had been granted prior to effective date of the Judicial Reorganization Act. *District of Columbia et al. v. Schwerman Trucking Company* (D.C. App. 1974, 327 A. 2d 818).

Bus drivers who were engaged in interstate commerce and who regularly spent more than 50% of their work week in District of Columbia were entitled to benefits of District of Columbia Minimum Wage Act [this subchapter]. *K. C. Williams et al. v. W. M. A. Transit Company* (1972, 472 F. 2d 1258, 153 U.S. App. D.C. 183; rev'g 268 A. 2d 261).

Statutory interpretations by D.C. Minimum Wage Board and Corporation Counsel were entitled to weight as construction of D.C. code unless plainly unreasonable or contrary to ascertainable legislative intent. *Id.*

§ 36-403. Minimum wage and overtime compensation—Workweek—Wage orders.

(a) (1) * * *

* * * * *

(3) Every employer of a private household worker shall pay to each of his employees (A) the wage

established for each such employee in a wage order issued under this subchapter, or (B) not less than a wage of \$2.50 an hour, whichever is higher.

* * * * *

(g) The Mayor shall issue a wage order, effective not more than 120 days after November 1, 1975, providing for the payment of the minimum wage and overtime compensation prescribed in subsections (a) (3) and (b) (1) (B) of this section to persons employed as private household workers. Such wage order shall include such definitions and regulations as the Mayor may prescribe to prevent the circumvention or evasion of such wage order and to safeguard the minimum wage rate and overtime compensation provision. The Mayor shall publish a notice once a week, for four successive weeks, in a newspaper of general circulation, stating that he will, on a date and at a place named in the notice, hold a public hearing for the purpose of allowing interested persons to comment on such proposed wage order. Such notice shall contain a copy of such proposed wage order or a summary thereof. Within thirty days after such hearing, the Mayor shall issue such a wage order as may be proper or necessary to effectuate the purposes of this subchapter. Notice of such wage order shall be published in a newspaper of general circulation and such wage order shall take effect upon the expiration of thirty days after the date on which such wage order is issued by the Mayor. (As amended Nov. 1, 1975, D.C. Law 1-32, § 3, 22 DCR 2549.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

In subsec. (g), "November 1, 1975" has been substituted for "the effective date of the District of Columbia Minimum Wage Amendment Act of 1975". See note under § 36-402.

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-32, added subsecs. (a) (3) and (g).

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 36-402.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

NOTES TO DECISIONS

Hotel and restaurant employees

Minimum Wage and Industrial Safety Board had authority to promulgate order providing for a \$2.25-minimum hourly wage for persons employed in hotel, restaurant and allied occupations, notwithstanding contention that provisions of Minimum Wage Act were intended to place a freeze on minimum wage rights for such employees or contention that Congress had intended that such employees were only to be permitted to obtain increase in minimum wage rates by a special act of Congress. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

¹ So in original.

Overtime

Employee who is covered by D.C. Minimum Wage Act and who works more than 40 hours a week inside the District for the same employer is entitled to statutory overtime pay regardless of whether he is subject to hours of service regulation by the Department of Transportation. *District of Columbia et al. v. Schwerman Trucking Company* (D.C. App. 1974, 327 A.2d 818).

Hours worked in places outside borders of District of Columbia by employees covered by D.C. Minimum Wage Act need not be credited to employees for purposes of computing overtime pay under the Act. *Id.*

§ 36-404. Exemptions of certain employees from minimum wage and overtime provisions of section 36-403.

(b) The overtime provisions of section 36-403(b) (1) shall not apply with respect to—

- (1) any employee employed as a seaman;
- (2) any employee employed by a railroad;
- (3) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trailers, or trucks, if employed by a non-manufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers;
- (4) any employee employed primarily to wash automobiles by an employer, more than 50 percent of whose annual dollar volume of sales is derived from washing automobiles, if for such employee's employment in excess of one hundred and sixty hours in a period of four consecutive workweeks, such employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed;

(5) any employee employed as an attendant at a parking lot or parking garage; or

(6) any employee employed by a carrier by air who voluntarily exchanges workdays with another employee for the primary purpose of utilizing air travel benefits available to such employees.

(As amended Dec. 29, 1973, Pub. L. 93-223, § 1, 87 Stat. 936.)

AMENDMENT

1973—Act Dec. 29, 1973, Pub. L. 93-223, amended subsec. (b) by:

- (1) striking the word "or" following the semicolon in subparagraph (4);
- (2) striking the period at the end of subparagraph (5) and inserting in lieu thereof "; or";
- (3) inserting after subparagraph (5) new subparagraph (6) to read as above set out.

NOTES TO DECISIONS**Construction**

Opinion which interpreted D.C. Minimum Wage Act and which was published by United States Court of Appeals for the District of Columbia after effective date of Judicial Reorganization Act and at time when District of Columbia Court of Appeals had final authority to interpret a District of Columbia enactment did not constitute controlling precedent for the District of Columbia Court of Appeals, even though leave to appeal in the case had been granted prior to effective date of the Judicial Reorganization Act. *District of Columbia et al. v. Schwerman Trucking Company* (D.C. App. 1974, 327 A.2d 818).

Motor carrier exemption in federal Fair Labor Standards Act was inapplicable to 1966 D.C. Minimum Wage Act. *Id.*

Bus drivers who were engaged in interstate commerce and who regularly spent more than 50% of their work week in District of Columbia were entitled to benefits of

District of Columbia Minimum Wage Act [this subchapter]. *K. C. Williams et al. v. W. M. A. Transit Company* (1972, 472 F.2d 1258, 153 U.S. App. D.C. 183; rev'g 268 A.2d 261).

Statutory interpretations by D.C. Minimum Wage Board and Corporation Counsel were entitled to weight as construction of D.C. code unless plainly unreasonable or contrary to ascertainable legislative intent. *Id.*

§ 36-405. Powers and duties of Commissioner—Investigations—Statements from employers.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-406. Reconsideration and revision of wage orders—Ad hoc committees—Committee reports of findings and recommendations—Failure to report.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS**Ad hoc committee**

That ad hoc committee, which made recommendations to Minimum Wage and Industrial Safety Board with regard to appropriate minimum wage for persons employed in hotel, restaurant and allied occupations and which was composed of three employer representatives, three employee representatives and three representatives of public, had no member who was an employer representative of "allied occupations" did not invalidate Board's minimum wage order, absent indication that interests of employers in "allied occupations" were not adequately represented, advanced and fully protected. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A.2d 294).

Discretion of Board

Minimum Wage and Industrial Safety Board acted properly and within its discretion when, in revising minimum wage order with regard to persons employed in hotel, restaurant and allied occupations, Board gave greater weight to amount of wages sufficient to provide adequate maintenance and to protect health than was given to fair and reasonable value of work performed and wages paid in metropolitan region by fair employers for work of like or comparable character. *Hotel Association of Washington, D.C., et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A.2d 294).

In determining appropriate minimum wage, Minimum Wage and Industrial Safety Board has discretion with regard to relative weight to be given to the three statutory criteria consisting of amount of wages sufficient to provide adequate maintenance and to protect health, fair and reasonable value of work performed and wages paid in metropolitan region by fair employers for work of like or comparable character. *Id.*

Fair and reasonable value of work

In determining fair and reasonable value of work performed by persons employed in hotel, restaurant and allied occupations, for purposes of revising minimum wage order, Minimum Wage and Industrial Safety Board could consider wages paid in metropolitan region by fair employers for work of like or comparable character. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A.2d 294).

Findings of fact—Substantial evidence

Finding by Minimum Wage and Industrial Safety Board, which promulgated order providing for \$2.25-minimum

hourly wage rate for persons employed in hotel, restaurant and allied occupations, that an employed person would require a wage of at least \$2.40 an hour to provide adequate maintenance and to protect health was supported by substantial evidence. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

§ 36-407. Issuance of revised wage orders—Notice and hearing—Notice and effective date of orders—Contents of orders—Restrictions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

NOTES TO DECISIONS

Authority of Board

Minimum Wage and Industrial Safety Board had authority, with regard to its order increasing minimum wage for persons employed in hotel, restaurant and allied occupations, to adopt definitions and detailed delineation of minimum wage standards, which were statements of terms and conditions calculated to assist Board to carry out purposes of order, to prevent circumvention or evasion of it and to safeguard wage rates and overtime compensation established in order. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

Conflict of interest

That employee representative on Minimum Wage and Industrial Safety Board was business agent for a union and was member of joint executive board of international union of hotel and restaurant employees and bartenders did not preclude him from participating in revision of minimum wage order with regard to persons employed in hotel, restaurant and allied occupations on theory that such representative possessed a disqualifying conflict of interests, in that employee representative and employer representative on such tripartite Board were expected to be partisan. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

Discretion of Board

Minimum Wage and Industrial Safety Board acted properly and within its discretion when, in revising minimum wage order with regard to persons employed in hotel, restaurant and allied occupations, Board gave greater weight to amount of wages sufficient to provide adequate maintenance and to protect health than was given to fair and reasonable value of work performed and wages paid in metropolitan region by fair employers for work of like or comparable character. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

In determining appropriate minimum wage, Minimum Wage and Industrial Safety Board has discretion with regard to relative weight to be given to the three statutory criteria consisting of amount of wages sufficient to provide adequate maintenance and to protect health, fair and reasonable value of work performed and wages paid in metropolitan region by fair employers for work of like or comparable character. *Id.*

Fair and reasonable value of work

In determining fair and reasonable value of work performed by persons employed in hotel, restaurant and allied occupations, for purposes of revising minimum

wage order, Minimum Wage and Industrial Safety Board could consider wages paid in metropolitan region by fair employers for work of like or comparable character. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

Findings of fact—Substantial evidence

Finding by Minimum Wage and Industrial Safety Board, which promulgated order providing for \$2.25-minimum hourly wage rate for persons employed in hotel, restaurant and allied occupations, that an employed person would require a wage of at least \$2.40 an hour to provide adequate maintenance and to protect health was supported by substantial evidence. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

Notice

Even if notice requirements of the D.C. Administrative Procedure Act were applicable with regard to proposed revised minimum wage order of Minimum Wage and Industrial Safety Board, such requirements were met where notice of proposed order was published and such notice set forth time and place of public hearing, contained summary of major provisions of proposed order and stated that such order, recommendations of ad hoc committee, wage data, cost of living budgets and related materials would be available at hearing and prior thereto at office of Board. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

Public hearing preliminary to revision of Minimum Wage and Industrial Safety Board's order with regard to persons employed in hotel, restaurant and allied occupations was not a "contested case" within purview of notice provisions of the D.C. Administrative Procedure Act. *Id.*

Validity of wage order

Minimum Wage and Industrial Safety Board order providing for a \$2.25-minimum hourly wage for persons employed in hotel, restaurant and allied occupations was not arbitrary and capricious. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

§ 36-408. Regulations of Council — Contents — Notice and hearing—Effective date.

PARTIAL REPEAL OF SUBSEC. (d)

Section 2(a) of act Nov. 1, 1975, D.C. Law 1-32, 22 DCR 2549, provided that "For the purposes of this act Section 36-408(d) of the Act (D.C. Code, Section 36-408(d)) is hereby repealed."

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EFFECTIVE DATE OF PARTIAL REPEAL OF SUBSEC. (d)

See note under § 36-402.

NOTES TO DECISIONS

Authority of Board

Minimum Wage and Industrial Safety Board had authority, with regard to its order increasing minimum wage for persons employed in hotel, restaurant and allied occupations, to adopt definitions and detailed delineation of minimum wage standards, which were statements of terms and conditions calculated to assist Board to carry out purposes of order, to prevent circumvention or evasion of it and to safeguard wage rates and overtime compensation established in order. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

§ 36-409. Judicial review of orders—Procedure—Scope of review—Additional evidence—Modification of or setting aside findings or orders—Stay pending determination of proceedings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-410. Authority of Commissioner to take testimony and issue subpoenas—Punishment for contempt.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-411. Records of employers—Availability for inspection—Sworn statements—Statements to employees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-412. Posting of law and wage orders—Commissioner to furnish copies.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-413. Prohibited acts.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-415. Employee remedies—Liability of employer—Liquidated damages—Actions—Parties—Attorney fees and costs—Defenses—Assignment of claim—Supervision of payment—Waiver.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Damages

Trial court lacked authority, under the District of Columbia Minimum Wage Act amendment of 1966, to award liquidated damages in an action brought by the District as assignee of employee's claims that employer had failed to pay wages to which they were entitled under the Act.

Johnson & Jenkins Funeral Home, Inc. v. District of Columbia, Assignee etc. (D.C. App. 1974, 318 A. 2d 596).

Evidence—Sufficiency

Findings of Superior Court, in action by District of Columbia against employer to recover wage claims assigned to District by two employees claiming that employer failed to pay wages to which they were entitled under Minimum Wage Act, wherein court entered judgment for plaintiff for compensatory and liquidated damages, were supported by the evidence. *Johnson & Jenkins Funeral Home, Inc. v. District of Columbia, Assignee etc.* (D.C. App. 1974, 318 A. 2d 596).

Exhaustion of arbitration remedies

Where issues involved in action brought alleging, inter alia, breach of collective bargaining agreement are covered in such agreement, and issues do not involve federal rights in existence prior to enactment of Labor Management Relations Act but arise out of District of Columbia statutes, which were enacted under Congress' plenary power to legislate for District of Columbia and not under Congress' power to legislate for entire nation, plaintiff employees are required to exhaust arbitration and grievance procedures under agreement before bringing action. *N. S. Papadopoulos et al. v. Sheraton Park Hotel* (1976, 410 F. Supp. 217).

Liquidated damages

Wage payment law (§ 36-601 et seq.) rather than minimum wage law was applicable to former employee's claims against former employer for allegedly unpaid wages and, therefore denial of former employee's claim for liquidated damages, attorneys' fees and costs in reliance on the minimum wage law was improper, where former employee did not quarrel with hourly rate but sued on basis of wages allegedly due for certain hours of work. *D. E. Klingaman v. Holiday Tours, Inc.* (D.C. App. 1973, 309 A. 2d 54).

§ 36-419. Short title.

SHORT TITLE

The first section of act Nov. 1, 1975, D.C. Law 1-32, provided "That this act [partially repealing § 36-408(d), and amending §§ 36-402 and 36-403] may be cited as the 'District of Columbia Minimum Wage Amendments Act of 1975'."

SUBCHAPTER II.—INDUSTRIAL SAFETY

§ 36-433. Additional duties of Board under this subchapter.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-434. Rules and regulations—Public hearing—Publication—Effective date.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-440. Office space and supplies for Board.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-441. Annual report to Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 5.—WORKMEN'S COMPENSATION

Sec.

36-503. Administrative expenses.

36-504. District employees—Transfer of functions with respect to processing claims.

CHAPTER REFERRED TO IN U.S. CODE

This chapter is referred to in section 941 of title 33, U.S. Code.

§ 36-501. Longshoremen's and Harbor Workers' Compensation Act made applicable to District of Columbia.

EFFECTIVE DATE

Section 4 (formerly section 3) of act May 17, 1928, renumbered Oct. 26, 1973, Pub. L. 93-140, § 19, 87 Stat. 507, provided: "This Act [enacting this chapter] shall take effect July 1, 1928."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36-438.

NOTES TO DECISIONS

Award—Attorney's fee

Requirement of time sheet would procure information to enhance basis for deciding what was reasonable attorney's fee, and where board, in violation of its own regulations, awarded attorney's fees without benefit of statement of extent and character of necessary work done, case would be remanded for further proceedings. *C. G. Matthews et al. v. N. C. A. Walter, Deputy Commissioner, etc. et al.* (1975, 512 F. 2d 941, 168 U.S. App. D.C. 27).

It was congressional intent that amendment authorizing award of attorney's fees apply in pending proceedings to services performed after its effective date, and board did not act unconstitutionally in awarding attorney's fees to workmen's compensation claimant's counsel for services rendered after effective date of authorizing amendment in case concerning death occurring prior to that date. *Id.*

—Modification

Deputy commissioner has jurisdiction to reopen award to dependents of deceased employee under Longshoremen's and Harbor Workers' Compensation Act even though employer's petition for such reopening was not filed within 30 days after award was made; such reopening is not automatic, however, but depends upon whether justice is thereby rendered under Act. *E. McCord v. J. F. Cephas* (1976, 532 F. 2d 1377, 174 U.S. App. D.C. 302).

On reopening of award to dependents of deceased employee under Longshoremen's and Harbor Workers' Compensation Act, question whether termination of award should be retrospective, freeing employer of all liability, or prospective only from date that decision is rendered, thus preserving entitlement in decedent's dependents to benefits up to that time, depends on whether according retroactive effect to correcting order would "render justice under the Act." *Id.*

Commissioner's finding of fact

Finding by deputy commissioner that employer and insurance carrier, which retained claim letter which asserted benefits on behalf of widow and son of deceased employee and which was sent prior to the expiration of one-year statute of limitations and which did not forward letter to the deputy commissioner for filing, were estopped to assert defense of statute of limitations under the Longshoremen's and Harbor Workers' Compensation Act was supported by substantial evidence on whole record. *Blackwell Construction Co. v. J. Garrell, Deputy Commissioner etc.* (1972, 352 F. Supp. 193).

Constitutionality

Full faith and credit clause is not violated either by extension of the District of Columbia's Workmen's Compensation Code to claim of widow of workman who was killed while in California or by a refusal of the Benefits Review Board to find that the California Workers' Compensation Act is the exclusive remedy for the benefits. *Director, Office of Workers' Compensation Programs, etc. v. P. A. E. Boughman et al.* (1976, 545 F. 2d 210, 178 U.S. App. D.C. 132).

Construction

As remedial legislation, the 1972 amendments to the Longshoremen's and Harbor Workers' Compensation Act to create Benefits Review Board to resolve appeals from decisions of administrative law judges may be applied immediately, absent some contrary indications by Congress and absent any procedural prejudice to either party. *In the Matter of the District of Columbia Workmen's Compensation Act* (1976, 554 F. 2d 1075, 180 U.S. App. D.C. 216; cert. denied 97 S. Ct. 67, 429 U.S. 820).

Full meaning of word "husband," as used in death benefit provision of Longshoremen's and Harbor Workers' Compensation Act is to be determined by reference to local law of District of Columbia in determining whether petitioner was common-law husband of decedent at time she was fatally wounded during a robbery at her place of employment, where both petitioner and decedent were domiciliaries of District of Columbia, and it was within latter's jurisdiction that a common-law marriage was supposedly contracted between parties. *A. Marcus v. Director, Office of Workers' Compensation Programs, etc.* (1976, 548 F.2d 1044, 179 U.S. App. D.C. 89).

Maximum benefits provided by disability provisions of the Longshoremen's and Harbor Workers' Compensation Act, as made applicable to the District of Columbia by this section, were meant to apply also to death benefits awarded under the Longshoremen's and Harbor Workers' Compensation Act. *Director, Office of Workers' Compensation Program, etc. v. P. A. E. Boughman et al.* (1976, 545 F. 2d 210, 178 U.S. App. D.C. 132).

Deputy commissioner has jurisdiction to reopen award to dependents of deceased employee under Longshoremen's and Harbor Workers' Compensation Act even though employer's petition for such reopening was not filed within 30 days after award was made; such reopening is not automatic, however, but depends upon whether justice is thereby rendered under Act. *E. McCord v. J. F. Cephas* (1976, 532 F. 2d 1377, 174 U.S. App. D.C. 302).

"Modification of Awards" section of Longshoremen's and Harbor Workers' Act incorporated by reference in District of Columbia Compensation Act was intended to apply only to cases in which deputy commissioner had "finally acted" by issuing or denying compensation order, and amendment was not intended to impose additional time barrier to recovery by claimants who filed application within time otherwise permitted and were still awaiting order thereon. *Intercounty Construction Corporation et ano. v. N. C. A. Walter, Deputy Commissioner, etc.* (1974, 500 F. 2d 815, 163 U.S. App. D.C. 147; aff'd 95 S. Ct. 2016, 422 U.S. 1).

Longshoremen's and Harbor Workers' Compensation Act is to be liberally construed in the light of its remedial and humanitarian purposes and court will not construe act to enable plaintiffs to escape liability to persons entitled to recover for admittedly compensable death by reading into it technical restrictions on tolling of filing period which are inconsistent with purpose of Act. *Blackwell Construction Co. v. J. Garrell, Deputy Commissioner, etc.* (1972, 352 F. Supp. 193).

Death in the course of employment

For workmen's compensation purposes, death of newspaper truck driver arose out of and in course of his employment where it occurred when driver was accidentally shot by a fellow employee during enforced lull in employment while employees were playing with gun kept by driver because he was afraid of being robbed while driving taxicab owned by him and because he was afraid of things which might happen while he was engaged in driving truck for employer. *Evening Star Newspaper Company v. P. Kemp et ano.* (1976, 533 F. 2d 1224, 175 U.S. App. D.C. 89).

Dependency

At least in cases such as that in which workman's drinking and its adverse potential impact on his minor children constituted justifiable cause for his widow's living apart from workman, effect of original justification persists and inheres in relationship of parties despite change in circumstances since initial separation. *C. G. Matthews et al. v. N. C. A. Walter, Deputy Commissioner, etc. et al.* (1975, 512 F. 2d 941, 168 U.S. App. D.C. 27).

Requisite conjugal nexus existed between claimant and workman at time of his death where decedent knowingly accepted claimant's relationship with another man, neither attempted to remarry, decedent contributed to her support and continued to have sexual relations with her, she continued to hold herself out as decedent's wife and she helped care for decedent when he was ill. *Id.*

Employment relationship

Though real estate broker worked on commission basis he was not independent contractor but was "employee", within workmen's compensation recovery limitations, of corporation which required him to attend sales meetings and, as directed, to check out possible listings and "sit" on specific property, to report on all sales transactions before they were "finalized," to comply with requirements, standards and methods of doing business established by corporation and to clear with corporation all prospective listings of property and all potential sales and who was furnished office, secretarial help, business card and car and advance on expenses and hospitalization and life insurance. *R. W. McGinniss v. Frederick W. Berens Sales, Inc., et ano.* (D.C. App. 1973, 308 A. 2d 765).

Enforcement of orders

If employee seeks to enforce default entered for non-payment of award by employer, employer does not have to make payment under supplementary order until court finds that order was in accordance with law. *L. Leonard v. N. C. A. Walter, Deputy Commissioner, etc.* (1973, 356 F. Supp. 56).

Final order enforceable by claimant or deputy commissioner can be either deputy commissioner's original order or his supplemental order, if one was entered. *Id.*

Before enforcement of final order of deputy commissioner, court must determine whether order was made in accordance with law, and employer does not have to pay award until determination is made. *Id.*

Estoppel

Estoppel may be asserted in cases brought under the Longshoremen's and Harbor Workers' Compensation Act to prevent party from relying on defense of statute of limitations. *Blackwell Construction Co. v. J. Garrell, Deputy Commissioner, etc.* (1972, 352 F. Supp. 193).

Evidence

Substantial evidence supports decision of Labor Benefits Review Board that testimony of petitioner and of various relatives and acquaintances fails to establish that petitioner and decedent had mutually agreed in words of present tense to enter into a valid common-law marriage and that, therefore, petitioner is precluded from recovering death benefits under Longshoremen's and Harbor Workers' Compensation Act owing to fatal wound sustained by decedent during a robbery at her place of employment. *A. Marcus v. Director, Office of Workers' Compensation Programs, etc.* (1976, 548 F.2d 1044, 179 U.S. App. D.C. 89).

Finality of award

Ordinarily, compensation order under Longshoremen's and Harbor Workers' Act becomes final unless employer institutes judicial proceedings to set it aside within 30 days of entry of order. *L. Leonard v. N. C. A. Walter, Deputy Commissioner, etc.* (1973, 356 F. Supp. 56).

Parties

Benefits Review Board was not a proper party and could not be compelled to participate in litigation over the propriety of its decision vacating order setting aside denial of claim for workmen's compensation death benefits under Longshoremen's and Harbor Workers' Compensation Act which had been adopted as District of Columbia's Workmen's Compensation Act. *E. McCord v. Benefits Review Board et al.* (1975, 514 F. 2d 198, 168 U.S. App. D.C. 302).

Presumptions—Rebuttal of

Employer's evidence which was not inconsistent with proposition that employee injured his back when he fell from the truck, and which suggested no more than that the full extent of the injury was not immediately medically recognizable did not overcome presumption that employee's back injury came within provisions of the Longshoremen's and Harbor Workers' Compensation Act. *In the Matter of the District of Columbia Workmen's Compensation Act* (1976, 554 F. 2d 1075, 180 U.S. App. D.C. 216; cert. denied 97 S. Ct. 67, 429 U.S. 820).

Review

Where employee's action to review rejection of his claim for benefits under the Longshoremen's and Harbor Workers' Compensation Act was properly before the District Court prior to the 1972 amendments of the Act to create a Benefits Review Board to resolve appeals from decisions of administrative law judges, the amendments did not cause the District Court to lose jurisdiction. *In the Matter of the District of Columbia Workmen's Compensation Act* (1976, 554 F. 2d 1075, 180 U.S. App. D.C. 216; cert. denied 97 S. Ct. 67, 429 U.S. 820).

Under Longshoremen's and Harbor Workers' Act, employer must make payment of award before he can obtain ruling on his claim before district court to set aside award, unless he obtains interlocutory injunction. *L. Leonard v. N. C. A. Walter, Deputy Commissioner, etc.* (1973, 356 F. Supp. 56).

Third party, injury by

District of Columbia workmen's compensation statute, i.e., the Longshoremen's and Harbor Workers' Compensation Act, did not bar suit against the District by employees of Districts independent contractor, which had contracted to install water main, to recover, on theory of inherently dangerous activity necessitating special precautions, for injuries sustained when flames erupted at open end of 66-inch diameter water main, which had been completely closed off for some 41 days and which employees were in process of cleaning when flames erupted and engulfed their caecal environment. *R. Lindler et ano. v. District of Columbia* (1974, 502 F. 2d 495, 164 U.S. App. D.C. 35).

Time for filing claim

Under District of Columbia Compensation Act, timely filed claim remains pending until compensation order is entered by deputy commissioner, and claimant, to preserve his claim, is not required to refile timely filed but unadjudicated claim after carrier stops paying compensation. *Intercounty Construction Corporation et ano. v. N. C. A. Walter, Deputy Commissioner, etc.* (1974, 500 F. 2d 815, 163 U.S. App. D.C. 147; aff'd 95 S. Ct. 2016, 422 U.S. 1).

Making of a voluntary payment of compensation on account of compensable death under Longshoremen's and Harbor Workers' Compensation Act permits the filing of a claim within one year of the date of the last payment and it is not required that such claim be filed by the same person to whom voluntary payment was made. *Blackwell Construction Co. v. J. Garrell, Deputy Commissioner, etc.* (1972, 352 F. Supp. 193).

—Tolling of filing period

The one-year statute of limitations for filing claim for death benefits under Longshoremen's and Harbor Workers' Compensation Act was tolled as to minor son of deceased employee because he had no guardian or other authorized representative with legal duty to file a claim on his behalf. *Blackwell Construction Co. v. J. Garrell, Deputy Commissioner, etc.* (1972, 352 F. Supp. 193).

Payments of compensation made to woman who filed claim as surviving widow on account of death of deceased employee were payments of compensation and tolled the filing period, so that the claim of the actual widow and the deceased's minor son filed approximately seven months after final payment to such person were timely. *Id.*

Payments made with intent of providing money allowance to dependent of decedent are payments of compensation within meaning of Compensation Act provision relating to the tolling of filing period because of payments of compensation made on account of death of covered person. *Id.*

Widow or widower

It is for administrative law judge in proceeding for death benefits under Longshoremen's and Harbor Workers' Compensation Act to judge credibility of testimony on issue whether petitioner was common-law husband of decedent at time she was fatally wounded during robbery of her place of employment and to weigh evidence adduced therefrom. *A. Marcus v. Director, Office of Workers' Compensation Programs, etc.* (1976, 548 F.2d 1044, 179 U.S. App. D.C. 89).

§ 36-502. Exceptions.**NOTES TO DECISIONS****Independent contractor**

Though real estate broker worked on commission basis he was not independent contractor but was "employee", within workmen's compensation recovery limitations, of corporation which required him to attend sales meetings and, as directed, to check out possible listings and "sit" on specific property, to report on all sales transactions before they were "finalized," to comply with requirements, standards and methods of doing business established by corporation and to clear with corporation all prospective listings of property and all potential sales and who was furnished office, secretarial help, business card and car and advance on expenses and hospitalization and life insurance. *R. W. McGinniss v. Frederick W. Berens Sales, Inc., et ano.* (D.C. App. 1973, 308 A. 2d 765).

§ 36-503. Administrative expenses.

There are authorized to be appropriated such sums as may be necessary to pay the expenses incurred by the United States Department of Labor in the administration of this chapter. (May 17, 1928, ch. 612, § 3, as added Oct. 26, 1973, Pub. L. 93-140, § 19, 87 Stat. 507.)

APPROPRIATIONS

See note under § 1-226a.

§ 36-504. District employees—Transfer of functions with respect to processing claims.

All functions of the Secretary under chapter 81 of title 5 of the United States Code, with respect to the processing of claims filed by employees of the government of the District for compensation for work injuries, are transferred to and shall be exercised by the Mayor, effective the day after the day on which the District establishes an independent personnel system or systems. (Dec. 24, 1973, Pub. L. 93-198, title II, § 204(e), 87 Stat. 783.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was enacted as part of the District of Columbia Self-Government and Governmental Reorganization Act, and not as part of Act May 17, 1928, ch. 612, as amended, which comprises this chapter.

Section is also set out as a note under 5 U.S.C. 8101.

EFFECTIVE DATE

Section effective July 1, 1974, see sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

TRANSFER OF EXISTING PERSONNEL, PROPERTY, RECORDS, AND FUNDS

See note under § 36-701.

CROSS REFERENCE

District government merit system, see § 1-162.

Chapter 6.—PAYMENT AND COLLECTION OF WAGES**§ 36-601. Definitions.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-603. Payment of wages upon discharge or resignation of employee and upon suspension of work—Liability of employer for failure to pay wages in accordance with this section.**NOTES TO DECISIONS****Liquidated damages**

Wage payment law rather than minimum wage law (§ 36-401 et seq.) was applicable to former employee's claims against former employer for allegedly unpaid wages and, therefore denial of former employee's claim for liquidated damages, attorneys' fees and costs in reliance on the minimum wage law was improper, where former employee did not quarrel with hourly rate but sued on basis of wages allegedly due for certain hours of work. *D. E. Klingaman v. Holiday Tours, Inc.* (D.C. App. 1973, 309 A. 2d 54).

§ 36-606. Enforcement, records and subpoenas.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS**Appealable order**

Since order of Minimum Wage and Industrial Safety Board advising employer that it owed and should pay a former employee all commissions earned prior to termination of his employment was enforceable only through criminal prosecution or civil litigation in which issues of fact or law would be determined entirely upon the pleadings and trial record, and not upon the proceedings before the Board, Board's order was not an "appealable order" under the Administrative Procedure Act. *Sonderling Broadcasting Corporation v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 315 A. 2d 828).

§ 36-608. Employees' remedies.**NOTES TO DECISIONS****Exhaustion of arbitration remedies**

Where issues involved in action brought alleging, inter alia, breach of collective bargaining agreement are covered in such agreement, and issues do not involve federal rights in existence prior to enactment of Labor Management Relations Act but arise out of District of Columbia statutes, which were enacted under Congress' plenary power to legislate for District of Columbia and not under Congress' power to legislate for entire nation, plaintiff employees are required to exhaust arbitration and grievance procedures under agreement before bringing action. *N. S. Papadopoulos et al. v. Sheraton Park Hotel* (1976, 410 F. Supp. 217).

Liquidated damages

Wage payment law rather than minimum wage law (§ 36-401 et seq.) was applicable to former employee's claims against former employer for allegedly unpaid wages and, therefore denial of former employee's claim for liquidated damages, attorneys' fees and costs in reliance on the minimum wage law was improper, where former employee did not quarrel with hourly rate but sued on

basis of wages allegedly due for certain hours of work. *D. E. Klingaman v. Holiday Tours, Inc.* (D.C. App. 1973, 309 A. 2d 54).

§ 36-609. Commissioner may delegate functions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 7.—PUBLIC EMPLOYMENT SERVICE

Sec.

36-701. Public employment service—Establishment by Mayor—Transfer of functions of existing employment service.

§ 36-701. Public employment service—Establishment by Mayor—Transfer of functions of existing employment service.

(a) All functions of the Secretary of Labor (hereafter in this section referred to as the "Secretary") under section 3 of the Act (29 U.S.C. 49b) entitled "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes", approved June 6, 1933 (29 U.S.C. 49-49k), with respect to the maintenance of a public employment service for the District, are transferred to the Mayor. After the effective date of this transfer, the Secretary shall maintain with the District the same relationship with respect to a public employment service in the District, including the financing of such service, as he has with the States (with respect to a public employment service in the States) generally.

(b) The Mayor is authorized and directed to establish and administer a public employment

service in the District and to that end he shall have all necessary powers to cooperate with the Secretary in the same manner as a State under the Act of June 6, 1933, specified in subsection (a). (Dec. 24, 1973, Pub. L. 93-198, title II, § 204(a), (b), 87 Stat. 783.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Subsec. (a) of this section is also set out as a note under 29 U.S.C. 49.

EFFECTIVE DATE

Section effective July 1, 1974, see sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

TRANSFER OF EXISTING PERSONNEL, PROPERTY, RECORDS, AND FUNDS

Section 204 of Act Dec. 24, 1973, Pub. L. 93-198, title II, 87 Stat. 784, as amended Aug. 29, 1974, Pub. L. 93-395, § 1(1), 88 Stat. 793, provided in part:

"(f) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, available, or to be made available in connection with functions transferred to the Commissioner [Mayor] by the provisions of this section, as the Director of the Federal Office of Management and Budget shall determine, are authorized to be transferred from the Secretary to the Commissioner [Mayor].

"(g) Any employee in the competitive service of the United States transferred to the government of the District under the provisions of this section shall retain all the rights, benefits, and privileges pertaining thereto held prior to such transfer."

TITLE 37.—LIBRARIES

Chapter 1.—PUBLIC LIBRARIES

§ 37-101. Public library established—Authority of Commissioner—Acceptance of gifts.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 37-104. Board of trustees—Appointment and tenure.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 37-105. Duties—Librarian and employees—Annual report.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 37-106. Submission of estimates.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 37-109. Transfer of miscellaneous books to District public library.

REFERENCE IN TEXT

The Federal Property and Administrative Services Act of 1949, as amended, referred to in text, is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Regulations provisions of the Act are contained in 40 U.S.C. 486. For complete classification of this Act, see Tables volume of United States Code.

TITLE 38.—LIENS

Chapter 1.—MECHANICS, MATERIALMEN, AND CONTRACTORS

§ 38-101. Mechanic's lien.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-2303, 5-925, 5-1212.

NOTES TO DECISIONS

Amount of lien

Once mechanic's lien arises, this section operates to prescribe amount thereof and if lien arises from work performed pursuant to valid contract, there is no dispute over fact that labor and materials have been expended on and to benefit of building in accordance with contract and no expenditure is challenged as unreasonable, contract price is measure of liability upon enforcement of the lien and no further proof of expenditures or proffer of reasonableness is required to make lien enforceable. *M. E. Sloane et ux. v. Malcolm Price, Inc.* (D.C. App. 1975, 339 A.2d 43).

On appeal from judgment to enforce mechanic's lien based on cost-plus contract, record does not show aggregate cost upon face of account to be so excessive and unreasonable as to suggest gross negligence or fraud and does not justify compelling contractor to show reasonableness. *Id.*

In suit to enforce mechanic's lien based on cost-plus contract, evidence sustains finding that estimated total cost figure contained in contract was not a maximum. *Id.*

Statutory construction

Within provision of this section that once work on building is performed pursuant to contract, that structure becomes subject to lien "for the contract price agreed upon," "contract" is not limited to certain type of contract and includes cost-plus type contract. *M. E. Sloane et ux v. Malcolm Price, Inc.* (D.C. App. 1975, 339 A.2d 43).

§ 38-102. Notice.

NOTES TO DECISIONS

Abandonment of work

Evidence sustains finding that abandonment of work under home improvement contract by plaintiff contractor did not occur prior to the beginning of three months period provided for filing of mechanic's lien and that no abandonment occurred prior to termination of mutual efforts to compromise, in proceeding by contractor to enforce mechanic's lien. *M. E. Sloane et ux. v. Malcolm Price, Inc.* (D.C. App. 1975, 339 A.2d 43).

When contractor abandons project prior to completion, applicable time period for asserting mechanic's lien runs from date of abandonment. *Malcolm Price, Inc. v. M. E. Sloane et ux.* (D.C. App. 1973, 308 A.2d 779).

§ 38-103. Subcontractor.

NOTES TO DECISIONS

Waiver

Mechanic's liens filed by subcontractor could not be enforced, where subcontractor released initial mechanic's liens after being informed that money deposited by property owner with title company would not be disbursed without such releases, and where title company then released some or all of the amount deposited, regardless of whether property owner was still indebted to general contractor when subcontractor filed subsequent mechanic's liens against the property. *Hutchison Brothers Excavating Company, Inc. v. L. Dworman* (D.C. App. 1973, 307 A.2d 760).

Where subcontractor upon filing of mechanic's liens demanded statement from property owner of terms of contract between itself and general contractor as required by statute, and such demand was never acted on by property owner, but where subcontractor released its mechanic's liens, subcontractor by releasing the liens waived its right to such statement. *Id.*

§ 38-106. Owner's duty.

NOTES TO DECISIONS

Subsequent payments

Where there is no indication that owner, in agreeing to pay subcontractors amounts owed them by contractors for work done after contractor abandoned construction project if subcontractors would proceed with work toward project's ultimate completion, ever expected to or did recoup such additional costs from contractor, but instead considered payments to subcontractors to be cost of completing project additional to whatever financial obligation owner might have had to contractor under construction contract, remaining subcontractor is not entitled to foreclose its mechanic's lien claim on theory that payments made by owner to other subcontractors constituted "subsequent payments becoming due to contractor," on which amount should have been withheld for remaining subcontractor's benefit. *Union Wesley A.M.E. Zion Church v. Rider Enterprises, Inc.* (D.C. App. 1977, 369 A.2d 608).

§ 38-107. Subcontractor entitled to know terms of contract.

NOTES TO DECISIONS

Waiver

Where subcontractor upon filing of mechanic's liens demanded statement from property owner of terms of contract between itself and general contractor as required by statute, and such demand was never acted on by property owner, but where subcontractor released its mechanic's liens, subcontractor by releasing the liens waived its right to such statement. *Hutchison Brothers Excavating Company, Inc. v. L. Dworman* (D.C. App. 1973, 307 A.2d 760).

§ 38-109. Priority of lien.

NOTES TO DECISIONS

Mechanic's lien

Mechanic's lien does not take precedence over recorded deed of trust where mechanic's lienor did not commence work until after construction lender recorded the deed of trust. *Waco Scaffold & Shoring Co., Inc. v. 425 Eye Street Associates* (D.C. App. 1976, 355 A.2d 780).

Priority to surplus on foreclosure

Where purchase price of property, at deed of trust foreclosure sale is less than amount of advances made under construction loan, which constitutes an interest superior to that of mechanic's lien claimants, the mechanic's liens are extinguished. *Waco Scaffold & Shoring Co., Inc. v. 425 Eye Street Associates* (D.C. App. 1976, 355 A.2d 780).

When lien attaches

Recording of mechanic's liens by two construction contractors does not relate back to commencement of work by third contractor, which started work before construction lender's deed of trust was recorded, for purpose of determining priority of liens. *Waco Scaffold & Shoring Co., Inc. v. 425 Eye Street Associates* (D.C. App. 1976, 355 A.2d 780).

Where construction lender recorded its deed of trust after commencement of work by construction companies but the latter filed notice of intent to hold a me-

chanic's lien only after the lender had advanced money, the mechanic's liens are subordinate to the claim of the construction lender to extent of loan advances made prior to recording of the mechanic's liens. *Id.*

§ 38-110. How lien enforced.

CROSS REFERENCE

Service by publication on nonresidents and absent defendants, see § 13-336.

§ 38-115. When suit to be commenced.

NOTES TO DECISIONS

Abandonment of work

When contractor abandons project prior to completion, applicable time period for asserting mechanic's lien runs from date of abandonment. *Malcolm Price, Inc. v. M. E. Sloane et ux.* (D.C. App. 1973, 308 A. 2d 779).

§ 38-118. Payment into court and release.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-925, 5-1212, 38-103.

§ 38-121. No action by subcontractor against owner.

NOTES TO DECISIONS

Personal obligation

Oral promise of owner to pay subcontractors amounts due them from contractor when it abandoned project, in exchange for subcontractors' agreement to continue working toward ultimate completion of project, is enforceable despite provision of this section that subcontractor employed under original contractor is not entitled to personal judgment or decree against owner of premises for amount due to him from original contractor except upon special promise of such owner, in writing, for sufficient consideration, to be answerable for the same. *Union Wesley A.M.E. Zion Church v. Rider Enterprises, Inc.* (D.C. App. 1977, 369 A.2d 608).

Chapter 2.—GARAGE KEEPERS AND LIVERYMEN

§ 38-205. Lien for storage, repairs and supplies for motor vehicles.

CROSS REFERENCE

Service by publication on nonresidents and absent defendants, see § 13-336.

NOTES TO DECISIONS

Out-of-state liens

Where Maryland law created lien in favor of Maryland garage keeper for cost of repair work performed on automobile owned by resident of the District of Columbia, owner could not escape garage keeper's priority of possessory right by bringing his car into the District, and neither this section nor public policy militates against giving effect in the District to the Maryland-created lien. *P. E. O'Donnell v. S & R, Inc.* (D.C. App. 1977, 369 A.2d 168).

— Repossession

Maryland repairman has a right to repossess District of Columbia resident's car in the District pursuant to a statutory garageman's lien created in Maryland, and where repossession is without breach of the peace, it is not contrary to public policy of the District and is entirely lawful. *P. E. O'Donnell v. S & R, Inc.* (D.C. App. 1977, 369 A.2d 168).

§ 38-206. Enforcement of lien by sale.

CROSS REFERENCE

Service by publication on nonresidents and absent defendants, see § 13-336.

Chapter 3.—HOSPITALS

§ 38-302. Notice to be filed.

CROSS REFERENCE

Service by publication on nonresidents and absent defendants, see § 13-336.

TITLE 39.—MILITARY

Chapter 1.—COMPOSITION, ORGANIZATION, AND CONTROL

§ 39-103. Assessors to make list of persons liable to enrollment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 6.—ACTIVE MILITARY DUTY

§ 39-603. Suppression of riots.

When there is in the District of Columbia a tumult, riot, mob, or a body of men acting together by force with attempt to commit a felony or to offer violence to persons or property, or by force or violence to break and resist the laws, or when such tumult, riot, or mob is threatened, it shall be lawful for the Mayor of the District of Columbia, or for the United States marshal for the District of Columbia, or for the National Capital Service Director, to call on the commander-in-chief to aid them in suppressing such violence and enforcing the laws; the commander-in-chief shall thereupon order out so much and such portion of the militia as he may deem necessary to suppress the same, and no member thereof who shall be thus ordered out by proper authority for any such duty shall be liable to civil or criminal prosecution for any act done in the discharge of his military duty.

(Mar. 1, 1889, 25 Stat. 778, ch. 328, § 45; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 48; Dec. 24, 1973, Pub. L. 93-198, title VII, § 739(d), 87 Stat. 826.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended section by inserting "or for the National Capital Service Director," immediately after "United States marshal for the District of Columbia,".

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that the amendment to this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

Chapter 8.—PAY AND ALLOWANCES

§ 39-805. Annual estimates.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 40.—MOTOR VEHICLES

Chapter 1.—REGISTRATION OF MOTOR VEHICLES

Sec.

40-102a. Registration and tags for motor vehicles of Disabled American Veterans—Design of tags—Restriction and fee—Requirements for issuance.

40-103. Fees classified—Payment of fees into General Fund.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1-1443b, 47-1208.

§ 40-101. Definitions.

SHORT TITLES

The first section of act Apr. 7, 1977, D.C. Law 1-112, provided "That this act [amending § 40-102] may be cited as the 'Motor Vehicle Registration Date Act'."

The first section of act Apr. 7, 1977, D.C. Law 1-110, provided "That this act [amending §§ 40-103, 40-201, and 40-301] may be cited as the 'District of Columbia Motorized Bicycle Act'."

§ 40-102. Registration of motor vehicles and trailers—Certificates — Tags—Duplicates—Dealers—Fees—Official and foreign vehicles and trailers—Transfers—Regulations.

* * * * *

(b) The Council of the District of Columbia by regulation shall provide for the issuance by the director—

(1) annually to any dealer, upon payment of the fee prescribed in section 40-103, of a registration certificate and identification tags bearing a distinguishing dealer's mark, for interchangeable use on motor vehicles and trailers in accordance with regulations promulgated by the Council;

(2) of certificates of registration and identification tags, without charge, for all motor vehicles and trailers owned by the United States or by the District of Columbia;

(3) annually, without charge, of certificates of registration and identification tags for all motor vehicles and trailers officially used by any duly accredited representative of a foreign government;

(4) of duplicate registration certificates or duplicate identification tags, upon proof satisfactory to the director of loss, mutilation, or destruction thereon, upon payment of a fee of \$2 for each set of duplicate tags or \$1 for each duplicate registration certificate; and

(5) to any person, upon payment of a fee of \$3, of a special use certificate and special use identification tags bearing a distinguishing mark, valid for a period not exceeding twenty days, for use on a motor vehicle or trailer in accordance with regulations promulgated by the Council except that in the event such certificate and tags are necessary for use in complying with vehicle inspection regulations made pursuant to the authority contained in section 40-207, prior to completion of the registration of such vehicle or trailer, the fee shall be \$2: *Provided*, That if any

person be convicted of a violation of such regulations, the director may refuse thereafter to issue a special use certificate and special use identification tags to such person for a period of one year: *Provided further*, That the issuance of a special use certificate and special use identification tags for a motor vehicle or trailer shall not constitute a registration of such motor vehicle or trailer for any purpose.

(c) Every registration made under this chapter shall expire at midnight on the last day of the registration year for which the registration was made, unless the time be extended by the Council. For the purposes of this act, a registration year shall begin and end on dates established by the Mayor of the District of Columbia. During the thirty day period immediately preceding the date, as specified by the Mayor, on which a registration expires, it shall be lawful to operate a motor vehicle or trailer registered for ensuing registration year.

(d) Upon the sale or other transfer to another owner of any motor vehicle or trailer registered under this chapter, the registration thereof shall expire. The owner selling or otherwise transferring such vehicle or trailer may register another motor vehicle or trailer for the unexpired portion of the registration year upon payment of a fee of \$2 and a sum equal to the difference between the registration fee originally paid and the fee computed for such other motor vehicle or trailer under section 40-103, in case the latter is the greater. In the case of joint ownership, upon consent of all the joint owners, such transfer may be made in the manner prescribed above to any person formerly a party to the joint ownership. If a motor vehicle or trailer be registered in the name of an individual, the name of the spouse of such individual may be added to the registration as a joint owner, subject to applicable provisions of law relating to the titling of the motor vehicle or trailer. Upon the death of a joint owner of a motor vehicle or trailer registered under this chapter the registration thereof shall be transferred to the survivor or survivors and the fee for such transfer shall be \$2. When the only assets of a decedent's estate requiring administration consist of not more than two motor vehicles, the Mayor of the District of Columbia may upon proof satisfactory to him that all debts and taxes owed by the decedent have been paid or provided for, transfer the title to such motor vehicles to the person or persons entitled thereto or their nominee; and in such case, no administration of the decedent's estate, or other proceedings, need be had. In the event that any of the persons entitled to the transfer of title hereunder shall be a minor, the custodian or the legal guardian of said minor may nominate transferees on behalf of such minor.

(e) The Council of the District of Columbia is authorized to prescribe such regulations as may be necessary to carry out the provisions of this chapter and the Mayor of the District of Columbia shall prescribe such forms of application for registration and for a special use certificate, such forms of registration and special use certificate, such design of identification tags, and provide for the keeping of such records of registration and issuance of special use certificates and transfers of registration as will facilitate the identification and the regulation of motor vehicles and trailers operated in the District of Columbia.

(f) The Council of the District of Columbia is further authorized to prescribe regulations under which the director may revoke or suspend the registration of any dealer who shall cease to be a dealer as defined in this chapter, or who shall have violated the provisions of this chapter or the regulations promulgated thereunder by the Council, and the Mayor is authorized to revoke or suspend and provide for the return to the director of all dealers' identification tags issued to such dealer, subject to review by the Mayor or his designated representative. Pending such review, any such order of revocation or suspension shall be stayed unless the Mayor shall otherwise direct. No order of the director or the Mayor hereunder shall be set aside or suspended by any court unless such order is arbitrary or capricious. (As amended Apr. 7, 1977, D.C. Law 1-112, § 2, 23 DCR 8741; Apr. 26, 1977, D.C. Law 1-133, title III, § 301, 23 DCR 9697.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

This act, referred to in subsec. (c), is the District of Columbia Revenue Act of 1937, Aug. 17, 1937, 50 Stat. 673, ch. 690. For classification of that Act to the Code, see the Parallel Reference Tables. It probably should read this title meaning title IV of that Act which is classified to this chapter.

AMENDMENTS

1977—Act Apr. 26, 1977, D.C. Law 1-133, amended section as follows:

(1) In material preceding subsec. (b) (1), substituted "Council of the District of Columbia" for "Commissioners of the District of Columbia";

(2) In subsec. (b) (1), substituted "Council" for "Commissioners";

(3) Amended subsec. (b) (2) generally;

(4) Redesignated subsecs. (b) (3) and (4) as subsecs. (b) (4) and (5), respectively, and added a new subsec. (b) (3);

(5) In subsec. (b) (5), as redesignated, substituted "Council" for "Commissioners";

(6) In subsec. (c), substituted "Council" for "Commissioners";

(7) In subsec. (d), added the third sentence;

(8) In subsec. (e), substituted "Council of the District of Columbia is" "for Commissioners of the District of Columbia are";

(9) In the first sentence of subsec. (f), substituted "Council of the District of Columbia is", "Council", and "Mayor or his designated representative", for "Commissioners of the District of Columbia are", "Commissioners", and "Commissioners under rules and regulations prescribed by them", respectively;

(10) In the second sentence of subsec. (f), substituted "Mayor" for "Commissioners"; and

(11) In the third sentence of subsec. (f), substituted "Mayor" for "Commissioners".

Act Apr. 7, 1977, D.C. Law 1-112, amended subsec. (c) by substituting "For the purposes of this act, a registration year shall begin and end on dates established by the Mayor of the District of Columbia. During the thirty day period immediately preceding the date, as specified by the Mayor, on which a registration expires, it shall be lawful to operate a motor vehicle or trailer registered for ensuing registration year." for "Any such registration may be renewed for the ensuing registration year upon application made by the owner during the months of February and March, and upon payment of the fees required by law. During the month of March it shall be lawful to operate a motor vehicle or trailer registered for the ensuing registration year. For the purposes of this chapter, a registration year shall be deemed to begin on April 1 and end on March 31."

EFFECTIVE DATES OF 1977 AMENDMENTS

Section 501 of act Apr. 26, 1977, D.C. Law 1-133, title V, provided: "This act [amending §§ 40-102, 40-301, 40-302, 40-420, 40-463, 40-602, and 40-603] shall become effective in accordance with the provisions of Section 602(c) of the District of Columbia Self Government and Governmental Reorganization Act [§ 1-147(c)]."

Section 3 of act Apr. 7, 1977, D.C. Law 1-112, provided: "This act [amending § 40-102] shall take effect immediately following the period provided for Congressional review in section 602(c) (1) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c) (1)]."

CROSS REFERENCE

Age of majority, see § 21-101 note.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-102a, 47-2601.

NOTES TO DECISIONS

Exemption—Tour service

Secretary of Interior has exclusive authority to regulate interpretive tour service operated under contract with Department of Interior, and service therefor is immune from enforcement of District of Columbia licensing and registration requirements. *District of Columbia et al. v. Landmark Services, Inc.* (1976, 416 F. Supp. 559).

§ 40-102a. Registration and tags for motor vehicles of Disabled American Veterans—Design of tags—Restriction and fee—Requirements for issuance.

(a) The Mayor is authorized to provide for the issuance of a registration certificate and identification tags for a passenger motor vehicle (other than a passenger vehicle for hire) of any individual who is and may be certified as a bona fide member of the Department of the District of Columbia Disabled American Veterans to the Mayor by the Department Commander of the District of Columbia Disabled American Veterans in office at the time of the application for the registration certificate and identification tags, and is a resident of the District of Columbia. Such certificate and tags shall be issued in lieu of those required by section 40-102.

(b) The identification tags issued under this section shall bear the initials D.A.V. in letters not less than two and three-quarter inches high and in strokes not less than one-quarter inch in width followed by such markings and numerals as the Mayor may require.

(c) At any one time no individual may have more than one motor vehicle registered under this section. The fee for such certificate and tags shall be set according to the current fee schedule established for passenger motor vehicles as required to be paid under section 40-103(b).

(d) No registration certificate and identification tags may be issued to any individual under this section unless due proof is submitted that the individual—

- (1) is a bona fide member of the Department of the District of Columbia Disabled American Veterans of the United States as may be certified to the Mayor through the Department Commander in office at the time of the application for the registration certificate and identification tags; and
- (2) is and has been for at least 30 days, prior to filing with the Mayor an application for such certificate and tags, a bona fide resident of the District of Columbia.

(Feb. 20, 1976, D.C. Law 1-49, § 2, 22 DCR 4694.)

CODIFICATION

Section was enacted as part of the D.A.V. Motor Vehicle Registration Certificate and Identification Tag Act of 1975, and not as a part of title IV of the District of Columbia Revenue Act of 1937 which comprises this chapter.

EFFECTIVE DATE

Section 3 of act Feb. 20, 1976, D.C. Law 1-49, provided: "This act [enacting this section] shall take effect at the end of the period provided for Congressional review of acts of the Council of the District of Columbia under subsection (c) of section 602 of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act Feb. 20, 1976, D.C. Law 1-49, provided "That this act [enacting this section] may be cited as the 'D.A.V. Motor Vehicle Registration Certificate and Identification Tag Act of 1975'."

§ 40-103. Fees classified—Payment of fees into General Fund.

* * * * *

(b) Class A: For each passenger vehicle, including passenger vehicles licensed under paragraph (d) of section 47-2331.

(1) When wholly equipped with pneumatic tires, a registration fee shall be charged according to the manufacturer's shipping weight as follows:

Manufacturer's Shipping Weight	Registration Fee
Class I (2,799 pounds or less) -----	35
Class II (2,800-3,499 pounds) -----	42
Class III (3,500-3,999 pounds) -----	68
Class IV (4,000 pounds or more) -----	76

(2) When wholly or partially equipped with other than pneumatic tires, double the above fees.

Class B. For each truck, tractor, and passenger-carrying vehicle for hire having a seating capacity of eight passengers or more in addition to the driver or operator with the exception of passenger vehicles licensed under paragraph (b) of section 47-2331.

(1) When wholly equipped with pneumatic tires, the manufacturer's shipping weight of the chassis, plus the weight of the cab and body, is less than three thousand pounds, \$95; three thousand pounds or more but less than four thousand pounds, \$105; four thousand pounds or more but less than five thousand pounds, \$123; five thousand pounds or more but less than six thousand pounds, \$143; six thousand pounds or more but less than seven thousand pounds, \$163; seven

thousand pounds or more but less than eight thousand pounds, \$176; eight thousand pounds or more but less than nine thousand pounds, \$200; nine thousand pounds or more but less than ten thousand pounds, \$228; ten thousand pounds or more but less than twelve thousand pounds, \$291; twelve thousand pounds or more but less than fourteen thousand pounds, \$340; fourteen thousand pounds or more but less than sixteen thousand pounds, \$408; sixteen thousand pounds or more, \$479: *Provided*, That in determining the total weight of a vehicle subject to the provisions of this clause, there shall be excluded, in computing such weight, the weight of any special equipment which is subject to taxation as tangible personal property under subsection (e) of this section.

(2) When wholly or partially equipped with other than pneumatic tires, double the above fees.

Class C. For each trailer, when the manufacturer's shipping weight of the chassis, plus the weight of the body, is less than five hundred pounds, \$20; five hundred pounds or more but less than one thousand pounds, \$29; one thousand pounds or more but less than one thousand five hundred pounds, \$48; one thousand five hundred pounds or more but less than two thousand five hundred pounds, \$77; two thousand five hundred pounds or more but less than three thousand five hundred pounds, \$109; three thousand five hundred pounds or more but less than six thousand pounds, \$143; six thousand pounds or more but less than eight thousand pounds, \$176; eight thousand pounds or more but less than ten thousand pounds, \$219; ten thousand pounds or more but less than twelve thousand pounds, \$291; twelve thousand pounds or more but less than sixteen thousand pounds, \$361; sixteen thousand pounds or more, \$431: *Provided*, That in determining the total weight of a trailer subject to the provisions of this Class C, there shall be excluded, in computing such weight, the weight of any special equipment which is subject to taxation as tangible personal property under subsection (e) of this section.

Class D. For each motorcycle, \$12.

Class E. For each motorized bicycle, \$6.

Class F. For each motor vehicle classified by the Commissioner or his designated agent as an antique motor vehicle on the basis of a finding that such vehicle was manufactured prior to January 1, 1930, and is owned solely as a collector's item, with its use limited to participation in club activities, exhibits, tours, parades, and similar uses, but in no event for general transportation, \$9.

Class G. For dealers' identification tags, first set of tags, \$53, and \$19 for each additional set.

Class H. Repealed. Apr. 19, 1977, D.C. Law 1-124, title I, § 101(c), 23 DCR 8749.

* * * * *

(d) The proceeds from fees payable under this chapter shall be paid into the General Fund of the District of Columbia as established in the Revenue Funds Availability Act of 1975.

(e) Notwithstanding the provisions of this chapter, special equipment mounted on a motor vehicle or

trailer and not used primarily for the transportation of persons or property shall be taxed as tangible personal property as provided by law. For the purpose of determining the fees authorized by clause 1 of class B and classes C and H of subsection (b) of this section, the weight of special equipment taxed in accordance with the provisions of this subsection (e) shall be excluded in computing the weight of the vehicle or trailer on which it is mounted. (As amended Oct. 21, 1975, D.C. Law 1-23, title I, § 101, 22 DCR 5091; Jan. 22, 1976, D.C. Law 1-42, § 6, 22 DCR 6317; June 15, 1976, D.C. Law 1-70, title I, § 101, 23 DCR 533; Apr. 7, 1977, D.C. Law 1-110, § 5, 23 DCR 8740; Apr. 19, 1977, D.C. Law 1-124, title I, § 101, 23 DCR 8749.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

The General Fund of the District of Columbia, referred to in text, was established by section 9 of the Revenue Funds Availability Act of 1975 (D.C. Law 1-42, Jan. 22, 1976) which is classified to § 47-130c.

AMENDMENTS

1977—Subsec. (b). Act Apr. 19, 1977, D.C. Law 1-124, amended subsec. (b) as follows:

(1) The paragraph designated "Class A" (relating to registration fees for passenger vehicles) was amended by striking out "\$50", "\$57", "\$83", "\$96", "2,800", and "2,801" and inserting in lieu thereof "\$35", "\$42", "\$68", "\$76", "2,799", and "2,800", respectively.

(2) The paragraph designated "Class B" (relating to registration fees for trucks, tractors, and certain commercial motor vehicles) was amended by striking out "\$300" and inserting in lieu thereof "\$340".

(3) Section 101(c) of the act provided for the repeal of the paragraph designated "Class G". In view of the redesignation of paragraph designated "Class G" as "Class H" by act Apr. 7, 1977, D.C. Law 1-110, section 101(c) was executed by deleting the paragraph designated "Class H" as the probable intent of the Council.

Act Apr. 7, 1977, D.C. Law 1-110, amended the paragraph designated "Class D" generally, redesignated the paragraphs designated "Class E", "Class F", and "Class G" as paragraphs "Class F", "Class G", and "Class H", respectively, and added a new paragraph designated "Class E".

Subsec. (e). Act Apr. 7, 1977, D.C. Law 1-110, amended subsec. (e) by substituting "H" for "G".

1976—Act June 15, 1976, D.C. Law 1-70, amended subsec. (b) as follows:

(1) Subparagraph (1) of the paragraph designated "Class A" of subsection (b) was amended generally.

(2) The paragraph designated "Class B" of subsection (b) (relating to registration fees for trucks, tractors, and certain commercial motor vehicles) was amended by striking out "\$71", "\$79", "\$92", "\$107", "\$122", "\$132", "\$150", "\$171", "\$218", "\$225", "\$306", and "\$359", and inserting in lieu thereof "\$95", "\$105", "\$123", "\$143", "\$163", "\$176", "\$200", "\$228", "\$291", "\$300", "\$408", and "\$479", respectively.

(3) The paragraph designated "Class C" of subsection (b) (relating to registration fees for trailers) was amended by striking out "\$15", "\$22", "\$36", "\$58", "\$82", "\$107", "\$132", "\$164", "\$218", "\$271", and "\$323", and inserting in lieu thereof "\$20", "\$29", "\$48", "\$77", "\$109", "\$143", "\$176", "\$219", "\$291", "\$361", and "\$431", respectively.

(4) The paragraph designated "Class D" of subsection (b) (relating to registration fees for motorcycles, motor bicycles, motor tricycles and motor wheels) was amended by striking out "\$16" and inserting in lieu thereof "\$21".

(5) The paragraph designated "Class E" of subsection (b) (relating to registration fees for antique motor vehicles) was amended by striking out "\$7" and inserting in lieu thereof "\$9".

(6) The paragraph designated "Class F" of subsection (b) (relating to registration fees for dealers' identification tags) was amended by striking out "\$40" and "\$14" and inserting in lieu thereof "\$53" and "\$19", respectively.

Act Jan. 22, 1976, D.C. Law 1-42 amended subsec. (d) generally. Prior to the amendment subsec. (d) read as follows:

"(d) Twenty-five per centum of the gross proceeds from fees payable under this title shall be paid into the Metrobus Fund established under section 1-1443b. The remainder of the proceeds from fees payable under this title shall be divided between the General Fund and the Highway Fund. The Council of the District of Columbia shall determine the percentage of such remainder which shall be deposited to the credit of the General Fund of the District of Columbia, except that the percentage of such remainder deposited to the credit of the General Fund shall be not less than forty-two per centum or more than forty-seven per centum of such remainder. The amounts of such remainder not deposited to the credit of the General Fund, along with specified moneys collected from the motor-vehicle-fuel tax, and specified amounts of fees charged for the titling of motor vehicles and trailers, including specified amounts of fees charged for the issuance of permits to operate motor vehicles, shall be appropriated and used solely and exclusively for—

"(1) construction, reconstruction, improvement, and maintenance of public highways, including the necessary administrative expenses in connection therewith;

"(2) the expenses of the office of the director of vehicles and traffic incident to the regulation and control of traffic and the administration of the same; and

"(3) the expenses necessarily involved in the police control, regulation, and administration of traffic upon the highways, except that the total amount to be expended under this item shall not exceed 15 per centum of the total payment appropriated for pay and allowances of officers and members of the Metropolitan Police force."

1975—Act Oct. 21, 1975, D.C. Law 1-23, made the following amendments:

(1) In the paragraph designated "Class A" of subsection (b) (relating to registration fees for passenger motor vehicles) struck out "\$30" and "\$50", and inserted in lieu thereof "\$40" and "\$67", respectively.

(2) In the paragraph designated "Class B" of subsection (b) (relating to registration fees for trucks, tractors and certain commercial motor vehicles) struck out "\$53", "\$59", "\$69", "\$80", "\$91", "\$99", "\$112", "\$128", "\$163", "\$191", "\$229", and "\$269", and inserted in lieu thereof "\$71", "\$79", "\$92", "\$107", "\$122", "\$132", "\$150", "\$171", "\$218", "\$225", "\$306", and "\$359", respectively.

(3) In the paragraph designated "Class C" of subsection (b) (relating to registration fees for trailers), struck out "\$11", "\$16", "\$27", "\$43", "\$61", "\$80", "\$99", "\$123", "\$163", "\$203", and "\$243", and inserted in lieu thereof "\$15", "\$22", "\$36", "\$58", "\$82", "\$107", "\$132", "\$164", "\$218", "\$271", and "\$323, respectively.

(4) In the paragraph designated "Class D" of subsection (b) (relating to registration fees for motorcycles, motor bicycles, motor tricycles and motor wheels) struck out "\$12", and inserting in lieu thereof "\$16".

(5) In the paragraph designated "Class E" of subsection (b) (relating to registration fees for antique motor vehicles) struck out "\$5" and inserted in lieu thereof "\$7".

(6) The paragraph designated "Class F" of subsection (b) (relating to registration fees for dealer's identification tags) struck out "\$30", and "\$10", and inserted in lieu thereof "\$40", and "\$14", respectively.

(7) Amended subsection (d) generally.

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of the paragraphs designated "Class D", "Class G", and "Class H" of subsection (b), see secs. 2, 3(a), and 4 of the Emergency Act to Pro-

vide for Amendments to the District of Columbia Motorized Bicycle Act and the Revenue Act for Fiscal Year 1978 (D.C. Act 2-37, May 24, 1977, 24 DCR 407), the Second Emergency Act to Provide for Amendments to the District of Columbia Motorized Bicycle Act and the Revenue Act for Fiscal Year 1978 (D.C. Act 2-80, Aug. 17, 1977, 24 DCR 1816), and the Third Emergency Act to Provide for Amendments to the District of Columbia Motorized Bicycle Act and the Revenue Act for Fiscal Year 1978 (D.C. Act 2-109, Dec. 2, 1977, 24 DCR 4810).

EFFECTIVE DATES OF 1977 AMENDMENTS

For act Apr. 19, 1977, D.C. Law 1-124, see section 1101 of that act set out as a note under § 47-1557a.

Section 7 of act Apr. 7, 1977, D.C. Law 1-110, provided: "This act [amending §§ 40-103, 40-201, and 40-301] shall take effect as provided for acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Government Reorganization Act [§ 1-147(c)]."

EFFECTIVE DATES OF 1976 AMENDMENTS

Section 1401 of act June 15, 1976, D.C. Law 1-70, provided: "The amendments [to this section and § 40-603, respectively] made by Titles I and II of this act shall take effect on October 1, 1976."

For effective date of act Jan. 22, 1976, D.C. Law 1-42, see sec. 10 of such act set out as a note under § 47-130c.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 801 of act Oct. 21, 1975, D.C. Law 1-23, as amended by section 7(d) of act Jan. 22, 1976, D.C. Law 1-42, provided in part as follows:

"(a) The amendments made by sections 101, 102, 201, and 203 [amending §§ 40-103, 40-603, 47-1901, and 45-723, respectively] shall take effect on the first day of the first month after the day this act becomes law according to the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

"(f) Sections 104, 202, and 602 [enacting provisions set out as notes under §§ 40-103, 40-603, 47-1551, 47-1901] shall take effect on the date this act becomes law according to the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

MAYOR TO SUBMIT LEGISLATIVE PROPOSAL

Section 104(a) of act Oct. 21, 1975, D.C. Law 1-23, provided: "The Mayor of the District of Columbia shall submit to the Council of the District of Columbia, no later than January 1, 1976, proposed legislation detailing a three-tier registration fee for automobiles in class A of section 3(b) of Title IV of the District of Columbia Revenue Act of 1937 (D.C. Code, sec. 40-103) to replace the existing two-tier structure, with disproportionately lower fee increases for lighter weight, compact and subcompact automobiles."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-102a, 40-202, 47-1557b.

§ 40-104. Unlawful acts—Penalty.

NOTES TO DECISIONS

Investigatory stops

Actions of police officers in stopping rented vehicle in order to determine if the defendant had proper license and rental agreement was reasonable, and seizure of pistol that was in plain view of officer who was looking at interior of car with flashlight while other officer was engaged in conversation with defendant did not violate the Fourth Amendment. *R. F. Palmore v. United States* (D.C. App. 1972, 290 A. 2d 573; aff'd 93 S. Ct. 1670, 411 U.S. 389).

Search and seizure

Where police officers who stopped defendant's car assertedly to check possession and validity of defendant's driver's permit and automobile registration had not observed defendant violate any traffic laws and had no ad-

verse prior information about defendant or his vehicle before making the stop and where officers acknowledged that defendant had aroused their suspicions by driving around in a residential area and by the fact that he appeared to be watching the officers in his rear view mirror, defendant's acts as reported by the officers were too innocuous to warrant temporary seizure for questioning and where stop was not based on articulable suspicion of criminal behavior or justified as part of systematic, random program of traffic stops, defendant was entitled to suppression of .38-caliber revolver and unregistered sawed-off shotgun found in search of defendant's vehicle incident to defendant's arrest on an outstanding traffic warrant. *United States v. K. L. Montgomery* (1977, 561 F. 2d 875, 182 U.S. App. D.C. 426).

Where all occupants of vehicle were under arrest and vehicle lacked valid tags, it was proper to impound vehicle. Once vehicle was properly impounded, inventory of its contents leading to discovery of hats and masks was proper. *R. B. Punch v. United States* (D.C. App. 1977, 377 A. 2d 1353).

§ 40-105. Provisions not affected.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2.—INSPECTION

§ 40-201. Annual inspection of motor vehicles—Inspection fee.

At the time of the registration of each motor vehicle or trailer there shall be levied and collected a fee known as the "inspection fee" of \$3, if an inspection is required for the ensuing registration year for such vehicle. The Council of the District of Columbia may prescribe regulations to permit a person who owns a motor vehicle or trailer not required to be registered in the District of Columbia to have such motor vehicle or trailer inspected in the District of Columbia. Such regulations shall fix the fee for such inspection in such amount as, in the Council's judgment, will be commensurate with the cost to the District of Columbia of such inspection. (Feb. 18, 1938, 52 Stat. 78 ch. 31, § 1; July 16, 1947, 61 Stat. 360, ch. 258, Art IV, § 1; Oct. 12, 1968, Pub. L. 90-567, § 1, 82 Stat. 1002; Oct. 31, 1969, Pub. L. 91-106, title IV, § 403, 83 Stat. 174; Apr. 7, 1977, D.C. Law 1-110, § 3, 23 DCR 8740.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1977—Act Apr. 7, 1977, D.C. Law 1-110, amended section by substituting "\$3, if an inspection is required for the ensuing registration year for such vehicle" for "\$2".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 7 of act Apr. 7, 1977, D.C. Law 1-110, set out as a note under § 40-103.

NOTES TO DECISIONS

Exemption—Tour service

Secretary of Interior has exclusive authority to regulate interpretive tour service operated under contract with Department of Interior, and service therefor is immune

from enforcement of District of Columbia licensing and registration requirements. *District of Columbia et al. v. Landmark Services, Inc.* (1976, 416 F. Supp. 559).

§ 40-205. Vehicles not inspected, or unsafe.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-207. Regulations by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 3.—OPERATORS' PERMITS

CHAPTER REFERRED TO IN U.S. CODE

This chapter is referred to in section 212b of title 40, U.S. Code.

§ 40-301. Operators' permits—Application—Examination—Periods for which issued—Fee—Lost permits—Age requirements—Provisions affecting personnel of armed forces of United States and foreign nations—Contents of permits—Possession of operator—Operation without permit prohibited.

(a) (1) The Mayor of the District of Columbia or his designated agent shall, upon application, the payment of a fee of \$12, and compliance with such regulations as the Mayor may prescribe, issue a motor vehicle operator's permit valid for a period not in excess of four years, to any individual sixteen years of age or over who, after examination, in the opinion of the Mayor or his designated agent, is mentally, morally, and physically qualified to operate a motor vehicle in such manner as not to jeopardize the safety of individuals or property. The Mayor or his designated agent shall cause each applicant to be examined as to his knowledge of the traffic regulations of the District and shall require the applicant to give a practical demonstration, or produce evidence acceptable to the Mayor or his designated agent, of his ability to operate a motor vehicle within a congested portion of the District, except that upon renewal of any such operator's permit such examination and demonstration may be waived in the discretion of the Mayor or his designated agent. No practical demonstration shall be required for a motorized bicycle permit. Should the Mayor or his designated agent believe that the issuance or reissuance of a permit in accordance with the provisions of this chapter may prove a menace to public safety, he or his agent may refuse the issuance or reissuance thereof. No operator's permit issued to any individual under eighteen years of age shall authorize the operation by such individual while he is under the age of eighteen years of any motor vehicle other than a passenger vehicle or motorcycle or motorized bicycle, used solely for purposes of pleasure and not for compensation.

section, the Mayor or his designated agent may, upon compliance with such regulations as the Mayor may prescribe, extend for a period not in excess of six years the validity of the operator's permit of any person who is a resident of the District and who is on active duty outside the District in the Armed Forces or the Merchant Marine of the United States and who was at the time of leaving the District the holder of a valid operator's permit.

(b) Each operator's permit shall state the name and address of the permittee, together with such other matter as the Mayor may by regulation prescribe, and shall bear the signature of the permittee.

* * * * *

(As amended Apr. 7, 1977, D.C. Law 1-110, § 4, 23 DCR 8740; Apr. 26, 1977, D.C. Law 1-133, title II, § 201(b), 23 DCR 9697.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1977—Act Apr. 26, 1977, D.C. Law 1-133, amended section by substituting "Mayor" in subsec. (a) (1) for "District of Columbia Council or its designated agent" immediately following "such regulations as the", in subsec. (a) (6) for "Council or its designated agent" immediately following "such regulations as the", and in subsec. (b) for "Council or its designated agent" immediately following "such other matter as the".

Act Apr. 7, 1977, D.C. Law 1-110, amended subsec. (a) (1) by inserting "No practical demonstration shall be required for a motorized bicycle permit." after the second sentence and substituting "motorized bicycle" for "motor bicycle".

EFFECTIVE DATES OF 1977 AMENDMENTS

For act Apr. 26, 1977, D.C. Law 1-133, see section 501 of that act set out as a note under § 40-102.

For act Apr. 7, 1977, D.C. Law 1-110, see section 7 of that act set out as a note under § 40-103.

CROSS REFERENCE

Driver education program of the public schools, see § 31-1119.

NOTES TO DECISIONS

Arrest

Where police officer knew that defendant was driving car with altered temporary tags and that defendant had previously been arrested for carrying a pistol without a license, where police officer had seen front seat passenger reach forward or lean down and then sit upright after car had passed officer's marked police cruiser and come to stop at a traffic light, and where police officer had probable cause to arrest defendant for driving without an operator's permit, officer was justified in examining under driver's seat of vehicle, seat closest to defendant, to look for weapons, especially when three other persons were seated in vehicle. *R. B. Punch v. United States* (D.C. App. 1977, 377 A.2d 1353).

Fact that defendant actually had valid operator's license at time of arrest is of no consequence in deciding whether, on information known to police officer at time of arrest, probable cause existed to arrest defendant for driving without an operator's permit. *Id.*

Where, after being stopped for having run stop sign, defendant was unable to furnish officers with either driver's permit or vehicle registration and police were unable to verify ownership by other means because of computer malfunction, police had probable cause to believe that vehicle was being used without authorization

* * * * *

(6) Notwithstanding the provisions of this sub-

and to arrest defendant on that basis. *R. A. Botts v. United States* (D.C. App. 1973, 310 A. 2d 237).

Search and seizure

Where police officers who stopped defendant's car assertedly to check possession and validity of defendant's driver's permit and automobile registration had not observed defendant violate any traffic laws and had no adverse prior information about defendant or his vehicle before making the stop and where officers acknowledged that defendant had aroused their suspicions by driving around in a residential area and by the fact that he appeared to be watching the officers in his rear view mirror, defendant's acts as reported by the officers were too innocuous to warrant temporary seizure for questioning and where stop was not based on articulable suspicion of criminal behavior or justified as part of systematic, random program of traffic stops, defendant was entitled to suppression of .38-caliber revolver and unregistered sawed-off shot gun found in search of defendant's vehicle incident to defendant's arrest on an outstanding traffic warrant. *United States v. K. L. Montgomery* (1977, 561 F.2d 875, 182 U.S. App. D.C. 426).

Where defendant was alone and out of automobile, either handcuffed or seated in police cruiser, at time of search and arresting officer, even with knowledge of defendant's bending movement in automobile as observed by another officer, had no reason to fear destruction of evidence in connection with arrest of defendant for driving without a permit after stopping him for a routine traffic spot check at 11:15 a.m., search of automobile, which was not of area searched "within his reach" and which uncovered a blackjack, exceeded permissible scope of search incident to lawful arrest. *L. Jacobs v. United States* (D.C. App. 1977, 374 A.2d 850).

Search of defendant's person after arrest for driving without a permit was not unlawful. *C. H. Spencer v. United States* (D.C. App. 1974, 316 A. 2d 331).

Where defendant was arrested for the petty offense of driving with a learner's permit while unaccompanied by a licensed driver and was frisked at scene and no weapons were found, arresting officer who then took defendant to the station and instead of informing defendant, who had \$171 cash in his pockets, of his right to post \$50 collateral, as prescribed for the petty offense, and leave the precinct station, required defendant as a booking inventory procedure to empty his pockets, conducted an unreasonable search rendering narcotics seized from pocket inadmissible. *United States v. H. E. Mills* (1972, 472 F. 2d 1231, 153 U.S. App. D.C. 156).

Informing person arrested for petty offense of his option to post collateral and giving him an opportunity to exercise that option is a necessary condition to a thorough and complete search that is conducted only as incident to needs of stationhouse detention. *Id.*

When person is charged with a collateral-type petty offense under which he rightfully has opportunity to post collateral and avoid further detention and there is no probable cause to believe that he committed a more serious crime, police may not engage in an inventory search of offender or an equivalent direction that he empty his pockets and seek to support it on ground of holding him in further confinement, unless at a minimum he was notified of his opportunity to post collateral and refused or was unable to do so. *Id.*

§ 40-302. Revocation or suspension of operators' permits—Procedure—New permit after revocation—Nonresidents—Penalty.

(a) Except where for any violation of this chapter revocation of the operator's permit is mandatory, the Mayor or his designated agent may revoke or suspend an operator's permit for any cause which he or his agent may deem sufficient: *Provided*, That in each case where a permit is revoked or suspended the reasons therefor shall be set out in the order of revocation or suspension: *Provided further*, That such order shall take effect five days after its issuance unless the holder of the permit shall have filed within such period, written application with the

Mayor of the District of Columbia for a review of his order or the order of his agent, and, if upon such review, the Mayor shall sustain such order, the same shall become effective immediately: *Provided further*, That application to said Mayor for a review shall not operate as a stay of such order of the Mayor or his agent when the order has been issued revoking or suspending a permit on account of mental or physical incapacity, for driving under the influence of liquor or narcotic drugs; for manslaughter when an automobile is involved, or for operating a motor vehicle equipped with a smoke screen.

* * * * *

(d) Notwithstanding any other provision of this section, the provisions of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.) and particularly those of section 1-1509, shall apply to each proceeding, decision, or other administrative action specified in this chapter.

(e) Any individual found guilty of operating a motor vehicle in the District during the period for which his operator's permit is revoked or suspended or for which his right to operate is suspended under this chapter shall, for each such offense, be fined not less than \$100 nor more than \$500, or imprisoned not less than 30 days nor more than one year, or both. (As amended Apr. 26, 1977, D.C. Law 1-133, title I, §§ 102-104, 23 DCR 9697.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

In the original, "this chapter", as used in this section, read "this Act", meaning the above-cited act of March 3, 1925. The provisions of such act still in force are classified to §§ 40-301 to 40-303, 40-601 to 40-603, 40-605, 40-609, 40-610, 40-611, and 40-613 to 40-615.

AMENDMENT

1977—Section 102 of act Apr. 26, 1977, D.C. Law 1-133, amended the first paragraph of subsec. (a) by striking "with or without a prior hearing" immediately following "his designated agent may".

Section 104 of such act amended section by redesignating subsec. (d) as subsec. (e).

Section 103 of such act added a new subsec. (d).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 501 of act Apr. 26, 1977, D.C. Law 1-133, set out as a note under § 40-102.

NOTES TO DECISIONS

Evidence

Where driver's counsel at license revocation hearing had not had transcript of testimony given at earlier license suspension hearing and hearing officer at revocation hearing had unequivocally advised counsel that urinalysis had showed .21 ethyl alcohol, driver was entitled to challenge on appeal from revocation a police officer's testimony, given at suspension hearing, that urinalysis report showed "zero-two-one, ethyl alcohol," on ground that it was not clear whether he meant .021 or 0.21, although counsel had failed to complain at revocation hearing during which hearing officer read statement of facts, including the police officer's testimony. *M. T. Reap v. Department of Motor Vehicles of the District of Columbia* (D.C. App. 1973, 305 A. 2d 513).

Where hearing officer at license revocation hearing had not examined laboratory urinalysis report which police officer, at earlier suspension hearing, had testified showed "zero-two-one, ethyl alcohol," and record did not contain the report so that it was not clear whether witness meant .021 or 0.21, officer's testimony concerning the urinalysis should not have been accorded any probative weight and, inasmuch as hearing officer expressly relied upon that testimony in revoking driver's license, revocation order must be reversed and case remanded for new hearing. *Id.*

Procedural requirements

Procedural due process requires that hearing be held prior to permanent suspension of driver's license. *A. Quick v. Department of Motor Vehicles of the District of Columbia* (D.C. App. 1975, 331 A.2d 319).

Driver's license revocation proceeding is a "contested case" and, therefore, is controlled by Administrative Procedure Act (§§ 1-1501 et seq.). *Id.*

Search and seizure

Where officer had probable cause to arrest defendant for operating a motor vehicle after revocation of his operator's permit and effected a full custody arrest, search of defendant's person without search warrant, inspection of crumpled cigarette package found on defendant's person and seizure of heroin capsules found in the package were permissible even though officer did not indicate any subjective fear of defendant and did not suspect that defendant was armed. *United States v. W. Robinson, Jr.* (1973, 94 S.Ct. 467, 414 U.S. 218; rev'g 471 F. 2d 1082, 153 U.S. App. D.C. 114).

Following arrest of defendant under warrant of operating motor vehicle after revocation of operator's permit, police officer was authorized to conduct "full field search" of defendant, remove envelope from pocket inside coat and open it to determine if it contained narcotics. *United States v. K. C. Simmons* (D.C. App. 1973, 302 A. 2d 728).

Absent "special circumstances," a police officer has no right to search either the person or the vehicle incident to a lawful arrest for violation of a mere motor vehicle regulation. *United States v. W. Robinson, Jr.* (1972, 471 F. 2d 1082, 153 U.S. App. D.C. 114; rev'd 94 S. Ct. 467, 414 U.S. 218).

§ 40-303. Nonresidents exempt from registration—Period of exemption.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 4.—MOTOR VEHICLE SAFETY RESPONSIBILITY

Sec.

40-420. Review by Mayor.

§ 40-417. Short title.

NOTES TO DECISIONS

Purpose

Motor Vehicle Safety Responsibility Act (this chapter) is a remedial statute designed to protect, so far as possible, innocent persons injured by negligent operation of motor vehicles. *Government Employees Insurance Company v. Stonewall Casualty Company* (D.C. App. 1973, 301 A. 2d 72).

§ 40-418. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-419. Administration.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-420. Review by Mayor.

Any order or act of any agent of the Mayor under the provisions of this chapter shall be subject to review by the Mayor. Application for review of any such order or act shall be in writing and shall set out in detail the reasons for such review. Such application shall be filed with the Mayor within five days after the issuance of the order or occurrence of the act in question. If upon review the Mayor shall sustain such order or act, the same shall become effective immediately.

Any person whose license or motor-vehicle registration shall be denied, suspended, or revoked by the Mayor under the provisions of this chapter may, within thirty days after such denial, revocation, or suspension has been reviewed by the Mayor and sustained by him, file in the District of Columbia Court of Appeals an application for the allowance of an appeal from the order or decision of the Mayor. Appeal shall be as provided in the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510).

Notwithstanding any other provision of this section the provisions of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.), and particularly those of section 1-1509, apply to each proceeding, decision, or other administrative action specified in this chapter.

For the purposes of this section, the phrase "review by the Mayor" shall mean a review by the Mayor of the District of Columbia or a review by any board of review established by the Mayor of the District of Columbia to review the order or act of any agent of the Mayor pursuant to the provisions of this chapter. No member of such board of review established by the Mayor shall review any of his own orders or acts. (May 25, 1954, 68 Stat. 122, ch. 222, § 4; Aug. 28, 1958, 72 Stat. 954, Pub. L. 85-792, § 3; July 8, 1963, 77 Stat. 78, Pub. L. 88-60, § 6; July 29, 1970, Pub. L. 91-358, § 163(h), title I, 84 Stat. 583; Apr. 26, 1977, D.C. Law 1-133, title I, § 101, 23 DCR 9697.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1977—Act Apr. 26, 1977, D.C. Law 1-133, amended section by adding third paragraph.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 501 of act Apr. 26, 1977, D.C. Law 1-133, set out as a note under § 40-102.

NOTES TO DECISIONS

Judicial review

Neither subsequently enacted Administrative Procedure Act nor District of Columbia Court Reform and Criminal Procedure Act of 1970 change method of seeking review under this section which makes review in safety responsibility cases discretionary on application for allowance of appeal, and thus, the Court of Appeals is not required to accept safety responsibility case on petition for review as matter of right from contested case determination under section 1-1510 but rather, review is discretionary on application for allowance of appeal. *H. Thomas et al. v. District of Columbia Board of Appeals and Review* (D.C. App. 1976, 355 A.2d 789).

§ 40-421. Abstract of operating record.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-422. Information regarding financial responsibility to be furnished person injured.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-423. Service of process on nonresident.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Construction

Long-arm statute (§ 13-401 et seq.) enacted as part of Court Reorganization Act of 1970 exists independently of Motor Vehicle Safety Responsibility Act (this chapter) as an alternative, independent method for acquiring in personam jurisdiction over a nonresident motorist. *Liberty Mutual Insurance Company et ano. v. W. Burgess* (D.C. App. 1973, 308 A.2d 775).

§ 40-424. Operator deemed to be agent of owner.

NOTES TO DECISIONS

Husband and wife

Interspousal immunity which was conferred on husband-driver, under District of Columbia law, did not extend to automobile owner, sued for injuries sustained by passenger-wife. *L. T. Edmunds v. J. A. Edmunds et ano.* (1972, 353 F. Supp. 287).

§ 40-425. Motor Vehicle Owners' and Operators' Financial Responsibility Fund, D.C.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-426. Report of accident required.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-427. Form of accident report.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-429. Additional information concerning accident to be furnished on request.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-430. Suspension of license and registration for failure to report.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-433. Determination of the amount of security.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-434. Exceptions to requirements as to security and suspension.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-435. Automobile liability policy or bond—Requirements.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-436. Security—Form and amount.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-437. Failure to deposit security—Suspensions.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS**Judicial review**

Neither subsequently enacted Administrative Procedure Act nor District of Columbia Court Reform and Criminal Procedure Act of 1970 change method of seeking review under section 40-420 which makes review in safety responsibility cases discretionary on application for allowance of appeal, and thus, the Court of Appeals is not required to accept safety responsibility case on petition for review as matter of right from contested case determination under section 1-1510 but rather, review is discretionary on application for allowance of appeal. *H. Thomas et al. v. District of Columbia Board of Appeals and Review* (D.C. App. 1976, 355 A.2d 789).

Procedural requirements

Prior to suspension of license under this chapter, hearing on question whether there is reasonable possibility of liability by uninsured is required as matter of due process. *H. Thomas et al. v. District of Columbia Board of Appeals and Review* (D.C. App. 1976, 355 A.2d 789).

As respects hearing required prior to suspension of license under this chapter on question whether there is reasonable possibility of liability by uninsured, while inquiry into fault or liability may be viewed as different from inquiry into reasonable possibility of such, difference is in degree only; the more absolute and final the determination, the greater the procedural protections must be, and thus, procedure which is appropriate to nature of the case of a possibility of liability is far less than for final adjudication of that issue. *Id.*

"Contested case standard" is inapplicable to hearing required to be held before license can be suspended under this chapter on issue whether there is reasonable possibility of liability by uninsured, and thus, in proceedings under this chapter, type of hearing required does not include right to compel attendance of witnesses for cross-examination. *Id.*

To extent there is burden in automobile license suspension cases under this chapter, it rests on Department of Motor Vehicles; however, issue at such hearings is not determination of fact respecting fault, but rather, is determination whether there is evidence, together with permissible inferences, which, if believed, could by reasonable possibility form predicate for liability of uninsured, and burden is not one of proof, but, one of ascertaining existence of evidence sufficient for test of reasonably possible liability. *Id.*

§ 40-438. Release from liability.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-440. Agreements for payment of damages.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-442. Termination of security requirement.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-443. Duration of suspension.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-444. Nonresidents—Unlicensed drivers—Unregistered vehicles—Accidents in other States.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-445. Commissioner authorized to decrease amount of security.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-446. Correction of Commissioner's action within one year.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-447. Disposition of security.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-448. Return of deposit.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-449. Matters not to be evidence in civil suits.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-453. Suspension of license and registration for certain convictions—Effect of proof of financial responsibility—Vehicles owned or leased by the United States, a State, or a political subdivision thereof—Suspension for out of District convictions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-454. Duration of suspension—Giving and maintenance of proof of financial responsibility.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-455. Suspension of unlicensed or licensed person after certain convictions—Proof of financial responsibility required—Certificate of conviction to be forwarded to Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-456. Suspension of nonresidents' operating privilege—Duration.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-457. Report by courts of nonpayment of judgments.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-458. Judgment against a nonresident—Transmittal of copy to license and registration official of defendant's State.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-459. Suspension for nonpayment of judgment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-461. Consent by judgment creditor to allowance of license, registration, or operating privileges to judgment debtor.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-462. Commissioner's finding that an insurer is obligated to pay judgment—Effect of finding—License, registration and operating privileges in the event of a finding.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-463. Continuance of suspension until judgment paid and proof given.

Such license, registration and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided and until the said person gives proof of financial responsibility subject to the exemptions stated in sections 40-460, 40-461, and 40-466, except that if the right to enforce said judgment by docketing and revival, or by revival, shall have expired without such docketing and revival, or if the judgment creditor fails to file notice of the docketing and revival of his judgment with the Mayor, the suspension of the license or registration of the judgment debtor shall be terminated. (May 25, 1954, 68 Stat. 132, ch. 222, § 47; Apr. 26, 1977, D.C. Law 1-133, title IV, § 401, 23 DCR 9697.)

AMENDMENT

1977—Act Apr. 26, 1977, D.C. Law 1-133, amended section by inserting a comma and the provision immediately following "stated in sections 40-460, 40-461, and 40-466".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 501 of act Apr. 26, 1977, D.C. Law 1-133, set out as a note under § 40-102.

§ 40-466. Installment payment of judgments—Default.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-467. Breach of agreement to pay in installments.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-470. Certificate of insurance as proof.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Estoppel

Automobile liability insurer's erroneous filing of certificate of insurance with Department of Motor Vehicles in accordance with Motor Vehicle Safety Responsibility Act (this chapter), even though insured had not renewed the policy, estopped insurer from denying existence of policy meeting the minimum requirements of the Act when insured was involved in an accident after his original policy had expired. *Government Employees Insurance Company v. Stonewall Casualty Company* (D.C. App. 1973, 301 A. 2d 72).

§ 40-471. Certificate filed by nonresident as proof of financial responsibility.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-472. Default by nonresident insurance carrier.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-473. "Motor-vehicle liability policy" defined.

NOTES TO DECISIONS

Estoppel

Automobile liability insurer's erroneous filing of certificate of insurance with Department of Motor Vehicles in accordance with Motor Vehicle Safety Responsibility Act (this chapter), even though insured had not renewed the policy, estopped insurer from denying existence of policy meeting the minimum requirements of the Act when insured was involved in an accident after his original policy had expired. *Government Employees Insurance Company v. Stonewall Casualty Company* (D.C. App. 1973, 301 A. 2d 72).

§ 40-474. Notice of cancellation or termination of certified policy.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Estoppel

Automobile liability insurer's erroneous filing of certificate of insurance with Department of Motor Vehicles in accordance with Motor Vehicle Safety Responsibility Act (this chapter), even though insured had not renewed the policy, estopped insurer from denying existence of policy meeting the minimum requirements of the Act when insured was involved in an accident after his original policy had expired. *Government Employees Insurance Company v. Stonewall Casualty Company* (D.C. App. 1973, 301 A. 2d 72).

§ 40-476. Surety bond as proof of financial responsibility.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-477. Bond a lien against scheduled real estate—Recording—Notice.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-479. Deposit of money with Commissioner—Certificate—Evidence of no unsatisfied judgments.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-481. Owner of a motor vehicle may give proof for others.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-482. Substitution of proof.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-483. Requirement of other proof of financial responsibility—Prior proof—Suspension.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-484. Duration of proof—Cancellation or return of proof.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-485. Transfer of registration to defeat purpose of chapter.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-486. Surrender of license and registration.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-488. Erroneous report—Forged signature—Filing forged evidence of proof of financial responsibility—Penalty—False swearing.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-494. Self-insurers.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-498. Interpretation of provisions of chapter.**NOTES TO DECISIONS****Purpose**

Motor Vehicle Safety Responsibility Act (this chapter) is a remedial statute designed to protect, so far as possible, innocent persons injured by negligent operation of motor vehicles. *Government Employees Insurance Company v. Stonewall Casualty Company* (D.C. App. 1973, 301 A. 2d 72).

Chapter 5.—PUBLIC-OWNED VEHICLES**Sec.**

40-501a. Official use of motor vehicles.

40-504. Omitted.

§ 40-501a. Official use of motor vehicles.

All passenger motor vehicles and watercraft owned by the District of Columbia shall be operated and utilized in conformity with section 5 of the Act of July 16, 1914, as amended by section 16 of the Act of August 2, 1946 (31 U.S.C. 638a), and shall be under the direction and control of the Mayor of the District of Columbia. The Mayor is authorized to alter

or change the assignment or direct the alteration or interchangeable use of any passenger motor vehicles or watercraft by officers and employees of the District of Columbia except as otherwise provided in such Act. Limitations on the official use of passenger motor vehicles, as set out in section 5 of such Act, shall not apply to the Mayor or, with the approval of the Mayor, to officers and employees of the District government the character of whose duties make such transportation necessary. (Oct. 26, 1973, Pub. L. 93-140, § 2, 87 Stat. 504.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

APPROPRIATIONS

See note under § 1-226a.

PRIOR PROVISIONS

Similar provisions were contained in the following prior District of Columbia appropriation acts:

1974—Aug. 14, 1973, Pub. L. 93-91, § 7, 87 Stat. 309.
 1973—July 10, 1972, Pub. L. 92-344, § 8, 86 Stat. 455.
 1972—Dec. 18, 1971, Pub. L. 92-202, § 9, 85 Stat. 686.
 1971—July 16, 1970, Pub. L. 91-337, § 9, 84 Stat. 436.
 1970—Dec. 24, 1969, Pub. L. 91-155, § 10, 83 Stat. 432.
 1969—Aug. 10, 1968, Pub. L. 90-473, § 10, 82 Stat. 699.
 1968—Nov. 13, 1967, Pub. L. 90-134, § 10, 81 Stat. 440.
 1967—Nov. 2, 1966, 80 Stat. 1173, Pub. L. 89-743, § 10.
 1966—July 16, 1965, 79 Stat. 242, Pub. L. 89-75, § 10.
 1965—Aug. 22, 1964, 78 Stat. 592, Pub. L. 88-479, § 10.
 1964—Dec. 30, 1963, 77 Stat. 839, Pub. L. 88-252, § 10.
 1963—Oct. 23, 1962, 76 Stat. 1154, Pub. L. 87-867, § 10.
 1962—Sept. 21, 1961, 75 Stat. 564, Pub. L. 87-265, § 10.
 1961—Apr. 8, 1960, 74 Stat. 30, Pub. L. 86-412, § 10.
 1960—July 23, 1959, 73 Stat. 238, Pub. L. 86-104, § 10.
 1959—Aug. 6, 1958, 72 Stat. 511, Pub. L. 85-594, § 10.
 1958—June 27, 1957, 71 Stat. 205, Pub. L. 85-61, § 10.
 1957—June 29, 1956, 70 Stat. 453, ch. 479, § 12.
 1956—July 5, 1955, 69 Stat. 263, ch. 272, § 12.
 1955—July 1, 1954, 68 Stat. 395, ch. 449, § 13.
 1954—July 31, 1953, 67 Stat. 295, ch. 299, § 14.
 1953—July 5, 1952, 66 Stat. 391, ch. 576, § 14.
 1952—Aug. 3, 1951, 65 Stat. 173, ch. 292, § 14.
 1951—July 18, 1950, 64 Stat. 361, ch. 467, § 1.
 1950—June 29, 1949, 63 Stat. 316, ch. 279, § 1.
 1949—June 19, 1948, 62 Stat. 551, ch. 555, § 1.
 1948—July 25, 1947, 61 Stat. 440, ch. 324, § 1.
 1947—July 9, 1946, 60 Stat. 516, ch. 544, § 1.
 1946—June 30, 1945, 59 Stat. 287, ch. 209, § 1.
 1945—June 28, 1944, 58 Stat. 524, ch. 300, § 1.
 1944—July 1, 1943, 57 Stat. 318, ch. 184, § 1.
 1943—June 27, 1942, 56 Stat. 429, ch. 452, § 1.
 1942—July 1, 1941, 55 Stat. 504, ch. 271, § 1.
 1941—June 12, 1940, 54 Stat. 312, ch. 333, § 1.
 1940—July 15, 1939, 53 Stat. 1009, ch. 281, § 1.
 1939—Apr. 4, 1938, 52 Stat. 162, ch. 62, § 1.
 1938—June 29, 1937, 50 Stat. 364, ch. 403, § 1.
 1937—June 23, 1936, 49 Stat. 1859, ch. 726, § 1.
 1936—June 14, 1935, 49 Stat. 345, ch. 241, § 1.
 1935—June 4, 1934, 48 Stat. 851, ch. 389, § 1.
 1934—June 16, 1933, 48 Stat. 226, ch. 93, § 1.
 1933—June 29, 1932, 47 Stat. 348, ch. 308, § 1.
 1932—Feb. 23, 1931, 46 Stat. 1382, ch. 282, § 1.
 1931—July 3, 1930, 46 Stat. 955, ch. 848, § 1.
 1930—Feb. 25, 1929, 45 Stat. 1267, ch. 314, § 1.
 1929—May 21, 1928, 45 Stat. 650, ch. 659, § 1.

USE OF CHAUFFEURS

Section 111 of title I of the District of Columbia Appropriation Act, 1977 (Oct. 1, 1976, Pub. L. 94-446, 90 Stat. 1494) provided:

"No part of any funds appropriated by this title shall be used to pay the compensation (whether by contract or

otherwise) of any individual for performing services as a chauffeur or driver for any designated officer or employee of the District of Columbia government (other than the Mayor of the District of Columbia, Chief of Police and Fire Chief), or for performing services as a chauffeur or driver of a motor vehicle assigned for the personal or individual use of any such officer or employee (other than the Mayor of the District of Columbia, Chief of Police and Fire Chief). No part of any funds appropriated by this title, in excess of \$1,000 per month in the aggregate (\$12,000 per annum) shall be used to pay the compensation (whether by contract or otherwise) of individuals for performing services as a chauffeur or driver for the Mayor of the District of Columbia, or for performing services as a chauffeur or driver of a motor vehicle assigned for the personal or individual use of the Mayor of the District of Columbia."

Similar provisions were contained in the following prior appropriation acts:

1976—June 30, 1976, Pub. L. 94-333, § 10, 90 Stat. 791.
 1975—Aug. 31, 1974, Pub. L. 93-405, § 10, 88 Stat. 828.
 1974—Aug. 14, 1973, Pub. L. 93-91, § 13, 87 Stat. 310.
 1973—July 10, 1972, Pub. L. 92-344, § 14, 86 Stat. 455.
 1972—Dec. 18, 1971, Pub. L. 92-202, § 16, 85 Stat. 687.

§ 40-504. Omitted.

This section, which prohibited transfer of motor vehicles from the police and fire departments to any other branch of the District government, is omitted as it was not continued by the District of Columbia Appropriation Act, 1975. The section was repeated in the District of Columbia Appropriation Acts listed below through the 1961 Act (Pub. L. 86-412). Hereafter, the section was not repeated, but appears to have been continued by the 1962 through the 1974 Appropriation Acts listed below which provided in part: "Except as otherwise provided herein, limitations and legislative provisions contained in the District of Columbia Appropriation Act, 1961, shall be applicable during the current fiscal year . . .".

1974—Aug. 14, 1973, Pub. L. 93-91, § 10, 87 Stat. 310.
 1973—July 10, 1972, Pub. L. 93-344, § 11, 86 Stat. 455.
 1972—Dec. 18, 1971, Pub. L. 92-202, § 13, 85 Stat. 687.
 1971—July 16, 1970, Pub. L. 91-337, § 14, 84 Stat. 437.
 1970—Dec. 24, 1969, Pub. L. 91-155, § 15, 83 Stat. 433.
 1969—Aug. 10, 1968, Pub. L. 90-473, § 15, 82 Stat. 700.
 1968—Nov. 13, 1967, Pub. L. 90-134, § 15, 81 Stat. 441.
 1967—Nov. 2, 1966, 80 Stat. 1173, Pub. L. 89-743, § 15.
 1966—July 16, 1965, 79 Stat. 242, Pub. L. 89-75, § 15.
 1965—Aug. 22, 1964, 78 Stat. 593, Pub. L. 88-479, § 15.
 1964—Dec. 30, 1963, 77 Stat. 840, Pub. L. 88-252, § 15.
 1963—Oct. 23, 1962, 76 Stat. 1155, Pub. L. 87-867, § 15.
 1962—Sept. 21, 1961, 75 Stat. 564, Pub. L. 87-265, § 15.
 1961—Apr. 8, 1960, 74 Stat. 30, Pub. L. 86-412, § 10.
 1960—July 23, 1959, 73 Stat. 238, Pub. L. 86-104, § 10.
 1959—Aug. 6, 1958, 72 Stat. 511, Pub. L. 85-594, § 10.
 1958—June 27, 1957, 71 Stat. 205, Pub. L. 85-61, § 10.
 1957—June 29, 1956, 70 Stat. 453, ch. 479, § 12.
 1956—July 5, 1955, 69 Stat. 263, ch. 272, § 12.
 1955—July 1, 1954, 68 Stat. 395, ch. 449, § 13.
 1954—July 31, 1953, 67 Stat. 295, ch. 299, § 14.
 1953—July 5, 1952, 66 Stat. 391, ch. 576, § 14.
 1952—Aug. 3, 1951, 65 Stat. 173, ch. 292, § 14.
 1951—July 18, 1950, 64 Stat. 361, ch. 467, § 1.
 1950—June 29, 1949, 63 Stat. 316, ch. 279, § 1.
 1949—June 19, 1948, 62 Stat. 551, ch. 555, § 1.
 1948—July 25, 1947, 61 Stat. 441, ch. 324, § 1.
 1947—July 9, 1946, 60 Stat. 516, ch. 544, § 1.
 1946—June 30, 1945, 59 Stat. 287, ch. 209, § 1.
 1945—June 28, 1944, 58 Stat. 524, ch. 300, § 1.
 1944—July 1, 1943, 57 Stat. 318, ch. 184, § 1.
 1943—June 27, 1942, 56 Stat. 429, ch. 452, § 1.
 1942—July 1, 1941, 55 Stat. 505, ch. 271, § 1.
 1941—June 12, 1940, 54 Stat. 312, ch. 333, § 1.
 1940—July 15, 1939, 53 Stat. 1010, ch. 281, § 1.
 1939—Apr. 4, 1938, 52 Ch. 162, ch. 62, § 1.
 1938—June 29, 1937, 50 Stat. 364, ch. 403, § 1.
 1937—June 23, 1936, 49 Stat. 1859, ch. 726, § 1.
 1936—June 14, 1935, 49 Stat. 346, ch. 241, § 1.
 1935—June 4, 1934, 48 Stat. 851, ch. 389, § 1.
 1934—June 16, 1933, 48 Stat. 226, ch. 93, § 1.
 1933—June 29, 1932, 47 Stat. 348, ch. 308, § 1.
 1932—Feb. 23, 1931, 46 Stat. 1382, ch. 282, § 1.

1931—July 3, 1930, 46 Stat. 955, ch. 848, § 1.
 1930—Feb. 25, 1929, 45 Stat. 1267, ch. 314, § 1.
 1929—May 21, 1928, 45 Stat. 650, ch. 659, § 1.

Chapter 6.—REGULATION OF TRAFFIC

Sec.

40-603-3. Repealed.

40-603c. Issuance of duplicate congressional tags.

CHAPTER REFERRED TO IN U.S. CODE

This chapter is referred to in section 212b of title 40, U.S. Code.

§ 40-601. Short title.

SHORT TITLE

The first section of act Apr. 26, 1977, D.C. Law 1-133, provided "That this act [amending §§ 40-102, 40-301, 40-302, 40-420, 40-463, 40-602, and 40-603] may be cited as the 'District of Columbia Motor Vehicle Act'."

§ 40-602. Definitions.

When used in this chapter—

* * * * *

(d) The term "Mayor" means the Mayor of the District of Columbia or his designated agent.

* * * * *

(As amended Apr. 26, 1977, D.C. Law 1-133, title II, § 201(a), 23 DCR 9697.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1977—Act Apr. 26, 1977, D.C. Law 1-133, amended par. (d) generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 501 of act Apr. 26, 1977, D.C. Law 1-133, set out as a note under § 40-102.

§ 40-603. Council authorized to make regulations—Department of Vehicles and Traffic—Director—Congressional tags—Titling—Arterial and boulevard highways—Council may prescribe penalties—Publication of regulations—Signs on highways—Prosecutions—Excise tax imposed for issuance of motor vehicle title certificates—Impoundment of motor vehicle for outstanding traffic violation notices.

* * * * *

(c) The Council of the District of Columbia is authorized and empowered to make and modify, and the Mayor is authorized and empowered to enforce, reasonable regulations in respect to brakes, horns, lights, mufflers, and other equipment, the inspection of the same; the registering, reregistering, titling, retitling, transferring of titles, and revocation of the certificate of title to motor vehicles and trailers: *Provided*, That congressional tags shall be issued by the Mayor under consecutive numbers, one to each Senator and Representative in Congress, to the elective officers and disbursing clerks of the Senate and the House of Representatives, the chief clerk of the Senate, the Parliamentarian of the Senate, the Parliamentarian of the House of Representatives, the attending physician of the Capitol, and the assistant secretaries (one for the majority and one for the minority of the Senate),

for their official use, which, when used by them individually while on official business, shall authorize them to park their automobiles in any available curb space in the District of Columbia, except within fire plug, fire house, loading station, and loading platform limitations, and such congressional tags shall not be assigned to or used by others: *Provided further*, That such congressional tags shall be valid only for the Congress in which such tags are so issued, and it shall be unlawful to display such congressional tags for a period longer than thirty days after the opening of the next Congress.

Any person violating this section shall be fined not more than \$300 or imprisoned not more than ninety days, or both.

* * * * *

(h) All regulations promulgated under the authority of this chapter shall be published in a newspaper of general circulation, other than in its legal notice section, and in accordance with the requirements of the District of Columbia Administrative Procedure Act [D.C. Code, sec. 1-1501 et seq.] but no penalty shall be enforced for any violation of any such regulation which occurs within ten days after the date of such publication, except that whenever the Council of the District of Columbia deems it advisable to make effective immediately any regulation relating to parking, diverting of vehicular traffic, or the closing of streets, to such traffic, the regulation shall become effective immediately upon placing at the point where it is to be enforced conspicuous signs containing a notice of the regulation. The placing at or upon the public highway of any sign relating to parking or regulation of traffic, except by the authority of the Council of the District of Columbia or its designated agent, or of the joint board, is prohibited: *Provided*, That this restriction shall not apply to any such signs which do not purport to reserve space on the public highways and which the Public Service Commission may authorize under the provision of this chapter.

* * * * *

(j) In addition to the fees and charges levied under other provisions of this chapter, there is hereby levied and imposed an excise tax on the issuance of every original certificate of title for a motor vehicle or trailer in the District and, in the case of a sale, resale, gift or other transfer thereof, on the issuance of every subsequent certificate of title (except in the case of a bona fide gift between spouses or between parent and child) at the following percentage of the fair market value of the motor vehicle or trailer at the time the certificate of title is issued:

Weight Class	Rate of Tax
Class I (2,799 pounds or less) -----	4%
Class II (2,800-3,499 pounds) -----	5%
Class III (3,500-3,999 pounds) -----	6%
Class IV (4,000 pounds or more) -----	7%

For the purpose of this section, the Mayor or his duly authorized representative shall determine the fair market value of a motor vehicle or trailer. As used in this section, the term "original certificate of

title" shall mean the first certificate of title issued by the District of Columbia for any particular motor vehicle or trailer. No certificate of title so issued shall be delivered or furnished to the person entitled thereto until the tax has been paid in full. The Assessor of the District of Columbia may require every applicant for a certificate of title to supply such information as he deems necessary as to the time of purchase, the purchase price, and other information relative to the determination of the fair market value of any motor vehicle or trailer for which a certificate of title is required and issued. The issuance of certificates of title for the following motor vehicles and trailers shall be exempt from the tax imposed by this subsection:

(1) Motor vehicles and trailers owned by the United States or the District of Columbia.

(2) Motor vehicles and trailers purchased or acquired by nonresidents prior to coming into the District of Columbia and establishing or maintaining residences in the District.

(3) Motor vehicles and trailers purchased or acquired by nonresidents prior to coming into the District of Columbia and establishing or maintaining a business or businesses in the District. Except as hereinafter provided, it is not intended to exempt from the tax the issuance of certificates of title for motor vehicles and trailers owned by nonresidents who are engaged in business in the District at the time of their purchase or acquisition of such vehicles and trailers and who use such vehicles and trailers in the conduct of their District business or businesses.

(4) Motor vehicles and trailers owned by a utility or public service company for use in furnishing a commodity or service: *Provided*, That the receipts from furnishing such commodity or service are subject to a gross-receipts or mileage tax in force in the District of Columbia at the time of a certificate of title for any such vehicle or trailer is issued.

(5) New motor vehicles acquired from dealers as replacements for defective vehicles purchased new not more than sixty days prior to the date of such replacement, except that if the fair market value of any replacement vehicle is greater than that of the vehicle which it replaces, then the tax imposed by this section shall be paid on such difference in value. If the fair market value of any replacement vehicle is less than that of the vehicle which it replaces, then the Mayor or his designated agent is authorized to refund to the owner of the replacement vehicle an amount equal to the difference between the excise tax paid on the defective vehicle and the excise tax paid on the replacement vehicle.

* * * * *

(As amended Nov. 1, 1973, Pub. L. 93-145, § 101, 87 Stat. 531; Oct. 21, 1975, D.C. Law 1-23, title I, § 102, formerly § 102(a), 22 DCR 2094, as redesignated Jan. 22, 1976, D.C. Law 1-42, § 7(b), 22 DCR 6317; June 15, 1976, D.C. Law 1-70, title II, § 201, 23 DCR 536; Apr. 19, 1977, D.C. Law 1-124, title I, § 102, 23 DCR 8749; Apr. 26, 1977, D.C. Law 1-133, title IV, § 402, 23 DCR 9697.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1977—Act Apr. 26, 1977, D.C. Law 1-133, amended the first sentence of subsec. (h) generally. For prior provisions, see the 1973 edition of the Code.

Act Apr. 19, 1977, D.C. Law 1-124, amended subsec. (j) by substituting "2,799" and "2,800" for "2,800" and "2,801", respectively.

1976—Act June 15, 1976, D.C. Law 1-70, amended subsec. (j) by substituting the first two sentences for the first sentence which read: "In addition to the fees and charges levied under other provisions of this chapter, there is hereby levied and imposed an excise tax for the issuance of every original certificate of title for a motor vehicle or trailer in the District, and for the issuance of every subsequent certificate of title for a motor vehicle or trailer in the District in the case of sale or resale thereof, at the rate of 6 per centum of the fair market value of such motor vehicle or trailer at the time such certificate is issued, as determined by the Assessor of the District of Columbia or his duly authorized representatives."

Act Jan. 22, 1976, D.C. Law 1-42, amended § 102(a) of act Oct. 21, 1975, D.C. Law 1-23, cited as a source credit, by redesignating it as § 102.

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended subsec. (j), by striking out "5 per centum" and inserting "6 per centum" in lieu thereof.

1973—Section 101 of Act Nov. 1, 1973, Pub. L. 93-145, amended subsec. (c) by striking out "Comptroller of the Senate," effective as of July 1, 1973.

EFFECTIVE DATES OF 1977 AMENDMENTS

For act Apr. 26, 1977, D.C. Law 1-133, see section 501 of that act set out as a note under § 40-102.

For act Apr. 19, 1977, D.C. Law 1-124, see section 1101 of that act set as a note under § 47-1557a.

EFFECTIVE DATES OF 1976 AMENDMENTS

For effective date of act June 15, 1976, D.C. Law 1-70, see sec. 1401 of such act set out as a note under § 40-103.

For effective date of act Jan. 22, 1976, D.C. Law 1-42, see sec. 10 of such act set out as a note under § 47-130c.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(a) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 40-103.

MAYOR TO SUBMIT LEGISLATIVE PROPOSAL

Section 104(b) of act Oct. 21, 1975, D.C. Law 1-23, provided: "The Mayor of the District of Columbia shall submit to the Council of the District of Columbia, no later than January 1, 1976, proposed legislation detailing a restructured three-tier motor vehicle excise tax rate which provides for a substantially lower tax rate for lighter weight, compact and subcompact automobiles."

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1006, 1-1412, 1-1443b, 25-127, 40-102, 40-603-1, 40-603b, 40-612, 43-907, 47-2331, 47-2333.

NOTES TO DECISIONS

Evidence

Where driver's counsel at license revocation hearing had not had transcript of testimony given at earlier license suspension hearing and hearing officer at revocation hearing had unequivocally advised counsel that urinalysis had showed .21 ethyl alcohol, driver was entitled to challenge on appeal from revocation a police officer's testimony, given at suspension hearing, that urinalysis report showed "zero-two-one, ethyl alcohol," on ground that it was not

clear whether he meant .021 or 0.21, although counsel had failed to complain at revocation hearing during which hearing officer read statement of facts, including the police officer's testimony. *M. T. Reap v. Department of Motor Vehicles of the District of Columbia* (D.C. App. 1973, 305 A. 2d 513).

Where hearing officer at license revocation hearing had not examined laboratory urinalysis report which police officer, at earlier suspension hearing, had testified showed "zero-two-one, ethyl alcohol," and record did not contain the report so that it was not clear whether witness meant .021 or 0.21, officer's testimony concerning the urinalysis should not have been accorded any probative weight and, inasmuch as hearing officer expressly relied upon that testimony in revoking driver's license, revocation order must be reversed and case remanded for new hearing. *Id.*

Search and seizure

Where officer had probable cause to arrest defendant for operating a motor vehicle after revocation of his operator's permit and effected a full custody arrest, search of defendant's person without search warrant, inspection of crumpled cigarette package found on defendant's person and seizure of heroin capsules found in the package were permissible even though officer did not indicate any subjective fear of defendant and did not suspect that defendant was armed. *United States v. W. Robinson, Jr.* (1973, 94 S.Ct. 467, 414 U.S. 218; rev'g 471 F. 2d 1082, 153 U.S. App. D.C. 114).

Absent "special circumstances," a police officer has no right to search either the person or the vehicle incident to a lawful arrest for violation of a mere motor vehicle regulation. *United States v. W. Robinson, Jr.* (1972, 471 F. 2d 1082, 153 U.S. App. D.C. 114; rev'd 94 S. Ct. 467, 414 U.S. 218).

Arresting officers did not have reasonable grounds to search a passenger in back seat of an automobile stopped during "rush hour" for speeding even if after automobile stopped they observed passenger move his right arm and shoulder as if to hide something or put something away, and a gun and heroin found in such search should have been suppressed pursuant to defendant's motions. *United States v. L. N. Page* (D.C. App. 1972, 298 A. 2d 233).

§ 40-603-2. Commissioner may enter into interstate agreement concerning enforcement of traffic laws.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-14 and 1-161.

§ 40-603-3. Repealed. Jan. 22, 1976, D.C. Law 1-42, § 7(a), 22 DCR 6317.

Section, act Oct. 21, 1975, D.C. Law 1-23, title I, § 102 (b), 22 DCR 2094, provided for the deposit into the Metrobus Fund of a portion of the proceeds from the excise tax for the issuance of motor vehicle title certificates.

EFFECTIVE DATE OF REPEAL

See sec. 10 of act Jan. 22, 1976, D.C. Law 1-42, set out as a note under § 47-130c.

§ 40-603c. Issuance of duplicate congressional tags.

Each Senator, Member of the House of Representatives, and other individual who is authorized by law to be issued a congressional tag for his automobile shall, upon application therefor, be entitled to be issued a duplicate tag bearing the same number. (Aug. 5, 1977, Pub. L. 95-94, title IV, § 410, 91 Stat. 684.)

CODIFICATION

Section was enacted as part of the Legislative Branch Appropriation Act, 1978, and not as part of the District of Columbia Traffic Act, 1925, which comprises this chapter.

§ 40-604. Parking space for Members of Congress.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-604a. Parking of automobiles in Municipal Center—Regulations—Violations and penalties.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Deposit of fees in General Fund, see § 40-808.

§ 40-605. Speeding and reckless driving.**NOTES TO DECISIONS****Constitutional rights—Summation**

Where trial court mistakenly read entire definition of reckless driving to jury rather than merely portion of this section with which defendant was charged, defendant's summation was spent solely in asserting his innocence under portion of this section with which he was not charged, and trial court subsequently gave instruction limited to applicable portion, defendant's decision to argue nonapplicable portion of this section was tactical choice, and thus defendant was not deprived of right to make final summation to jury. *B. M. Murray v. District of Columbia* (D.C. App. 1976, 358 A.2d 651).

Instructions

Where trial court had mistakenly instructed jury as to both offenses of reckless driving under this section, it was not improper for trial court to call jury from its deliberations and withdraw from jury's consideration inapplicable portions of court's previous overinclusive instruction. *B. M. Murray v. District of Columbia* (D.C. App. 1976, 358 A.2d 651).

§ 40-606. Negligent homicide.**NOTES TO DECISIONS****Construction**

Negligent homicide statute was unambiguously designed to protect individual victims; gravamen of crime is not act of operating motor vehicle negligently, but rather, killing of human being. *W. G. Murray v. United States and District of Columbia* (D.C. App. 1976, 358 A.2d 314).

Evidence—Admissibility

Though it was hearsay, testimony of defendant's employer concerning contents of alleged telephone threat against defendant, should have been admitted to show state of mind it might have induced in defendant, in prosecution for carrying pistol without license, assault with deadly weapon, and negligent homicide, but trial court's exclusion of this testimony is not reversible error, where any possible prejudice was cured by admission of other evidence, including testimony by defendant, as to the content of the threat and its effect on his state of mind. *N. L. Cooper v. United States* (D.C. App. 1975, 353 A.2d 696).

— Good character

Though a defendant's reputation for truthfulness might not always be sufficiently germane to charge of violent behavior to warrant admission, where defendant's credibility may have played determinative role in jury's decision, it is error to bar competent testimony as to defendant's reputation for truthfulness, but where defendant was permitted to introduce testimony which bore on credibility, and court charged jury that charac-

ter evidence alone may create reasonable doubt of guilt, error is harmless. *N. L. Cooper v. United States* (D.C. App. 1975, 353, A.2d 696).

Indictment

After Government's election to proceed only on theory of involuntary manslaughter under duplicitous indictment which failed to distinguish between voluntary and involuntary manslaughter, trial suffered none of infirmities associated with one based upon duplicitous indictment, in that Government adduced no proof inconsistent with charge of involuntary manslaughter, motions for judgments of acquittal were addressed solely to that charge and to charge of negligent homicide, lesser included offense, and jury was instructed only on involuntary manslaughter; furthermore, jury acquitted motorist on charge of manslaughter as to both victims, which abrogates any question as to which crime indictment referred. *W. G. Murray v. United States and District of Columbia* (D.C. App. 1976, 358 A.2d 314).

Sentence

Imposition of consecutive one-year terms of imprisonment on two negligent homicide convictions of motorist arising out of automobile accident, was within discretionary power of trial court. *W. G. Murray v. United States and District of Columbia* (D.C. App. 1976, 358 A.2d 314).

§ 40-609. Fleeing from scene of accident—Driving under the influence of liquor or drugs.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS**Assistance of counsel**

Defendant's Sixth Amendment rights were not abridged in prosecution for fleeing scene of automobile collision which involved personal injury because trial judge failed to provide him with funds for legal representation and other services where defendant was represented by retained counsel throughout proceedings and no claim of indigency was presented to trial court. *G. P. Hall v. District of Columbia* (D.C. App. 1976, 353 A.2d 296).

Confessions

No reversible error resulted from trial court's refusal, in prosecution for fleeing scene of automobile collision which involved personal injury, to permit defense counsel to attack voluntariness of defendant's written statement, which was admitted during government's case with specific limitation on its use to possible later impeachment of defendant if he were to testify contrarily, that is, to allow defense "second bite" on issue, where in actuality, defense counsel was allowed to explore voluntariness of statement before jury during cross-examination of defendant and furthermore, trial court, in instructing jury in relation to voluntariness issue, gave specific instruction requested by defendant. *G. P. Hall v. District of Columbia* (D.C. App. 1976, 353 A.2d 296).

Evidence

In view of fact that this section's definition of offense of leaving after colliding and causing personal injury does not quantify injury, in view of complaining witness' testimony that he sustained personal injury when defendant's vehicle hit him and that defendant left scene of accident without asking whether witness was injured, and in view of defendant's own testimony admitting that he saw such witness push himself away from car with his hand, evidence is sufficient to sustain conviction of leaving scene of accident after colliding and causing personal injuries. *P. Tuchman v. District of Columbia* (D.C. App. 1977, 370 A.2d 1321).

Instructions

Since defendant's written statement, admitted during government's case with specific limitation on its use to

possible later impeachment of defendant if he were to testify contrarily, was not actually confession nor admission, trial court did not err in failing to give instruction of corroboration of confessions and admissions in prosecution for fleeing scene of automobile collision which involved personal injury. *G. P. Hall v. District of Columbia* (D.C. App. 1976, 353 A.2d 296).

Intoxication

For purpose of revoking or suspending a driver's license, a motorist is acting under the influence of alcohol even when its effect is combined with that of another cause, such as taking prescription drug; emphasis of governing motor vehicle regulations is on physical conditions which render one a dangerous motorist, rather than on whether such condition resulted from matters within the driver's control. *G. J. Bodoh v. District of Columbia Bureau of Motor Vehicle Services* (D.C. App. 1977, 377 A.2d 1135).

§ 40-609a. Operating of vehicles while under the influence of intoxicating liquor and in violation of other laws—Prima facie evidence of intoxication—Relevant evidence of use of intoxicating liquor.

NOTES TO DECISIONS

Intoxication

For purpose of revoking or suspending a driver's license, a motorist is acting under the influence of alcohol even when its effect is combined with that of another cause, such as taking prescription drug; emphasis of governing motor vehicle regulations is on physical conditions which render one a dangerous motorist, rather than on whether such condition resulted from matters within the driver's control. *G. J. Bodoh v. District of Columbia Bureau of Motor Vehicle Services* (D.C. App. 1977, 377 A.2d 1135).

§ 40-612. Convictions to be reported.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-613. Control over park system not affected by this chapter.

NOTES TO DECISIONS

Bus tours

Secretary of Interior has exclusive authority to regulate interpretive tour service operated under contract with Department of Interior, and service therefor is immune from enforcement of District of Columbia licensing and registration requirements. *District of Columbia et al. v. Landmark Services, Inc.* (1976, 416 F. Supp. 559).

§ 40-616. Parking meters.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Additional parking meters and devices, see § 40-804(e).
Deposit of fees in General Fund, see § 40-808.
Rules and regulations generally, see § 40-603.

§ 40-617. Loitering by public cabs.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 7.—LIENS ON MOTOR VEHICLES OR TRAILERS

§ 40-705. Liens to be kept by recorder in director's office.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-715. Appropriation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 8.—REGULATION OF PARKING

Sec.

§ 40-808. Deposit of fees and moneys into General Fund.

§ 40-803. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-804. Powers—Acquisition of property—Construction and maintenance—Leasing to private interests—Disposal of property—Establishment of rates—Miscellaneous rules and regulations—Parking meters.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-805. Motor-Vehicle Parking Agency—Creation and composition—Term—Powers.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-807. Records and data available—Additional surveys.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-808. Deposit of fees and moneys into General Fund.

All fees and other moneys collected under this chapter, including all fees collected pursuant to sections 40-616 and 40-604a, and all moneys derived from the sale or assignment of any property, real or personal, shall be deposited in the General Fund of the District of Columbia as established by the Revenue Funds Availability Act of 1975. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 7; Dec. 16, 1944, 58 Stat. 809, ch. 595, § 3; Mar. 2, 1962, 76 Stat. 18, Pub. L. 87-408, § 601; Jan. 22, 1976, D.C. Law 1-42, § 3(c), 22 DCR 6312.)

REFERENCE IN TEXT

The General Fund of the District of Columbia, referred to in text, was established by section 9 of the Revenue Funds Availability Act of 1975 (D.C. Law 1-42, Jan. 22, 1976) which is classified to § 47-130c.

AMENDMENT

1976—Act Jan. 22, 1976, D.C. Law 1-42, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 10 of act. Jan. 22, 1976, D.C. Law 1-42, set out as a note under § 47-130c.

§ 40-809. Appropriations—Employment of director—Salaries of employees—Salaries of members of agency.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-809a. Acquisition of new parking facilities prohibited—Operation and expansion of existing facilities—Exempt facilities.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-810. Parking restrictions—Vehicles impounded—Penalties.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS**Removal of vehicle by individual**

Where defendant removed automobiles, which either had valid license tags or were virtually undamaged and could not therefore have reasonably have been regarded as abandoned, from parking lot under authorization by property managers, who did not have authority to contract with defendant for removal of such vehicles, defendant had no right to tow away such automobiles and thus was properly found guilty of taking property without right. *L. R. Fogle, Sr. v. United States* (D.C. App. 1975, 336 A.2d 833).

Chapter 9.—INSTALLMENT SALES OF MOTOR VEHICLES**§ 40-901. Definitions.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22-2204.

NOTES TO DECISIONS**Civil remedy for violations**

Where used car dealer violated numerous fundamental provisions of District of Columbia regulations governing installment sales of motor vehicles, sales contract is illegal and "void" as that term is used in cases construing the "Loan Shark Law" (sections 26-601 et seq.) and, therefore, the sale contract, being unenforceable, gave dealer no right to foreclose on the automobile. *J. R. Vines et al. v. T. M. Hodges et al.* (1976, 422 F. Supp. 1292).

Where sellers of used car wrongfully foreclosed on car, buyers are entitled to damages therefore in the amount of payments they had made, minus rental value of car for period during which buyers used it and minus cost of towing car from point where it broke down, which cost sellers incurred at buyers' request. *Id.*

Nothing in the Truth in Lending Act suggests that provision for statutory damages and traditionally available common-law remedies were meant to be mutually exclusive and, therefore, aggrieved buyers are entitled to common-law remedy of rescission based on non-TILA causes of action as well as to damages for wrongful repossession and the statutory damage award under the TILA. *Id.*

Where, inter alia, undisputed facts do not warrant finding that defendants knowingly and willfully violated statutes and regulations applicable to sale of used car and where it is not established that price of used car contained an "exorbitant finance charge," no award of punitive damages is proper on summary judgment motion, in action under the Truth in Lending Act and this chapter. *Id.*

§ 40-902. Maximum finance charges—Computation—Proportionate adjustments—Investigation of economic conditions to determine finance charges—Regulations—Classification of parties—Waiver.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS**Construction**

Provision of this section permitting interest rates in excess of 8% with respect to installment loans on certain categories of motor vehicle sales is available to finance company, which thus could recover 14% interest on retail installment contract for sale of second-hand vehicle less than four years old, notwithstanding contention that such provision is applicable only when action is brought by original payee of the note (the car dealer) or a holder in due course. *J. T. Randolph et ux. v. Franklin Investment Co., Inc.* (D.C. App. 1977, 368 A.2d 1151).

Deficiency judgment

Following repossession and sale of automobile under conditional sales contract, finance company was properly granted deficiency judgment though cash price of the vehicle was less than \$2,000, and despite contention that exemption under section 28-3812 for direct motor vehicle

installment loans from preclusions of deficiency judgment where cash price is \$2,000 or less applies only to the benefit of banking institutions. *J. T. Randolph et ux. v. Franklin Investment Co., Inc.* (D.C. App. 1977, 368 A.2d 1151).

§ 40-903. Bonding of automobile dealers and applicants—Liability Insurance—Designation of Commissioner as agent for service of process—Limitation on bonds—Action on bonds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-904. Delegation of functions—Exception.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-905. Promulgation of regulations—Public hearings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-906. False statements.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-907. Penalties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Civil remedy for violations

Where used car dealer violated numerous fundamental provisions of District of Columbia regulations governing installment sales of motor vehicles, sale contract is illegal and "void" as that term is used in cases construing the "Loan Shark Law" (sections 26-601 et seq.) and, therefore, the sale contract, being unenforceable, gave dealer no right to foreclose on the automobile. *J. R. Vines et al. v. T. M. Hodges et al.* (1976, 422 F. Supp. 1292).

Where sellers of used car wrongfully foreclosed on car, buyers are entitled to damages therefore in the amount of payments they had made, minus rental value of car for period during which buyers used it and minus cost of towing car from point where it broke down, which cost sellers incurred at buyers' request. *Id.*

Nothing in the Truth in Lending Act suggests that provision for statutory damages and traditionally available common-law remedies were meant to be mutually exclusive and, therefore, aggrieved buyers are entitled to common-law remedy of rescission based on non-TILA causes

of action as well as to damages for wrongful repossession and the statutory damage award under the TILA. *Id.*

Where, inter alia, undisputed facts do not warrant finding that defendants knowingly and wilfully violated statutes and regulations applicable to sale of used car and where it is not established that price of used car contained an "exorbitant finance charge," no award of punitive damages is proper on summary judgment motion, in action under the Truth in Lending Act and this chapter. *Id.*

§ 40-908. Corporation counsel to conduct prosecutions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-909. Additional authority granted to Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 10.—MOTOR VEHICLE OPERATORS—IMPLIED CONSENT TO BLOOD-ALCOHOL CONTENT TESTS

§ 40-1001. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-1002. Implied consent to blood-alcohol content tests—Administration—Accidents.

NOTES TO DECISIONS

Blood test—Procedure

Where police officers detected odor of liquor on motorist's breath before request was made that sample of his blood be drawn, and hospital delivered blood specimen, extracted in accordance with hospital emergency procedures, to police only after detective's investigation prompted him to make such specific request, it would have been unreasonable to require attending nurse or physician to draw additional blood at direction of police officer simply to comply literally with this chapter; that particular sequence of events did not render this chapter inapplicable where it was obvious that blood test procedure had law enforcement motivations and consequences. *W. G. Murray v. United States and District of Columbia* (D.C. App. 1976, 358 A.2d 314).

Construction

Evidentiary exclusion of section 40-1005 prohibiting use of blood test against one who is unconscious or otherwise incapable of refusing to submit to test if that person later objects to its introduction, resulting in automatic loss of driver's permit for six months, when considered in light of this chapter's overall purposes, does not apply in cases involving death or personal injury, and thus operator who was involved in motor vehicle collision in which death or bodily injury resulted did not have option of refusing to submit to chemical testing and objecting to introduction of test results against him on ground that he was incapable of refusal when specimen was extracted. *W. G. Murray v. United States and District of Columbia* (D.C. App. 1976, 358 A.2d 314).

While this chapter authorizes, under certain circumstances, performance of two types of chemical tests on operators of motor vehicles, who are either arrested and believed to be under influence of alcohol, or who are involved in accidents resulting in death or personal injury, it does not mandate proof of both tests at trial. *Id.*

§ 40-1003. Blood tests—Physician or nurse to withdraw blood—Additional test by private physician.

NOTES TO DECISIONS

Blood test—Procedure

Where police officers detected odor of liquor on motorist's breath before request was made that sample of his blood be drawn, and hospital delivered blood specimen, extracted in accordance with hospital emergency procedures, to police only after detective's investigation prompted him to make such specific request, it would have been unreasonable to require attending nurse or physician to draw additional blood at direction of police officer simply to comply literally with this chapter; that particular sequence of events did not render this chapter inapplicable where it was obvious that blood test procedure had law enforcement motivations and consequences. *W. G. Murray v. United States and District of Columbia* (D.C. App. 1976, 358 A.2d 314).

§ 40-1005. Test refusal—Penalty—Incapacitated person—Use of evidence.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Construction

Evidentiary exclusion of this section prohibiting use of blood test against one who is unconscious or otherwise incapable of refusing to submit to test if that person later objects to its introduction, resulting in automatic loss of driver's permit for six months, when considered in light of this chapter's overall purposes, does not apply in cases involving death or personal injury, and thus operator who was involved in motor vehicle collision in which death or bodily injury resulted did not have option of refusing to submit to chemical testing and objecting to introduction of test results against him on ground procedure had law enforcement motivations and consequences. *W. G. Murray v. United States and District of Columbia* (D.C. App. 1976, 358 A.2d 314).

§ 40-1006. License revocation or denial order—Hearing.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-1007. Judicial review.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 41.—PARTNERSHIPS

Chapter 3.—UNIFORM PARTNERSHIPS

PART II

NATURE OF A PARTNERSHIP

§ 41-305. Partnership defined.

NOTES TO DECISIONS

Evidence of partnership

In action for accounting of proceeds accruing under partnership, evidence supports trial court's finding that partnership was established between parties. *A. Cooper v. J. M. Saunders-Hunt* (D.C. App. 1976, 365 A.2d 626).

Oral partnership agreement does not run afoul of statute of frauds where no term of years was ever fixed by agreement and it was therefore capable of performance within one year, nor did asserted agreement by its terms convey any interest in land so as to place it within statute of frauds. *Id.*

§ 41-306. Rules for determining the existence of a partnership.

NOTES TO DECISIONS

Evidence of partnership

In action for accounting of proceeds accruing under partnership, evidence supports trial court's finding that partnership was established between parties. *A. Cooper v. J. M. Saunders-Hunt* (D.C. App. 1976, 365 A.2d 626).

Oral partnership agreement does not run afoul of statute of frauds where no term of years was ever fixed by agreement and it was therefore capable of performance within one year, nor did asserted agreement by its terms convey any interest in land so as to place it within statute of frauds. *Id.*

PART III

RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

§ 41-311. Partnership charged with knowledge of or notice to partner.

NOTES TO DECISIONS

Applicability

Where one partner was never named as a party in tenants' petition charging exaction of excessive rent in violation of subchapter III of chapter 16, title 45 and was not given notice of hearing on the petition or an opportunity to be heard in his own behalf, imposition of \$50 fine was improper; provision of this section relating to partnerships is inapplicable since neither the partnership nor general partner was named as a party to the proceeding. *H. M. Ammerman et al. v. District of Columbia Rental Accommodations Commission* (D.C. App. 1977, 375 A. 2d 1060).

§ 41-314. Nature of partner's liability.

NOTES TO DECISIONS

Service

The long-arm statute which was intended to codify recent case law with respect to extraterritorial jurisdiction over and service upon persons in civil litigation and to assimilate District law on jurisdiction to that of neighboring states did not alter the District law governing service on partnerships that the partnership entity is never to be served but rather service must be made on all partners. *J. E. Day v. W. H. Avery et al.* (1976, 548 F.2d 1018, 179 U.S. App. D.C. 63; aff'd 394 F. Supp. 986; cert. denied 97 S. Ct. 1706, 431 U.S. 908).

PART IV

RELATIONS OF PARTNERS TO ONE ANOTHER

§ 41-317. Rules determining rights and duties of partners.

NOTES TO DECISIONS

Partnership agreement

Where partnership agreement to which plaintiff subscribed, stated that partnership agreement could be amended by majority approval of partners, there was no requirement of unanimous vote for the merger of partnership with another firm on ground that merger was a fundamental change in partnership. *J. E. Day v. Sidley & Austin et al.* (1975, 394 F. Supp. 986; aff'd 548 F. 2d 1018, 179 U.S. App. D.C. 63; cert. denied 97 S. Ct. 1706, 431 U.S. 908).

§ 41-320. Partner accountable as a fiduciary.

NOTES TO DECISIONS

Breach of fiduciary duty

Where there was no financial gain for defendant members of former partnership executive committee with respect to negotiations which led to merger with another partnership, and the remaining partners acquired no more power in firm as result of alleged withholding of information about merger from plaintiff former partner, there could be no breach of fiduciary duty between such defendant partners and plaintiff. *J. E. Day v. Sidley & Austin et al.* (1975, 394 F. Supp. 986; aff'd 548 F. 2d 1018, 179 U.S. App. D.C. 63; cert. denied 97 S. Ct. 1706, 431 U.S. 908).

§ 41-321. Right to an account.

NOTES TO DECISIONS

Entitlement to accounting

Where limited partner received monthly and annual financial report of the business, had not sought to examine the books of the partnership, had been apprised of the partnership's financial status, and did not contend that general partners had engaged in financial mismanagement of any kind, he is not entitled to an accounting. *C. Cafritz v. C. Cafritz et ano.* (D.C. App. 1975, 347 A. 2d 267).

PART V

PROPERTY RIGHTS OF A PARTNER

§ 41-324. Nature of a partner's right in specific partnership property.

* * * * *

(2) The incidents of this tenancy are such that:

* * * * *

(e) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, widowers, heirs, or next of kin.

(As amended Oct. 1, 1976, D.C. Law 1-87, § 39, 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended subsec. (2)(e) by inserting "widowers," after "allowances to widows,".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

PART VI

DISSOLUTION AND WINDING UP

§ 41-331. Dissolution by decree of court.

NOTES TO DECISIONS

Conduct prejudicial to business

Allegedly irreconcilable differences between limited partner and general partners concerning both retention of cash received upon liquidation of certain partnership assets and also concerning development of property owned by the partnership do not interfere with the carrying on the partnership business, particularly in light of the fact that, under the partnership agreement, the general partners had full power to control, operate and manage the business, so that the existence of the differences do not provide basis for dissolution. *C. Cafritz v. C. Cafritz et ano.* (D.C. App. 1975, 347 A. 2d 267).

§ 41-337. Rights of partners to application of partnership property.

NOTES TO DECISIONS

Joint tenancy, right of survivorship

Where sister and brother, as partners, owned realty and savings accounts as joint tenants, all of the four unities of joint tenancy were present, record showed no evidence that any partnership creditors' claims were not met by partnership assets which were not held in joint tenancy, there was no indication that partners did not understand and intend survivorship consequences of joint tenancy, and there was no evidence that they at any time intended to sever joint tenancy, such partnership assets became sister's by right of survivorship on brother's death and are subject to District of Columbia inheritance tax as part of sister's estate. *District of Columbia v. The Riggs National Bank of Washington, D.C., Executor etc.* (D.C. App. 1975, 335 A.2d 238).

Partnership agreement

Where new partnership agreement, which plaintiff signed and which resulted in the merger of two firms, set forth in some detail relationship between partners and structure of new firm and no mention was made of the firm's Washington office or plaintiff's status therein although special arrangements were specified for certain other partners, plaintiff had no contractual right to maintain his previous authority over Washington office after merger and hence had no cause of action based on breach of contract when he became only a cochairman of Washington office following merger. *J. E. Day v. Sidley & Austin et al.* (1975, 394 F. Supp. 986; aff'd 548 F. 2d 1018, 179 U.S. App. D.C. 63; cert. denied 97 S. Ct. 1706, 431 U.S. 908).

§ 41-338. Rights where partnership is dissolved for fraud or misrepresentation.

NOTES TO DECISIONS

Fraud

Since plaintiff, a former partner suing former partnership and partners thereof for fraud in connection with

representations concerning merger with another partnership, had no right to remain chairman of Washington office under the new partnership agreement to which he subscribed, any alleged misrepresentation regarding his chairmanship of that office after merger could not form basis for cause of action for fraud. *J. E. Day v. Sidley & Austin et al.* (1975, 394 F. Supp. 986; aff'd 548 F. 2d 1018, 179 U.S. App. D.C. 63; cert. denied 97 S. Ct. 1706, 431 U.S. 908).

§ 41-339. Rules for distribution.

NOTES TO DECISIONS

Joint tenancy, right of survivorship

Where sister and brother, as partners, owned realty and savings accounts as joint tenants, all of the four unities of joint tenancy were present, record showed no evidence that any partnership creditors' claims were not met by partnership assets which were not held in joint tenancy, there was no indication that partners did not understand and intend survivorship consequences of joint tenancy, and there was no evidence that they at any time intended to sever joint tenancy, such partnership assets became sister's by right of survivorship on brother's death and are subject to District of Columbia inheritance tax as part of sister's estate. *District of Columbia v. The Riggs National Bank of Washington, D.C., Executor etc.* (D.C. App. 1975, 335 A. 2d 238).

§ 41-342. Accrual of right to account.

NOTES TO DECISIONS

Enforcement of agreement—Illegal activities

As respects partner's contention in action for accounting, that two partners operated illegal numbers business during time they carried on other ventures and that income from all facets of partnership was commingled and therefore court should not enforce partnership agreement in view of illegal aspect of partnership, trial court's findings of fact that during life of partnership each real estate venture netted profit, thus removing any possibility that illegal numbers activity sustained or underwrote legal activities involving real estate are supported by evidence and, since plaintiff did not ask at trial for accounting of proceeds and profits, but only that precise sum of money she had invested in partnership be returned to her, trial court properly enforced agreement so far as real estate ventures were concerned. *A. Cooper v. J. M. Saunders-Hunt* (D.C. App 1976, 365 A. 2d 626).

Review

Since there is ample evidence in action for accounting of proceeds accruing under partnership, to support trial court's findings of fact, and conclusions flow from findings and reflect no error of law on part of trial court, which concluded that plaintiff was entitled to amount she had contributed to partnership, the Court of Appeals is required to affirm. *A. Cooper v. J. M. Saunders-Hunt* (D.C. App. 1976, 365 A. 2d 626).

TITLE 42.—PERSONAL PROPERTY

Chapter 1.—RECORDATION OF INSTRUMENTS

§ 42-107. False statements—Penalty.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 43.—PUBLIC UTILITIES

Chapter 1.—DEFINITION OF TERMS AND APPLICATION OF LAW

§ 43-104. Service.

NOTES TO DECISIONS

Steam and chilled water

Coverage under the Public Utilities Act was sufficiently broad to encompass furnishing of steam and chilled water services pursuant to contract between utility and association representing hotel-office-apartment buildings complex since the consumers, i. e., tenants of the complex, received their heating and cooling needs from a third party, i. e., the utility, which was neither their landlord nor their cooperative management group and utility not only distributed but also manufactured the subject steam and chilled water and utility had joined with the association in actively seeking Commission regulation of such service area in the first instance. *Watergate Improvement Association v. Public Service Commission of the District of Columbia* (D.C. App. 1974, 326 A. 2d 778).

§ 43-121. Pipe-line company.

NOTES TO DECISIONS

Steam and chilled water

Coverage under the Public Utilities Act was sufficiently broad to encompass furnishing of steam and chilled water services pursuant to contract between utility and association representing hotel-office-apartment buildings complex since the consumers, i. e., tenants of the complex, received their heating and cooling needs from a third party, i. e., the utility, which was neither their landlord nor their cooperative management group and utility not only distributed but also manufactured the subject steam and chilled water and utility had joined with the association in actively seeking Commission regulation of such service area in the first instance. *Watergate Improvement Association v. Public Service Commission of the District of Columbia* (D.C. App. 1974, 326 A. 2d 778).

Chapter 2.—CREATION OF PUBLIC SERVICE COMMISSION—MEMBERS—COUNSEL—EMPLOYEES

Sec.

43-201a. Function of Commission—Unjust, unreasonable, or discriminating charge prohibited.

43-205. People's Counsel—Appointment, compensation, qualifications—Personnel—Duties.

43-205a. Same; Appropriations.

§ 43-201. Members—Eligibility of Commissioners—Oath.

The Public Service Commission of the District of Columbia shall be composed of three commissioners appointed by the Mayor by and with the advice and consent of the Council, except that the members (other than the Commissioner of the District of Columbia) serving as commissioners of such Commission on January 1, 1975, by virtue of their appointment by the President, by and with the advice and consent of the Senate, shall continue to serve until the expiration of the terms for which they were so appointed. The member first appointed by the Mayor, by and with the advice and consent of the Council, on or after January 2, 1975, shall serve until

June 30, 1978. Each of the appointed commissioners shall receive a salary at the rate of \$7,500 per annum. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. The commission shall at least biennially elect a chairman by a majority vote of its members. No Commissioner shall, during his term of office, hold any other public office. The Mayor shall furnish the Public Service Commission with suitable offices and quarters. No person shall be eligible to the office of Commissioner of the Public Service Commission of the District of Columbia who has not been a bona fide resident of the District of Columbia for a period of at least three years next preceding his appointment or who has voted or claimed residence elsewhere during such period. No person shall be eligible to the office of commissioner of said Public Service Commission who is, or who shall have been during a period of five years next preceding his appointment, directly or indirectly interested in any public utility operating, owning, or having an interest in property in the District of Columbia; or in any stock, bond, mortgage, security, or contract of any such public utility. If any such commissioner shall voluntarily become so interested, his office shall ipso facto become vacant; and if any such commissioner shall become so interested otherwise than voluntarily he shall, within a reasonable time, divest himself of such interest, and if he fails to do so his office shall become vacant. Before entering upon the duties of his office each commissioner, the secretary of the commission, the counsel of the commission and every employee of said commission shall take and subscribe the constitutional oath of office, and shall in addition thereto make oath or affirmation before and file with the clerk of the Superior Court of the District of Columbia that he is not pecuniarily interested, voluntarily or involuntarily, directly or indirectly, in any public utility in the District of Columbia. (Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 97(a); Dec. 15, 1926, 44 Stat. 920, ch. 8, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; July 29, 1970, Pub. L. 91-358, title I, § 155(c) (39) (A), 84 Stat. 572; Dec. 24, 1973, Pub. L. 93-198, title IV, § 493(b), 87 Stat. 811; Jan. 3, 1975, Pub. L. 93-635, § 17, 88 Stat. 2178.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1975—Act Jan. 3, 1975, Pub. L. 93-635, amended section as follows:

(1) Inserted the following at the end of the first sentence: “, except that the members (other than the Commissioner of the District of Columbia) serving as commissioners of such Commission on January 1, 1975, by virtue of their appointment by the President, by and with the advice and consent of the Senate, shall continue to serve until the expiration of the terms for which they were so appointed. The member first appointed by the Mayor, by and with the advice and consent of the Council, on or after January 2, 1975, shall serve until June 30, 1978.”.

(2) Repealed the first sentence which read: “Of the two commissioners first appointed after December 15, 1926, one shall be appointed for a term of two years, and one for a term of three years, commencing July 1, 1926.”.

(3) Amended the sixth sentence by substituting “No Commissioner shall” for “No commissioner, other than the said Commissioner of the District of Columbia, shall”.

(4) Amended the seventh sentence by substituting “Mayor” for “Commissioner of the District of Columbia”.

(5) Amended the eighth sentence by substituting “No person shall” for “No person, other than the said Commissioner of the District of Columbia, shall”; and by inserting “of the District of Columbia” immediately after “Public Service Commission”.

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended the first sentence generally. Prior to amendment, the sentence read: “The Public Service Commission of the District of Columbia shall be composed of three commissioners as follows: (1) The Commissioner of the District of Columbia, and (2) two persons appointed by the President, by and with the advice and consent of the Senate.”

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771 of Act of Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this amendment is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in the amendment to this section by Act Dec. 24, 1973, Pub. L. 93-198, as amended.

TRANSFER OF FUNCTIONS

Section 712 of Act Dec. 24, 1973, Pub. L. 93-198 [set out as § 1-132], provided in part that “[no] function now vested pursuant to section 501 of Reorganization Plan Numbered 3 of 1967 in the . . . District Public Service Commission, or in any officer, employee, or body of or under such agency, shall be considered as a function transferred to the Council pursuant to section 404(a) of this Act [§ 1-144(a)]. Each such function is hereby transferred to the officer, employee, or agency (including any body of or under such agency), to whom or to which it was delegated, or in whom or in which it has remained vested, until the Mayor or Council established under this Act, or both, pursuant to the powers herein granted, shall revoke, modify, or transfer such delegation or vesting.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-2418, 43-203, 43-205.

§ 43-201a. Function of Commission—Unjust, unreasonable, or discriminating charge prohibited.

There shall be a Public Service Commission whose function shall be to insure that every public utility doing business within the District of Columbia is required to furnish service and facilities reasonably

safe and adequate and in all respects just and reasonable. The charge made by any such public utility for any facility or services furnished, or rendered, or to be furnished or rendered, shall be reasonable, just, and nondiscriminatory. Every unjust or unreasonable or discriminating charge for such facility or service is prohibited and is hereby declared unlawful. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 493(a), 87 Stat. 811.)

CODIFICATION

Section was enacted as part of the District of Columbia Self-Government and Governmental Reorganization Act, and not as part of the Act of Mar. 4, 1913, which comprises chapters 1-10 of this title.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

§ 43-205. People's Counsel—Appointment, compensation, qualifications—Personnel—Duties.

(a) There is hereby established within the Public Service Commission of the District of Columbia, established by section 43-201, an office to be known as the “Office of the People's Counsel”.

(b) There shall be at the head of such office the People's Counsel who shall be appointed by the Mayor of the District of Columbia, by and with the advice and consent of the Council of the District of Columbia, and who shall serve for a term of three years. Appointments to the position of People's Counsel shall be made without regard to the provisions of title 5 of the United States Code, governing appointments in the competitive service. The People's Counsel shall be entitled to receive compensation at the maximum rate as may be established from time to time for GS-16 of the General Schedule under section 5332 of title 5 of the United States Code. No person shall be appointed to the position of People's Counsel unless that person is admitted to practice before the District of Columbia Court of Appeals. Before entering upon the duties of such office, the People's Counsel shall take and subscribe the same oaths as that required by the Commissioners of the Commission, including an oath or affirmative before the Clerk of the Superior Court of the District of Columbia that he is not pecuniarily¹ interested, voluntarily or involuntarily, directly or indirectly, in any public utility in the District of Columbia.

(c) The People's Counsel is authorized to employ and fix the compensation of such employees, including attorneys, as are necessary to perform the functions vested in him by this Act, and prescribe their authority and duties.

(d) The People's Counsel—

(1) shall represent and appeal for the people of the District of Columbia at hearings of the Commission and in judicial proceedings involving the interests of users of the products of or services furnished by public utilities under the jurisdiction of the Commission;

¹ So in original.

(2) may represent and appear for petitioners appearing before the Commission for the purpose of complaining in matters of rates or services;

(3) may investigate the services given by, the rates charged by, and the valuation of the properties of, the public utilities under the jurisdiction of the Commission; and

(4) is authorized to develop means to otherwise assure that the interests of users of the products of or services furnished by public utilities under the jurisdiction of the Commission are adequately represented in the course of proceedings before the Commission, including public information dissemination, consultative services, and technical assistance.

(Jan. 2, 1975, Pub. L. 93-614, § 1, 88 Stat. 1975.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3, of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

"This Act", referred to in subsec. (c), is the Act of Jan. 2, 1975, Pub. L. 93-614, which enacted this section and section 43-205a and amended section 43-412.

CODIFICATION

Section was enacted as part of the Act of Jan. 2, 1975, and not as part of the Act of Mar. 4, 1913, ch. 150, § 8, 37 Stat. 974, which comprises chapters 1-10 of title 43. A prior section, based on the Act of Mar. 4, 1913, § 8, par. 91A, as added Dec. 15, 1926, ch. 8, § 3, 44 Stat. 921, which established an office of People's Counsel and prescribed the duties thereof, has been omitted from the Code as the office was abolished by 1952 Reorg. Plan No. 5, § 2(b), 66 Stat. 824.

CROSS REFERENCE

Expenses of People's Counsel to be borne by public utilities, see § 43-412.

§ 43-205a. Same; Appropriations.

For the fiscal year ending June 30, 1975, there is authorized to be appropriated such sum, not to exceed \$50,000, as may be necessary to carry out the purposes of this Act. For the fiscal year ending June 30, 1976, and each fiscal year thereafter, there are authorized to be appropriated such sums, not to exceed \$100,000 in any one fiscal year, as may be necessary to carry out the purposes of this Act. (Jan. 2, 1975, Pub. L. 93-614, § 3, 88 Stat. 1977.)

REFERENCE IN TEXT

"This Act", referred to in text, is the Act of Jan. 2, 1975, Pub. L. 93-614, which enacted this section and section 43-205 and amended section 43-412.

CODIFICATION

Section was enacted as part of the Act of Jan. 2, 1975, and not as part of the Act of Mar. 4, 1913, ch. 150, § 8, 37 Stat. 974, which comprises chapters 1-10 of title 43.

§ 43-209. Authority of District of Columbia Commissioner to continue—Ordinances and regulations to remain in force until modified by the Public Service Commission.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 3.—SERVICE, VALUATION, ACCOUNTS

§ 43-301. Public utilities—Service and facilities—Charges to be reasonable, just, and nondiscriminatory—To obey orders of Commission.

NOTES TO DECISIONS

Determination of rate base—Generally

Electricity rate order was unjust and unreasonable where it deprived utility of opportunity to earn a fair rate of return by improperly disregarding the latest relevant historical data of record pertaining to its operations, in that Public Service Commission refused to utilize most recent test period in the record, failed to account for continuing attrition and refused to recognize certain known changes which occurred after the original proposed test period. *Potomac Electric Power Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1977, 380 A. 2d 126).

Realistic electricity rate making in today's economic climate must take into account the lengthening delays occasioned by the regulatory processes, while recognizing the need for preserving an appropriate balance between investor and consumer interests; regulatory lag may not be arbitrarily cited in an effort to justify failure to strike the needed balance by utilizing the utility's most recent historical data of record. *Id.*

Differences in public utility's rate of return from different customer classes need not specifically and quantitatively be supported by customer class-cost considerations; differences can be based not only on quantity, but also on nature, time and pattern of use so as to achieve reasonable efficiency and economic operation. *Apartment House Council of Metropolitan Washington, Inc. v. Public Service Commission of the District of Columbia* (D.C. App. 1975, 332 A.2d 53).

Recoupment of losses

General principle precluding a utility from charging higher rates in the future in order to recoup past losses does not preclude imposition of a surcharge to recover revenues lost by electric utility while rate order, which was found to be arbitrary and unreasonable, was in effect; losses occurred after fair rate of return had been determined and lost revenues were shown, by abundant evidence, to have been result of arbitrary and unreasonable rulings of Public Service Commission; imposition of surcharge to recoup past losses does not constitute retroactive rate making. *Potomac Electric Power Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1977, 380 A. 2d 126).

§ 43-305. Commission to ascertain cost of construction, replacement value, outstanding stock—Information to be printed in annual report.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-323. Schedule of rates to be filed—Existing rates to remain in force until changed.

NOTES TO DECISIONS

Approval of rate changes

Absent a controlling statutory provision, no reason exists to construe telephone company's "new service" offering, viz., a technologically improved PBX system, as essentially different from a rate change application, wherein Public Service Commission approval is statutorily required. *The Chesapeake and Potomac Telephone Company v. Public Service Commission* (D.C. App. 1977, 378 A. 2d 1085).

§ 43-327. Change in schedule—Notice.

NOTES TO DECISIONS

Approval of rate changes

Absent a controlling statutory provision, no reason exists to construe telephone company's "new service"

offering, viz., a technologically improved PBX system, as essentially different from a rate change application, wherein Public Service Commission approval is statutorily required. *The Chesapeake and Potomac Telephone Company v. Public Service Commission* (D.C. App. 1977, 378 A.2d 1085).

Chapter 4.—RATES, EXAMINATIONS, INVESTIGATIONS, AND HEARINGS

Sec.

43-412. Expenses of investigation or revaluation to be borne by utility—Deposit for costs—Limitation of expenditures in rate and revaluation hearings—Cost of report on water rates and sewer charges.

§ 43-401. Existing rates continued—Schedules to be filed—Application to change rates—Review of ruling by Court of Appeals.

NOTES TO DECISIONS

Approval of rate changes

Absent a controlling statutory provision, no reason exists to construe telephone company's "new service" offering, viz., a technologically improved PBX system, as essentially different from a rate change application, wherein Public Service Commission approval is statutorily required. *The Chesapeake and Potomac Telephone Company v. Public Service Commission* (D.C. App. 1977, 378 A.2d 1085).

Due process—Procedural

Although utility's initial application and public notice were captioned as requests for increases in gas rates and, thus, did not clearly indicate that changes in steam and chilled water rates were also being sought, association representing hotel-office-cooperative apartment buildings complex had not been denied procedural due process where steam and chilled water rates were partially dependent upon interruptible gas rates charged other customers and, to that extent, the association was on notice that its steam and chilled water rates might be changed; but, in any event, any possible prejudice was cured when the Commission permitted association to intervene, reopened proceedings and approved new rates only after careful study of the evidence produced at the reopened proceeding. *Watergate Improvement Association v. Public Service Commission of the District of Columbia* (D.C. App. 1974, 326 A.2d 778).

Jurisdictional lines

It was not unreasonable, in allocating systemwide rate increase as between District of Columbia and state of Maryland, for Public Service Commission to let share of revenue increase follow share of total test-years electricity sales applicable to each jurisdiction. *L. S. Goodman v. Public Service Commission of the District of Columbia et al.* (1974, 497 F.2d 661, 162 U.S. App. D.C. 74).

Power to fix rates

Under provision of original service agreement that furnishing of steam and chilled water would be subject to a regulation to extent lawfully prescribed by any local regulatory commission having jurisdiction, that if during term of agreement such public regulatory authority prescribed different rates such rates would supersede rates specified in agreement and that either purchaser or seller had right at any time to request regulatory authority to fix just and reasonable rates, the Public Service Commission had power to change rates and to grant each party the right to seek rate changes. *Watergate Improvement Association v. Public Service Commission of the District of Columbia* (D.C. App. 1974, 326 A.2d 778).

Rate base

Electricity rate order was unjust and unreasonable where it deprived utility of opportunity to earn a fair rate of return by improperly disregarding the latest relevant historical data of record pertaining to its operations, in that Public Service Commission refused to utilize most recent test period in the record, failed to account for continuing attrition and refused to recognize certain known changes which occurred after the original proposed test period. *Potomac Electric Power Co. v. Public Service Com-*

mission of the District of Columbia (D.C. App. 1977, 380 A.2d 126).

Realistic electricity rate making in today's economic climate must take into account the lengthening delays occasioned by the regulatory processes, while recognizing the need for preserving an appropriate balance between investor and consumer interests; regulatory lag may not be arbitrarily cited in an effort to justify failure to strike the needed balance by utilizing the utility's most recent historical data of record. *Id.*

So long as capitalized interest is not included in rate base, inclusion of plant under construction provides no excessive compensation to utility. *L. S. Goodman v. Public Service Commission of the District of Columbia et al.* (1974, 497 F.2d 661, 162 U.S. App. D.C. 74).

Public Service Commission did not act arbitrarily, in rate-making case, by inclusion of plant under construction in rate base, although there were alternative methods available. *Id.*

Where Public Service Commission, in including plant under construction in rate base, chose between alternatives and achieved reasonable result, its findings could not be disturbed. *Id.*

Where Public Service Commission in including plant under construction in rate base could not determine whether impact of work in progress upon net operating income, when plant was completed, would be substantial, Commission properly gave specific effect to such possibility in setting rate of return at lowest end of range found to be acceptable, and was not required to make compensating adjustment of test-year revenue and expenses. *Id.*

Public Service Commission did not act arbitrarily, or "double charge" electric power rate payers, by adopting end-of-period rate base and by increasing overall fair rate of return allowed, thus assertedly taking account of effects of inflation twice. *Id.*

Recoupment of losses

General principle precluding a utility from charging higher rates in the future in order to recoup past losses does not preclude imposition of a surcharge to recover revenues lost by electric utility while rate order, which was found to be arbitrary and unreasonable, was in effect; losses occurred after fair rate of return had been determined and lost revenues were shown, by abundant evidence, to have been result of arbitrary and unreasonable rulings of Public Service Commission; imposition of surcharge to recoup past losses does not constitute retroactive rate making. *Potomac Electric Power Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1977, 380 A.2d 126).

§ 43-402. Commission may adopt rules and regulations.

NOTES TO DECISIONS

Applicability of Administrative Procedure Act

Decision of Public Service Commission in telephone rate proceedings to furnish transcripts to intervenors at telephone company's expense does not constitute a proper exercise of Commission's delegated powers to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it, since any procedure established by the Commission must conform with the minimum requirements set forth in Administrative Procedure Act (§§ 1-1501 et seq.), and since Commission's rule that transcripts be furnished to intervenors at telephone company's expense was a mere nullity because it contravened express language of section 1-1509. *Chesapeake and Potomac Telephone Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1975, 339 A.2d 710).

§ 43-408. Commission may investigate unjust discriminatory rates, schedules, or services—No order to be entered without formal hearing.

NOTES TO DECISIONS

Approval of rate changes

Absent a controlling statutory provision, no reason exists to construe telephone company's "new service" offering, viz., a technologically improved PBX system, as essentially different from a rate change application,

wherein Public Service Commission approval is statutorily required. *The Chesapeake and Potomac Telephone Company v. Public Service Commission* (D.C. App. 1977, 378 A. 2d 1085).

Hearing requirement

In respect to a telephone company's filings for "new services," a formal hearing is required, under this section, only when the Public Service Commission proceeds upon its own initiative, or a reasonable complaint is made against the utility, on the basis that a rate, schedule or service appears unreasonable or unjustly discriminatory; however, when there is a typical "new service" filing by a telephone company to which no "reasonable objection" is made, and it is acceptable to the Commission, there is no requirement for a formal hearing before approval. *The Chesapeake and Potomac Telephone Company v. Public Service Commission* (D.C. App. 1977, 378 A. 2d 1085).

§ 43-411. Reasonable rates may be ordered—Notice to be given utility affected thereby.

NOTES TO DECISIONS

Approval of rate changes

Absent a controlling statutory provision, no reason exists to construe telephone company's "new service" offering, viz., a technologically improved PBX system, as essentially different from a rate change application, wherein Public Service Commission approval is statutorily required. *The Chesapeake and Potomac Telephone Company v. Public Service Commission* (D.C. App. 1977, 378 A. 2d 1085).

Determination of rates

Electricity rate order was unjust and unreasonable where it deprived utility of opportunity to earn a fair rate of return by improperly disregarding the latest relevant historical data of record pertaining to its operations, in that Public Service Commission refused to utilize most recent test period in the record, failed to account for continuing attrition and refused to recognize certain known changes which occurred after the original proposed test period. *Potomac Electric Power Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1977, 380 A. 2d 126).

Realistic electricity rate making in today's economic climate must take into account the lengthening delays occasioned by the regulatory processes, while recognizing the need for preserving an appropriate balance between investor and consumer interests; regulatory lag may not be arbitrarily cited in an effort to justify failure to strike the needed balance by utilizing the utility's most recent historical data of record. *Id.*

Power to fix rates

Under provision of original service agreement that furnishing of steam and chilled water would be subject to a regulation to extent lawfully prescribed by any local regulatory commission having jurisdiction, that if during term of agreement such public regulatory authority prescribed different rates such rates would supersede rates specified in agreement and that either purchaser or seller had right at any time to request regulatory authority to fix just and reasonable rates, the Public Service Commission had power to change rates and to grant each party the right to seek rate changes. *Watergate Improvement Association v. Public Service Commission of the District of Columbia* (D.C. App. 1974, 326 A. 2d 778).

Recoupment of losses

General principle precluding a utility from charging higher rates in the future in order to recoup past losses does not preclude imposition of a surcharge to recover revenues lost by electric utility while rate order, which was found to be arbitrary and unreasonable, was in effect; losses occurred after fair rate of return had been determined and lost revenues were shown, by abundant evidence, to have been result of arbitrary and unreasonable rulings of Public Service Commission; imposition of surcharge to recoup past losses does not constitute retroactive rate making. *Potomac Electric Power Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1977, 380 A. 2d 126).

§ 43-412. Expenses of investigation or revaluation to be borne by utility—Deposit for costs—Limitation of expenditures in rate and revaluation hearings—Cost of report on water rates and sewer charges.

(a) The expenses, including the expenses of the Office of the People's Counsel, of any investigation, valuation, revaluation, or proceeding of any nature by the Public Service Commission of or concerning any public utility operating in the District of Columbia, and all expenses of any litigation, including appeals, arising from any such investigation, valuation, revaluation, or proceeding, or from any order or action of the Commission, shall be borne by the public utility investigated, valued, revalued, or otherwise affected as a special franchise tax in addition to all other taxes imposed by law, and such expenses with interest at 6 per centum per annum may be charged to operating expenses and amortized over such period as the Commission shall deem proper and be allowed for in the rates to be charged by such utility. When any such investigation, valuation, revaluation, or other proceeding is begun the said Public Service Commission may call upon the utility in question for the deposit of such reasonable sum or sums as in the opinion of said commission, it may deem necessary from time to time until the said proceeding or the litigation arising therefrom is completed, the money so paid to be deposited in the treasury of the United States to the credit of the appropriation account known as "miscellaneous trust fund deposit, District of Columbia" and to be disbursed in the manner provided for by law for other expenditures of the government of the District of Columbia, for such purposes as may be approved by the Public Service Commission; or certified by the People's Counsel with respect to his expenses. Any unexpended balance of such sum or sums so deposited shall be returned to the utility depositing the same: *Provided*, That the amount expended by the Commission and the People's Counsel, combined in any valuation or rate case shall not exceed one-half of 1 per centum of the existing valuation of the company investigated, and that the amount expended in all other investigations shall not exceed one-tenth of 1 per centum of the existing valuation for any one company for any one year.

(b) The Mayor shall provide and the Public Service Commission of the District of Columbia and the Office of the People's Counsel are authorized to draw from, receive and spend no more than \$50,000, as provided in paragraph (2)¹ of this section, for the costs of preparing the reports required to be submitted to the Council under sections 604 and 605 of the Revenue Act of 1976. The \$50,000 shall be derived from a \$25,000 charge against revenues from water rates and a \$25,000 charge against revenues from the charge for sanitary sewer service. The Public Service Commission of the District of Columbia and the Office of the People's Counsel are authorized to draw, receive and spend up to and including \$30,000 and \$20,000 respectively. In addition the Commission and the Office of the People's Counsel are authorized to draw, receive and spend

¹ So in original. There is no par. (2).

any amount allocated to the other under this section but not spent. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 42; Mar. 3, 1927, 44 Stat. 1351, ch. 304; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 3; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; Jan. 2, 1975, Pub. L. 93-614, § 2, 88 Stat. 1976; June 15, 1976, D.C. Law 1-70, title VI, § 606, 23 DCR 553.)

REFERENCE IN TEXT

Sections 604 and 605 of the Revenue Act of 1976, referred to in subsec. (b), are sections 604 and 605 of act June 15, 1976, D.C. Law 1-70, which are set out as a note under § 43-1520d.

AMENDMENTS

1976—Act June 15, 1976, D.C. Law 1-70, amended section by designating existing provisions as subsec. (a) and adding subsec. (b).

1975—Act Jan. 2, 1975, amended the sections as follows: (a) by amending the first sentence generally so as to include reference to the expenses of the Office of People's Counsel; (b) by inserting "or certified by the People's Counsel with respect to his expenses" at the end of the second sentence; and (c) by inserting "and the People's Counsel, combined" immediately after "Commission" in the third sentence.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 1402 of act June 15, 1976, D.C. Law 1-70, set out as a note under § 47-1209.

CROSS REFERENCE

Appropriations for Office of People's Counsel, see § 43-205a.

Chapter 7.—ORDERS AND COURT PROCEEDINGS

§ 43-701. Schedules to conform to orders of Commission—Changes in schedules to be first approved by Commission.

NOTES TO DECISIONS

Approval of rate changes

Absent a controlling statutory provision, no reason exists to construe telephone company's "new service" offering, viz., a technologically improved PBX system, as essentially different from a rate change application, wherein Public Service Commission approval is statutorily required. *The Chesapeake and Potomac Telephone Company v. Public Service Commission* (D.C. App. 1977, 378 A. 2d 1085).

§ 43-704. Application to Court of Appeals for instructions—Application for reconsideration.

NOTES TO DECISIONS

Exhaustion of administrative remedy

Request for reconsideration was jurisdictional prerequisite for filing petition of appeal from order of Public Service Commission of the District of Columbia approving rate schedules and regulations proposed by regulated utility. *Watergate Improvement Association v. Public Service Commission of the District of Columbia* (D.C. App. 1974, 326 A. 2d 778).

Seeking reconsideration of Public Service Commission order is jurisdictional prerequisite to filing an appeal; however, one need not have been a party to the proceeding before the Public Service Commission to seek reconsideration, one need only be affected by the order in question. *L. S. Goodman v. Public Service Commission of the District of Columbia* (D.C. App. 1973, 309 A. 2d 97).

§ 43-705. Appeal to Court of Appeals from certain orders—Precedence over other civil causes—Proceeding when additional evidence proper—Statement to accompany decision—Commission not liable for costs or damages.

NOTES TO DECISIONS

Burden of proof

Onus was on association, which represented hotel, two office buildings and three cooperative apartment build-

ings and which sought appellate review of rate schedules and regulations governing steam and chilled water service to the complex, to make a convincing showing that the rate order was invalid because it was unjust and unreasonable in its consequences. *Watergate Improvement Association v. Public Service Commission of the District of Columbia* (D.C. App. 1974, 326 A. 2d 778).

Exhaustion of administrative remedy

Request for reconsideration was jurisdictional prerequisite for filing petition of appeal from order of Public Service Commission of the District of Columbia approving rate schedules and regulations proposed by regulated utility. *Watergate Improvement Association v. Public Service Commission of the District of Columbia* (D.C. App. 1974, 326 A. 2d 778).

Seeking reconsideration of Public Service Commission order is jurisdictional prerequisite to filing an appeal; however, one need not have been a party to the proceeding before the public service commission to seek reconsideration, one need only be affected by the order in question. *L. S. Goodman v. Public Service Commission of the District of Columbia* (D.C. App. 1973, 309 A. 2d 97).

Moot question

Issuance of subsequent rate order did not render moot and impractical question of relief in proceedings challenging prior rate order where the utility was never allowed to recoup revenue losses experienced as result of the prior order, which was found to be arbitrary and unreasonable; even if prior order were technically moot, it presented issues of a continuing nature. *Potomac Electric Power Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1977, 380 A. 2d 126).

Person affected

One who seeks judicial review of agency action must show impact of such action on himself. *Telephone Users Association v. Public Service Commission of the District of Columbia* (D.C. App. 1973, 304 A. 2d 293; cert. denied 94 S. Ct. 1448, 1449, 415 U.S. 933, 934).

One who alleges that he uses and pays for telephone service is "person or corporation affected by" order increasing telephone rates. *Id.*

Telephone users' association which, according to Federal Communications Commission, appeared to be for all intents and purposes the alter ego of its attorney and was not, according to telephone company's records, a subscriber to telephone service was not a "person or corporation affected by" order increasing telephone rates. *Id.*

§ 43-706. Appeal limited to questions of law.

NOTES TO DECISIONS

In general

It is responsibility of Public Service Commission to present its decisions in manner amendable to judicial review. *Telephone Users Association v. Public Service Commission of the District of Columbia* (D.C. App. 1973, 304 A. 2d 293; cert. denied 94 S. Ct. 1448, 1449, 415 U.S. 933, 934).

Evidence supporting findings

Determination by Public Service Commission, which granted electric utility a rate increase, that residential class should not bear burden of significant rate increases and that rate increases of 10.4 percent for residential class, 15.1 percent for commercial and industrial class and 22.2 percent for "high tension" class and the differentials in the inherent rates of return of 5.63 percent, 7.78 percent and 8.27 percent from such classes respectively were just, reasonable and nondiscriminatory is supported by substantial evidence. *Apartment House Council of Metropolitan Washington, Inc. v. Public Service Commission of the District of Columbia* (D.C. App. 1975, 332 A.2d 53).

In analyzing whether new rate established by Public Service Commission for electric power was or was not arbitrary, each component of determination was to be analyzed, i.e., reviewing court was to ascertain whether each of elements of Commission's order was supported by substantial evidence in the record. *L. S. Goodman v. Public Service Commission of the District of Columbia et al.* (1974, 497 F. 2d 661, 162 U.S. App. D.C. 74).

In electric power rate case, evidence before Public Service Commission sustained its findings that rate of return had declined and that decline was attrition related. *Id.*

Conclusion of Public Service Commission, which granted power company's application for rate increase, that adjustment in test year data for revenues from the sale of power to another power company must be accompanied by a reduction in adjustment in the test year data for generator outage was supported by substantial evidence. *L. S. Goodman v. Public Service Commission of the District of Columbia* (D.C. App. 1973, 309 A. 2d 97).

Where attrition was claimed, attrition being condition which can only be exemplified by showing trend over series of years, Public Service Commission erred in refusing, in rate-making case, to consider telephone company's evidence for years 1966 through 1969 on ground that whatever attrition occurred during 1966-1969 period had been recognized and allowed for in decision in previous rate case. *Telephone Users Association v. Public Service Commission of the District of Columbia* (D.C. App. 1973, 304 A. 2d 293; cert. denied 94 S. Ct. 1448, 1449, 415 U.S. 933, 934).

In view of evidence that telephone company's forecasts in past had proved accurate, that Public Service Commission auditors were permanently assigned to telephone company's premises and continuously audited books which were maintained in accordance with Commission prescribed accounting system and that company's expert testified that 1972 forecast was developed in ordinary course of business as part of normal budgetary process, Commission erred in refusing, in rate-making proceeding, to consider company's 1972 forecast. *Id.*

In view of indications in record as to when information concerning telephone company's claim for certain expenses became available to Public Service Commission, Commission erred in refusing to consider company's data in support of its claim notwithstanding Commission's contention that, because company's claims were first made part of record as part of company's rebuttal case the Commission was unable either to review fully the company's forecast or present its own evidence of offsetting adjustments without unduly prolonging proceedings. *Id.*

Findings

Where findings of Public Service Commission with respect to rate base and net revenues of telephone company directly influenced ultimate determination of rates that company could charge, the findings, though subsidiary, were subject to judicial review. *Telephone Users Association v. Public Service Commission of the District of Columbia* (D.C. App. 1973, 304 A. 2d 293; cert. denied 94 S. Ct. 1448, 1449, 415 U.S. 933, 934).

Where Public Service Commission failed in rate-making case to make adequate findings based on evidence in record respecting telephone company's claim of attrition, remand for further findings was required. *Id.*

Reasonableness and justness of rates fixed

Electricity rate order was unjust and unreasonable where it deprived utility of opportunity to earn a fair rate of return by improperly disregarding the latest relevant historical data of record pertaining to its operations, in that Public Service Commission refused to utilize most recent test period in the record, failed to account for continuing attrition and refused to recognize certain known changes which occurred after the original proposed test period. *Potomac Electric Power Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1977, 380 A. 2d 126).

Realistic electricity rate making in today's economic climate must take into account the lengthening delays occasioned by the regulatory processes, while recognizing the need for preserving an appropriate balance between investor and consumer interests; regulatory lag may not be arbitrarily cited in an effort to justify failure to strike the needed balance by utilizing the utility's most recent historical data of record. *Id.*

Public Service Commission was not shown, in fixing electric power rates, to have recompensed power company for past losses. *L. S. Goodman v. Public Service Commission of the District of Columbia et al.* (1974, 497 F. 2d 661, 162 U.S. App. D.C. 74).

Public Service Commission acted properly, in making allowance for federal income taxes in electric power rate case, in applying maximum statutory tax rate. *Id.*

Rejection by Public Service Commission of claim of petitioner seeking reconsideration of rate increase, that since summer of test year, used in connection with application of power company for rate increase, was abnormally cool, gross test year revenues should be normalized by the addition of \$18,000,000 to reflect the normal demand for energy for air conditioning was not unreasonable, arbitrary or capricious. *L. S. Goodman v. Public Service Commission of the District of Columbia* (D.C. App. 1973, 309 A. 2d 97).

Rejection of argument of customer, who sought reconsideration or order of Public Service Commission granting rate increase to power company, that additional operating revenues generated from anticipated additions to power plant obviated need for present rate increase was not unreasonable, arbitrary or capricious in light of lack of evidence on projected revenues or expenses for future. *Id.*

Public Service Commission's computation of rate base of power company seeking rate increase by including actual cost of construction work in progress rather than capitalizing the interest on funds committed to construction was not unreasonable, arbitrary, or capricious. *Id.*

Despite claim that overall effective income tax rate of power company seeking rate increase was considerably less than the statutory rate, calculation of additional operating revenues necessary to realize the necessary after-tax increase by using statutory federal income tax rate was reasonable and proper. *Id.*

As respects rate increase awarded to power company, jurisdictional cost allocation, computed in reliance upon the average and excess demand method rather than basis of rate of growth, did not unfairly and irrationally discriminate against District of Columbia customers to the benefit of customers in other jurisdictions, and Public Service Commission's acceptance of such computation was not unreasonable, arbitrary or capricious. *Id.*

Recoupment of losses

General principle precluding a utility from charging higher rates in the future in order to recoup past losses does not preclude imposition of a surcharge to recover revenues lost by electric utility while rate order, which was found to be arbitrary and unreasonable, was in effect; losses occurred after fair rate of return had been determined and lost revenues were shown, by abundant evidence, to have been result of arbitrary and unreasonable rulings of Public Service Commission; imposition of surcharge to recoup past losses does not constitute retroactive rate making. *Potomac Electric Power Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1977, 380 A. 2d 126).

Although surcharge can be imposed to recover revenues lost by electric utility while inadequate rate order was in effect, Public Service Commission must determine whether surcharge should be offset by any unusually high revenues experienced because of moderately warmer summer and uniquely colder winter while the challenged rate was in effect. *Id.*

A utility may not charge a higher rate in the future in order to recoup past losses. *Chesapeake and Potomac Telephone Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1974, 330 A. 2d 236).

Review

In reviewing order of Public Service Commission, it is especially important to accord great respect to Commission in complex, esoteric area such as rate-making in which Commission has been entrusted with difficult task of deciding among many competing arguments and policies. *L. S. Goodman v. Public Service Commission of the District of Columbia et al.* (1974, 497 F. 2d 661, 162 U.S. App. D.C. 74).

In reviewing rate order of Public Service Commission, determination of reviewing court must focus on whether result reached is arbitrary, and the appealing party bears burden of clearly demonstrating arbitrary action, which burden cannot be met by advancing alternative techniques from which Commission could have chosen. *Id.*

Review of actions of Public Service Commission by Court of Appeals is limited to questions of law and the

commission's findings of fact are deemed conclusive unless found to be unreasonable, arbitrary or capricious. *L. S. Goodman v. Public Service Commission of the District of Columbia* (D.C. App. 1973, 309 A. 2d 97).

Chapter 9.—PENAL PROVISIONS

§ 43-907. Prosecution and penalty for violation of rules.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 10.—GENERAL PROVISIONS

§ 43-1003. Chapters to be liberally construed—Separability of provisions.

NOTES TO DECISIONS

Approval of rate changes

Absent a controlling statutory provision, no reason exists to construe telephone company's "new service" offering, viz., a technologically improved PBX system, as essentially different from a rate change application, wherein Public Service Commission approval is statutorily required. *The Chesapeake and Potomac Telephone Company v. Public Service Commission* (D.C. App. 1977, 378 A. 2d 1085).

Construction

Modern regulatory legislation is generally regarded as a newly conceived system of legal arrangements to deal with newly emergent problems in society, entitled to liberal construction because of its remedial character and not subject to the role of strict construction of statutes in derogation of common law because its genesis and conception are wholly outside and apart from any common law frame of reference. *The Chesapeake and Potomac Telephone Company v. Public Service Commission* (D.C. App. 1977, 378 A. 2d 1085).

Interim rate relief

Under statute giving Public Service Commission all additional and incidental power which may be proper and necessary to effect and carry out all powers specifically granted, Commission has the authority to issue plan for interim rate relief. *Chesapeake and Potomac Telephone Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1974, 330 A. 2d 236).

Chapter 11.—ELECTRIC LIGHT AND POWER COMPANIES—SPECIAL ACTS

§ 43-1101. Extension of overhead wires in Georgetown—Extension of underground conduits in Mount Pleasant.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1102. Conduits and overhead wires for electric lighting prohibited in streets—House connections authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1104. Electric-lighting wires west of Rock Creek.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1105. Electric-lighting wires east of Rock Creek.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1106. Permits for repair, extension, and enlargement of conduits.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Requirements for new subdivisions or developments to reduce flood hazards, see § 5-1102.

§ 43-1107. Extension of conduits—Ducts for use of fire and police wires—Maximum price of current—Additional charge for nonpayment of bills.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Requirements for new subdivisions or developments to reduce flood hazards, see § 5-1102.

§ 43-1108. Use of conduits of Washington Railway and Electric Company by Potomac Electric Power Company.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 12.—GAS COMPANIES—SPECIAL ACTS

§ 43-1202. Additional laboratories for testing gas of Washington Gas Light and Georgetown Gas Light Companies—Payment of expenses incident thereto.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 13.—PRIVATE CONDUITS**§ 43-1301. Conditions under which private conduits may be laid.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1302. Refusal to remove conduits—Penalty.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 14.—TELEGRAPH AND TELEPHONE COMPANIES**§ 43-1401. Additional telegraph and telephone wires prohibited on streets—Extensions.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1402. Removal of telephone poles and wires—Area of removal—Duties of Commissioner—Extension of conduits.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1403. Plans of conduits to be submitted to Commissioner—Permits—Removal of poles—Wires for house connections—Telephone companies.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1405. Erection and maintenance of telephone poles in alleys—Poles outside designated limit—Temporary permits.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1406. Regulations for inspection—Ducts for use of fire and police wires.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1407. Repairs and renewals.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1409. Removal of telegraph poles and wires—Duties of Commissioner—Extension of conduits.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1410. Plans of conduits to be submitted to Commissioner—Permits—Removal of poles—Wires for house connections—Telegraph companies.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1412. Erection and maintenance of telegraph poles in alleys—Poles outside designated limits—Temporary permits.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1414. Regulations for inspection—Ducts for use of fire and police wires.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1415. Repairs and renewals.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 15.—WATER SUPPLY, ASSESSMENTS, AND RATES**Sec.**

- 43-1504a. Payment of rates for water and water service.
- 43-1504b. Change of ownership or occupancy—Statement of account.

- Sec.
 43-1520c. Council authorized to fix water rates.
 43-1520d. Water and water service rates and charges.
 43-1523. Payment of water tax into General Fund.
 43-1524. Payment of water rents from Washington Aqueduct into General Fund.
 43-1540. Repealed.
 43-1542a. Same.
 43-1543. Acquisition of land for Washington aqueduct.

§ 43-1501. Water mains, pipes, and fire plugs—Commissioner to have power to erect.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1502. Water department—Operations of, to be under direction of Engineer's Office.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1503. Water supply—Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1504. Fiscal year of water department.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1504a. Payment of rates for water and water service.

All rates for water and water service hereby established shall be payable at least once semiannually. When the computation of the amount of any bill for any of such services results in a fraction of one-half cent or more, the next highest amount not containing a fraction shall be charged. (Oct. 21, 1975, D.C. Law 1-23, title VII, § 701(c), 22 DCR 2115.)

CODIFICATION

Portion of section relating to payment of charges for sanitary sewer service is set out as § 43-1605b.

EFFECTIVE DATE

Sec. 801(e) of act Oct. 21, 1975, D.C. Law 1-23, provided "Title VII of this Act [amending § 43-1520c, and enacting §§ 43-1504a, 43-1504b, 43-1520d, 43-1605a, 43-1605b and provisions set out as notes under §§ 43-1520d, 43-1605a] shall take effect on July 1, 1975."

§ 43-1504b. Change of ownership or occupancy—Statement of account.

Any person who desires a statement of the account of any water or sewer service charge to the

date of the acquisition of any premises shall make a written request to the Water Registrar on or before the date of such acquisition, except that the authority to enforce payment of water and sewer service charges by shutting off the water supply or by refusing to restore the water supply may be exercised without regard to any change of ownership or occupancy of any such premises. The Water Registrar shall have access to all premises furnished water or sewer service, and if any such premises is vacant, any request for a statement of account shall contain a fixed time at which a representative of the Water Registrar may obtain access. (Oct. 21, 1975, D.C. Law 1-23, title VII, § 703, 22 DCR 2116.)

EFFECTIVE DATE

See sec. 801(e) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 43-1504a.

§ 43-1506. Water registrar.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1510. Water mains and service sewers erected at discretion of Commissioner—Costs assessed against abutting property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Repair or renewal by District and compensation for past repairs of water service pipes and building sewers, see § 6-405.

Requirements for new or replacement water or sewer systems to reduce flood hazards, see § 5-1103.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43-1513, 43-1515 to 43-1517.

§ 43-1511. Assessments for water mains.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43-1513, 43-1515 to 43-1517.

§ 43-1512. Assessor to give notice of assessments.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43-1513, 43-1515 to 43-1517.

§ 43-1513. Water main and service sewer assessments payable in three installments.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43-1515 to 43-1517.

§ 43-1514. Assessment of property in county of Washington for water mains and service sewers.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43-1513, 43-1515 to 43-1517.

§ 43-1515. Relevying assessments when assessments declared void.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43-1513, 43-1516, 43-1517.

§ 43-1516. Disposal of funds received by collector of taxes.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43-1513, 43-1515, 43-1517.

§ 43-1517. Definition—Service sewer.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43-1513, 43-1515, 43-1516.

§ 43-1519. Refund of water rents erroneously paid.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1520. Water rents—Rates.

The following schedule of water rents in the District of Columbia shall be fixed by the Mayor of said District:

For the use of water for domestic purposes through unmetered services, \$9.85 per annum for all tenements two stories high, or less, with a front width of sixteen feet, or less; for each additional front foot or fraction thereof greater than one-half, 62 cents; and for each additional story or part thereof, one-third of the charges as computed above. For business places that are not required to install meters under existing regulations, the rates in effect June 30, 1930, to be increased by 40 per centum per annum. Unless otherwise determined pursuant to section 603 of this Act, after June 30, 1976, the rate for water furnished any premises through metered services shall be 39.4 cents for each one hundred cubic feet of water used. For water for building construction purposes when not supplied through a meter, 6 cents per one thousand brick and 3 cents per cubic yard of concrete, with a minimum charge of \$1 for each separate building project. All water required for purposes which are not covered by the foregoing classifications shall be paid for at such rates as may be fixed by the Mayor of the District of Columbia. (July 3, 1930, 46 Stat. 988, ch. 848, § 1; June 15, 1976, D.C. Law 1-70, title VI, § 601, 23 DCR 548.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

Section 603 of this Act, referred to in text, is probably a reference to section 603 of act June 15, 1976, D.C. Law 1-70, which is set out as a note under § 43-1520d.

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-70, amended the third full sentence generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 1402 of act June 15, 1976, D.C. Law 1-70, set out as a note under § 47-1209.

§ 43-1520c. Council authorized to fix water rates.

The Council of the District of Columbia is authorized from time to time to fix the rates charged by the District for water and water services furnished by the District water supply system, at such amount as the Council, on the basis of a recommendation made by the Mayor of the District of Columbia, determines is necessary to meet the expense to the District of furnishing such water and water services. In computing the charge for the consumption of water, if such charge is for a period beginning prior to a change in water rates and ending thereafter, such charge shall be prorated in such a manner as to charge for water consumed prior to the effective date of such new water rates at the rate which is in effect during that period of consumption, and to charge for water consumed after the effective date at the new rates. Nothing in this title shall be construed to modify the provisions of section 43-1530 relating to the delivery of water from the District water supply system to the Washington Suburban Sanitary Commission. (May 18, 1954, 68 Stat. 101, ch. 218, title I, § 101; Mar. 2, 1962, 76 Stat. 17, Pub. L. 87-408, § 501; Jan. 5, 1971, Pub. L. 91-650, title I, § 105(a), 84 Stat. 1931; Oct. 21, 1975, D.C. Law 1-23, title VII, § 706, 22 DCR 2118.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

This title, referred to in the last sentence, is title I of Act May 18, 1954, ch. 218, which enacted §§ 43-1520c, 43-1521a to 43-1521d, and 43-1541, and amended §§ 43-1504 and 43-1540.

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended the second sentence generally.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(e) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 43-1504a.

§ 43-1520d. Water and water service rates and charges.

Notwithstanding any other provision of law or regulation, the following rates and charges shall be applicable for water and water services provided on or after July 1, 1975:

(1) ¹ *Rates and Charges for Metered Services.*

The minimum rate for water furnished any prem-

¹ Enacted without a par. (2).

ises through a metered service shall be \$8.75 semi-annually for the use of up to 3,600 cubic feet of water, payable in advance and for water furnished during such period in excess of that quantity the rate shall be thirty cents per one hundred cubic feet of water.

(Oct. 21, 1975, D.C. Law 1-23, title VII, § 701(a), 22 DCR 2114.)

EMERGENCY ACT AMENDMENTS

1977—For temporary provisions relating to establishing administrative procedures for reviewing contested water and sanitary sewer service bills, see sec. 3 of the Second Emergency Water and Sewer Bill Payment Act of 1977 (D.C. Act 2-112, Dec. 5, 1977, 24 DCR 4831).

For temporary provisions requiring the Mayor to promulgate an equitable formula for the reassessment of residential water and sanitary sewer service charges, see sec. 4 of the Emergency Water and Sewer Bill Payment Act of 1977 (D.C. Act 2-65, Aug. 2, 1977, 24 DCR 1218).

EFFECTIVE DATE

See sec. 801(e) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 43-1504a.

PENALTIES

Section 702 of act Oct. 21, 1975, D.C. Law 1-23, title VII, provided: "The penalties to be imposed for failure to pay bills for water and sewer service after the expiration of thirty days from the date of rendition thereof, and the payment of any costs incurred by the District of Columbia in connection with discontinuing and restoring the water supply to any premises, shall be as provided by sections 102 and 210 of the District of Columbia Public Works Act of 1954 (D.C. Code, secs. 43-1521a, 43-1609)."

WATER RATE STRUCTURE REPORT

Section 704 of act Oct. 21, 1975, D.C. Law 1-23, title VII, provided:

"By November 15, 1975, the Mayor of the District of Columbia shall submit to the Council of the District of Columbia a water rate structure which shall—

"(a) continue the increasing price rate structure contained in this title [VII] whereby per unit water rates increased with increased consumption;

"(b) a plan to provide for a minimum bill for water usage not to exceed \$2.89 for the first 1,200 cubic feet of water used during each six month period;

"(c) provide a scheme whereby residents of multi-family units will benefit on an equal basis with residents of single-family units in the low-minimum water usage rates; and

"(d) provide detailed substantiation for the rate structure. The structure, plan and scheme submitted by the Mayor under this section shall be designed to make no change in the amount of revenue derived from the water rates and sewer service charges, and shall not take effect unless implemented by further action of the Council."

Section 704 of act Oct. 21, 1975, D.C. Law 1-23, was temporarily amended by sec. 2 of the Emergency Fourth Amendment to the Revenue Act of 1975 (D.C. Act 1-82, Jan. 6, 1976, 22 DCR 3799) by substituting "January 23, 1976" for "November 15, 1975".

CERTIFICATION OF MAILING OF WATER AND SANITARY SEWER SERVICE BILLS

Section 903 of act Apr. 19, 1977, D.C. Law 1-124, title IX, provided: "Before May 15, 1977, the Mayor shall submit to the Committee on Finance and Revenue a certification that all billings for water, water service and sanitary sewer service for water consumed prior to November 1, 1976 have been mailed to consumers. The certification shall include the following information as of the first day of the month from September 1, 1976 to May 1, 1977, inclusive: (1) for each billing category (i.e., privates and charitables, Southeast and Southwest, Northeast, Northwest City and Northwest County): number of customers, total number of bills mailed, total number of bills audited, billable water consumed (if meters were read for the category during the preceding 30 days) and, (2) an estimate of the total nonbillable water consumed.

The certification shall also include the total revenue collected for water, water service and sewer service between September 1, 1976 and May 1, 1977, inclusive; total federal consumption and total District consumption between July 1, 1976 and January 1, 1977, inclusive."

CERTIFICATION OF WATER AND SANITARY SEWER SERVICE BILLINGS; REQUIREMENTS TO EFFECT WATER RATES AND SEWER CHARGES

Section 603 of act June 15, 1976, D.C. Law 1-70, title VI, provided:

"(a) (1) On or before May 1, 1976, the Mayor shall certify to the Council that all billings for water and water service rendered through October 19, 1975, have been mailed out.

"(2) The water rates to become effective after June 30, 1976, according to the provisions of section 601 of this Act [amending § 43-1520], shall be effective if the Council, acting by resolution, determines prior to June 30, 1976, that the Mayor has properly justified those water rates and if the Mayor submits to the Council the certification referred to in paragraph (1).

"(3) The water rates in effect after June 30, 1975, shall remain in effect after June 30, 1976, if the Council does not act pursuant to paragraph (2) of this subsection.

"(b) (1) On or before May 1, 1976, the Mayor shall certify to the Council that all billings for sanitary sewer service rendered through October 19, 1975, have been mailed out.

"(2) The charge for sanitary sewer service to become effective after June 30, 1976, according to the provisions of section 602(a) (2) of this act [§ 43-1605a(2)], shall be effective if the Council, acting by resolution, determines prior to June 30, 1976, that the Mayor has properly justified that charge for sanitary sewer service and if the Mayor submits to the Council the certification referred to in paragraph (1).

"(3) The charge for sanitary sewer service in effect after June 30, 1975, shall remain in effect after June 30, 1976, if the Council does not act pursuant to subsection (b) (2) of this section."

DURATION OF WATER RATES AND SEWER CHARGES

Section 705 of act Oct. 21, 1975, D.C. Law 1-23, title VII, provided:

"The water rates and sewer service charge contained in this title [VII], to be effective July 1, 1975, shall terminate on January 1, 1976, unless—

"(1) the Mayor of the District of Columbia submits to the Council of the District of Columbia, by November 15, 1975, a complete report substantiating the increased water rates and sewer service charges as necessitated by increased government cost; and

"(2) the Council adopts a resolution (before January 1, 1976) stating that the Council concurs in the Mayor's report. In the event such report is not submitted to the Council by November 15, 1975, or the Council does not adopt such resolution by January 1, 1976, then the water rates and sewer service charges in effect on June 30, 1975 shall again be effective beginning January 1, 1976."

Section 705 of act Oct. 21, 1975, D.C. Law 1-23, was temporarily amended by secs. 3-5 of the Emergency Fourth Amendment to the Revenue Act of 1975 (D.C. Act 1-82, Jan. 6, 1976, 22 DCR 3799) by substituting "March 15, 1976" for "January 1, 1976" and "January 23, 1976" for "November 15, 1975" and by amending par. (2) generally.

WATER RATE AND SANITARY SEWER SERVICE CHARGE REPORTS BY PUBLIC SERVICE COMMISSION AND PEOPLE'S COUNSEL

Sections 604 and 605 of act June 15, 1976, D.C. Law 1-70, title VI, provided:

"Sec. 604. Before September 30, 1976, the Commissioners of the Public Service Commission of the District of Columbia shall submit a report to the Committee on Finance and Revenue to the Council (1) stating the information which should be submitted to the Council by the Mayor to justify any increase in the water rate and the charge for sanitary sewer service and any change in the rate structure, (2) describing alternative rate structures and methods of determining the proper water rate and charge for sanitary sewer service to be charged users

of the water, water services and sewer services provided by the government of the District of Columbia and recommending a rate structure and method of determining proper rates, and (3) suggesting a procedure under which the Public Service Commission of the District of Columbia reviews the Mayor's recommended increase in the water rate or charge for sanitary sewer service and renders to the Council an advisory opinion concerning the appropriateness and legality of the recommended rates.

"Sec. 605. Before September 30, 1976, the People's Counsel shall submit a report to the Council (1) stating the effect on consumers of the water rate and charge for sanitary sewer service scheduled to become effective after June 30, 1976, pursuant to sections 601 and 602 of this act [amending §§ 43-1520 and 43-1605a] (2) stating what issues affecting consumers should be considered by the Council in setting the water rate and the charge for sanitary sewer service, and (3) relating the experiences, procedure and law in jurisdictions in which a public service commission determines or recommends the rates to be charged by a government-owned utility."

§ 43-1521. Commissioner to have authority to collect water rates in advance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1521a. Additional charge on unpaid water bills.

EMERGENCY ACT AMENDMENTS

1977—For temporary provisions relating to additional time for payment of water and sanitary sewer service bills exceeding \$75, see secs. 2 and 3 of the Emergency Water and Sewer Bill Payment Act of 1977 (D.C. Act 2-65, Aug. 2, 1977, 24 DCR 1217) and sec. 2 of the Second Emergency Water and Sewer Bill Payment Act of 1977 (D.C. Act 2-112, Dec. 5, 1977, 24 DCR 4830).

§ 43-1521b. Discontinuance of water service for failure to pay water charges.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1523. Payment of water tax into General Fund.

The water tax authorized to be levied and collected by this Act shall be paid into the General Fund of the District of Columbia as established by the Revenue Funds Availability Act of 1975. (R.S., D.C., § 203; Jan. 22, 1976, D.C. Law 1-42, § 3(d), 22 DCR 6313.)

REFERENCES IN TEXT

"This Act", referred to in the text, is Act June 22, 1874, which enacted the Revised Statutes of the United States relating to the District of Columbia. For the classification of the Act to the Code, see Parallel Reference Tables.

The General Fund of the District of Columbia, referred to in text, was established by section 9 of the Revenue Funds Availability Act of 1975 (D.C. Law 1-42, Jan. 22, 1976) which is classified to § 47-130c.

AMENDMENT

1976—Act Jan. 22, 1976, D.C. Law 1-42, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 10 of act Jan. 22, 1976, D.C. Law 1-42, set out as a note under § 47-130c.

§ 43-1524. Payment of water rents from Washington Aqueduct into General Fund.

All water rents derived from the Washington Aqueduct shall be paid into the General Fund of the District of Columbia as established by the Revenue Funds Availability Act of 1975. (R.S., D.C., § 217; Jan. 22, 1976, D.C. Law 1-42, § 3(e), 22 DCR 6313.)

REFERENCE IN TEXT

The General Fund of the District of Columbia, referred to in text, was established by section 9 of the Revenue Funds Availability Act of 1975 (D.C. Law 1-42, Jan. 22, 1976) which is classified to § 47-130c.

AMENDMENT

1976—Act Jan. 22, 1976, D.C. Law 1-42, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 10 of act Jan. 22, 1976, D.C. Law 1-42, set out as a note under § 47-130c.

§ 43-1530. Commissioner authorized to deliver water in nearby Maryland—Contract.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1531a. Delivery of water to Falls Church, Virginia, and adjacent areas—Installation expenses—Payments for water—Revocation of permit.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1531c. Acquiring of lands for pipe lines authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1533. Potomac water to be furnished to charitable institutions without charge.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1536. Penalty for damaging or defacing water pipes.

CODIFICATION

Section was formerly classified to 40 U.S.C. § 57.

§ 43-1538. Unauthorized opening.

No person, unless by consent of the Chief of Engineers, shall tap or open the mains or pipes laid or hereafter to be laid by the United States, under a penalty of not less than \$50 nor more than \$500. (R.S., U.S., § 1803; Feb. 26, 1925, ch. 339, § 3, 43 Stat. 983.)

CODIFICATION

The words "in charge of public buildings and works" which followed "Chief of Engineers" was omitted from the Code in view of the abolishment of the Office of Public Buildings and Grounds under the Chief of Engineers and the transfer of certain functions of the Chief of Engineers to the Director of Public Buildings and Grounds of the National Capital by Act Feb. 26, 1925. For further details, see Transfer of Function note set out under § 47-409.

Section is also classified to 40 U.S.C. § 56.

§ 43-1539. District of Columbia water system defined.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan. No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1540. Repealed. Dec. 24, 1973, Pub. L. 93-198, title VII, § 743(b), 87 Stat. 832.

Section, Acts June 2, 1950, 64 Stat. 195, ch. 218, § 2; May 18, 1954, 68 Stat. 103, ch. 218, § 108; Jan. 5, 1971, Pub. L. 91-650, title I, § 103(d), 84 Stat. 1930; related to loans to expand the water system. For new borrowing authority, see § 47-241 et seq.

EFFECTIVE DATE OF REPEAL

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that the repeal of this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

LOAN REPAYMENT OBLIGATION

See note under § 9-220.

§ 43-1541. Water and water service supplied for the use of the Government of the United States.

* * * * *

(b) For the purpose of effectuating the provisions of subsection (a) of this section, there shall be included annually in the budget estimates of the Mayor (beginning with the budget estimates for the fiscal year beginning October 1, 1977) the estimated value, as determined by the Mayor, of the water and water services to be furnished to the United States during the fiscal year for which the budget estimates are prepared, based on the rates for water and water services that will be in effect during such fiscal year. There shall be appropriated annually to the District, subject to subsequent adjustment within two fiscal years, out of any money in the Treasury not otherwise appropriated, a sum corresponding to the estimated value of water and water services to be furnished to the United States; *Provided*, That nothing contained in this subsection shall be deemed to relieve the United States of its obligation to make payments to the District for water and water services furnished prior to October 1, 1977: *Provided further*, That notwithstanding any other provision of law, outstanding payments for water and water services furnished by the District prior to October 1, 1977, shall be advanced and paid, subject to subsequent adjustment within two fiscal years, to the District by the United States on October 1, 1977. (As amended Oct. 6, 1977, Pub. L. 95-122, § 1(1), 91 Stat. 1093.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan. No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1977—Act Oct. 6, 1977, Pub. L. 95-122, amended subsec. (b) generally. For prior provisions, see the 1973 edition of the Code.

SUBMISSION OF REVISED FINANCIAL PLAN IN ABSENCE OF ADVANCE FEDERAL PAYMENTS FOR WATER AND SANITARY SEWER SERVICE

Section 901 of act Apr. 19, 1977, D.C. Law 1-124, title IX, provided: "If before September 2, 1977 the Congress and the President of the United States have failed to enact legislation which will provide for the advance payment by the federal government to the District of Columbia for water, water service, and sanitary sewer service, then the Mayor shall submit to the Committee on Finance and Revenue of the Council of the District of Columbia or its successor committee a revised financial plan for the approval, by resolution, by the Council of the District of Columbia."

CROSS REFERENCE

Deposit of payment in General Fund, see § 47-130c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-130c.

§ 43-1542. Potomac River reservoir—Contract authority—District share of costs—Water delivery charges—Appropriations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan. No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1542a. Same.

(a) The Mayor is authorized to contract with the United States, any State in the Potomac River Basin, any agency or political subdivision thereof, and any other competent State or local authority, with respect to the payment by the District to the United States, either directly or indirectly, of the District's equitable share of any part or parts of the non-Federal portion of the costs of any reservoirs authorized by the Congress for construction on the Potomac River or any of its tributaries. Every such contract may contain such provisions as the Mayor may deem necessary or appropriate.

(b) Unless hereafter otherwise provided by legislation enacted by the Council, all payments made by the District and all moneys received by the District pursuant to any contract made under the authority of this Act shall be paid from, or be deposited in, a fund designated by the Mayor. Charges for water delivered from the District water system for use outside the District may be adjusted to reflect the portions of any payments made by the District under contracts authorized by this Act which are equitably attributable to such use outside the District. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 488, 87 Stat. 808.)

REFERENCE IN TEXT

"This Act", referred to in subsec. (b), is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198,

87 Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

EFFECTIVE DATE

Section 771 of the Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

§ 43-1543. Acquisition of land for Washington aqueduct.

Appropriations are hereby authorized for the acquisition, by gift, dedication, exchange, purchase, or condemnation, of land or rights in or on land or easements therein for the Washington aqueduct by the Chief of Engineers, Corps of Engineers, United States Army, or his designated agents. (Oct. 26, 1973, Pub. L. 93-140, § 18, 87 Stat. 507.)

APPROPRIATIONS

See note under § 1-228a.

Chapter 16.—SANITARY SEWAGE WORKS

SUBCHAPTER I.—D.C. SANITARY SEWAGE WORKS

Sec.

43-1602. Repealed.

43-1603. Use of the General Fund for sanitary sewage works.

43-1605a. Sanitary sewer service charges.

43-1605b. Payment of sanitary sewer service charges.

43-1612, 43-1613. Repealed.

43-1614. Use of funds from General Fund for certain sewers.

43-1615 to 43-1617. Repealed.

43-1619. Agreements with Maryland and Virginia.

SUBCHAPTER II.—DULLES INTERNATIONAL AIRPORT SANITARY SEWER

43-1621. Potomac interceptor—Acquisition of rights-of-way—Plans and specifications—Operation and maintenance of regional sanitary sewer system—Charges for use of interceptor.

43-1623. Repealed.

SUBCHAPTER I.—D.C. SANITARY SEWAGE WORKS

§ 43-1601. Definitions.

For the purposes of this subchapter—

* * * * *

CODIFICATION

The first line of this section is set out in this supplement to reflect the redesignation of sections 43-1601 to 43-1618 as subchapter I of this chapter.

§ 43-1602. Repealed. Jan. 22, 1976, D.C. Law 1-42, § 3(f)(1), 22 DCR 6313.

Section, Act May 18, 1954, 68 Stat. 104, ch. 218, title II, § 202, created a special fund known as the D.C. Sanitary Sewage Works Fund. For the deposit of amounts in the General Fund, see § 47-130c.

EFFECTIVE DATE OF REPEAL

See sec. 10 of act Jan. 22, 1976, D.C. Law 1-42, set out as a note under § 47-130c.

§ 43-1603. Use of the General Fund for sanitary sewage works.

Subject to appropriations, amounts in the General Fund of the District of Columbia (including any

special account therein) as established by the Revenue Funds Availability Act of 1975 shall be available for use by or under the direction and control of the Mayor of the District of Columbia for—

* * * * *

(b) payment of a portion of such administrative expenses as may not be wholly allocated to the sanitary sewage works or to any other sewage works of the District, but which expenses are incurred in connection with the operation of the sanitary sewage works and either or both the stormwater sewer system and the combined sewer system. The portion of such expenses to be paid from the General Fund of the District of Columbia (including any special account therein) shall be fixed from time to time by the Mayor at such a percentage of the total of such expenses for the said sewer systems as the Mayor, in his discretion, may determine;

* * * * *

(f) payments to and¹ other funds of the District for such expenses or estimated expenses as are or may be incurred in the administration of this subchapter;

(g) payment to the United States Treasury of the interest, in accordance with the provisions of this subchapter, on loans to the District for the purposes of this Act;

(h) repayment to the United States Treasury of the principal amount of each loan made to the District in accordance with the provisions of this chapter, and of any advancements made to the District in accordance with the provisions of section 43-1604; and

* * * * *

(As amended Jan. 22, 1976, D.C. Law 1-42, § 3(f)(2), 22 DCR 6313.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCES IN TEXT

The General Fund of the District of Columbia, referred to in text, was established by section 9 of the Revenue Funds Availability Act of 1975 (D.C. Law 1-42, Jan. 22, 1976) which is classified to § 47-130c.

"This Act", referred to in par. (g), is the District of Columbia Public Works Act of 1954, May 18, 1954, 68 Stat. 104, ch. 218. For classification of the Act to the Code, see Parallel Reference Tables.

AMENDMENTS

1976—Act Jan. 22, 1976, D.C. Law 1-42, amended section by substituting "Subject to appropriations, amounts in the General Fund of the District of Columbia (including any special account therein) as established by the Revenue Funds Availability Act of 1975" for "Subject to appropriations, the D.C. Sanitary Sewage Works Fund".

Par. (b). Such act amended par. (b) by substituting "General Fund of the District of Columbia (including any special account therein)" for "D.C. Sanitary Sewage Works Fund".

Par. (f). Such act amended par. (f) by striking out "the General Fund" immediately following "payments to".

¹ So in original.

Par. (g). Such act amended par. (g) by substituting "the purposes of this Act" for "such Sanitary Sewage Works Fund".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 10 of act Jan. 22, 1976, D.C. Law 1-42, set out as a note under § 47-130c.

§ 43-1604. Advances for sanitary sewage works—Reimbursement for amounts advanced.

The Secretary of the Treasury, notwithstanding the provisions of the District of Columbia Appropriation Act, approved June 29, 1922 (42 Stat. 668), is authorized and directed to advance, on the requisition of the Mayor of the District of Columbia, made in the manner now prescribed by law, out of any money in the Treasury of the United States not otherwise appropriated, such sums as may be necessary, from time to time, to meet the expenses of the District in connection with the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the sanitary sewage works of the District, as authorized by Congress, and such amounts so advanced shall be reimbursed by the said Mayor to the Treasury out of money in the General Fund of the District of Columbia (including any special account therein). (May 18, 1954, 68 Stat. 105, ch. 218, title II, § 204; Jan. 22, 1976, D.C. Law 1-42, § 3(f) (3), 22 DCR 6314.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Jan. 22, 1976, D.C. Law 1-42, amended section by substituting "money in the General Fund of the District of Columbia (including any special account therein)" for "the moneys deposited to the credit of the D.C. Sanitary Sewage Works Fund".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 10 of act Jan. 22, 1976, D.C. Law 1-42, set out as a note under § 47-130c.

CROSS REFERENCE

General Fund, see § 47-130c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43-1603.

§ 43-1605. Service charges for sanitary sewer service—Authority of Council.

The Council of the District of Columbia is authorized to establish charges for the provision of sanitary sewer service, such charges to be collected in the same manner and at the same time as water charges are collected, and to be paid into the General Fund of the District of Columbia as established by the Revenue Funds Availability Act of 1975. (May 18, 1954, 68 Stat. 106, ch. 218, title II, § 206; Jan. 22, 1976, D.C. Law 1-42, § 3(f) (4), 22 DCR 6314.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

The General Fund of the District of Columbia, referred to in text, was established by section 9 of the Revenue Funds Availability Act of 1975 (D.C. Law 1-42, Jan. 22, 1976) which is classified to § 47-130c.

AMENDMENT

1976—Act Jan. 22, 1976, D.C. Law 1-42, amended section by substituting "General Fund of the District of Columbia as established by the Revenue Funds Availability Act of 1975" for "D.C. Sanitary Sewage Works Fund".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 10 of act Jan. 22, 1976, D.C. Law 1-42, set out as a note under § 47-130c.

§ 43-1605a. Sanitary sewer service charges.

(1) Before July 1, 1976, the charge for sanitary sewer service furnished any premises in the District shall be 90 percent of the charge for water or water services furnished any such premises from the District of Columbia Water Supply System and shall be collected in the same manner and at the same time as water charges are collected.

(2) Unless otherwise determined pursuant to section 603 of this Act, after June 30, 1976, the charge for sanitary sewer service furnished any premises in the District shall be at the rate of 44.8 cents for each one hundred (100) cubic feet of water and shall be collected in the same manner and at the same time as water charges are collected.

(3) When water is supplied any such premises from a source or sources other than the District of Columbia Water Supply System, the charge for sanitary sewer service shall be the same in amount as would be charged if the same quantity of water were furnished such premises from the District of Columbia Water Supply System through metered service.

(4) The sanitary sewer charge shall be added as a separate item on the bill, if any, for water and water service furnished such premises. (Oct. 21, 1975, D.C. Law 1-23, title VII, § 701(b), 22 DCR 2115; June 15, 1976, D.C. Law 1-70, title VI, § 602, 23 DCR 549.)

REFERENCE IN TEXT

Section 603 of this Act, referred to in par. (2), is probably a reference to section 603 of act June 15, 1976, D.C. Law 1-70, which is set out as a note under § 43-1520d.

CODIFICATION

Section was enacted as part of the Revenue Act of 1975, and not as part of title II of the District of Columbia Public Works Act of 1954 which comprises this subchapter.

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-70, amended section by designating the first sentence as pars. (1) and (2) and amending it generally. Prior to amendment the first sentence read as follows: "The charge for sanitary sewer service furnished any premises in the District of Columbia shall be 90 per centum of the charge for water or water service furnished any such premises from the District of Columbia Water Supply System and shall be collected in the same manner and at the same time as water charges are collected."

Such act also designated the second and third sentences as pars. (3) and (4), respectively.

EMERGENCY ACT AMENDMENTS

1977—For temporary provisions relating to establishing administrative procedures for reviewing contested water and sanitary sewer service bills, see sec. 3 of the Second Emergency Water and Sewer Bill Payment Act of 1977 (D.C. Act 2-112, Dec. 5, 1977, 24 DCR 4831).

For temporary provisions requiring the Mayor to promulgate an equitable formula for the reassessment of residential water and sanitary sewer service charges, see sec. 4 of the Emergency Water and Sewer Bill Payment Act of 1977 (D.C. Act 2-65, Aug. 2, 1977, 24 DCR 1218).

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 1402 of act June 15, 1976, D.C. Law 1-70, set out as a note under § 47-1209.

EFFECTIVE DATE

See sec. 801(e) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 43-1504a.

DURATION OF WATER RATES AND SEWER CHARGES

See sec. 705 of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 43-1520d.

PENALTIES

Section 702 of act Oct. 21, 1975, D.C. Law 1-23, title VII, provided: "The penalties to be imposed for failing to pay bills for water and sewer service after the expiration of thirty days from the date of rendition thereof, and the payment of any costs incurred by the District of Columbia in connection with discontinuing and restoring the water supply to any premises, shall be as provided by sections 102 and 210 of the District of Columbia Public Works Act of 1954 (D.C. Code, secs. 43-1521a, 43-1609)."

§ 43-1605b. Payment of sanitary sewer service charges.

All charges for sanitary sewer service hereby established shall be payable at least once semiannually. When the computation of the amount of any bill for any of such services results in a fraction of one-half cent or more, the next highest amount not containing a fraction shall be charged. (Oct. 21, 1975, D.C. Law 1-23, title VII, § 701(c), 22 DCR 2115.)

CODIFICATION

Portion of section relating to payment of rates for water and water service is set out as § 43-1504a.

Section was enacted as part of the Revenue Act of 1975, and not as part of title II of the District of Columbia Public Works Act of 1954 which comprises this subchapter.

EFFECTIVE DATE

See sec. 801(e) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 43-1504a.

CROSS REFERENCE

Change of ownership or occupancy, statement of account, see § 43-1504b.

§ 43-1606. Methods of determination of sanitary sewer service charges.

(a) The sanitary sewer service charges established under the authority of this subchapter shall be based on the water consumption of, and water service to, the properties served, and be determined by one of the following methods:

* * * *

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

A portion of subsection (a) of this section is set out in this supplement to reflect the redesignation of sections 43-1601 to 43-1618 as subchapter I of this chapter.

§ 43-1607. Persons obligated to pay sanitary sewer service charge.

(a) The owner or occupant of each building, establishment, or other place in the District con-

nected with any District sewer conducting sanitary sewage shall pay the sewer service charge authorized by this subchapter.

(b) If the sanitary sewer service charge imposed by this subchapter is based on a water charge any part of which is for a period beginning prior to the imposition of the sanitary sewer service charge and ending thereafter, the sanitary sewer service charge shall be prorated, on a monthly basis, on so much of such water charge as shall have accrued subsequent to August 1, 1954.

* * * *

CODIFICATION

Subsections (a) and (b) of this section are set out in this supplement to reflect the redesignation of sections 43-1601 to 43-1618 as subchapter I of this chapter.

CROSS REFERENCE

Change of ownership or occupancy, statement of account, see § 43-1504b.

§ 43-1608. Meters and measuring devices—Maintenance and repairs.

All meters or other measuring devices installed or required to be used under the provisions of this subchapter shall be under the control of the Mayor of the District of Columbia, and the Council of the District of Columbia, shall promulgate all regulations necessary in its judgment to effectuate the purposes of this subchapter. The owner or occupant of the property upon which any such measuring device is installed shall be responsible for its maintenance and safekeeping, and all repairs thereto shall be made at the owner's cost, whether such repairs are made necessary by ordinary wear and tear or other causes. Bills for such repairs, if made by the District, shall be due and payable when rendered, and the Mayor is authorized to provide for stopping the supply of water to any building or establishment upon the failure to pay such charge for meter repairs. (May 18, 1954, 68 Stat. 107, ch. 218, title II, § 209.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

The section is set out in this supplement to reflect the redesignation of sections 43-1601 to 43-1618 as subchapter I of this chapter.

§ 43-1609. Additional charge for overdue bills—Enforcement of lien.

The Council of the District of Columbia is hereby authorized, in order to encourage the prompt payment of the sanitary sewer service charge imposed by this subchapter, to impose an additional charge of 10 per centum for any sanitary sewer service charge remaining unpaid for more than thirty days, and the Mayor of the District of Columbia is authorized to shut off the water of premises for which such charge is not paid within thirty days, and to have and enforce a continuing lien for such charge upon the land and any improvements thereon furnished such sanitary sewer service, in the same manner and to the same extent as if sections 43-1521a, 43-1521b, 43-1521c, and 43-1521d were set forth in this sub-

chapter, and such sections shall be deemed to be applicable in every particular to the sanitary sewer service charge imposed by this subchapter: *Provided*, That whenever said lien is enforced by the sale of property against which it has been assessed, so much of the proceeds of such sale as represents said unpaid sanitary sewer service charges shall be credited to the General Fund of the District of Columbia as established by the Revenue Funds Availability Act of 1975. (May 18, 1954, 68 Stat. 107, ch. 218, title II, § 210; Jan. 22, 1976, D.C. Law 1-42, § 3 (f) (5), 22 DCR 6315.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

The General Fund of the District of Columbia, referred to in text, was established by section 9 of the Revenue Funds Availability Act of 1975 (D.C. Law 1-42, Jan. 22, 1976) which is classified to § 47-130c.

AMENDMENT

1976—Act Jan. 22, 1976, D.C. Law 1-42, amended section by substituting "General Fund of the District of Columbia as established by the Revenue Funds Availability Act of 1975" for "D.C. Sanitary Sewage Works Fund".

EMERGENCY ACT AMENDMENTS

1977—For temporary provisions relating to additional time for payment of water and sanitary sewer service bills exceeding \$75, see secs. 2 and 3 of the Emergency Water and Sewer Bill Payment Act of 1977 (D.C. Act 2-65, Aug. 2, 1977, 24 DCR 1217) and sec. 2 of the Second Emergency Water and Sewer Bill Payment Act of 1977 (D.C. Act 2-112, Dec. 5, 1977, 24 DCR 4830).

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 10 of act Jan. 22, 1976, D.C. Law 1-42, set out as a note under § 47-130c.

§ 43-1610. Sanitary sewer service charges as to churches and institutions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1611. Sanitary sewer service charges for sewer services furnished for direct use by the Government of the United States.

* * * * *

(b) For the purpose of effectuating the provisions of subsection (a) of this section, there shall be included annually in the budget estimates of the Mayor (beginning with the budget estimates for the fiscal year beginning October 1, 1977) the estimated value, as determined by the Mayor, of the sanitary sewer services to be furnished to the United States during the fiscal year for which the budget estimates are prepared, based on the rates for sanitary sewer services that will be in effect during such fiscal year. There shall be appropriated annually to the District, subject to subsequent adjustment within two fiscal years, out of any money in the

Treasury not otherwise appropriated, a sum corresponding to the estimated value of sanitary sewer services to be furnished to the United States: *Provided*, That nothing contained in this subsection shall be deemed to relieve the United States of its obligation to make payments to the District for sanitary sewer services furnished prior to October 1, 1977: *Provided further*, That, notwithstanding any other provisions of law, outstanding payments for sanitary sewer services furnished by the District prior to October 1, 1977, shall be advanced and paid, subject to subsequent adjustment within two fiscal years, to the District by the United States on October 1, 1977. (As amended Oct. 6, 1977, Pub. L. 95-122, § 1(2), 91 Stat. 1093.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1977—Act Oct. 6, 1977, Pub. L. 95-122, amended subsec. (b) generally. For prior provisions, see the 1973 edition of the Code.

CROSS REFERENCE

Deposit of payments in General Fund, see § 47-130c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-130c.

§ 43-1612. Repealed. Dec. 24, 1973, Pub. L. 93-198, title VII, § 743(c), 87 Stat. 832.

Section, Act May 18, 1954, 68 Stat. 108, ch. 218, title II, § 213, related to loans from the U.S. Treasury for sanitary and combined sewer systems of the District. For new borrowing authority, see § 47-241 et seq.

EFFECTIVE DATE OF REPEAL

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that the repeal of this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

§ 43-1613. Repealed. Dec. 24, 1973, Pub. L. 93-198, title VII, § 743(c), 87 Stat. 832.

Section, Acts May 18, 1954, 68 Stat. 108, ch. 218, title II, § 214; Sept. 6, 1960, 74 Stat. 811, Pub. L. 86-711, § 1; Jan. 5, 1971, Pub. L. 91-650, title I, § 103(b), 84 Stat. 1930; Dec. 15, 1971, Pub. L. 91-196, title V, § 501, 85 Stat. 654; related to the limit of loans for the sanitary and combined sewer systems. For new borrowing authority, see § 47-241 et seq.

EFFECTIVE DATE OF REPEAL

See note under § 43-1612.

§ 43-1614. Use of funds from General Fund for certain sewers.

Nothing herein contained shall prohibit the use of funds deposited to the credit of the General Fund of the District of Columbia as established by the Revenue Funds Availability Act of 1975 from being used for the construction, expansion, relocation, replacement, or renovation of any sewer in the combined sewer system of the District. (May 18, 1954, 68 Stat. 109, ch. 218, title II, § 215; Jan. 22, 1976, D.C. Law 1-42, §§ 3(f) (6), 8, 22 DCR 6315, 6318.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

The General Fund of the District of Columbia, referred to in text, was established by section 9 of the Revenue Funds Availability Act of 1975 (D.C. Law 1-42, Jan. 22, 1976) which is classified to § 47-130c.

AMENDMENTS

1976—Section 3(f)(6) of act Jan. 22, 1976, D.C. Law 1-42, provided as follows: "Section 214¹ of such Act (D.C. Code, see 43-1614) is amended by striking out ' but the Commissioner of the District of Columbia, prior to authorizing the use of moneys from such fund for such work, shall determine the percentage of the cost to be borne by the D.C. Sanitary Sewage Works Fund and the percentage to be borne by the General Fund'."

Section 8 of such act amended section by substituting "General Fund of the District of Columbia as established by the Revenue Funds Availability Act of 1975" for "D.C. Sanitary Sewage Works Fund".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 10 of act Jan. 22, 1976, D.C. Law 1-42, set out as a note under § 47-130c.

§ 43-1615. Repealed. Dec. 24, 1973, Pub. L. 93-198, title VII, § 743(c), 87 Stat. 832.

Section, Act May 18, 1954, 68 Stat. 109, ch. 218, title II, § 216, provided by advancement and availability of funds from loans. For new borrowing authority, see § 47-241 et seq.

EFFECTIVE DATE OF REPEAL

See note under § 43-1612.

§ 43-1616. Repealed. Dec. 24, 1973, Pub. L. 93-198, title VII, § 743(c), 87 Stat. 832.

Section, Acts May 18, 1954, 68 Stat. 109, ch. 218, title II, § 217; Sept. 6, 1960, 74 Stat. 812, Pub. L. 86-711, § 1; provided for repayment of loans. For new borrowing authority, see § 47-241 et seq.

EFFECTIVE DATE OF REPEAL

See note under § 43-1612.

AMENDMENT SUBSEQUENT TO REPEAL

Section 3(f)(7) of act Jan. 22, 1976, D.C. Law 1-42, 22 DCR 6315, purported to amend former section by substituting "General Fund of the District of Columbia as established in the Revenue Funds Availability Act of 1975" for "D.C. Sanitary Sewage Works Fund" each place it occurs.

LOAN PAYMENT OBLIGATION

See note under § 9-220.

§ 43-1617. Repealed. Dec. 24, 1973, Pub. L. 93-198, title VII, § 743(c), 87 Stat. 832.

Section, Act May 18, 1954, 68 Stat. 109, ch. 218, title II, § 218, related to interest rates on loans. For new borrowing authority, see § 47-241 et seq.

EFFECTIVE DATE OF REPEAL

See note under § 43-1612.

§ 43-1618. Council's authority to make regulations.

The Council of the District of Columbia is authorized to make rules and regulations to carry out the provisions of this subchapter. (May 18, 1954, 68 Stat. 120, ch. 218, title XVII, § 1701.)

¹ So in original, probably should be section "215".

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

The section is set out in this supplement to reflect the redesignation of sections 43-1601 to 43-1618 as subchapter I of this chapter.

In addition to the sections contained in this subchapter the authority of the Council under section 402 (329) of Reorg. Plan No. 3 of 1967 to make regulations extends to all of the act of May 18, 1954, known as the District of Columbia Public Works Act of 1954, which has been classified to the following sections of the District of Columbia Code: §§ 7-132, 7-133, 7-901, 25-124, 25-138, 40-102, 40-103, 43-1504, 43-1511, 43-1520c, 43-1521a to 43-1521d, 43-1540, 43-1541, 43-1601 to 43-1618, 47-312, 47-313, 47-501a, 47-1203, 47-1206, 47-1208 to 47-1211, 47-1567b, 47-1701, 47-1901, 47-1912, 47-2331, 47-2501a, 47-2501b, 47-2601, 47-2602, 47-2604, 47-2605, 47-2701, 47-2702, 47-2705, 47-2802.

§ 43-1619. Agreements with Maryland and Virginia.

(a) The Mayor shall annually estimate the amount of the District's principal and interest expense which is required to service District obligations attributable to the Maryland and Virginia pro rata share of District sanitary sewage water works and other water pollution projects which provide service to the local jurisdictions in those States. Such amounts as determined by the Mayor pursuant to the agreements described in subsection (b) shall be used to exclude the Maryland and Virginia share of pollution projects cost from the limitation on the District's capital project obligations as provided in section 47-228(b).

(b) The Mayor shall enter into agreements with the States and local jurisdictions concerned for annual payments to the District of rates and charges for waste treatment services in accordance with the use and benefits made and derived from the operation of the said waste treatment facilities. Each such agreement shall require that the estimated amount of such rates and charges will be paid in advance, subject to adjustment after each year. Such rates and charges shall be sufficient to cover the cost of construction, interest on capital, operation and maintenance, and the necessary replacement of equipment during the useful life of the facility. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 487, 87 Stat. 808.)

CODIFICATION

Section was enacted as a part of the District of Columbia Self-Government and Governmental Reorganization Act, and not as part of title II of Act May 18, 1954, which comprises this subchapter.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

SUBCHAPTER II.—DULLES INTERNATIONAL AIRPORT SANITARY SEWER

§ 43-1620. Commissioner authorized to develop plan for interceptor and sewer line.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43-1621.

§ 43-1621. Potomac interceptor—Acquisition of rights-of-way—Plans and specifications—Operation and maintenance of regional sanitary sewer system—Charges for use of interceptor.

(a) Upon completion of the plan authorized by section 43-1620, the Mayor is authorized to provide for acquisition of rights-of-way, development of the detailed plans and specifications, and construction of the Potomac interceptor. When such interceptor is completed, it shall be operated and maintained by the Mayor as a part of a regional sanitary sewer system in cooperation with the proper authorities of the State and local jurisdictions concerned, under such regulations as may be prescribed by the Council of the District of Columbia.

(b) The Mayor is authorized to establish, by agreements with the appropriate agencies of the United States and with the proper authorities of the States and local jurisdictions concerned, charges for the use of the Potomac interceptor, which shall be based upon the costs of operation, maintenance, and amortization of the cost of all planning and construction (including acquisition of rights-of-way) of such interceptor, but which shall exclude such amount as may be appropriated pursuant to section 43-1622.

(c) The Mayor shall also charge all users of the Potomac interceptor, including any agency of the United States for carrying, treating, and disposing of sewage in the sewerage system of and within the District of Columbia consistently with the provisions of section 1-817c and section 1-817. (June 12, 1960, 74 Stat. 211, Pub. L. 86-515, § 2; Sept. 11, 1967, Pub. L. 90-84, § 1, 81 Stat. 224; Dec. 15, 1971, Pub. L. 92-196, title V, § 502, 85 Stat. 654; Jan. 22, 1976, D.C. Law 1-42, § 4 (a), (b), 22 DCR 6316.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Subsec. (b). Section 4(a) of act Jan. 22, 1976, D.C. Law 1-42, amended subsec. (b) by striking out all of the provisions following the first sentence. For prior provisions, see the 1973 edition of the Code.

Subsec. (c). Section 4(b) of such act amended subsec. (c) by striking out “, and the receipts derived from said charges shall be deposited to the credit of the D.C. Sanitary Sewage Works Fund (created by section 43-1602)” appearing at the end thereof.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 10 of act Jan. 22, 1976, D.C. Law 1-42, set out as a note under § 47-130c.

§ 43-1622. Authorization of appropriations.

For the purposes of carrying out the provisions of this subchapter, there is authorized to be appropriated, without fiscal year limitation, the sum of \$3,000,000, as the Federal contribution toward the cost of planning, acquiring rights-of-way for, and constructing the Potomac interceptor. (June 12, 1960, 74 Stat. 210, Pub. L. 86-515, § 3; Jan. 22, 1976, D.C. Law 1-42, § 4(c), 22 DCR 6316.)

AMENDMENT

1976—Act Jan. 22, 1976, D.C. Law 1-42, amended section by striking out “to the Metropolitan Area Sanitary Sewage Works Fund” immediately following “without fiscal year limitation,”.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 10 of act Jan. 22, 1976, D.C. Law 1-42, set out as a note under § 47-130c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43-1621.

§ 43-1623. Repealed. Dec. 24, 1973, Pub. L. 93-198, title VII, § 743(e), as added Oct. 13, 1977, Pub. L. 95-131, § 4(3), 91 Stat. 1156.

Section, Acts June 12, 1960, Pub. L. 86-515, § 4, 74 Stat. 211; Sept. 11, 1967, Pub. L. 90-84, § 2, 81 Stat. 225; Dec. 15, 1971, Pub. L. 92-196, title V, § 502, 85 Stat. 654; Jan. 22, 1976, D.C. Law 1-42, § 4(d), 22 DCR 6316, authorized the Secretary of the Treasury to advance funds, as loans, to the Mayor to carry out the purposes of sections 43-1620 to 43-1624 and provided for the crediting and repayment of the loans.

§ 43-1624. Acquisition of land in Maryland or Virginia for Potomac interceptor—Title to and jurisdiction over land—Condemnation proceedings.

(a) The Mayor is authorized to acquire by purchase, condemnation, donation, or otherwise, any land or any interest in land located in Maryland or Virginia needed for construction and operation of the Potomac interceptor. Title to any such land or interest in land shall be taken in the name of the United States but shall be under the jurisdiction and control of the Mayor. For the purpose of acquiring any such land or any interest in land, the Mayor shall be deemed to be an officer of the Government within the meaning and for the purposes of section 257 of title 40, U.S. Code. The provisions of sections 258a-258e and 258f of title 40, U.S. Code, shall be applicable to any condemnation proceedings instituted pursuant to authority of this subchapter.

* * * * *

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Subsection (a) of this section is set out in this supplement to reflect the redesignation of sections 43-1620 to 43-1624 as subchapter II of this chapter.

TITLE 44.—RAILROADS AND OTHER CARRIERS

Chapter 1.—RAILROADS

§ 44-106. Reversion of property to District of Columbia—Adequate walkways provided.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2.—STREET RAILWAYS AND BUS LINES

Sec.

44-216. Unlawful conduct on public passenger vehicles.

44-217. Carrier authorized to refuse transportation to violators.

44-218. Penalties.

§ 44-204. Fenders required on streetcars.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 44-206. Construction of duct lines authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 44-211. Removal of disused tracks.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 44-212. Free transfers.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 44-214a. Fares for schoolchildren not over 18 years of age—Formula for adjusting and payment of fare subsidy.

* * * * *

In the case of any common carrier required to furnish transportation to schoolchildren at a reduced fare under this section, the Washington Metropolitan Area Transit Commission shall certify to

the Mayor of the District of Columbia, with respect to each calendar month commencing with September 1968, and ending August 1977, all inclusive, an amount which is the difference between the total of all reduced fares paid during such calendar month to such carrier by schoolchildren in accordance with this section and the amount which would have been paid during that month to such carrier if such fares had been paid at the lowest adult fare established by the Commission for regular route transportation in that month. The certification required by this section shall be made for each such month as soon as practicable following the end thereof. The Mayor of the District of Columbia, upon receiving any such certification, shall pay the carrier with respect to which that certification was filed an amount equal to the amount contained therein. (As amended Aug. 14, 1974, Pub. L. 93-375, § 1, 88 Stat. 446.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1974—Act Aug. 14, 1974, Pub. L. 93-375, amended second par. of section by striking out "1974" and substituting "1977".

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of section, see sec. 2 of the School Transit Subsidy Emergency Act of 1977 (D.C. Act 2-76, Aug. 16, 1977, 24 DCR 1794) and the Second School Transit Subsidy Emergency Act of 1977 (D.C. Act 2-104, Nov. 23, 1977, 24 DCR 4710).

CONSTRUCTION OF 1974 AMENDMENT

Section 2 of Act Aug. 14, 1974, Pub. L. 93-375, provided: "Notwithstanding any other provision of law, or any rule of law, nothing in this Act (including the amendment made by this Act) shall be construed as limiting the authority of the Council of the District of Columbia to enact any act or resolution, after January 2, 1975, pursuant to the District of Columbia Self-Government and Governmental Reorganization Act with respect to any matter covered by this Act."

§ 44-216. Unlawful conduct on public passenger vehicles.

It shall be unlawful for passengers or occupants while aboard a public passenger vehicle with a capacity for seating twelve or more passengers, including vehicles owned and/or operated by the Washington Metropolitan Area Transit Authority while said vehicle is transporting passengers in regular route service within the corporate limits of the District of Columbia to:

(a) Smoke or carry a lighted or smoldering pipe, cigar or cigarette in or upon any bus or rail transit car;

(b) Consume food or drink in or upon any bus or rail transit car;

(c) Spit in or upon any bus or rail car;
 (d) Discard litter in or upon any bus or rail transit car;

(e) Play any radio, cassette, recorder or other such instrument, except where same is connected to an earphone that limits the sound to the individual user;

(f) Carry any flammable or combustible liquids, live animals, birds, reptiles, explosives, acids, or any item inherently dangerous or offensive to others upon any bus or rail transit car, except for seeing eye dogs properly harnessed and accompanied by blind passengers, and small animals properly packaged;

(g) Stand in front of the white line marked on the forward end of the floor of any bus, or otherwise conduct himself in such manner as to obstruct the vision of the operator;

(h) Board any bus through the rear exit door, unless so directed by an employee or agent of the carrier. (Sept. 23, 1975, D.C. Law 1-18, § 2, 22 DCR 1994.)

EFFECTIVE DATE

Section 5 of Act Sept. 23, 1975, D.C. Law 1-18, provided: "The provisions of this act [enacting §§ 44-216 to 44-218 and provisions set out in notes under this section] shall go into effect on September 30, 1975."

SHORT TITLE

The first section of Act Sept. 23, 1975, D.C. Law 1-18, provided: "That this act [enacting §§ 44-216 to 44-218 and provisions set out in notes under this section] may be cited as the 'Act to Regulate Public Conduct on Public Passenger Vehicles'."

SEPARABILITY

Section 6 of Act Sept. 23, 1975, D.C. Law 1-18, provided: "If any provision of this act is declared unconstitutional the constitutionality of the remaining provisions shall not be affected thereby."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 44-217, 44-218 of this title.

§ 44-217. Carrier authorized to refuse transportation to violators.

A carrier may refuse to transport a person or persons whose immediately observed conduct or behavior would constitute a violation of section 44-216. (Sept. 23, 1975, D.C. Law 1-18, § 3, 22 DCR 1995.)

EFFECTIVE DATE

See note under § 44-216.

§ 44-218. Penalties.

Violation of section 44-216 shall be punishable by a fine¹ of not less than ten nor more than fifty dollars for a first offense; and not less than fifty nor more than one hundred dollars or ten days in jail or both for each second or subsequent offense. (Sept. 23, 1975, D.C. Law 1-18, § 4, 22 DCR 1995.)

¹ So in original. Probably should be "fine".

EFFECTIVE DATE

See note under § 44-216.

Chapter 3.—PASSENGER MOTOR VEHICLES FOR HIRE

Sec.

44-308. Delegation of authority of Council to Superintendent.

§ 44-301. Passenger motor vehicles for hire to carry insurance—Exceptions—Liability of insurance company absolute.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SHORT TITLE

The first section of act Apr. 23, 1977, D.C. Law 1-127, provided "That this act [enacting § 44-308] may be cited as the 'Taxicab Insurance Rate Approval Act'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 44-308, 47-2331.

§ 44-302. Insurance companies must be authorized to do business in District—Bonds to be secured—Insurance companies and corporate sureties must be approved by Superintendent—Reserves—Superintendent may make rules and regulations—Superintendent may withdraw certificate of approval after hearing—Conditions for cancellation of insurance policies and bonds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 44-308.

§ 44-308. Delegation of authority of Council to Superintendent.

The powers of the Council under sections 44-301 and 44-302, transferred to the Council in paragraphs 402(331) and (332) of Reorganization Plan Numbered 3 of 1967 and section 1-144(a), may be exercised by the Superintendent of Insurance. (June 29, 1938, ch. 809, § 8, as added Apr. 23, 1977, D.C. Law 1-127, § 2, 23 DCR 9691.)

REFERENCE IN TEXT

Paragraphs 402(331) and (332) of Reorganization Plan Numbered 3 of 1967, referred to in the text, are set out in the Appendix to title 1 in the main edition.

EFFECTIVE DATE

Section 3 of act Apr. 23, 1977, D.C. Law 1-127, provided: "This act [enacting § 44-308] shall take effect immediately following the period provided for Congressional review in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)(1)]."

TITLE 45.—REAL PROPERTY

Chapter 1.—CONVEYABLE ESTATES AND METHODS OF CONVEYANCE

§ 45-102. Perpetuities—Excepting charitable uses.

NOTES TO DECISIONS

Power to alienate suspended

For purposes of the rule against perpetuities, there must be certainty of vesting and power to alienate within the allowable period. *A. B. Cennamo v. American Security & Trust Company et al.* (1973, 360 F. Supp. 1354).

Where testamentary trust violated common-law rule against perpetuities and statute limiting suspension of power of alienation when read in isolation from rest of the will, but where such trust would not violate such rule or statute if offending lines were struck, where will contained savings clause directing trustee to terminate any trust in violation of any applicable rule against perpetuities on date limited by such rule, and elimination of such lines harmonized with testatrix' intent, such savings clause prevailed so as to result in elimination of the lines, and will as thus construed was not in violation of the rule or statute. *Id.*

Savings clause

Will, which provided that after death of life beneficiary, property would be held in trust for remaindermen until they reached age of 30, which provided for further trusts should remaindermen die before reaching age of 30, and which provided that all trusts created by will were to terminate on date limited by applicable rule against perpetuities or any similar rule of law, would be construed to provide that trusts for remaindermen would terminate when beneficiary reached the age specified in the will or 21 years from date of death of life beneficiary, whichever occurred earlier, so as not to violate 21-year rule of this section against perpetuities. *In re Estate of D. H. Burrough* (1975, 521 F. 2d 277, 172 U.S. App. D.C. 177).

Chapter 3.—FORMS—COVENANTS AND WARRANTIES

Sec.

45-308. Covenant for further assurances—Soil characteristics information to be contained in contracts.

§ 45-301. Forms of instruments.

NOTES TO DECISIONS

Constitutionality

District of Columbia statutes governing extrajudicial mortgage foreclosure procedures do not on their face violate due process clause of Fifth Amendment because they recognize right of private individuals contractually to create power of sale clauses which operate as a waiver of certain potential preforeclosure rights. *J. A. Bryant et al. v. Jefferson Federal Savings and Loan Association et al.* (1974, 509 F.2d 511, 166 U.S. App. D.C. 178).

§ 45-308. Covenant for further assurances—Soil characteristics information to be contained in contracts.

(a) A covenant by a grantor, in a deed of land, "that he will execute such further assurances of said land as may be requisite," shall have the same effect as if he had covenanted that he, his heirs or devisees, will, at any time, upon any reasonable request, at the charge of the grantee, his heirs or assigns, do, execute, or cause to be done and executed, all such further acts, deeds, and things, for the better, more

perfectly and absolutely conveying and assuring the lands and premises conveyed unto the grantee, his heirs and assigns, as intended to be conveyed, as by the grantee, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably devised, advised, or required.

(b) All contracts drawn for the purpose of conveying real property in the District of Columbia shall contain the following information:

(1) The characteristic of the soil on the property in question as described by the Soil Conservation Service of the United States Department of Agriculture in the Soil Survey of the District of Columbia published in 1976 and as shown on the Soil Maps of the District of Columbia at the back of that publication; and

(2) A notation that for further information the buyer can contact a soil testing laboratory, the District of Columbia Department of Environmental Services or the Soil Conservation Service of the Department of Agriculture.

(Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 510; Sept. 28, 1977, D.C. Law 2-23, § 3, 24 DCR 3342.)

AMENDMENT

1977—Act Sept. 28, 1977, D.C. Law 2-23, amended section by designating existing provisions as subsec. (a) and adding subsec. (b).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 7 of act Sept. 28, 1977, D.C. Law 2-23, provided: "This act [amending § 45-308] shall take effect as provided in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act Sept. 28, 1977, D.C. Law 2-23, provided "That this act [amending § 45-308] may be cited as the 'Soil Erosion and Sedimentation Control Act of 1977.'"

SEVERABILITY PROVISIONS OF D.C. LAW 2-23

Section 5 of act Sept. 28, 1977, D.C. Law 2-23, provided: "Each separate provision of this act shall be deemed independent of any other provision of this act and if any provision, sentence, clause, section, or part thereof is held illegal, invalid, unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this act or their application to other parts or circumstances. It is hereby declared to be the legislative intent that this act would have been enacted if such illegal, invalid, or unconstitutional provision, sentence, clause, section, or part had not been included therein and if the person or circumstances to which this act or any part thereof is inapplicable had been specifically exempted therefrom."

Chapter 4.—ACKNOWLEDGMENTS

§ 45-401. Acknowledgment by attorney.

NOTES TO DECISIONS

Construction

Prohibition of this section of execution or acknowledgment by attorney of any deed of conveyance of either

real or personal estate applies only to deeds of conveyance and not to contracts to convey which are subject to the statute of frauds which limits enforceability of certain agreements to those signed by party to be charged or by a person authorized by party to be charged. *M. A. Gustin v. R. D. Stegall et ano., Administrator, etc.* (D.C. App. 1975, 347 A. 2d 917; cert. denied 96 S. Ct. 2174, 425 U.S. 974).

§ 45-402. Acknowledgment in the District.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 19-107a, 45-501.

Chapter 5.—EFFECTIVE DATE AND RECORDING OF DEEDS

§ 45-501. When deeds take effect.

Any deed conveying real property in the District, or interest therein, or declaring or limiting any use or trust thereof, executed and acknowledged and certified as provided in sections 19-107a, 45-106, 45-302, 45-401 to 45-404 and delivered to the person in whose favor the same is executed, shall be held to take effect from the date of the delivery thereof, except that as to creditors and subsequent bona fide purchasers and mortgagees without notice of said deed, and others interested in said property, it shall only take effect from the time of its delivery to the recorder of deeds for record. (Apr. 29, 1878, 20 Stat. 39, ch. 69; Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 499; June 30, 1902, 32 Stat. 531, ch. 1329.)

CODIFICATION

In the original, "as provided in sections 19-107a, 45-106, 45-302, and 45-401 to 45-404" read "as aforesaid" meaning as provided in sections 492 to 498 of the code of 1901. Section 494 of the 1901 code was redesignated as section 19-107a by sec. 33(c) of D.C. Law 1-87, Oct. 1, 1976; and sections 492, 493, and 495 to 498 are classified to sections 45-106, 45-402, 45-403, 45-404, 45-302, and 45-401, respectively.

■ CROSS REFERENCE

Real Estate Settlement Procedures Act of 1974, see 12 U.S.C. 2601 et seq.

NOTES TO DECISIONS

Constructive trust

To support imposition of constructive trust on residential dwelling, which was conveyed by 98-year-old grantor to her nephew some four months prior to her death, it was not necessary to make a finding of fraud; finding that grantor, who expressed intent to put the house in trust to provide scholarships, did not intend to make a gift of the house but intended it to pass to nephew and his wife only so that they might take care of it warranted such remedy since case was one in which a party obtained property which did not belong to him and which he could not in good conscience retain. *J. Hertz et ux. v. H. S. Klavan, Executor etc.* (D.C. App. 1977, 374 A.2d 871).

Deed withheld from record

Under evidence that grantee had furnished down payment with which grantor had purchased property and had made contributions toward mortgage payments for number of years thereafter, that deed in favor of grantee was executed at time of conveyance to grantor and that grantee did not record deed at that time because she did not want her husband to know of the transaction, grantee did not lose title to the property and was not limited to claiming only as a secured creditor for her advances on the purchase price even though grantee did not record deed until after death of grantor some 15 years after death of grantee's husband. *M. E. Smart v. E. W. Nevins* (D.C. App. 1972, 298 A. 2d 217).

Purpose of recording

Purpose of recordation of deeds is to protect rights of bona fide purchasers, creditors, assignees and others relying upon indicia of record ownership and as between grantor and grantee, failure of latter to record cannot

be viewed as waiver of rights to the property. *M. E. Smart v. E. W. Nevins* (D.C. App. 1972, 298 A. 2d 217).

§ 45-506. Maps and plats not to be recorded.

NOTES TO DECISIONS

Servitudes

Although subdivision plats must be duly recorded in office of surveyor, once that requirement has been met, District of Columbia statutes do not prohibit an owner from incorporating a revised copy of the same plat in another recordable instrument in order to impress, through a suitable endorsement on the plat, a servitude upon a single lot in the original subdivision and, in such circumstances, the revised plat is being used only as method of imposing a servitude, and not to establish the areas and boundaries of lots in the subdivision. *H. Case v. A. E. Morrisette* (1973, 475 F. 2d 1300, 155 U.S. App. D.C. 31).

Equitable servitudes can be created by inscriptions on subdivision plats filed with surveyor, but they also may be created by deeds, with or without plats attached. *Id.*

Where deed described parcel as lot on subdivision plat recorded in office of surveyor and referred to it as area for parking as shown on revised plat recorded with declaration of covenants, purchaser was placed on notice of inscription affecting lot and either such constructive notice or purchaser's actual knowledge was sufficient to require enforcement of equitable servitude against purchaser and it was immaterial that copy of revised plat bearing inscription was recorded in office of recorder of deeds rather than with surveyor. *Id.*

Chapter 6.—MORTGAGES AND DEEDS OF TRUST

§ 45-601. Mortgages and deeds of trust executed, acknowledged, and recorded same as deeds.

CROSS REFERENCE

Real Estate Settlement Procedures Act of 1974, see 12 U.S.C. 2601 et seq.

§ 45-603. Estate of mortgagee or trustee conveyed.

NOTES TO DECISIONS

Constitutionality

District of Columbia statutes governing extrajudicial mortgage foreclosure procedures do not on their face violate due process clause of Fifth Amendment because they recognize right of private individuals contractually to create power of sale clauses which operate as a waiver of certain potential preforeclosure rights. *J. A. Bryant et al. v. Jefferson Federal Savings and Loan Association et al.* (1974, 509 F.2d 511, 166 U.S. App. D.C. 178).

Powers and duties of trustees

Trustees, under deeds of trust, who were also officers and controlling stockholders of lender, did not violate their fiduciary duties by instituting foreclosure proceedings after borrowers' defaults and after exercise of a valid acceleration of indebtedness clause, in absence of neglect of duty or misconduct by trustees. *L. F. Johnson et al. v. Inter-City Mortgage Corp. et al.* (D.C. App. 1976, 366 A.2d 435).

§ 45-608. Infant trustee or mortgagee may convey on petition to court by mortgagor, beneficiary, or guardian.

It shall and may be lawful to and for any person or persons, under the age of eighteen, by the direction of the court of chancery, signified by an order made upon hearing all parties concerned, on the petition of the person or persons for whom such infant or infants shall be seized or possessed in trust, or of the mortgagor or mortgagors, guardian or guardians of such infant or infants, or person or persons entitled to the monies secured by or upon any lands, tenements, or hereditaments, whereof any infant or infants are or shall be seized or possessed by way of mortgage, or of the person or persons entitled to the redemption thereof, to convey and assure

any such lands, tenements, or hereditaments, in such manner as the said court of chancery shall, by such order so to be obtained, direct, to any other person or persons; and such conveyance or assurance so to be had and made, as aforesaid, shall be as good and effectual in law, to all intents and purposes whatsoever, as if the said infants or infant were, at the time of making such conveyance, or assurance, of the full age of eighteen. (7 Ann, ch. 19, § 1, 1708; Kilty's Rep. 247; Alex. Br. Stat. 679; Comp. Stat., D. C., p. 79, § 13; July 22, 1976, D.C. Law 1-75; § 4 (i), 23 DCR 1181.)

AMENDMENT

1976—Act July 22, 1976, D.C. Law 1-75, amended section by substituting "eighteen" for "one and twenty years".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 8 of act July 22, 1976, D.C. Law 1-75, set out as a note under § 21-101.

§ 45-615. Terms of sale and notice to be given.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Service by publication on nonresidents, absent defendants, and unknown heirs or devisees, see § 13-336.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-1262.

NOTES TO DECISIONS

Constitutionality

District of Columbia statutes governing extrajudicial mortgage foreclosure procedures do not on their face violate due process clause of Fifth Amendment because they recognize right of private individuals contractually to create power of sale clauses which operate as a waiver of certain potential preforeclosure rights. *J. A. Bryant et al. v. Jefferson Federal Savings and Loan Association et al.* (1974, 509 F.2d 511, 166 U.S. App. D.C. 178).

Last known address

Where owner of property never notified noteholder or trustee under deed of trust of owner's change of address, where owner, which was in the real estate business and knew the effect of default, was in serious default in its payments, and where owner was on notice that statutes required lender to send notice of foreclosure to owner at last known address, failure of owner to receive notice, which was mailed in time to reach owner at its old address but which did not reach that address until owner had moved, did not indicate deficiency on the part of the trustees or the noteholder in giving personal notice to property. *S & G Investment Inc. et al. v. Home Federal Savings and Loan Association et al.* (1974, 505 F. 2d 370, 164 U.S. App. D.C. 263).

Notice

Trustees under deed of trust are entitled to rely upon secured parties' notice of foreclosure to the owner of the property. *S & G Investment Inc. et al. v. Home Federal Savings and Loan Association et al.* (1974, 505 F. 2d 370, 164 U.S. App. D.C. 263).

Trustees under first deed of trust were not required, in addition to publishing notice of foreclosure in newspaper, to give personal notice of the foreclosure sale to the holder of the second lien, especially where second lienor had not given trustees notice that it wished to receive notice of any foreclosure sale. *Id.*

Publication of newspaper advertisement of foreclosure sale satisfied statutory requirement that terms of sale and notice be given and satisfied terms of deed of trust which provided that trustees had the power, upon the

request of the noteholder, to sell the realty after such previous advertisement as the trustees might deem best for the interests of all concerned. *Id.*

Statutory requirement that notice of foreclosure sale under deed of trust be given to owner did not require that both the noteholder and the trustees give notice to the owner. *Id.*

Neither noteholder nor trustees under deed of trust were required to give notice of foreclosure sale to owner by telephone. *Id.*

Validity of sale

Since mortgage foreclosure sale was conducted in accordance with terms of deeds of trust authorizing such sale and this section allows parties to prescribe the length of notice and terms of sale, court properly decreed sale to be valid despite subordinated lienholder's claims of irregularities with respect to person who was trustee, imposition of allegedly prohibited conditions on prospective bidders at sale and use of minimal advertising. *American Century Mortgage Investors v. Unionamerica Mortgage and Equity Trust et al.* (D.C. App. 1976, 355 A.2d 563).

§ 45-616. Sale of property and deficiency decree in personam—Same relief in re vendor's lien.

NOTES TO DECISIONS

Proceeds of sale

Where deed of trust authorized trustees to use the proceeds of foreclosure sale to pay the remaining unpaid balance of the principal of note given for purchase of the property whether or not the entire balance was due and where notice of foreclosure sale sent to owner indicated that property would be sold to satisfy the debt secured by the deed of trust and also informed owner as to what the balance due was, proceeds of sale were properly applied to pay the entire amount of the note, even though payments on the note were only three months delinquent. *S & G Investment Inc. et al. v. Home Federal Savings and Loan Association et al.* (1974, 505 F. 2d 370, 164 U.S. App. D.C. 263).

§ 45-617. Creditor buying.

NOTES TO DECISIONS

Proceeds of sale

Where holder of first lien was estopped from challenging its agreements with construction lenders whereby it subordinated its lien to those of the construction lenders, construction lenders' deeds of trust were prior in lien to that of the subordinated first lienholder, and when the total amount derived from sale of property was insufficient to satisfy the prior liens of construction lender the subordinated lien was extinguished. *American Century Mortgage Investors v. Unionamerica Mortgage and Equity Trust et al.* (D.C. App. 1976, 355 A.2d 563).

Chapter 7.—RECORDER OF DEEDS

SUBCHAPTER I.—APPOINTMENT AND FUNCTIONS OF RECORDER

§ 45-701. Appointment and duties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TRANSFER OF FUNCTIONS

Section 712 of Act Dec. 24, 1973, Pub. L. 93-198 [set out as § 1-132], provided in part that "[no] function now vested pursuant to section 501 of Reorganization Plan Numbered 3 of 1967 in the . . . Office of the Recorder of Deeds, or in any officer, employee, or body of or under such agency, shall be considered as a function transferred to the Council pursuant to section 404(a) of this Act [§ 1-144(a)]. Each such function is hereby transferred to the officer, employee, or agency (including any body of or under such agency), to whom or to which it was

delegated, or in whom or in which it has remained vested, until the Mayor or Council established under this Act, or both, pursuant to the powers herein granted, shall revoke, modify, or transfer such delegation or vesting."

CROSS REFERENCE

Real Estate Settlement Procedures Act of 1974, see 12 U.S.C. 2601 et seq.

§ 45-702. Deputy recorder—Duties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-703. Second deputy—His duties and powers.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-714. Authority of Commissioner to increase or decrease fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-721. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-723. Imposition of tax—Rate—Returns—Liability for tax.

(a) There is hereby imposed on each deed at the time it is submitted to the Mayor for recordation a tax at the rate of 1 per centum of the consideration for such deed: *Provided*, That in any case where application of the rate of tax to the consideration for a deed results in a total tax of less than \$1 the tax shall be \$1.

* * * * *

(As amended Oct. 21, 1975, D.C. Law 1-23, title II, § 203, 22 DCR 2097.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended subsec. (a) by substituting "1 per centum" for "one-half of 1 per centum".

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(a) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 40-103.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-1557b.

§ 45-724. Absence of consideration—Basis for computation of tax.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-725. Investigation by Commissioner to determine correctness of returns—Production of books and records—Examination of witnesses—Service of summons—Compelling attendance—Punishment for disobedience.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-726. Recordation—Conditions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-728. Deficiencies in tax—Notice of determination—Protests—Hearings—Time for payment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-729. Penalties and interest—Waiver—Interest on deficiency assessments—Extension of time for payment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-730. Compromise and settlement—Written agreements for settlement of tax liability—Penalties for illegal acts in connection with compromise agreements—Prosecutions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-731. Compromise of penalties and adjustment of interest.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-732. Limitations—Time for making assessments—Extension of time by agreement—Suspension of running of period of limitations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-733. Administration of oaths.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-734. Appeal—Other remedies.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-736. Stamps and other devices for collection of tax.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-737. Promulgation of rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-738. Abatement.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-739. Elimination of fractional stamps or devices.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 8.—ESTATES IN LAND

§ 45-816. Tenancies in common, tenancies by the entirety, and joint tenancies.

NOTES TO DECISIONS

Estates by entirety

Where, when deed was executed in names of "John F. Douglass and Elizabeth Douglass, his wife, as tenants by the entirety," deceased was married to woman named Elizabeth but had been living for 15 years with another woman known by same name, court erred, in action wherein both women asserted right to property, in holding that property passed to wife by intestate succession on ground that deed was voided by action of second woman in having sister sign her name to deed of trust, rather than determining as matter of fact which of two women was intended to be referred to in deed by grantor thereof. *E. Snipes v. E. Douglass* (D.C. App. 1974, 319 A.2d 326).

Under deed of house "to Herbert L. Wright and Mattie G. Wright, his wife, and Pauline E. Liner . . . as joint tenants," the husband and wife acquired a one-half interest as tenants by the entirety and the other party acquired a one-half interest jointly with the entirety, particularly where a consideration of the transactions with respect to the property indicated that such result was the most likely intent of the parties. *E. M. Daniel v. H. L. Wright et al.* (1972, 352 F. Supp. 1).

§ 45-820. Estates by sufferance.

NOTES TO DECISIONS

Expiration of lease

Notice to quit given on July 31 to tenants whose lease expired on August 15 and who became tenants by sufferance thereafter was proper and, therefore, can serve as basis for possessory action. *A. C. Brown, Sr., et al. v. M. Young (Young & Simon, Inc.)* (D.C. App. 1976, 364 A.2d 1171).

Statutory tenancy by sufferance

Arrangement whereby defendant was occupying his girlfriend's apartment rent free, and at her indulgence, does not constitute "tenancy by sufferance," so as to preclude his conviction for unlawful entry in such apartment. *P. R. Jackson v. United States* (D.C. App. 1976, 357 A.2d 409).

A "tenancy at sufferance" requires payment of rent or "hirings" or a "rate per month" to accompany the estate. *M. A. Smith v. Town Center Management Corporation* (D.C. App. 1974, 329 A.2d 779).

§ 45-822. Estates at will—When terminated.

NOTES TO DECISIONS

Tenancy at will

A "tenancy at will" is an estate held by the joint will of lessor and lessee and such estate cannot exist or be created except by express contract. *M. A. Smith v. Town Center Management Corporation* (D.C. App. 1974, 329 A.2d 779).

Chapter 9.—LANDLORD AND TENANT

Sec.

45-913, 45-914. Repealed.

§ 45-901. When notice to quit not necessary.

CROSS REFERENCE

Alterations to units after notice to vacate, prohibitions, see §§ 5-324 to 5-327.

NOTES TO DECISIONS

Construction with other laws

Although Rent Control Regulation governing eviction procedures under the District's rent control program is in conflict with this section which provides that a tenant whose lease has expired may be evicted without service of a notice to quit and with section 45-904 which does not require that a notice to quit contain a reason therefor, the conflicting sections of the Code, being first enacted, yield to the more recently enacted Rent Control Regulations. *Jack Spicer Real Estate, Inc. v. N. B. Gasaway* (D.C. App. 1976, 353 A.2d 288).

Retaliatory eviction

Where, even though tenant had a one-year lease, landlord had an established policy of allowing tenants to remain as month-to-month tenants after the expiration of a fixed term of lease, and where landlord abandoned that established policy with respect to one tenant who had just been elected president of the tenants' association, tenant was entitled to present evidence, in defense of possessory action, to demonstrate that landlord was engaged in a retaliatory eviction notwithstanding provision of this section that a landlord is entitled to possession without notice at the expiration of a fixed term. *J. Golphin, Jr. v. Park Monroe Associates* (D.C. App. 1976, 353 A.2d 314).

§ 45-902. Notices to quit—Month to month.**CROSS REFERENCES**

Alterations to units after notice to vacate, prohibitions, see §§ 5-324 to 5-327.

Eviction, see § 45-1653.

Retaliatory action by landlord in rent control cases prohibited, see § 45-1654.

NOTES TO DECISIONS**Date notice terminates**

Provision of lease of governmentally assisted dwelling which stated that the first term of the lease "shall commence on the 18th day and continue through the last day of January, 1974" and that "This lease shall be automatically renewed for successive terms of one month each at the rent of \$36.00 per month" is not unreasonably ambiguous as to the date of commencement of the tenancy but evidences an intent to create two separate terms of tenancy, the first term expiring the last day of January, 1974, with a new term automatically commencing on February 1 and continuing on a month-to-month basis; therefore, notice to quit which expired on June 30 and required tenant to vacate on or before July 1 sufficiently complies with this section which requires that notice to quit expire on date of commencement of tenancy. *District of Columbia Department of Housing and Community Development v. A. M. Pitts* (D.C. App. 1977, 370 A.2d 1377).

Receipt of rent after notice

Finding, in action for possession by landlord, which charged rent on basis of the tenant's ability to pay, that fact that institution, which collected rent for landlord, accepted and deposited rent payment, which was made by tenant for new period after expiration of 30-day notice to quit, did not indicate an intention by landlord to waive such notice was not clearly erroneous. *J. D. Rhodes v. United States* (D.C. App. 1973, 310 A.2d 250).

Waiver

Landlord who, in early or mid-August, informed month-to-month tenant that she would have to vacate by September 1 or agree to rent increase, waived requirement of 30 days' written notice and is estopped to rely on this section relating to termination of tenancy and is not entitled to rent for September although tenant only gave oral notice on August 22 and did not comply with requirements of this section. *O. Sklar et ux. v. J. Hightower* (D.C. App. 1975, 342 A.2d 57).

§ 45-903. Tenancy at will—Notice for termination.**CROSS REFERENCES**

Alterations to units after notice to vacate, prohibitions, see §§ 5-324 to 5-327.

Eviction, see § 45-1653.

Retaliatory action by landlord in rent control cases prohibited, see § 45-1654.

§ 45-904. Tenancy by sufferance—When terminated.**CROSS REFERENCES**

Alterations to units after notice to vacate, prohibitions, see §§ 5-324 to 5-327.

Eviction, see § 45-1653.

Retaliatory action by landlord in rent control cases prohibited, see § 45-1654.

NOTES TO DECISIONS**Construction with other laws**

Although Rent Control Regulation governing eviction procedures under the District's rent control program is in conflict with section 45-901 which provides that a tenant whose lease has expired may be evicted without service of a notice to quit and with this section which does not require that a notice to quit contain a reason therefor, the conflicting sections of the Code, being first enacted, yield to the more recently enacted Rent Control Regulations. *Jack Spicer Real Estate, Inc. v. N. B. Gassaway* (D.C. App. 1976, 353 A.2d 288).

Eviction—Basis

Landlord's 30-day notice to quit did not comply with requirements of Rent Control Regulation where stated reason for demanding possession was the expiration of the tenant's lease and no showing was made that eviction could be had on some basis authorized by the regulation. *Jack Spicer Real Estate, Inc. v. N. B. Gassaway* (D.C. App. 1976, 353 A.2d 288).

Mootness

Where occupant, who vacated apartment under threat of eviction, had occupied apartment as a permissive user or licensee, occupant left as trespasser and took with her no right of reentry; thus, occupant's appeal from refusal to vacate default judgment for owner for possession of apartment had been rendered moot. *M. A. Smith v. Town Center Management Corporation* (D.C. App. 1974, 329 A.2d 779).

Notice generally

Notice to quit given on July 31 to tenants whose lease expired on August 15 and who became tenants by sufferance thereafter was proper and, therefore, can serve as basis for possessory action. *A. C. Brown, Sr., et al. v. M. Young (Young & Simon, Inc.)* (D.C. App. 1976, 364 A.2d 1171).

§ 45-906. Service of notice.**CROSS REFERENCE**

Alterations to units after notice to vacate, prohibitions, see §§ 5-324 to 5-327.

NOTES TO DECISIONS**Generally**

Although service of notice to quit is not jurisdictional and can be waived, it is a condition precedent to the landlord's suit for possession. *H. A. Moody et ano. v. Winchester Management Corp.* (D.C. App. 1974, 321 A.2d 562).

Posting on premises

Service of notice to quit by resident manager who knocked on tenants' door but received no response and who slipped notice, enclosed in an envelope, under the door, did not constitute "posting in a conspicuous place" as required by this section and service of notice was defective. *H. A. Moody et ano. v. Winchester Management Corp.* (D.C. App. 1974, 321 A.2d 562).

Substituted service of notice to quit is less favored than delivery of the document to the tenant in person, and posting should be employed as a last resort. *Id.*

§ 45-908. Agreement as to notice.**NOTES TO DECISIONS****Waiver of notice**

Landlord who, in early or mid-August, informed month-to-month tenant that she would have to vacate by September 1 or agree to rent increase, waived requirement of 30 days' written notice and is estopped to rely on section 45-902 relating to termination of tenancy and is not entitled to rent for September although tenant only gave oral notice on August 22 and did not comply with requirements of section 45-902. *O. Sklar et ux. v. J. Hightower* (D.C. App. 1975, 342 A.2d 57).

§ 45-910. Ejectment or summary proceedings.**CROSS REFERENCES**

Eviction, see § 45-1653.

Retaliatory action by landlord in rent control cases prohibited, see § 45-1654.

NOTES TO DECISIONS

Abatement

Denial of landlord's request for summary possession against tenants, who placed words "Paid under protest" on their rent payment checks for purpose of avoiding waiver of right to challenge rent increases, on ground that granting of request would unduly impinge on class action challenging lawfulness of such increases was proper, notwithstanding contention that landlord's right to do with its property as it pleased would be impaired and contention that tenants in summary possession suit did not put into issue the lawfulness of the rent increases and thus such issue should not have been considered. *F. W. Berens Sales Co., Inc. v. G. McKinney et al.* (D.C. App. 1973, 310 A.2d 601).

Construction

In view of express terms of 1970 Court Reform Act, District of Columbia ejectment statute (this section) as amended by 1970 Court Reform Act was not "Act of Congress" within statute (28 U.S.C. 1345, 1363) giving original jurisdiction in district court of suits brought by the United States except as otherwise provided by Act of Congress. *H. and J. Herian et al. v. United States* (1973, 363 F. Supp. 287).

Counsel fees

Though landlord's summary possession suit against tenants, who placed words "Paid under protest" on their rent payment checks for purpose of avoiding waiver of right to challenge rent increases, may have been brought to achieve tactical advantage in class action challenging lawfulness of such increases, suit was not so clearly unwarranted or so vexatious, wanton or oppressive as to justify award of counsel fees to tenants on dismissal of suit. *F. W. Berens Sales Co., Inc. v. G. McKinney et al.* (D.C. App. 1973, 310 A.2d 601).

Counterclaims

Power of court to assess amount of rent owed in summary possession action does not give rise to an expanded authority simultaneously to adjudicate all conflicting claims between landlord and tenant. *Winchester Management Corporation v. C. L. Staten et al.* (D.C. App. 1976, 361 A.2d 187).

Defenses

Original landlord's breach of lease is not available defense to be asserted by tenants in second landlord's summary action for possession based on valid notice to quit. *A. C. Brown, Sr., et al. v. M. Young (Young & Simon, Inc.)* (D.C. App. 1976, 364 A.2d 1171).

While a tenant can defend against a possessory action which is based upon nonpayment of rent by proof that landlord violated housing regulations, normally, tenant cannot do so in a suit based upon a notice to quit. *Id.*

A landlord's violation of law in failing to procure required licenses is not to be treated any differently than a violation of law in failing to meet the minimum standards of habitability; in neither case does a violation arising after the lease term has commenced void the contract, and in neither case does the failure to comply with statutory requirements deprive the landlord of his right to sue for possession for nonpayment of rent. *G. Curry et al. v. Dunbar House, Inc.* (D.C. App. 1976, 362 A.2d 686).

In context of landlord's summary suit for possession, tenant's defense, based upon failure of landlord to perform obligations other than those required by housing code, is inappropriate and is irrelevant in assessing propriety of possessory relief. *Winchester Management Corporation v. C. L. Staten et al.* (D.C. App. 1976, 361 A.2d 187).

Any claims which defendants sought to make concerning federal housing policy could be raised in District of Columbia Superior Court as defenses to ejectment proceedings brought by United States. *H. and J. Herian et al. v. United States* (1973, 363 F. Supp. 287).

Deposits in court

Trial court properly ordered tenant who had asserted defenses to landlord's possessory action and demanded jury trial to make monthly payments equal to accruing rental into registry of court pending resolution of case, where parties were present in court, relevant facts were not in dispute, and court heard argument from counsel

for each party before granting landlord's motion. *D. McNeal v. N. Habib* (D.C. App. 1975, 346 A.2d 508).

If tenant in possessory action demands trial, future payments for use of premises become involved, and at hearing on landlord's motion for protective order, allegations of housing code violations are relevant to trial court's determination of amount which should be paid monthly into registry of court pursuant to protective order, notwithstanding fact that defense of housing code violations is normally irrelevant to possessory action based upon valid 30-day notice to quit. *Id.*

Court may enter order disbursing funds paid into registry of court pursuant to protective order in contested possessory action only after holding hearing at which tenant has opportunity to present evidence as to, inter alia, extent to which rental contract figure should be abated, if at all, due to violations of housing regulations which might have existed during tenant's occupancy of premises while protective order was in effect. *Id.*

Equity

Since tenant's failure to pay timely rent as required by her lease and her payment with checks not covered by sufficient funds in her bank account was willful, calculated and consistent, she is not entitled to equitable relief, notwithstanding the fact that, after the expiration date of the lease, she tendered all money owing. *I. Kaiser v. N. J. Rapley* (D.C. App. 1977, 380 A.2d 995).

Grounds for eviction

Granting landlord possession of premises on December 31, by virtue of granting landlord's motion stating that lease would terminate on such date, was improper where motion was made before expiration date of lease. *M. Zanakis v. Brawner Building, Inc.* (D.C. App. 1977, 377 A.2d 67).

Habitability—Warranty of

Where landlord's sole action is possessory one based upon nonpayment of rent, the only germane defenses in nature of recoupment or setoff are those which would be sufficient, in whole or in part, to defeat landlord's claim that tenants unjustifiably failed to pay rent and unless rent is owed, landlord is not entitled to possession, but right in tenant to withhold rent is recognized only where there has been such breach of warranty of habitability as a result of existence of housing code violations. *Winchester Management Corporation v. C. L. Staten et al.* (D.C. App. 1976, 361 A.2d 187).

Housing regulations

Upon finding that tenant sued in landlord's possessory actions had been without continuous supply of hot water in violation of housing regulations, trial court properly determined what portions of tenants' rental obligations should be abated. *Winchester Management Corporation v. C. L. Staten et al.* (D.C. App. 1976, 361 A.2d 187).

Even though landlord agreed to provide air conditioning and significant portion of rent paid was in consideration for that service, that does not entitle tenants to withhold rent for failure to provide such, and they can not assert such failure as defense in possessory action by landlord for nonpayment of rent, in absence of explicit direction from housing code making cool air in summer vital to use of apartments. *Id.*

Jurisdiction

Under District of Columbia ejectment statute (this section) as amended by 1970 Court Reform Act, District Court does not have original jurisdiction over ejectment proceedings brought by the United States; intent of Court Reform Act was to vest exclusive jurisdiction of all ejectment proceedings in Superior Court, even those brought by the United States. *H. and J. Herian et al. v. United States* (1973, 363 F. Supp. 287).

Licensing regulations

A landlord's violation of law in failing to procure required licenses is not to be treated any differently than a violation of law in failing to meet the minimum standards of habitability; in neither case does a violation arising after the lease term has commenced void the contract, and in neither case does the failure to comply with statutory requirements deprive the landlord of his right to sue for possession for nonpayment of rent. *G.*

Curry et al. v. Dunbar House, Inc. (D.C. App. 1976, 362 A.2d 686).

Since landlord did not deliberately avoid licensure procedures in an effort to avoid inspections and possible notification of violations, and since, instead, the landlord undertook repair work after receiving notice of existing illegal conditions, under those circumstances, equitable principles require that the tenants be relieved of their legal obligations to pay rent only to the extent that they actually were harmed. *Id.*

Mootness

Tenant's appeal from summary judgment for possession by landlord is not rendered moot due to fact that premises were no longer being occupied by tenant where it did not unequivocally concede landlord's right to possession, but, rather, immediately moved for summary reversal and there was a substantial controversy persisting between landlord and tenant. *M. Zanakis v. Brawner Building, Inc.* (D.C. App. 1977, 377 A.2d 67).

Appeals taken by tenants from rulings entered in possessory actions by landlord for nonpayment of rent are not rendered moot by the fact that the tenants had vacated their apartments, since the issue on appeal is whether the failure to have the required license and certificate precludes the landlord's action for possession in the first instance, and since the tenants' continuing interest in the appeal lay in the fact that, prior to voluntarily surrendering possession of their respective apartments, they paid the rent arrearages to the landlord in order to avoid immediate eviction. *G. Curry et al. v. Dunbar House, Inc.* (D.C. App. 1976, 362 A.2d 686).

Inasmuch as landlord sold apartment building during pendency of tenant's appeal from eviction order, and landlord could no longer put tenant back into possession, case is moot. *S. J. Spingarn v. Landow & Co.* (D.C. App. 1975, 342 A.2d 41).

Where occupant, who vacated apartment under threat of eviction, had occupied apartment as a permissive user or licensee, occupant left as trespasser and took with her no right of reentry; thus, occupant's appeal from refusal to vacate default judgment for owner for possession of apartment had been rendered moot. *M. A. Smith v. Town Center Management Corporation* (D.C. App. 1974, 329 A.2d 779).

Nonpayment of rent

Since landlord continually objected to tenant's late rent payments, and since the tenant could not have been misled as to the landlord's expressed intention to enforce the lease, the landlord's acceptance of late rent payments through December 1975 was not a waiver of the landlord's rights, but simply an acceptance of what was legally due the landlord. *I. Kaiser v. N. J. Rapley* (D.C. App. 1977, 380 A.2d 995).

Pleading

Landlord who chose to rely upon expiration of 30-day notice to quit, rather than upon apparently unpaid past rent, waived right to claim rental arrearages in proceeding for possession of premises, and could not have amended complaint to assert claim for rent due, though he is free to seek recovery of back rent in separate action. *D. McNeal v. N. Habib* (D.C. App. 1975, 346 A.2d 508).

Protective orders

Superior Court Landlord and Tenant Rule which provides, inter alia, that any motion which is dependent upon facts not apparent upon record shall be in writing and accompanied by sworn testimony setting out fully facts upon which motion is based, and that such motions shall be heard not earlier than fifth day after service, is inapplicable to landlord's motion for protective order requiring tenant to make payments equal to accruing rent into court registry made orally on return date in possessory action. *D. McNeal v. N. Habib* (D.C. App. 1975, 346 A.2d 508).

Questions for jury

Court in possessory action by landlord did not err in refusing to grant trial by jury where there were no material facts of issue to submit to jury. *A. C. Brown, Sr., et*

al. v. M. Young (Young & Simon, Inc.) (D.C. App. 1976, 364 A.2d 1171).

Retaliatory defense

Evidence in proceeding by tenant in which he charged retaliatory and racially prejudiced eviction sustains finding that tenant made threats of violence to resident manager and his wife and sustains determination in favor of landlord. *G. Miller, Jr. v. District of Columbia Commission on Human Rights* (D.C. App. 1976, 352 A.2d 387).

Even if there was reduction of services by landlord after racial composition of apartment building changed, such discrimination did not license any tenant, black or white, to indulge in threats of physical violence, by reason of which landlord served eviction notice. *Id.*

§ 45-913. Repealed. Oct. 1, 1976, D.C. Law 1-87, § 40, 23 DCR 2544.

Section, Act Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1169, provided the procedure for ejecting a married woman who is a tenant.

§ 45-927. Lunatic or infant, or guardian or committee, under order of court, may surrender and take new leases.

In all cases where any person under the age of eighteen years, or any lunatic, is or shall become interested in or entitled to any lease or leases made or granted, or to be made or granted, by any person or persons, bodies politick, corporate or collegiate, aggregate or sole, for the life or lives of one or more person or persons, or for any term of years, either absolute or determinable upon the death of one or more person or persons or otherwise, it shall and may be lawful for such person under the age of eighteen years, or for his or her guardian or guardians, or other person or persons on his or her behalf, and for such lunatic, or his or her guardian or guardians, committee or committees of the estate, or other person or persons on his or her behalf, to apply to the court of chancery by petition or motion, in a summary way, and by the order and direction of the said court made, upon hearing all parties concerned, such person under the age of eighteen years, and such lunatics, or person or persons appointed by the said courts respectively, by deed or deeds only, shall and may be enabled, from time to time, to surrender such lease or leases, and accept and take, in the name, and for the benefit of such person under the age of eighteen years, or lunatic, one or more new lease or leases of the premises comprised in such lease or leases surrendered by virtue of this section for and during such number of lives, or for such term or terms of years, determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned or contained in such lease or leases so surrendered, at the making thereof respectively, or otherwise as the said court shall respectively direct. (29 Geo. 2, ch. 31, § 1, 1756; Kilty's Rep. 253; Alex. Br. Stat. 788; Comp. Stat. D.C., 335, § 70; July 22, 1976, D.C. Law 1-75, § 4(j), 23 DCR 1182.)

AMENDMENT

1976—Act of July 22, 1976, D.C. Law 1-75, amended section by substituting "eighteen" for "twenty-one".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 8 of act July 22, 1976, D.C. Law 1-75, set out as a note under § 21-101.

Chapter 10.—POWERS

§ 45-1002. General power.

NOTES TO DECISIONS

Conditions on exercise of power

For purposes of qualifying life interest left to wife under testamentary trust for marital deduction, power of appointment to wife was general and thus authorized an appointment of trust property to her estate, even though power was subject to condition that it be exercised by will. *Estate of J. Mittleman v. Commissioner of Internal Revenue* (1975, 522 F. 2d 132, 173 U.S. App. D.C. 26).

Chapter 13.—WASTE

§ 45-1301. Writ of waste—Lease forfeited for waste and lessee pays treble damages.

A man from henceforth shall have a writ of waste in the chancery against him that holdeth by law, or otherwise for term of life, or for term of years, or in dower; and he which shall be attainted of waste, shall leese the thing that he hath wasted, and moreover shall recompense thrice so much as the waste shall be taxed at. (6 Edw. 1, ch. 5, § 1, 1278; Kilty's Rep. 211; Alex. Br. Stat. 83; Comp. Stat. D.C., 319, § 21; Oct. 1, 1976, D.C. Law 1-87, § 41, 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended section by striking "a woman" preceding "in dower".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

Chapter 14.—REAL ESTATE AND BUSINESS BROKERS' LICENSES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 6-2202.

§ 45-1401. Acting as broker or salesman without license unlawful.

NOTES TO DECISIONS

Broker

This chapter, providing for licensing brokers, defines "broker" to include persons who deal not only in real estate but also in "business chances." *P. Schliep v. V. DeMaras et al.* (1976, 410 F. Supp. 1190).

Conflict of laws

District court sitting in District of Columbia would apply North Carolina statute for licensing of brokers to action brought by widow of decedent for actual damages allegedly caused her deceased husband by members of group which allegedly breached contract with decedent and defrauded him, where, at time of execution of alleged contract, none of parties to transaction were residents of District of Columbia, but where transaction took place in North Carolina and involved at least one North Carolina party. *P. Schliep v. V. DeMaras et al.* (1976, 410 F. Supp. 1190).

In suit by Washington, D.C. lawyers to recover compensation for services rendered in connection with the financing and sale of Maryland realty, the governing real estate broker licensing law is that of the District of Columbia in view of evidence that all conferences among the parties relative to the financing and sale of the realty were held in the District of Columbia. *G. S. Leonard et al. v. BHJK Corporation* (1972, 469 F. 2d 108, 152 U.S. App. D.C. 97).

§ 45-1402. Definitions—Exceptions.

NOTES TO DECISIONS

Broker

This chapter, providing for licensing brokers, defines "broker" to include persons who deal not only in real

estate but also in "business chances." *P. Schliep v. V. DeMaras et al.* (1976, 410 F. Supp. 1190).

Conflict of laws

District court sitting in District of Columbia would apply North Carolina statute for licensing of brokers to action brought by widow of decedent for actual damages allegedly caused her deceased husband by members of group which allegedly breached contract with decedent and defrauded him, where, at time of execution of alleged contract, none of parties to transaction were residents of District of Columbia, but where transaction took place in North Carolina and involved at least one North Carolina party. *P. Schliep v. V. DeMaras et al.* (1976, 410 F. Supp. 1190).

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§ 45-1403. Real Estate Commission created—Membership—Seal—Records—Compensation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-1404. Qualifications for license.

No license under the provisions of this chapter shall be issued to any person who has not attained the age of eighteen years, nor to any person who cannot read, write, and understand the English language; nor until the Commission has received satisfactory proof that the applicant is trustworthy and competent to transact the business of a real-estate broker or real-estate salesman or business-chance broker or business-chance salesman in such a manner as to safeguard the interests of the public: *Provided, however,* That a salesman shall have six months from the date of the issuance of his original license to prove his competency, and failure to prove his competency to the satisfaction of the Commission within that period will automatically cancel his original license or any renewal thereof.

(As amended July 22, 1976, D.C. Law 1-75, § 3(s), 23 DCR 1180.)

AMENDMENT

1976—Act July 22, 1976, D.C. Law 1-75, amended first paragraph of section by substituting "eighteen" for "twenty-one".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 8 of act July 22, 1976, D.C. Law 1-75, set out as a note under § 21-101.

NOTES TO DECISIONS

Findings

Findings of the Real Estate Commission, in denying license as a business-chance broker were supported by substantial evidence in light of license revocation some 20 years previously for failure to refund deposits, conviction many years previously resulting in prison sentence for filing fraudulent vouchers, and filing of petition in

bankruptcy listing among unpaid debts unsatisfied obligation on real estate bond. *L. M. Bryant v. Real Estate Commission of the District of Columbia* (D.C. App. 1973, 302 A. 2d 721).

Prior convictions

In denying application for license as a business-chance broker, it was not error for the Real Estate Commission to rely in part on a conviction for fraudulent conduct occurring prior to the ten-year period specified by § 14-305 as limitation on the use of prior convictions of witnesses for impeachment purposes in court trials. *L. M. Bryant v. Real Estate Commission of the District of Columbia* (D.C. App. 1973, 302 A. 2d 721).

Trustworthiness and competency

A person may demonstrate competency and even good character and yet be so lacking in fiscal responsibility as to negate any assumption of trustworthiness in conducting a brokerage business in a manner calculated to safeguard the interests of the public. *L. M. Bryant v. Real Estate Commission of the District of Columbia* (D.C. App. 1973, 302 A. 2d 721).

§ 45-1405. Application for license—Requirements—Location of business—Members—Individual broker's and real-estate salesman's license—Bond—Form, conditions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-1407. Details relating to license.

NOTES TO DECISIONS

Conflict of laws

In suit by Washington, D.C. lawyers to recover compensation for services rendered in connection with the financing and sale of Maryland realty, the governing real estate broker licensing law is that of the District of Columbia in view of evidence that all conferences among the parties relative to the financing and sale of the realty were held in the District of Columbia. *G. S. Leonard et al. v. BHJK Corporation* (1972, 469 F. 2d 108, 152 U.S. App. D.C. 97).

§ 45-1408. Suspension or revocation of license—Causes enumerated.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-2233, 45-1409.

§ 45-1409. Hearing before suspension—Court review—Appeal.

NOTES TO DECISIONS

Due process

Combination of prosecutorial and adjudicative functions in the same agency does not violate constitutional guarantee of due process. *L. M. Bryant v. Real Estate Commission of the District of Columbia* (D.C. App. 1973, 302 A. 2d 721).

Fact that the Real Estate Commission itself presented and tried charges which it eventually adjudicated in denying application for broker's license did not deny applicant due process. *Id.*

Findings

Findings of the Real Estate Commission, in denying license as a business-chance broker were supported by substantial evidence in light of license revocation some 20 years previously for failure to refund deposits, conviction many years previously resulting in prison sentence for filing fraudulent vouchers, and filing of petition in bankruptcy listing among unpaid debts unsatisfied obligation on real estate bond. *L. M. Bryant v. Real Estate Commission of the District of Columbia* (D.C. App. 1973, 302 A. 2d 721).

Prior convictions

In denying application for license as a business-chance broker, it was not error for the Real Estate Commission to rely in part on a conviction for fraudulent conduct oc-

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Chapter 16.—RENT CONTROL

SUBCHAPTER I.—EMERGENCY RENT ACT OF 1951

Sec.

45-1601 to 45-1611. Repealed.

SUBCHAPTER II.—RENT CONTROL ACT OF 1973

45-1621 to 45-1627. Omitted.

SUBCHAPTER III.—RENTAL ACCOMMODATIONS ACT OF 1975

TITLE I.—RENTAL ACCOMMODATIONS COMMISSION

45-1631. Establishment of Commission.
45-1632. Duties.
45-1633. Rental Accommodations Office.
45-1634. Duties of Rent Administrator.

TITLE II.—RENT STABILIZATION

45-1641. Definitions.
45-1642. Registration—Coverage.
45-1643. Annual fee.
45-1644. Rent ceiling.
45-1645. Capital improvements.
45-1646. Services and facilities.
45-1647. Security deposit.
45-1648. Vacant accommodation.
45-1649. Hardship petition.
45-1650. Substantial rehabilitation.
45-1651. Transitional provision.
45-1652. Adjustment procedure.
45-1653. Eviction.
45-1654. Retaliatory action.
45-1655. Penalties.

TITLE III.—CONVERSION OF RENTAL HOUSING

45-1661. Sale of single family housing accommodation.
45-1662. Cooperative conversion.

TITLE IV.—MISCELLANEOUS

45-1671. Construction.
45-1672. Transfer of property, records, and unexpended balances—Continuation of determinations etc.
45-1673. Judicial review.
45-1674. Severability.

SUBCHAPTER I.—EMERGENCY RENT ACT OF 1951

§§ 45-1601 to 45-1611. Repealed. Nov. 21, 1973, Pub. L. 93-157, § 9, 87 Stat. 627.

Section 45-1601, Acts Dec. 2, 1941, 55 Stat. 788, ch. 553, § 1; Dec. 3, 1945, 59 Stat. 592, ch. 514; June 29, 1946, 60 Stat. 340, ch. 521; Aug. 1, 1947, 61 Stat. 713, ch. 429; Mar. 30, 1948, 62 Stat. 100, ch. 163; Apr. 29, 1948, 62 Stat. 205, ch. 243, § 1; Mar. 31, 1949, 63 Stat. 30, ch. 45; Apr. 19, 1949, 63 Stat. 48, ch. 73, § 1; June 30, 1950, 64 Stat. 310, ch. 428, § 1; Mar. 23, 1951, 65 Stat. 25, ch. 16; June 30, 1951, 65 Stat. 98, ch. 192, § 1; June 30, 1952, 66 Stat. 308, ch. 531, § 1; Apr. 30, 1953, 67 Stat. 26, ch. 32, § 1, dealt with the purposes and termination of the District of Columbia Emergency Rent Act of 1951.

Section 45-1602, Acts Dec. 2, 1941, 55 Stat. 788, ch. 553, § 2; Apr. 29, 1948, 62 Stat. 205, ch. 243, § 2; Apr. 19, 1949, 63 Stat. 49, ch. 73, §§ 2, 3, 5; June 30, 1950, 64 Stat. 310, ch. 428, § 2; June 30, 1951, 65 Stat. 99, ch. 192, § 1, dealt with maximum rent ceilings and minimum service standards.

Section 45-1603, Acts Dec. 2, 1941, 55 Stat. 789, ch. 553, § 3; June 30, 1951, 65 Stat. 100, ch. 192, § 1, related to general and special adjustments of rent ceilings and service standards.

Section 45-1604, Acts Dec. 2, 1941, 55 Stat. 790, ch. 553, § 4; June 30, 1950, 64 Stat. 310, ch. 428, § 3; June 30, 1951, 65 Stat. 100, ch. 192, § 1, authorized any landlord or tenant to petition for adjustment of rent ceilings and service standards.

Section 45-1605, Acts Dec. 2, 1941, 55 Stat. 791, ch. 553, § 5; Sept. 26, 1942, 56 Stat. 759, ch. 564, § 1; Aug. 1, 1947, 61 Stat. 721, ch. 442; Apr. 19, 1949, 63 Stat. 49, ch. 73, § 4; June 30, 1951, 65 Stat. 102, ch. 192, § 1, prohibited violations of the Act and regulations and orders thereunder, prohibited certain possessory actions, and prohibited retaliatory actions against tenants.

Section 45-1606, Acts Dec. 2, 1941, 55 Stat. 791, ch. 553, § 6; June 30, 1951, 65 Stat. 103, ch. 192, § 1, created the Office of Administrator of Rent Control and prescribed the salary, powers and duties thereof.

Section 45-1607, Acts Dec. 2, 1941, 55 Stat. 792, ch. 553, § 7; Sept. 26, 1942, 56 Stat. 759, ch. 564, § 2; June 30, 1951, 65 Stat. 103, ch. 192, § 1, dealt with the authority of the Administrator to obtain information and to prescribe rules and regulations.

Section 45-1608, Acts Dec. 2, 1941, 55 Stat. 792, ch. 553, § 8; June 30, 1951, 65 Stat. 104, ch. 192, § 1, dealt with procedure for the handling of petitions and the conduct of hearings.

Section 45-1609, Acts Dec. 2, 1941, 55 Stat. 793, ch. 553, § 9; Apr. 29, 1948, 62 Stat. 206, ch. 243, § 3; June 30, 1951, 65 Stat. 104, ch. 192, § 1; July 8, 1963, 77 Stat. 78, Pub. L. 88-60, § 6, related to judicial review of orders of the Administrator.

Section 45-1610, Acts Dec. 2, 1941, 55 Stat. 794, ch. 553, § 10; Apr. 19, 1949, 63 Stat. 49, ch. 73, § 6; June 30, 1951, 65 Stat. 105, ch. 192, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1, dealt with enforcement of the Act through court actions and prescribed penalties for violations.

Section 45-1611, Acts Dec. 2, 1941, 55 Stat. 794, ch. 553, § 11; June 30, 1951, 65 Stat. 106, ch. 192, § 1, contained definitions.

SUBCHAPTER II.—RENT CONTROL ACT OF 1973

§§ 45-1621 to 45-1627. Omitted.

Subchapter II (§§ 45-1621 to 45-1627) of this chapter terminated pursuant to § 45-1627 which provided in part that the provisions of the subchapter, and all rules, orders, and requirements thereunder, shall terminate at the end of the one-year period beginning on the date that rules adopted by the District of Columbia Council pursuant to § 45-1622(a) to regulate and stabilize rents in the District of Columbia become effective. Initial rules were adopted by the Council and published Apr. 29, 1974, at 20 DCR 1063.

Section 45-1621, Act Nov. 21, 1973, Pub. L. 93-157, § 2, 87 Stat. 624, contained definitions.

Section 45-1622, Act Nov. 21, 1973, Pub. L. 93-157, § 3, 87 Stat. 624, dealt with the powers of the D.C. Council.

Section 45-1623, Acts Nov. 21, 1973, Pub. L. 93-157, § 4, 87 Stat. 625; June 20, 1975, D.C. Law 1-6, § 1, 21 DCR 284, related to the Housing Rent Commission.

Section 45-1624, Act Nov. 21, 1973, Pub. L. 93-157, § 5, 87 Stat. 626, prohibited retaliatory action.

Section 45-1625, Act Nov. 21, 1973, Pub. L. 93-157, § 6, 87 Stat. 626, related to judicial review.

Section 45-1626, Act Nov. 21, 1973, Pub. L. 93-157, § 7, 87 Stat. 626, contained criminal penalties.

Section 45-1627, Act Nov. 21, 1973, Pub. L. 93-157, § 8, 87 Stat. 626, provided for termination of the subchapter.

SUBCHAPTER III.—RENTAL ACCOMMODATIONS ACT OF 1975

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 5-324.

TITLE I.—RENTAL ACCOMMODATIONS COMMISSION

§ 45-1631. Establishment of Commission.

(a) There is established for the District of Columbia a Rental Accommodations Commission (hereinafter in this subchapter referred to as the "Commission") which shall consist of nine members to be appointed by the Mayor of the District of Columbia by and with the advice and consent of the Council of the District of Columbia. The Mayor shall make

his initial appointments within 30 days after the effective date of this subchapter. Three of the members of the Commission shall represent the interests of landlords, and each of the three shall be a landlord of at least one housing accommodation located in the District of Columbia. Three of the members shall be tenants who shall represent the interests of tenants. The rest of the members of the Commission shall be neither landlords nor tenants. All members of the Commission shall be residents of the District of Columbia.

(b) Members of the Commission shall be appointed to serve for a two year term beginning on the effective date of this subchapter. In the case of a vacancy in the membership of the Commission, a new member shall be appointed to serve out the term of the member whose vacancy gave rise to the appointment. The Mayor shall have the authority to remove from the Commission any member who fails to meet the qualifications of a member or who fails to attend 70 percent of the regularly scheduled meetings held within any six month period.

(c) Members of the Commission shall be entitled to receive compensation of \$50.00 per day for each day spent in performing the duties of the Commission, except no member shall receive more than \$5,200 under this subsection in any one calendar year. No compensation shall be paid to a member of the Commission who is also an officer or employee of the United States or the District of Columbia government.

(d) Five members of the Commission shall constitute a quorum for the transaction of business so long as one of the five members is a landlord, one is a tenant, and one is neither a landlord nor a tenant.

(e) The chairperson and vice-chairperson of the Commission shall be selected by the members of the Commission from among their number and shall be neither landlords nor tenants. (Nov. 1, 1975, D.C. Law 1-33, title I, § 101, 22 DCR 2490; Apr. 19, 1977, D.C. Law 1-122, § 2(a), 23 DCR 8748.)

AMENDMENT

1977—Act Apr. 19, 1977, D.C. Law 1-122, amended subsec. (d) by substituting "one is" for "two are", "a landlord" for "landlords", and "a tenant" for "tenants".

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of subsec. (d), see sec. 2(a) of the Emergency Rental Accommodations Act Amendments of 1977 (D.C. Act 2-3, Feb. 9, 1977, 23 DCR 6871).

1976—For temporary amendment of subsec. (d), see sec. 2 (1) of the Emergency Rental Accommodations Act Amendments of 1976 (D.C. Act 1-148, Aug. 12, 1976, 23 DCR 1673) and sec. 2(a) of the Second Emergency Rental Accommodations Act Amendments of 1976 (D.C. Act 1-173, Nov. 10, 1976, 23 DCR 3608).

1975—For temporary extension of prior rent control provisions, see sec. 2 of the Rent Control Program Extension Act (D.C. Act 1-12, Apr. 24, 1975, 21 DCR 3042) and secs. 2 and 3 of the Rent Stabilization Program Transition Act (D.C. Act 1-35, July 25, 1975, 21 DCR 841).

For temporary rent control provisions prior to the enactment of this subchapter, see sec. 4 of the Rent Stabilization Program Transition Act (D.C. Act 1-35, July 25, 1975, 22 DCR 842) as extended by sec. 2 of the Emergency Transitional Rent Stabilization Act (D.C. Act 1-58, Oct. 24, 1975, 22 DCR 2122a).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 3 of act Apr. 19, 1977, D.C. Law 1-122, provided: "This act [for classification of act see Tables] shall become effective as provided for acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

EFFECTIVE DATE

Section 404 of act Nov. 1, 1975, D.C. Law 1-33, provided that "This act [enacting this subchapter] shall take effect at the end of the 30 day period (excluding Saturdays, Sundays, holidays, and days on which either House of Congress is not in session) provided for Congressional review of acts of the Council under subsection (c) of section 602 of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)], and shall terminate at the end of the second year occurring immediately after such effective date. At the end of the first year following such effective date, the Council shall review the rent stabilization program established in this act [subchapter] through review of the reports required in Section 102(b) [§ 45-1632(b)] and through any other investigations or hearings it may conduct or require."

For temporary extension of the termination date of this subchapter, see the First Emergency Extension of D.C. Law No. 1-33 of 1977 (D.C. Act 2-93, Oct. 31, 1977, 24 DCR 3610).

SHORT TITLES

The first section of act Oct. 27, 1977, D.C. Law 2-34, provided "That this act [amending § 45-1634] may be cited as the 'Rent Administrator Delegation Act of 1977'."

The first section of act Apr. 19, 1977, D.C. Law 1-122, provided "That this act [for classification of act see Tables] may be cited as the 'Rental Accommodations Act Amendments of 1976'."

The first section of act Nov. 1, 1975, D.C. Law 1-33, provided "That this act [enacting this subchapter] may be cited as the 'District of Columbia Rental Accommodations Act of 1975'."

NOTES TO DECISIONS

Constitutionality

This subchapter is not constitutionally unwarranted nor an invalid exercise of police power on ground that no emergency existed, where the subchapter was a legislative response to a shortage of housing for District residents which the Council found to exist. *Apartment and Office Building Association of Metropolitan Washington et al. v. W. E. Washington, Mayor, et al.* (D.C. App. 1977, 381 A.2d 588).

§ 45-1632. Duties.

(a) The Commission shall—

(1) promulgate, amend, and rescind rules and procedures for the administration of this subchapter; and

(2) decide appeals brought to it from decisions of the Rent Administrator.

(b) In addition the Commission shall, twice each year, submit to the Council of the District of Columbia a report on the trends, during the immediate preceding six months, of tax, operating, and maintenance costs (as they relate to housing accommodations in the District of Columbia) and a recommendation as to whether any adjustment should be made, as a result of such trends, in the formula contained in section 45-1644 for computing the rent ceiling.

(c) (1) The Commission and/or the Rent Administrator shall have the power to hold such hearings, sit and act at such times and places within the District of Columbia, administer such oaths, and require by subpoena or otherwise the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda,

papers and documents as the Commission or the Rent Administrator may deem advisable in carrying out its/his functions under this subchapter.

(2) In the case of contumacy or refusal to obey a subpoena issued under this subsection by any person who resides, is found, or transacts business within the District of Columbia, the Superior Court of the District of Columbia, at the request of the Commission or the Rent Administrator, shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or the Rent Administrator, there to produce evidence if so ordered, or there to give testimony touching upon the matter under inquiry. Any failure of such person to obey any order of the Superior Court may be punished by the Superior Court as contempt thereof.

(d) Upon the request of the Chairperson or the Rent Administrator, as the case may be, such department or entity of the District of Columbia government is authorized to furnish directly to the Commission or the Rent Administrator assistance or information as may be necessary for the Commission and/or the Rent Administrator to effectively carry out this subchapter. (Nov. 1, 1975, D.C. Law 1-33, title I, § 102, 22 DCR 2492; Apr. 19, 1977, D.C. Law 1-122, § 2(b), (c), 23 DCR 8748.)

AMENDMENT

1977—Act Apr. 19, 1977, D.C. Law 1-122, amended subsecs. (a) (2), (c), and (d) generally.

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of subsecs. (a) (2), (c), and (d), see sec. 2(b) and (c) of the Emergency Rental Accommodations Act Amendments of 1977 (D.C. Act 2-3, Feb. 9, 1977, 23 DCR 6871).

1976—For temporary amendment of subsecs. (a) (2), (c), and (d), see sec. 2 (2) and (3) of the Emergency Rental Accommodations Act Amendments of 1976 (D.C. Act 1-148, Aug. 12, 1976, 23 DCR 1673) and sec. 2 (b) and (c) of the Second Emergency Rental Accommodations Act Amendments of 1976 (D.C. Act 1-173, Nov. 10, 1976, 23 DCR 3608).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 3 of act Apr. 19, 1977, D.C. Law 1-122, set out as a note under § 45-1631.

§ 45-1633. Rental Accommodations Office.

(a) There is established as an agency of the District of Columbia government, within the executive office of the Mayor, a Rental Accommodations Office (hereinafter in this subchapter referred to as the "Office") which shall have as its head a Rent Administrator to be appointed by the Mayor.

(b) The Rent Administrator shall be an attorney-at-law and/or other person who possesses experience of a technical or professional nature in landlord-tenant affairs or in a field directly related thereto, shall be a resident of the District of Columbia and shall be entitled to receive annual compensation (payable in regular installments) at a rate as may be established but no less than class GS-15 on the General Schedule under section 5332 of Title 5 of the United States Code. (Nov. 1, 1975, D.C. Law 1-33, title III, § 103, 22 DCR 2493; Apr. 19, 1977, D.C. Law 1-122, § 2(d), 23 DCR 8748.)

AMENDMENT

1977—Act Apr. 19, 1977, D.C. Law 1-122, amended subsec. (b) by inserting "an attorney-at-law and/or other person

who possesses experience of a technical or professional nature in landlord-tenant affairs or in a field directly related thereto, shall be" preceding "a resident".

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of subsec. (b), see sec. 2(d) of the Emergency Rental Accommodations Act Amendments of 1977 (D.C. Act 2-3, Feb. 9, 1977, 23 DCR 6873).

1976—For temporary amendment of subsec. (b), see sec. 2(4) of the Emergency Rental Accommodations Act Amendments of 1976 (D.C. Act 1-148, Aug. 12, 1976, 23 DCR 1675) and sec. 2(d) of the Second Emergency Rental Accommodations Act Amendments of 1976 (D.C. Act 1-173, Nov. 10, 1976, 23 DCR 3610).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 3 of act of Apr. 19, 1977, D.C. Law 1-122, set out as a note under § 45-1631.

§ 45-1634. Duties of Rent Administrator.

(a) The Rent Administrator shall implement the provisions of this subchapter according to the rules and procedures established by the Commission.

(b) (1) The Rent Administrator may employ, within the funds available to him or her, the personnel and consultants, including hearing examiners and legal counsel, necessary to carry out the provisions of this subchapter.

(2) The Rent Administrator may, consistent with the regulations promulgated by the Commission, delegate to the employees appointed in conformity with subsection (b) (1) those functions and duties assigned to him or her by this subchapter, including hearing matters filed or initiated under title II or III of this subchapter, issuing decisions in those cases, and rendering final orders in those cases.

(c) The Rent Administrator shall hear and review any complaint arising from a landlord's claim to an exemption from sections 45-1642(b) through 45-1652, and shall determine the validity of such claim. (Nov. 1, 1975, D.C. Law 1-33, title I, § 104, 22 DCR 2494; Apr. 19, 1977, D.C. Law 1-122, §2(o), 23 DCR 8748; Oct. 27, 1977, D.C. Law 2-34, § 2, 24 DCR 4055).

AMENDMENTS

1977—Act Oct. 27, 1977, D.C. Law 2-34, amended subsecs. (a) and (b) generally.

Act Apr. 19, 1977, D.C. Law 1-122, amended section by deleting the last sentence of subsec. (b) which read: "Such personnel and consultants shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates." and by adding subsec. (c).

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of subsec. (b), see sec. 2 of the First Extension of the Rent Administrator Emergency Delegation Act of 1977 (D.C. Act 2-75, Aug. 16, 1977, 24 DCR 1792) and the Rent Administrator Emergency Delegation Act of 1977 (D.C. Act 2-43, June 8, 1977, 24 DCR 188) and sec. 2(o) (1) of the Emergency Rental Accommodations Act Amendments of 1977 (D.C. Act 2-3, Feb. 9, 1977, 23 DCR 6880).

For temporary amendment of subsec. (c), see sec. 2(o) of the Emergency Rental Accommodations Act Amendments of 1977 (D.C. Act 2-3, Feb. 9, 1977, 23 DCR 6880).

1976—For temporary amendment of subsecs. (b) and (c), see sec. 2 (o) of the Second Emergency Rental Accommodations Act Amendments of 1976 (D.C. Act 1-173, Nov. 10, 1976, 23 DCR 3616).

EFFECTIVE DATES OF 1977 AMENDMENTS

Section 3 of act Oct. 27, 1977, D.C. Law 2-34, provided: "This act [amending § 45-1634] shall take effect as provided for acts of the Council of the District of Columbia under section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

For effective date of act Apr. 19, 1977, D.C. Law 1-122, see section 3 of that act set out as a note under § 45-1631.

NOTES TO DECISIONS

Hearing—Abuse of discretion

Where only two working days before date scheduled for hearing on petition charging excessive rent the landlord requested a continuance to a date near expiration of 60-day statutory deadline for acting on such petitions and only reason given was that counsel would be in New York on scheduled hearing date and Rent Administrator was not informed of possibility that the landlord might also be unavailable, denial of continuance was not abuse of discretion, absent consent of the tenants; furthermore, landlord acted at his own risk in relying on assurances of attorney, who he assumed represented the tenants, that a continuance would be arranged. *H. M. Ammerman et al. v. District of Columbia Rental Accommodations Commission* (D.C. App. 1977, 375 A. 2d 1060).

—Notice

Where one partner was never named as a party in tenants' petition charging exaction of excessive rent in violation of this subchapter and was not given notice of hearing on the petition or an opportunity to be heard in his own behalf, imposition of \$50 fine was improper; provision of section 41-311 relating to partnerships is inapplicable since neither the partnership nor general partner was named as a party to the proceeding. *H. M. Ammerman et al. v. District of Columbia Rental Accommodations Commission* (D.C. App. 1977, 375 A. 2d 1060).

TITLE II.—RENT STABILIZATION

TITLE REFERRED TO IN OTHER SECTIONS

This title II is referred to in section 45-1634.

§ 45-1641. Definitions.

For the purposes of this subchapter—

(a) The term "Council" means the Council of the District of Columbia established under section 1-141.

(b) The term "Mayor" means the Mayor of the District of Columbia established under section 1-161.

(c) Except as provided in section 45-1644(d), the term "base rent" means the rent charged (on a monthly basis) for a rental unit on February 1, 1973; or, in the case of a rental unit not rented on February 1, 1973, the rent last charged (on a monthly basis) for that rental unit between January 1, 1972, and February 1, 1973; or, in the case of a rental unit which was not rented during the period beginning January 1, 1972, and ending on February 1, 1973 or, if the landlord can show to the satisfaction of the Rent Administrator that the rent charged during that period cannot be determined, an appropriate rent as determined by the Rent Administrator.

(d) The term "capital improvement" means a permanent improvement or renovation other than ordinary repair, replacement, or maintenance, the use of which will continue beyond the twelve month period beginning on the date of completion of such capital improvement.

(e) The term "housing accommodation" means any structure or building in the District of Columbia containing one or more rental units, and the

land appurtenant thereto. Such term shall not include any hotel, motel, or other structure, including any room therein, used primarily for transient occupancy and in which at least 60 percent of the rooms devoted to living quarters for tenants or guests are used for transient occupancy.

(f) The term "housing regulations" means the Housing Regulations of the District of Columbia as established by the Commissioners' Order dated August 11, 1955, as amended.

(g) The term "initial leasing period" means that period during which the first tenant of a new rental unit or a rental unit covered by item (6) of subsection (a) of section 45-1642 rents such rental unit.

(h) The term "landlord" means an owner, lessor, sublessor, assignee, or agent of any thereof or other person receiving or entitled to receive rents or benefits for the use or occupancy of any rental unit, including any person who has an option to buy or who has entered into a contract to buy any housing accommodation or rental unit with the intent to offer such housing accommodation or rental unit for rent.

(i) The term "person" means an individual, corporation, partnership, association, joint venture, business entity, or an organized group of individuals, and their successors and assignees.

(j) The term "related facility" means any facility, furnishing, or equipment made available to a tenant by a landlord, the use of which is authorized by the payment of the rent charged for a rental unit, including the use of any kitchen, bath, laundry facility, parking, and the use of common room, yard and other common area.

(k) The term "related services" means services provided by a landlord, or required by law or by the terms of a rental agreement to be provided by a landlord, to a tenant in connection with the use and occupancy of a rental unit, including repairs, decorating and maintenance, the provision of light, heat, hot and cold water, telephone answering and elevator services, janitor services, and the removal of trash and refuse.

(l) The term "rent" means the entire amount of money, money's worth, benefit, bonus, or gratuity demanded, received, or charged by a landlord as a condition of occupancy or use of a rental unit, its related services, and its related facilities.

(m) The term "rental unit" means any apartment, efficiency apartment, room, single-family house (and the land appurtenant thereto), suite of rooms, or duplex, which is rented or offered for rent for residential occupancy. Such term shall not include any room in a hotel, motel or other structure used primarily for transient occupancy.

(n) The term "market value" standing alone means the greater of ¹

(1) the total purchase price most recently paid for a housing accommodation; or

(2) the estimated market value of such housing accommodation, for property assessment purposes, as determined by the Mayor.

(o) The term "assessed market value" means the estimated market value of such housing accommoda-

tion, for property assessment purposes, as determined by the Mayor.

(p) The term "substantial rehabilitation" means any improvement to or renovation of a housing accommodation or a rental unit begun on or after February 1, 1973 for which the total expenditure equals 50 percent or more of the market value of the housing accommodation before such rehabilitation.

(q) The term "tenant" includes a tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy or the benefits thereof, of any rental unit.

(r) The term "maximum possible rental income" means the sum of the rents for all rental units, whether occupied or not, as of the date of the filing of the registration statement.

(s) The term "vacancy loss" shall be the amount of rent not collected (computed on an annual basis) due to vacant units. No amount shall be included for units occupied by a landlord or his employees or otherwise not offered for rent.

(t) The term "uncollected rent" shall be the amount of rents and other charges due but not collected from tenants minus the amount due and not collected from tenants whose location the landlord knows and from whom he has failed to attempt to recover the loss through legal action in the Superior Court of the District of Columbia or other appropriate forum after having had adequate opportunity to do so.

(u) The term "operating expenses" shall mean the expenses for the upkeep of the accommodation for any consecutive 12 month period in the 15 months immediately preceding the filing of the registration statement required by subsection (b) of section 45-1642, including but not limited to expenses for salaries of on-site personnel, supplies, painting, maintenance and repairs, utilities, professional fees, on-site offices, and insurance.

(v) The term "management fee" shall be the amount paid to a managing agent and any pro rata salaries of off-site administrative personnel paid by the landlord.

(w) The term "property taxes" shall be the amount paid to the District of Columbia Treasurer for real property tax on the housing accommodation.

(x) The term "other income which can be derived from the housing accommodation" shall include but not be limited to fees; commissions; income from vending machines; income from laundry facilities; parking and recreational facilities; late charges; and kindred income which a landlord earns because of his ownership of a housing accommodation other than the gross rental charge. (Nov. 1, 1975, D.C. Law 1-33, title II, § 201, 22 DCR 2495.)

EFFECTIVE DATE

See note under § 45-1631.

§ 45-1642. Registration—Coverage.

(a) Sections 45-1642(b) through 45-1652 shall apply to each rental unit in the District of Columbia except:

(1) any rental unit in any Federally or District owned housing accommodation or in any housing accommodation with respect to which the mortgage or rent is federally subsidized;

¹ So in original. Probably should be followed by a dash.

(2) any rental unit in a housing accommodation for which the initial certificate of occupancy was issued after February 2, 1973, but such exception shall be effective only during the length of the initial leasing period or for the first year of tenancy, whichever is shorter;

(3) any rental unit in a housing accommodation containing no more than 4 rental units; *Provided*, That

(A) such housing accommodation is owned by not more than 4 natural persons,

(B) none of such owners has any interest, either directly or indirectly, in any other rental unit in the District of Columbia; and

(C) The owner(s) of such housing accommodation shall file with the Rent Administrator a claim of exemption statement which shall consist of an oath or affirmation by such owner(s) of their valid claim to the exemption. The claim of exemption statement shall also contain the signatures of each person having an interest (direct or indirect) in the housing accommodation. Any change in the ownership of the exempted housing accommodation or change in the owner's interest in any other housing accommodation which would invalidate the exemption claim must be reported in writing to the Rent Administrator within 30 days of such change; and

(D) The claim of exemption statement required by subsection (a)(3)(C) of this section shall also be filed within 30 days of the effective date of this act by all owners of housing accommodations of no more than four rental units exempted from sections 45-1642(b) through 45-1652 by D.C. Act No. 1-148 who were the owners of such property on July 1, 1976.

(4) any rental unit which has been continuously vacant and not subject to a rental agreement for a period of at least 6 months since November 1, 1975; *Provided*, That such rental unit became vacant on or before August 12, 1976 (the effective date of the Emergency Rental Accommodations Act Amendments of 1976; D.C. Act No. 1-148) and *Provided, further*, That such rental unit is in substantial compliance with the housing regulations of the District of Columbia before the expiration of this subchapter; and

(5) any rental unit in any newly constructed housing accommodation for which the building permit was issued on or after January 1, 1976, *Provided, however*, That this exemption shall not apply to any housing accommodation, the construction of which required the demolition of any housing accommodation subject to this subchapter, unless the number of newly-constructed rental units exceeds the number of demolished rental units.

Provided, That no part of this subchapter shall apply to:

(1) any rental unit in an establishment which has as its primary purpose the providing of diagnostic care and treatment of diseases, including but not limited to hospitals, convalescent homes, nursing homes, and personal care homes; or

(2) any dormitory of an institution of higher education, or a private boarding school, in which rooms are provided for students.

(b) Within not more than 90 days following the effective date of this subchapter each landlord of a housing accommodation not exempted from the coverage of this subsection by subsection (a) of this section shall file with the Rent Administrator, on a form approved by the Rent Administrator, a registration statement for each housing accommodation in the District of Columbia and for which he is receiving rent or is entitled to receive rent. The registration form shall contain that information the Rent Administrator may require, including, but not limited to—

(1) a description of the housing accommodation, including the address, number of rental units, number of stories, drainage, type of construction, date and number of housing business license issued by the District of Columbia Government with respect thereto, and date and number of the certificates of occupancy issued by the District of Columbia government with respect thereto;

(2) a description of the utilities, air-conditioning, and type of heating fuel used for each rental unit in such housing accommodation;

(3) rental information on each rental unit in such housing accommodation for the base rent date including the base rent, the current rent being charged, the amount of the security deposit if any, the related services included, and the related facilities and charges therefor;

(4) the information which is filed in paragraph (3) for the date on which such registration is filed;

(5) in the case of a housing accommodation which has been substantially rehabilitated, the market value of such housing accommodation prior to rehabilitation and the method of computing the market value, a description of such rehabilitation, and an itemized list of expenditures for rehabilitation;

(6) in the case of a housing accommodation which is planned to be substantially rehabilitated or in the process of being substantially rehabilitated, the market value of such housing accommodation prior to rehabilitation and the method of computing the market value, and a description of the proposed rehabilitation;

(7) in the case of a housing accommodation with respect to which the Rent Administrator has permitted, pursuant¹ subsection (a) of section 45-1645, the amortized costs of capital improvements to be included in the computation of the rate of return according to the formula provided in section 45-1644, the market value of such accommodation prior to such improvements, a list of all such improvements allowed pursuant to section 45-1645, and an itemized list of expenditures for such improvements;

(8) a list of any outstanding violations of housing regulations applicable to such housing accommodation;

¹ So in original. Probably should be "pursuant to".

(9) the name and address of the owner of such housing accommodation and, when applicable, the name of the resident agent;

(10) the information necessary for the Rent Administrator to easily and accurately compute, according to subsection (a) of section 45-1644, the rate of return for that housing accommodation; and

(11) the rate of return for that housing accommodation as computed by the landlord according to said formula.

(c) After filing the initial registration statement required by this subchapter, each landlord required to file an initial registration statement shall file an amended registration statement upon the occurrence of any event which changes or substantially affects the rent (except for adjustments pursuant to section 45-1648) or the ownership or management of any rental unit in a registered housing accommodation.

(d) Each registration form filed under this section shall be available for public inspection at the Office, and each landlord shall keep a duplicate of each registration form posted in a public place on the premises of the housing accommodation with respect to which such registration form applies *Provided That*, each landlord may, in lieu of posting in a public place in each single family housing accommodation, mail to each tenant of such housing accommodation such duplicate of each registration form.

(e) Each registration form filed under this section which meets the minimum requirements established by the act and by the rules of procedure of the Commission shall be assigned a registration number.

(f) Each certificate of occupancy and each housing business license issued to any landlord in the District of Columbia after the effective date of this subchapter shall contain the registration number of those housing accommodations to which such certificate or license applies. (Nov. 1, 1975, D.C. Law 1-33, title II, § 202, 22 DCR 2500; Apr. 19, 1977, D.C. Law 1-122, § 2(e)-(g), 24 DCR 8748.)

REFERENCES IN TEXT

The effective date of this act, referred to in subsec. (a) (3) (D), is probably a reference to the effective date of act Apr. 19, 1977, D.C. Law 1-122. See Effective Date of 1977 Amendment note set out under § 45-1631.

The Emergency Rental Accommodations Act Amendments of 1976, D.C. Act 1-148, Aug. 12, 1976, referred to in subsecs. (a) (3) (D) and (a) (4), was published at 23 DCR 1673.

The expiration of this subchapter, referred to in subsec. (a) (4), is prescribed by sec. 404 of act Nov. 1, 1975, D.C. Law 1-33, which is set out as a note under § 45-1631.

The effective date of this subchapter, referred to in subsecs. (b) and (f), is prescribed by sec. 404 of act Nov. 1, 1975, D.C. Law 1-33, which is set out as a note under § 45-1631.

AMENDMENT

1977—Section 2(e) of act Apr. 19, 1977, D.C. Law 1-122, amended subsec. (a) generally.

Section 2(f) of such act amended material preceding subsec. (b) (1) by deleting "(whether subject to sections 45-1643 to 45-1652 or not)" immediately after "District of Columbia" and by inserting "of a housing accommodation not exempted from the coverage of this subsection by subsection (a) of this section" immediately after "each landlord".

Section 2(g) of such act amended subsec. (c) generally.

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of subsecs (a)-(c), see sec. 2 (e)-(g) of the Emergency Rental Accommodations Act Amendments of 1977 (D.C. Act 2-3, Feb. 9, 1977, 23 DCR 6873).

For temporary amendment of subsec. (a), see sec. 4 of the Emergency Relocation Regulation Act of 1976 (D.C. Act 1-210, Jan. 12, 1977, 23 DCR 5067).

1976—For temporary amendment of subsecs. (a)-(c), see sec. 2(5)-(7) of the Emergency Rental Accommodations Act Amendments of 1976 (D.C. Act 1-148, Aug. 12, 1976, 23 DCR 1675-1677) and sec. 2(e)-(g) of the Second Emergency Rental Accommodations Act Amendments of 1976 (D.C. Act 1-173, Nov. 10, 1976, 23 DCR 3610-3613).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 3 of act Apr. 19, 1977, D.C. Law 1-122, set out as a note under § 45-1631.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45-1634, 45-1641, 45-1644, 45-1653, 45-1662.

§ 45-1643. Annual fee.

Each landlord of a housing accommodation covered by this part shall pay a fee of \$2.00 for each rental unit in a housing accommodation registered by the landlord. Such fee shall be paid annually to the Mayor at the time the landlord applies for his/her business license or a renewal thereof. In the case of a housing accommodation for which no such license is required, the fee shall be paid to the Mayor at the time the landlord files the initial registration statement and every 12 months thereafter from the date of such initial registration. Such fees shall be paid from time to time into such depositories of the District of Columbia Government established for such purposes and credited to the General Fund of the District of Columbia. (Nov. 1, 1975, D.C. Law 1-33, title II, § 203, 22 DCR 2506; Apr. 19, 1977, D.C. Law 1-122, § 2(m), 23 DCR 8748.)

REFERENCE IN TEXT

This part, referred to in the text, is probably a reference to title II of act Nov. 1, 1975, D.C. Law 1-33, which is classified to title II of this subchapter.

AMENDMENT

1977—Act Apr. 19, 1977, D.C. Law 1-122, amended section generally.

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of section, see sec. 2(m) of the Emergency Rental Accommodations Act Amendments of 1977 (D.C. Act 2-3, Feb. 9, 1977, 23 DCR 6879).

1976—For temporary amendment of section, see sec. 2(m) of the Second Emergency Rental Accommodations Act Amendments of 1976 (D.C. Act 1-173, Nov. 10, 1976, 23 DCR 3615).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 3 of act Apr. 19, 1977, D.C. Law 1-122, set out as a note under § 45-1631.

CROSS REFERENCE

General Fund of the District of Columbia, see § 47-130c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45-1634, 45-1642, 45-1644.

§ 45-1644. Rent ceiling.

(a) Except to the extent provided in subsections (b), (c), and (d) of this section, and section 45-1651, no landlord may charge or collect rent for any rental unit in excess of the rent computed according to the

following formula (hereinafter referred to in this subchapter as the "rent ceiling"):

(1) Step 1: add to the base rent an amount equal to 4 percent of the base rent.

(2) Step 2: add to the figure computed in Step 1 an amount equal to 8 percent of such figure.

(3) Step 3: (A) In the case of a housing accommodation for which the rate of return, as shown on the registration statement and computed according to part (B) of this step, is less than 8 percent, the landlord may add to the figure computed in step 2 a pro rata share of an amount sufficient to increase the maximum possible rental income for that housing accommodation by such an amount as will generate a rate of return of no greater than eight percent, *Provided That* no increase shall be more than five percent of (1) the amount computed in step 2 or (2) the rent as established by the Housing Rent Commission or a court of competent jurisdiction.

(B) In determining the rate of return for each housing accommodation, the following formula shall be used (computed over a base period of any consecutive twelve month period within the fifteen months immediately preceding the filing of the registration statement):

(1) The sum of the maximum possible rent income which can be derived from a housing accommodation shall be added.

(2) To the sum of all other income which can be derived from the housing accommodation.

(3) From the total of maximum possible rental income which can be derived from a housing accommodation plus the sum of all other income which can be derived from the housing accommodation shall be subtracted (i) the dollar value of vacancy losses and (ii) uncollected rents the remainder of which shall be defined as the "gross income".

(4) From the gross income shall be subtracted (i) the operating expenses; (ii) property taxes; (iii) management fee of no more than six percent of the maximum rental income of the accommodation unless and only to the extent any additional amount is approved by the Rent Administrator pursuant to subsection (b) of section 45-1645; (iv) depreciation expenses (computed on a straight line basis) of no more than two percent of the assessed market value of the housing accommodation may be deducted in any one year as a depreciation expense, unless and to only the extent any additional amounts are approved by the Rent Administrator pursuant to subsection (c) of section 45-1645; and (v) amortized costs of capital improvements if and as permitted pursuant to subsection (a) of section 45-1645. The remainder after such subtractions shall be defined as the "net income".

(5) The net income shall be divided by the assessed market value of the housing accommodation to determine the rate of return.

(b) The rent ceiling for a particular rental unit computed according to the procedure specified in this section may be increased or decreased, as the case may be,

(1) according to section 45-1646, to allow for an increase or decrease in related services or facilities;

(2) according to section 45-1650, to allow for the cost of substantial rehabilitation; or

(3) according to section 45-1648, to allow for adjustments for vacant accommodations.

(c) In addition to the adjustments in the rent ceiling which are allowed as specified in subsection (b), any landlord may apply for a hardship adjustment to be computed under section 45-1649.

(d) The rent ceiling for any unit in a housing accommodation exempted by section 45-1642(a)(2) from the provisions of sections 45-1642(b) through 45-1652, after the termination of such exemption, shall be the rent charged during the initial leasing period or during the first year of tenancy, whichever is less, increased by an amount not in excess of an amount computed in accordance with step 3 of the formula specified in subsection (a) *Provided That*, no increase shall be more than five percent of the rent so charged. Such increase may be effected only in accordance with the procedures specified in subsections (h) and (i) of this section.

(e) Notwithstanding any provision of this subchapter, the rent for any rental unit shall not be increased above the base rent unless (1) the housing accommodation of which such rental unit is a part is in substantial compliance with the housing regulations *Provided That*, such non-compliance is not the result of tenant neglect or misconduct; (2) the housing accommodation is registered in accordance with section 45-1642; (3) the landlord of such housing accommodation is properly licensed pursuant to the housing regulations if such regulations require his licensing; and (4) the manager of such housing accommodation, when other than the landlord, is properly registered pursuant to the housing regulations if such regulations require his registration.

(f) If, on the effective date of this subchapter, the rent being charged exceeds the allowable rent ceiling, the rent shall be reduced to the allowable rent ceiling effective the next date that the rent is due, *Provided That* this subsection shall not apply to any rent approved by the Housing Rent Commission under Regulation 74-20 or any rent approved by a court of competent jurisdiction. The landlord shall notify the tenant in writing of the required decreases prior to the effective date of such decreases.

(g) Notwithstanding any other provision of this subchapter, no rent shall be increased under this subchapter for any rental unit with respect to which there is a valid written lease or rental agreement establishing the rent for such rental unit for the term of such written lease or rental agreement.

(h) (1) If a landlord indicates on his registration statement filed under subsection (b) of section 45-1642, or on any document filed under item (3) of subsection (c) of section 45-1642, that he is entitled to an increase in rents under part A of step 3 of subsection (a) and that he intends to so increase such rents, such landlord shall immediately notify (in writing) the tenants of the rental units to which such increase applies of the intended rent increase. Such notice shall be mailed to the tenants by

certified mail, return receipt requested. Such notice shall include those items listed in subsection (i) of this section, and, in addition, a copy of that portion of the registration statement which shows the computation of the rate of return relating to the housing accommodation containing the rental units for which a rent increase is sought. The Commission shall by regulation prescribe the actual wording (including the size of type to be used) of a statement to be included with such notice informing the tenants that they may request a review of such registration statement and a hearing on such review and giving the address where and time within which such request may be made.

(2) Any intended rent increase to be made under part (A) of step 3 of subsection (a) of this section shall not be effective before the first day that rent is due occurring more than 30 days after the notice specified in paragraph (1) of this subsection is mailed. If during such 30 days, a tenant in a housing accommodation to which such increase applies files a request for a review of such registration statement, the Rent Administrator shall forthwith notify the landlord of such request and the landlord raising such rents shall pay the amounts collected reflecting such increase from the tenants of the housing accommodation, beginning on the effective date of such increase, into an interest bearing escrow account established by the landlord in a bank or other financial institution in the District of Columbia. Interest on such accounts shall be at least 5¼ percent. The landlord shall keep detailed records for such accounts showing the exact amounts in such accounts attributable to each tenant in the housing accommodation concerned. Such account, and such records, shall be maintained until the Rent Administrator completes the requested review and issues an order specifying how the contents of such account is to be distributed. Either the landlord, or the tenant requesting a review, may demand and receive a hearing on the review. If the Rent Administrator finds, as a result of his review, that such increase is justified, then he shall award the amounts in such account to the landlord. If the Rent Administrator finds, as a result of his review that such increase was not justified, then he shall award the amounts in such account to the tenants concerned. If he finds such increase to be partially justified, he shall order the amounts in such account to be distributed equitably to reflect such finding. The Rent Administrator shall complete each such review within a reasonable time.

(3) If any tenant files a petition for a review of a registration statement more than 30 days after the mailing of the copy of such statement, the Rent Administrator shall conduct such a review in a reasonable time, but the landlord shall not be required to place the amounts reflected by the increase in escrow. In addition, the Rent Administrator or Commission may initiate such a review.

(4) An appeal may be taken from a decision of the Rent Administrator made as a result of a review by filing a notice of such appeal with the Commission within fifteen days after the date of the decision being appealed.

(5) For the purposes of this subsection, the term "review" shall mean an examination of the expenses and income contained in the registration statement of the building in question. The review shall consist of an official examination and verification of the accounts and records pertaining to the property or premises. The Administrator may require the landlord to produce relevant ledgers, journals, cancelled checks, bank statements, receipts and such other information as may be required to review the registration statement including but not limited to, copies of relevant portions of income tax returns relating to the particular housing accommodation that have been filed with the Federal or District Government in the past 3 years.

(i) Each notice of an impending rent increase shall be in writing and shall contain a statement of the:

- (1) current rent;
- (2) proposed rent;
- (3) percentage increase that the proposed rent represents over the current rent;
- (4) effective date of the proposed rent increase;
- (5) base rent;
- (6) percentage increase that the current rent represents above the base rent;
- (7) percentage increase that the proposed rent represents above the base rent;
- (8) registration number of the accommodation;
- (9) certification and explanation by the landlord that the unit is in substantial compliance with the housing regulations and that the increase is in substantial compliance with the housing regulations and that the increase is in compliance with this subchapter;
- (10) exact method of computation of the increase including itemization of cost figures to which the increase is attributable when such increase is pursuant to sections 45-1645, 45-1646, 45-1648, 45-1649, 45-1650;
- (11) statement of the penalties as described in section 45-1655, and
- (12) location of the registration statement in a public place on the premises in accordance with subsection (d) of section 45-1642.

(Nov. 1, 1975, D.C. Law 1-33, title II, § 204, 22 DCR 2507; Apr. 19, 1977, D.C. Law 1-122, § 2(h), (n), 23 DCR 8748.)

REFERENCE IN TEXT

The effective date of this subchapter, referred to in subsec. (f), is prescribed by sec. 404 of act Nov. 1, 1975, D.C. Law 1-33, which is set out as a note under § 45-1631.

AMENDMENT

1977—Section 2(h) of act Apr. 19, 1977, D.C. Law 1-122, amended subsec. (h) by substituting "review" for "audit", by substituting "a" for "an" where appropriate, and by amending par. (5) generally.

Section 2(n) of such act amended subsec. (d) by substituting "section 45-1642(a) (2) from the provisions of sections 45-1642(b) through 45-1652" for "paragraphs (3) and (6) of subsection (2) of section 45-1642 from the provisions of Section 45-1643—45-1652" which was executed by substituting the quoted language for "paragraphs (3), or (6) of subsection (a) of section 45-1642 from the provisions of sections 45-1643 to 45-1652".

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of subsecs. (d) and (h), see sec. 2 (n) and (h) of the Emergency Rental Ac-

commodations Act Amendments of 1977 (D.C. Act 2-3, Feb. 9, 1977, 23 DCR 6880, 6876).

1976—For temporary amendment of subsec. (d), see sec. 2(n) of the Second Emergency Rental Accommodations Act Amendments of 1976 (D.C. Act 1-173, Nov. 10, 1976, 23 DCR 3616).

For temporary amendment of subsec. (h), see sec. 2(8) of the Emergency Rental Accommodations Act Amendments of 1976 (D.C. Act 1-148, Aug. 12, 1976, 23 DCR 1678) and sec. 2(h) of the Second Emergency Rental Accommodations Act Amendments of 1976 (D.C. Act 1-173, Nov. 10, 1976, 23 DCR 3613).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 3 of act Apr. 19, 1977, D.C. Law 1-122, set out as a note under §45-1631.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45-1632, 45-1634, 45-1641, 45-1642, 45-1645, 45-1649, 45-1651, 45-1652.

NOTES TO DECISIONS UNDER PRESENT LAW

Constitutionality

Provision of this section allowing an 8% rate of return is not so low as to be confiscatory, even though based on assessed value rather than fair market value of rental property, in light of provisions in this subchapter for periodic review, hardship petitions, and partial pass-through of costs, and in light of fact that this subchapter is temporary since by its own terms it is applicable for a two-year period designed to meet an emergency. *Apartment and Office Building Association of Metropolitan Washington et al. v. W. E. Washington, Mayor, et al.* (D.C. App. 1977, 381 A.2d 588).

It was not shown that provision of this section for upward adjustment of rent by landlords is inherently unworkable because of inadequate administrative machinery so as to render this subchapter confiscatory. *Id.*

NOTES TO DECISIONS UNDER PRIOR LAW

Constitutionality, rent control regulations

Fact that rent schedules promulgated by Secretary of Housing and Urban Development for federally insured housing projects allowed the mortgagors to charge rents up to specified maximum did not render invalid, under Supremacy Clause, District of Columbia regulation setting rent ceiling beneath maximum fixed by the Secretary; although federal standard established a maximum rent it did not, conversely, create a right or entitlement to exact the specified maximum; in addition, since federal standard is permissive rather than mandatory, there is no "impossibility of dual compliance" with the two statutes. *Columbia Plaza Limited Partnership et al. v. A. Cowles et al.* (1975, 403 F. Supp. 1337; rem'd 551 F.2d 466, 179 U.S. App. D.C. 280).

Construction

Statute, which provides that in event of adoption of rent control rules by Council, there be a "means whereby increased cost incurred by * * * landlord[s] * * * shall be taken into consideration," requires prompt, and therefore meaningful, cost passthrough procedures. *Apartment and Office Building Association of Metropolitan Washington et al. v. W. E. Washington, Commissioner, et al.* (D.C. App. 1975, 343 A.2d 323).

Increased costs, pass-through

Neither expiration of 90-day period in which court had directed that applications for rent increase should be considered by trial court nor enactment of new rent control provisions altered rights which vested by terms of court's earlier order. *Apartment and Office Building Association of Metropolitan Washington et al. v. L. C. Moore, Judge, etc.* (D.C. App. 1976, 359 A.2d 140).

Where trial court had not been able to adjudicate all requests for increases under rent control provisions within 90-day period set forth by the Court of Appeals, Court of Appeals would order that rent adjustment become effective under the old rent program upon filing with the court and with the rent administrator of certified statement showing the current annual costs, base period annual costs, annual amount of cost increase, monthly amount of cost increase, unit pass-through

amount, and the amount of the adjusted rent ceiling, with the agency retaining the right to audit and inspect such statements, but court would not permit a recoupment surcharge to make up for past deficiencies. *Id.*

Rent control regulation's rent ceiling formula of a 12.32% increase in rent did not satisfy statutory requirement that a procedure for permitting cost pass-through be provided if rent control is to be imposed. *Apartment and Office Building Association of Metropolitan Washington et al. v. W. E. Washington, Commissioner, et al.* (D.C. App. 1975, 343 A.2d 323).

Rent control regulation's sections, which implemented Rent Control Act provision allowing Housing Rent Commission to grant hardship exemptions to landlords, did not satisfy statutory requirement that a procedure for permitting cost passthrough be provided if rent control is to be imposed, in that pass-through requirement of Act was separate from hardship exemption provision. *Id.*

Even if rent control regulation contained a cost passthrough mechanism, regulation was not enforceable where implementation of the cost passthrough procedure was shown by the record to be useless as a means of providing a meaningful passthrough of increases in operating costs. *Id.*

Judicial review

In suit by landlord to obtain review of an order of the Housing Rent Commission denying landlord's petition to increase rents, the judicial review provision established in the Rent Control Act of 1973 was controlling and therefore the Superior Court, not the Court of Appeals, was the proper Court in which to seek review. *Kew Gardens Joint Venture v. District of Columbia Housing Rent Commission* (D.C. App. 1976, 359 A.2d 269).

By specifically vesting the Superior Court with jurisdiction to review Rent Commission's decisions, Congress gave statutory recognition to authority of trial court to use its equity power in rent control field. *Columbia Realty Venture v. District of Columbia Housing Rent Commission* (D.C. App. 1975, 350 A.2d 120).

District of Columbia Court of Appeals is without jurisdiction to review Housing Rent Commission's voiding of hearing examiner's order allowing increased cost of operating property to be passed through to tenants due to landlord's failure to serve order on parties and Commission within 45 days after decision; review thereof would be in the Superior Court. *Id.*

§ 45-1645. Capital improvements.

(a) In the case of a landlord who has completed capital improvements, the Rent Administrator may permit the costs of such improvements, amortized over the useful life of such improvements and applied on an equal basis to all rental units within the housing accommodation benefiting from such improvement, to be included as an item in the computation of the rate of return to be subtracted from gross income as defined in part (B) of step (3) of subsection (a) of section 45-1644 *Provided That*, (1) the landlord has made available to the Rent Administrator and to the tenant concerned the plans, contracts, specifications, and building permits relating to the capital improvements; and (2) the Rent Administrator is satisfied that the interests of the tenant are being protected.

(b) Where, in the computation of a rate of return, a landlord seeks to deduct a management fee in excess of six percent of the maximum possible rental income, he shall first file with the Rent Administrator a petition to allow such excess to be deducted. If the Rent Administrator determines that such excess or part thereof is reasonable, he may permit to be deducted the same or so much thereof as he determines to be reasonable. The petition shall contain such information as the Rent Administrator may require including but not limited to the name of the

payee of the fee and what, if any, identity exists between the landlord and the payee.

(c) Where, in the computation of a rate of return, a landlord seeks to deduct depreciation expenses in excess of two percent of the assessed market value of the housing accommodation, he shall first file with the Rent Administrator a petition to allow such excess to be deducted. If the Rent Administrator determines that such excess or part thereof is justified, he may permit to be deducted the same or so much thereof as he determines to be justified. The petition shall contain such information as the Rent Administrator may require including but not limited to what if any depreciation of the housing accommodation has been claimed for tax purposes.

(d) Nothing in subsections (b) and (c) of this section shall be construed to prohibit or limit the Rent Administrator in any determination of the accuracy of any claimed management fee of six percent or less of the maximum possible rental income or any claimed depreciation expense of two percent or less of the assessed market value of the housing accommodation. (Nov. 1, 1975, D.C. Law 1-33, title II, § 205, 22 DCR 2515.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45-1634, 45-1642, 45-1644, 45-1652.

§ 45-1646. Services and facilities.

If the Rent Administrator determines that—

(1) the related services or related facilities supplied by a landlord for a housing accommodation or for any rental unit therein are substantially increased; or

(2) the related services or related facilities supplied by a landlord for a housing accommodation or for any rental unit therein are substantially decreased;

then the Rent Administrator may increase or decrease the rent ceiling applicable to such rental unit accordingly. (Nov. 1, 1975, D.C. Law 1-33, title II, § 206, 22 DCR 2517.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45-1634, 45-1642, 45-1644, 45-1652.

§ 45-1647. Security deposit.

No person shall demand or receive a security deposit for any rental unit where no security deposit was demanded or received for such rental unit upon the effective date of this subchapter. (Nov. 1, 1975, D.C. Law 1-33, title II, § 207, 22 DCR 2518.)

REFERENCE IN TEXT

The effective date of this subchapter, referred to in text, is prescribed by sec. 404 of act Nov. 1, 1975, D.C. Law 1-33, which is set out as a note under § 45-1631.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45-1634, 45-1642, 45-1644.

§ 45-1648. Vacant accommodation.

(a) When, after the date the initial registration statement is filed under this subchapter, a rental unit becomes vacant, the landlord may adjust the rent ceiling for such rental unit to the rent ceiling applicable to any substantially identical rental unit within the same housing accommodation, provided

the tenant has vacated on his own initiative or as a result of notice to vacate for one of the following causes: (1) nonpayment of rent; (2) violation of an obligation of his tenancy, as provided in item (1) of subsection (b) of section 45-1653; or (3) use of the accommodation for an illegal purpose or purposes, as provided in item (2) of subsection (b) of section 45-1653.

(b) For the purposes of this section, rental units shall be defined to be "substantially identical" where they contain essentially the same square footage, essentially the same floor plan, comparable amenities and equipment, comparable locations with respect to exposure and height (if exposure and height have previously been factors in the amount of rent charged), and are in comparable physical condition. (Nov. 1, 1975, D.C. Law 1-33, title II, § 208, 22 DCR 2518.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45-1634, 45-1642, 45-1644.

§ 45-1649. Hardship petition.

(a) In those cases where, after any increase which may be permitted by Part (A) of step 3 of subsection (a) of section 45-1644, the landlord can show a negative cash flow after consideration of debt service, the Rent Administrator, upon petition of the landlord, may allow such additional increases in rent as will generate a positive cash flow *Provided That*, in the consideration of such petitions, the Rent Administrator shall consider the degree of hardship which the requested increase will place upon the tenants of the housing accommodation.

(b) In those cases where the rent increase permitted by Part (A) of step 3 of subsection (a) of section 45-1644 is insufficient to generate a rate of return of eight percent computed according to the formula provided in Part (B) of said step, the Rent Administrator, upon petition of the landlord and after audit of the figures and computations in the most current registration statement, may allow such additional increases in rent as will generate a rate of return of eight percent. The Rent Administrator shall approve or disapprove such petition or any part thereof but shall not permit an increase which will generate a rate of return in excess of eight percent as of the time of the filing of the most current registration statement. (Nov. 1, 1975, D.C. Law 1-33, title II, § 209, 22 DCR 2519.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45-1634, 45-1642, 45-1644, 45-1652.

NOTES TO DECISIONS UNDER PRIOR LAW

Increased costs, pass-through

Rent control regulation's sections, which implemented Rent Control Act provision allowing Housing Rent Commission to grant hardship exemptions to landlords, did not satisfy statutory requirement that a procedure for permitting cost passthrough be provided if rent control is to be imposed, in that pass-through requirement of Act was separate from hardship exemption provision. *Apartment and Office Building Association of Metropolitan Washington et al. v. W. E. Washington, Commissioner, et al.* (D.C. App. 1975, 343 A.2d 323).

Judicial review—Equitable jurisdiction

By specifically vesting the Superior Court with jurisdiction to review Rent Commission's decisions, Congress gave

statutory recognition to authority of trial court to use its equity power in rent control field. *Columbia Realty Venture v. District of Columbia Housing Rent Commission* (D.C. App. 1975, 350 A.2d 120).

District of Columbia Court of Appeals is without jurisdiction to review Housing Rent Commission's voiding of hearing examiner's order allowing increased cost of operating property to be passed through to tenants due to landlord's failure to serve order on parties and Commission within 45 days after decision; review thereof would be in the Superior Court. *Id.*

Superior Court did not abuse its discretion in taking equitable jurisdiction in case, in which landlords sought to have rent control regulation declared invalid and in which Housing Rent Commission was shown to have had an administrative inability to decide landlords' petitions for hardship adjustments, notwithstanding contention that landlords' proper remedy would have been to wait 60 days and then commence an action in Superior Court pursuant to provision of District of Columbia Rent Control Act. *Apartment and Office Building Association of Metropolitan Washington et al. v. W. E. Washington, Commissioner, et al.* (D.C. App. 1975, 343 A.2d 323).

— Standing

Landlords, who alleged injury in fact through loss of increased rent because of failure of Housing Rent Commission to decide petitions for hardship adjustments, who alleged that they were within zone of interest that rent control regulation in Rent Control Act was designed to protect and who alleged that there was no clear and convincing indication of a legislative intent to preclude judicial review, had standing to seek judicial review of failure of Commission to act on such petitions within the 60 days required by regulation. *Apartment and Office Building Association of Metropolitan Washington et al. v. W. E. Washington, Commissioner, et al.* (D.C. App. 1975, 343 A.2d 323).

§ 45-1650. Substantial rehabilitation.

(a) If the Rent Administrator determines that: (1) a rental unit is to be substantially rehabilitated, (2) such rehabilitation is in the interest of the tenants of such unit and the housing accommodation in which the unit is located, then the Rent Administrator may approve, contingent upon completion of such substantial rehabilitation, an increase in the rent ceiling for such rental unit, *Provided* That such rent increase is no greater than the equivalent of 125 percent of the rent ceiling applicable to such rental unit prior to substantial rehabilitation.

(b) In determining whether a housing unit is to be substantially rehabilitated, the Rent Administrator shall examine the plans, specifications and projected costs for such rehabilitation, which shall be made available to the Administrator by the landlord of the unit or accommodation to be rehabilitated.

(c) In determining whether substantial rehabilitation of a housing accommodation is in keeping with the interest of the tenants, the Rent Administrator shall consider, among other relevant factors: (1) the impact of such rehabilitation on the tenants of the unit or housing accommodation and (2) the existing condition of the unit or housing accommodation and the degree to which any violations of the housing regulations in such unit or housing accommodation constitute an impairment of the health, welfare and safety of the tenants.

(d) This section shall apply to the following: (1) any rental unit with respect to which a landlord has notified the tenant, after effective date of this subchapter, of intent to substantially rehabilitate; (2)

any rental unit with respect to which, prior to the effective date of this subchapter: (i) the landlord has notified the tenant of the intended substantial rehabilitation; and (ii) all the tenants have left. (Nov. 1, 1975, D.C. Law 1-33, title II, § 210, 22 DCR 2520.)

REFERENCE IN TEXT

The effective date of this subchapter, referred to in subsec. (d), is prescribed by sec. 404 of act Nov. 1, 1975, D.C. Law 1-33, which is set out as a note under § 45-1631.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45-1634, 45-1642, 45-1644, 45-1652, 45-1662.

§ 45-1651. Transitional provision.

In the case of rental units, the rents of which have been determined by the Housing Rent Commission or a court of competent jurisdiction, the landlord of such units shall not use steps 1 and 2 of subsection (a) of section 45-1644 in computing the allowable rent ceiling for such units, but shall use the rents so allowed in lieu of said steps. (Nov. 1, 1975, D.C. Law 1-33, title II, § 211, 22 DCR 2521.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45-1634, 45-1642, 45-1644.

§ 45-1652. Adjustment procedure.

(a) The Rent Administrator shall consider an adjustment allowed by sections 45-1645, 45-1646, 45-1649, or 45-1650 in the rent ceiling applicable to any rental unit upon a petition filed with him by the landlord of such rental unit. Such petition shall be filed with the Rent Administrator on a form provided by him containing such information as he or the Commission may require. A tenant may file a petition for adjustment of rent pursuant to section 45-1644(e) or resulting from a reduction of services or facilities pursuant to section 45-1646. The Rent Administrator shall approve or deny, in whole or in part, each such petition whether filed by landlord or tenant within 60 days after such petition is filed with him, unless an extension of time is approved, in writing, by both the landlord and tenant of such rental unit or by the Commission.

(b) Upon receipt of such petition, the Rent Administrator shall notify the landlord if the tenant filed the petition, or the tenants concerned if the landlord filed the petition by certified mail or any other form of service which assures delivery, of the receipt of such petition and of the right of either party to request (in writing) a hearing within fifteen days after the receipt of such notice. If a hearing is timely requested by either party, notice of the time and place of the hearing shall be furnished the parties by certified mail or any other form of service which assures delivery at least fifteen days before the commencement of such hearing. Such notice shall inform each of the parties of his right to retain legal counsel to represent him at the hearing.

(c) Each landlord of any rental unit with respect to which a petition is filed or initiated under this section shall submit to the Rent Administrator, within 15 days after demand therefor is made, an information statement, on a form approved by the Rent Administrator, containing the information the Rent Administrator may request or the Commission may require.

(d) The Rent Administrator may consolidate petitions and hearings relating to rental units in the same housing accommodation.

(e) The Rent Administrator may, without holding a hearing, refuse to adjust the rent ceiling for any rental unit, and may dismiss any petition for adjustment, if a final decision has been made on a petition filed under sections 45-1646, 45-1649, or 45-1650 or under District of Columbia Regulation 74-20 on another petition for adjustment as to the same rental units within the six months immediately before the filing of the immediate petition.

(f) All petitions filed under this section, all hearings held relating thereto, and all appeals taken from decision of the Rent Administrator, shall be considered and held according to the provisions of this section and the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.). In the case of any direct, irreconcilable conflict between the provisions of this section and the District of Columbia Administrative Procedure Act, the District of Columbia Administrative Procedure Act shall apply.

(g) Decisions of the Rent Administrator shall be made on the record relating to any petition filed with him. An appeal from any decision of the Rent Administrator may be taken by the aggrieved party to the Commission within ten days after the decision of the Rent Administrator, or the Commission may initiate a review of a decision of the Rent Administrator on its own initiative. The Commission may reverse, in whole or in part, any decision which it finds to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the provisions of this subchapter, or unsupported by the substantial evidence in the record of the proceedings before the Rent Administrator; or it may affirm, in whole or in part, the Rent Administrator's decision. The Commission shall issue a decision with respect to an appeal within 30 days after such an appeal was filed. An appeal from a decision by the Rent Administrator respecting any rent adjustment shall not stay the effectiveness of the decision.

(h) No increase in rent allowed under this subchapter shall be implemented unless the tenant concerned has been given written notice, at least 30 days before the intended date of implementation, of such increase.

(i) A copy of any decision made by the Rent Administrator or by the Commission under this section shall be mailed to the parties to such decision. (Nov. 1, 1975, D.C. Law 1-33, title II, § 212, 22 DCR 2522; Apr. 19, 1977, D.C. Law 1-122, § 2(i), 23 DCR 8748.)

AMENDMENT

1977—Act Apr. 19, 1977, D.C. Law 1-122, amended second sentence of subsec. (a) by inserting "or the Commission" immediately before "may require" and by deleting from the end thereof "including an itemization of the actual income and operating expenses for the housing accommodation of which that rental unit is a part for a two-year period ending not more than four months before the date such petition was filed or initiated".

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of subsec. (a), see sec. 2(i) of the Emergency Rental Accommodations Act Amendments of 1977 (D.C. Act 2-3, Feb. 9, 1977, 23 DCR 6877).

1976—For temporary amendment of subsec. (a), see sec. 2(9) of the Emergency Rental Accommodations Act Amendments of 1976 (D.C. Act 1-148, Aug. 12, 1976, 23 DCR 1679) and sec. 2(i) of the Second Emergency Rental Accommodations Act Amendments of 1976 (D.C. Act 1-173, Nov. 10, 1976, 23 DCR 3614).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 3 of act Apr. 19, 1977, D.C. Law 1-122, set out as a note under §45-1631.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45-1634, 45-1642, 45-1644.

NOTES TO DECISIONS

Administrative procedure

Where a decision rendered by acting rent administrator as to permissible rent was based on evidence presented before hearing examiner, and where hearing examiner did not issue to the parties a proposed order, including findings of fact and conclusions of law, nor did parties have opportunity to file exceptions, present arguments, and direct the acting rent administrator's attention to designated portions of record prior to entry by him of his "decision", rent administrator's decision is a "final order" entered without compliance with procedural requirements of the Administrative Procedure Act which requires reversal. *L. L. Meier, Jr. v. District of Columbia Rental Accommodations Commission et ano.* (D.C. App. 1977, 372 A.2d 566).

The District of Columbia Rental Accommodations Commission has the right to issue regulations empowering hearing examiners to conduct hearings on permissible rent as this subchapter and the Administrative Procedure Act clearly provide vehicle for utilization of such hearing examiners to hear the evidence with the decision being made by another. *Id.*

Construction

Clear distinction between functions of acting rent administrator and Rental Accommodations Commission is made; authority to decide rental adjustment petitions is vested in the administrator while authority to decide administrative appeals is vested in the Commission. *L. L. Meier, Jr. v. District of Columbia Rental Accommodations Commission et ano.* (D.C. App. 1977, 372 A.2d 566).

Review by Commission

Review by the Rental Accommodations Commission of decisions on rental adjustment made by the acting rent administrator is limited to whether decision of rent administrator is arbitrary, capricious, an abuse of discretion not in accordance with law, or unsupported by substantial evidence in the record; and this is an appellate review standard, rather than an initial decisions standard. *L. L. Meier, Jr. v. District of Columbia Rental Accommodations Commission et ano.* (D.C. App. 1977, 372 A.2d 566).

§ 45-1653. Eviction.

(a) No tenant shall be evicted from a rental unit for any reason other than for non-payment of rent unless he has been served with a written notice to vacate which meets the requirements set forth in paragraph (3) of subsection (c) of this section and such notice has been served upon the Rent Administrator.

(b) Notwithstanding any other provision of law, no tenant shall be evicted from a rental unit, notwithstanding the expiration of his lease or rental agreement, so long as such tenant continues to pay the rent to which the landlord is entitled for such rental unit, unless—

(1) the tenant is violating an obligation of his tenancy and fails to correct such violation within 30 days after receiving notice thereof from the landlord;

(2) a court of competent jurisdiction has determined that the tenant has performed an illegal

act within such rental unit or housing accommodation;

(3) the landlord seeks in good faith to recover possession of such rental unit for his immediate and personal use and occupancy;

(4) the landlord has in good faith contracted in writing to sell the rental unit, or the housing accommodation in which such rental unit is located, for the immediate and personal use and occupancy by another person and such rental unit or housing accommodation is not being converted to a condominium, so long as at the time he offers the rental unit or housing accommodation for sale the landlord has so notified the tenant in writing;

(5) the landlord seeks in good faith to recover possession of the rental unit:

(A) for the immediate purpose of making alterations or renovations of the rental unit which cannot safely or reasonably be accomplished while the rental unit is occupied so long as the plans for such alterations have been filed and certified by the Rent Administrator as evincing that the proposed alterations or renovations cannot safely or reasonably be accomplished while the unit is occupied; or

(B) for the immediate purpose of demolishing the housing accommodation in which such rental unit is located and replacing it with new construction and a copy of the permit for such new construction has been filed with the Rent Administrator.

(6) the landlord seeks in good faith to recover possession of the rental unit for the immediate purpose of discontinuing the housing use and occupancy of such rental unit for a continuous period of not less than 6 months.

(c) (1) In any case where the landlord seeks to recover possession of a rental unit under paragraphs (3), (4), (5), or (6) of subsection (b) of this section he shall first notify the tenant of such rental unit, in writing and at least 90 days prior thereto, of his intent to recover possession of such rental unit *Provided That*, when the landlord seeks to recover possession of a rental unit under paragraph (5) for purposes of substantial rehabilitation, such notice shall be in accordance with section 45-1661.

(2) in any case where a landlord seeks to recover possession of a rental unit or housing accommodation to convert such rental unit or housing accommodation to a condominium, notice shall be given according to the provisions of section 503 of the Condominium Act of 1976.

(3) The notice required by subsection (a) of this section shall contain a statement detailing the reasons for the eviction, and if the housing accommodation is required to be registered by this subchapter, a statement that the housing accommodation is registered with the office and the registration number as provided by section 45-1642(e).

(d) No landlord shall demand or receive rent for any rental unit which he has repossessed under paragraphs (3) or (6) of subsection (b) of this section during the 6 month period beginning on the date he recovered possession of such rental unit. No person who has purchased a rental unit which has been repossessed by a landlord under paragraph (4) of sub-

section (b) of this section shall demand or receive rent for such rental unit during the 6 month period beginning on the date such landlord recovered such rental unit.

(e) In the case of any rental unit which has been repossessed by a landlord under paragraph (5) of subsection (b) of this section, the tenant from whom the landlord repossessed such unit shall have an absolute right to rerent such unit immediately upon completion of the renovation or alterations, and, where the renovations or alterations are necessary to bring the unit into compliance with the housing regulations, the tenant may rerent at the same rent and under the same obligations as were in effect at the time he was dispossessed, *Provided That*, such renovations or alterations were not made necessary by the negligent or malicious conduct of such tenant. (Nov. 1, 1975, D.C. Law 1-33, title II, § 213, 22 DCR 2525; Mar. 29, 1977, D.C. Law 1-89, title IV, § 420(1), (2), 23 DCR 9532b; Apr. 19, 1977, D.C. Law 1-122, § 2(j)-(l), 23 DCR 8748.)

REFERENCE IN TEXT

The Condominium Act of 1976, referred to in subsec. (c) (2), is act Mar. 29, 1977, D.C. Law 1-89, which is classified to sections 5-1201 et seq. As enacted, that act did not contain a section 503.

AMENDMENTS

1977—Subsec. (a). Section (2) (j) of act Apr. 19, 1977, D.C. Law 1-122, amended subsec. (a) generally.

Subsec. (b) (4). Section 420(1) of act Mar. 29, 1977, D.C. Law 1-89, amended subsec. (b) (4) by inserting "and such rental unit or housing accommodation is not being converted to a condominium," immediately after "another person".

Subsec. (b) (5). Section (2) (k) of act Apr. 19, 1977, D.C. Law 1-122, amended subsec. (b) (5) generally.

Subsec. (c). Section (2) (l) of act Apr. 19, 1977, D.C. Law 1-122, amended subsec. (c) by adding par. (3).

Section 420(2) of act Mar. 29, 1977, D.C. Law 1-89, amended subsec. (c) by inserting "(1)" immediately after "(c)" and adding par. (2).

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of subsecs. (a), (b) (5), and (c), see sec. 2 (j)-(l) of the Emergency Rental Accommodations Act Amendments of 1977 (D.C. Act 2-3, Feb. 9, 1977, 23 DCR 6877).

1976—For temporary amendment of subsecs. (a), (b) (5), and (c), see sec. 2(10)-(12) of the Emergency Rental Accommodations Act Amendments of 1976 (D.C. Act 1-148, Aug. 12, 1976, 23 DCR 1679, 1680) and sec. 2(j)-(l) of the Second Emergency Rental Accommodations Act Amendments of 1976 (D.C. Act 1-173, Nov. 10, 1976, 23 DCR 3614, 3615).

EFFECTIVE DATES OF 1977 AMENDMENTS

For act Apr. 19, 1977, D.C. Law 1-122, see section 3 of that act set out as a note under § 45-1631.

For act Mar. 29, 1977, D.C. Law 1-89, see section 419 of that act set out as a note under § 5-1201.

DEFINITIONS

The definitions appearing in §§ 5-1201 and 5-1202 apply to terms appearing in subsec. (c) (2).

CROSS REFERENCE

Alterations to units after notice to vacate, prohibitions, see §§ 5-324 to 5-327.

NOTES TO DECISIONS UNDER PRESENT LAW

Eviction—Basis

Tenant is guilty of a continuing willful violation of her tenancy, and her landlord is entitled to possession, where she consistently and willfully failed to pay her rent when due; this section, properly construed, does not dictate a contrary result. *I. Kaiser v. N. J. Rapley* (D.C. App. 1977, 380 A. 2d 995).

NOTES TO DECISIONS UNDER PRIOR LAW

Constitutionality, rent control regulations

Eviction controls in an emergency rent control program are constitutional. *Jack Spicer Real Estate, Inc. v. N. B. Gassaway* (D.C. App. 1976, 353 A.2d 288).

Construction

Rent Control Regulation governing eviction procedures under District's rent control program directly serves the stated congressional object of stabilizing rent and is not unreasonable or oppressive. *Jack Spicer Real Estate, Inc. v. N. B. Gassaway* (D.C. App. 1976, 353 A.2d 288).

Provision of Rent Control Act of 1973 authorizing the Council to adopt such rules as it determines necessary and appropriate to regulate and stabilize rent suggests that Congress intended to delegate to the Council its full authority to control rent; a more restricted interpretation of the statute so as to exclude authority to promulgate eviction controls would be warranted only if the inclusion of such authority could be regarded as contrary to the obvious purpose of the statute or absurd. *Id.*

Although Rent Control Regulation governing eviction procedures under the District's rent control program is in conflict with section 45-904 which provides that a tenant whose lease has expired may be evicted without service of a notice to quit and with section 45-901 which does not require that a notice to quit contain a reason therefor, the conflicting sections of the Code, being first enacted, yield to the more recently enacted rent control regulations. *Id.*

Eviction—Basis

Landlord's 30-day notice to quit did not comply with requirements of Rent Control Regulation where stated reason for demanding possession was the expiration of the tenant's lease and no showing was made that eviction could be had on some basis authorized by the regulation. *Jack Spicer Real Estate, Inc. v. N. B. Gassaway* (D.C. App. 1976, 353 A.2d 288).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45-1648.

§ 45-1654. Retaliatory action.

(a) No landlord shall take any retaliatory action against any tenant who exercises any right conferred upon him by this subchapter, or by any rule or order issued pursuant thereto, or by any other provision of law. Retaliatory action shall include any action or proceeding to recover possession of a rental unit; action which would increase rent, decrease services, increase the obligation of a tenant or constitute undue or unusual inconvenience, violate the privacy of the tenant, harass, reduce the quality or quantity of service; and any refusal to honor a lease or rental agreement or any provision of a lease or rental agreement, refusal to renew a lease or rental agreement, termination of a tenancy without cause; and any other form of threat or coercion.

(b) In determining whether an action taken by a landlord against a tenant is retaliatory action, the trier of fact shall take into consideration whether, within the 6 months immediately preceding such landlord's action, the tenant—

(1) has made a witnessed oral or written request to the landlord to make repairs which are necessary to bring the housing accommodation or the rental unit into compliance with the housing regulations;

(2) contacted appropriate officials of the District of Columbia government, either orally in the presence of a witness or in writing, concerning existing violations of the housing regulations of the rental unit he occupies or pertaining to the

housing accommodation in which such rental unit is located, or reported to such officials suspected violations which, if confirmed, would render such rental unit or housing accommodation in noncompliance with the housing regulations;

(3) withheld all or part of his rent, after having given a reasonable notice to the landlord, either orally or in the presence of a witness or in writing, of a violation of the housing regulations;

(4) organized, been a member of, or been involved in any lawful activities pertaining to a tenant organization;

(5) made an effort to secure or enforce any of his rights under his lease or contract with the landlord; or

(6) brought legal action against the landlord based on the provisions of this subchapter.

(Nov. 1, 1975, D.C. Law 1-33, title II, § 214, 22 DCR 2529.)

§ 45-1655. Penalties.

(a) Any person who—

(1) demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of this subchapter, or

(2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator for treble the amount by which the rent exceeded the applicable rent ceiling or for \$50, whichever is greater.

(b) Any person who—

(1) willfully makes a false or misleading statement in any registration statement or other statement filed under this subchapter, or

(2) willfully commits any other action in violation of this subchapter, or willfully fails to do anything required under this subchapter; shall be fined not more than \$5,000 for each violation. (Nov. 1, 1975, D.C. Law 1-33, title II, § 215, 22 DCR 2531.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45-1644.

NOTES TO DECISIONS

Administrative procedure—Notice

Where one partner was never named as a party in tenants' petition charging exaction of excessive rent in violation of this subchapter and was not given notice of hearing on the petition or an opportunity to be heard in his own behalf, imposition of \$50 fine was improper; provision of section 41-311 relating to partnerships is inapplicable since neither the partnership nor general partner was named as a party to the proceeding. *H. M. Ammerman et al. v. District of Columbia Rental Accommodations Commission* (D.C. App. 1977, 375 A.2d 1060).

TITLE III.—CONVERSION OF RENTAL HOUSING

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in section 45-1634.

§ 45-1661. Sale of single family housing accommodation.

Any owner of a single family housing accommodation may sell such housing accommodation to a purchaser but only after such owner has given the

tenant of such housing accommodation an opportunity to purchase such housing accommodation at a price which represents a bonafide offer of sale. The tenant shall be afforded at least 45 days within which to accept such offer of sale. (Nov. 1, 1975, D.C. Law 1-33, title III, § 301, 22 DCR 2532.)

EFFECTIVE DATE

See note under § 45-1631.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45-1653.

§ 45-1662. Cooperative conversion.

(a) Every tenant of a housing accommodation which the landlord seeks to convert from a rental basis to a cooperative, shall be notified in writing no less than 120 days before the conversion thereof. The landlord of such a housing accommodation shall make to each tenant a bonafide offer of sale of the unit which such tenant occupies, and the tenant shall be afforded no less than 60 days within which to accept. No tenant shall be served with a notice to vacate until 90 days after he first receives notice of the landlord's intention to convert, nor shall the notice to vacate be served prior to the expiration of the aforesaid 60-day period or receipt of the tenant's written rejection of the bonafide offer of sale of the unit which he occupies, whichever occurs first. Nothing in this subsection shall be construed to permit conversion of rental units to cooperative units where otherwise prohibited by law.

(b) The tenant of every housing accommodation which the landlord seeks to substantially rehabilitate shall be notified in writing at least 120 days prior to commencement of rehabilitation. No tenant shall be served with a notice to vacate until 90 days after he first received written notice of the landlord's intention to rehabilitate, and no landlord shall commence actual (physical) rehabilitation until the 120-day notice period has expired. The written notice of intent to substantially rehabilitate shall include the information required under section 45-1642(b), and a statement that the Rent Administrator has approved the substantial rehabilitation according to section 45-1650 and information indicating tenant may obtain a copy of the registration form at the office of the Rent Administrator, and the address of the Rent Administrator. (Nov. 1, 1975, D.C. Law 1-33, title III, § 302, 22 DCR 2532; Mar. 29, 1977, D.C. Law 1-89, title IV, § 420(3), 23 DCR 9532b.)

AMENDMENT

1977—Act Mar. 29, 1977, D.C. Law 1-89, amended subsec. (a) by striking out "condominium or" immediately preceding "cooperative, shall" and by substituting "120" for "180," "90" for "150," and "cooperative units" for "condominium units."

EFFECTIVE DATE OF 1977 AMENDMENT

See section 419 of act Mar. 29, 1977, D.C. Law 1-89, set out as a note under § 5-1201.

CROSS REFERENCE

Condominium conversion, moratorium, authority of Council, see § 5-928a.

TITLE IV.—MISCELLANEOUS

§ 45-1671. Construction.

Except as to the appointment of members of the Rental Accommodations Commission, the provisions

of this act shall be deemed as a continuation of Act 1-35, adopted on July 22, 1975 by the Council and approved by the Mayor on July 25, 1975, and shall be deemed to have been in effect as of the effective date of said Act 1-35. (Nov. 1, 1975, D.C. Law 1-33, title IV, § 401, 22 DCR 2534.)

EFFECTIVE DATE

See note under § 45-1631.

§ 45-1672. Transfer of property, records, and unexpended balances—Continuation of determinations etc.

(a) There are hereby authorized to be transferred to the Rent Administrator and the Commission for use in the administration of the functions of those offices, the property, records, and unexpended balances of appropriations and other funds which related primarily to the functions so transferred.

(b) Any determination, rule, or order, contract, compact, designation or other action made by the District of Columbia Housing Rent Commission shall, except to the extent modified or made inapplicable by the subchapter, continue in effect. (Nov. 1, 1975, D.C. Law 1-33, title IV, § 402, 22 DCR 2534.)

§ 45-1673. Judicial review.

(a) Any person or class of persons aggrieved by a decision of the Commission, or by any failure on the part of the Commission to act, may seek judicial review of such decision or failure by filing a petition for review in the District of Columbia Court of Appeals. The Commission on its own initiative, or the Rent Administrator, may commence a civil action to enforce any rule or decision of the Commission or Rent Administrator, as the case may be. Such an action brought by the Commission or Rent Administrator, as the case may be, shall be brought in the Superior Court of the District of Columbia.

(b) The Superior Court, in issuing any order in any action brought under this section, may award costs of litigation (including a reasonable attorney's fee) to any successful party. (Nov. 1, 1975, D.C. Law 1-33, title IV, § 403, 22 DCR 2535.)

NOTES TO DECISIONS UNDER PRIOR LAW

Jurisdiction

In suit by landlord to obtain review of an order of the Housing Rent Commission denying landlord's petition to increase rents, the judicial review provision established in the Rent Control Act of 1973 was controlling and therefore the Superior Court, not the Court of Appeals, was the proper Court in which to seek review. *Kew Gardens Joint Venture v. District of Columbia Housing Rent Commission* (D.C. App. 1976, 359 A. 2d 269).

By specifically vesting the Superior Court with jurisdiction to review Rent Commission's decisions, Congress gave statutory recognition to authority of trial court to use its equity power in rent control field. *Columbia Realty Venture v. District of Columbia Housing Rent Commission* (D.C. App. 1975, 350 A.2d 120).

District of Columbia Court of Appeals is without jurisdiction to review Housing Rent Commission's voiding of hearing examiner's order allowing increased cost of operating property to be passed through to tenants due to landlord's failure to serve order on parties and Commission within 45 days after decision; review thereof would be in the Superior Court. *Id.*

Superior Court did not abuse its discretion in taking equitable jurisdiction in case, in which landlords sought to have rent control regulation declared invalid and in which Housing Rent Commission was shown to have had an administrative inability to decide landlords' petitions for hardship adjustments, notwithstanding contention that landlords' proper remedy would have been to wait 60 days and then commence an action in Superior Court pursuant to provision of District of Columbia Rent Control Act. *Apartment and Office Building Association of Metropolitan Washington et al. v. W. E. Washington, Commissioner, et al.* (D.C. App. 1975, 343 A. 2d 323).

§ 45-1674. Severability.

If any provision of this subchapter, or any section, sentence, clause, phrase or word or the application thereof, in any circumstances is held invalid, the validity of the remainder of the subchapter and of the application of any such provision, section, sentence, clause, phrase or word shall not be affected. (Nov. 1, 1975, D.C. Law 1-33, title IV, § 405, 22 DCR 2536.)

TITLE 46.—SOCIAL SECURITY

Chapter 3.—UNEMPLOYMENT COMPENSATION

Sec.

46-327. Pregnancy.

§ 46-301. Definitions.

As used in this chapter, unless the context indicates otherwise—

(b) (1) * * *

(5) The term "employment" shall not include—
* * *

(R) service performed after April 1, 1962, in the employ of a public international organization designated by the President as entitled to enjoy the privileges, exemptions, and immunities provided under the International Organizations Immunities Act (22 U.S.C. 288—288f-2).

* * *

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established By Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

In subsec. (b) (5) (R), "(22 U.S.C. 288—288f-2)" has been substituted for "(22 U.S.C. 288—288f-1)" to reflect the addition of another section to the International Organizations Immunities Act by Act Nov. 27, 1973, Pub. L. 93-161, 87 Stat. 635.

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of section, see sec. 2(e)-(f) of the Emergency District of Columbia Unemployment Compensation Act Amendments of 1977 (D.C. Act 2-126, Dec. 29, 1977, 24 DCR 5752).

CROSS REFERENCE

Age of majority, see § 21-101 note.

NOTES TO DECISIONS

Boundaries of District of Columbia

Washington National Airport is within boundaries of Commonwealth of Virginia and not within those of District of Columbia; thus employer of pilot, whose base of operations was the airport, correctly reported pilot's wages to Virginia for unemployment compensation purposes and pilot is not entitled to unemployment benefits from the District of Columbia. *J. L. Bryan v. District Unemployment Compensation Board* (D.C. App. 1975, 342 A.2d 45).

Construction

Provision of this section defining "computation date" as 30th day of June of each year as of which rates of contributions by employers are determined for next following calendar year do not apply to section 46-303 authorizing District Unemployment Compensation Board to increase employer contribution rates if amount of fund as of June 30th of any year is less than four percent of total payrolls subject to contributions for 12-consecutive-month period ending on preceeding December 1, and such

section does not require finding that Board cannot increase contribution rates until beginning of calendar year beginning after the June 30 determination. *District Unemployment Compensation Board v. Security Storage Company of Washington et al.* (D.C. App. 1976, 365 A.2d 785; cert. denied 97 S. Ct. 2651, 431 U.S. 939).

Employment—Interstate arrangements

Where claimant, by combining his military service with his later private employment in Ohio, claims to be qualified for increased benefits under the Interstate Arrangement for Combining Employment and Wages, his military service constitutes "employment" under interstate arrangement entered into by District of Columbia, and since the District is the paying state and Ohio is the transferring state, Ohio law governs whether claimant's employment is subject to transfer to the District so as to qualify him for increased benefits. *Benjamin Rose Institute v. District Unemployment Compensation Board* (D.C. App. 1975, 338 A.2d 104).

§ 46-303. Employer contributions.

* * *

(c) FUTURE RATES BASED ON BENEFIT EXPERIENCE.—

* * *

(10) At least one month prior to the final date upon which the first contributions for any calendar year or part thereof become due from any employer at a contribution rate determined under this subsection, the Board shall notify such employer of his rate of contributions and of the benefit charges upon which such rate was based. Such determination shall become conclusive and binding upon the employer unless, within thirty days after the mailing of notice thereof to his last-known address, or in the absence of mailing, within thirty days after the delivery of such notice, the employer files an application for review and a redetermination, setting forth his reasons therefor. Upon receipt of such application, the Board shall voluntarily adjust such matter or shall grant an opportunity for a fair hearing and promptly notify the employer thereof. All such hearings shall be held before a Contribution Rate Review Committee composed of three members who shall be employees of the Board and appointed by the Board. The findings and decision of this Committee shall not be subject to review by the District Auditor. No employer shall have standing, in any proceeding involving his rate of contributions or contribution liability, to contest the chargeability of his account of any benefits paid in accordance with a determination, redetermination, or decision pursuant to section 46-311, except on the ground that the services on the basis of which such benefits were found to be chargeable do not constitute services performed in employment for him and only in the event that he was not a party to such determination, redetermination, or decision or to any other proceedings under this chapter in which the character of such services was determined. The employer shall be promptly

notified in writing of the Board's denial of his application or of the Board's redetermination. An employer aggrieved by the Board's decision may seek review of such determination in the District of Columbia Court of Appeals in accordance with the District of Columbia Administrative Procedure Act [D.C. Code, secs. 1-1501 et seq.].

* * * * *

(j) Notwithstanding any of the provisions of this chapter, no employer's experience rating account shall be charged and no employer shall be liable for payments in lieu of contributions with respect to extended benefit payments which are wholly reimbursed to the District of Columbia by the Federal Government. (As amended Dec. 7, 1974, Pub. L. 93-515, title III, § 301(1), 88 Stat. 1617; May 13, 1975, D.C. Law 1-2, § 1(1), 21 DCR 3941.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established By Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1975—Act May 13, 1975, D.C. Law 1-2, added subsec. (j).

1974—Section 301(1) of Act Dec. 7, 1974, Pub. L. 93-515, amended subsec. (c) (10) by substituting "The employer shall be promptly notified in writing of the Board's denial of his application or of the Board's redetermination. An employer aggrieved by the Board's decision may seek review of such determination in the District of Columbia Court of Appeals in accordance with the District of Columbia Administrative Procedure Act [D.C. Code, secs. 1-1501 to 1-1510]." for the last three sentences which read: "The employer shall be promptly notified of the Board's denial of his application or of the Board's redetermination, both of which shall become final unless, within thirty days after the mailing of such notice thereof to his last-known address, or in the absence of mailing, within thirty days after the delivery of such notice, a petition for judicial review is filed in the Superior Court of the District of Columbia. In any proceedings under this subsection the findings of the Board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall be confined to questions of law. Such proceedings shall be given precedence over all other civil cases except cases arising under section 46-312 and under section 36-501."

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of section, see sec. 2(g)-(j) of the Emergency District of Columbia Unemployment Compensation Act Amendments of 1977 (D.C. Act 2-126, Dec. 29, 1977, 24 DCR 5757).

1975—For temporary amendment of subsec. (j), see sec. 1(1) of D.C. Act 1-1-1, Jan. 22, 1975, 21 DCR 1687.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 2.2 of Act May 13, 1975, D.C. Law 1-2, provided: "The amendments [to §§ 46-303, 46-307] made by this act shall take effect immediately upon passage of this act."

EFFECTIVE DATE OF 1974 AMENDMENTS

Section 302 of Act Dec. 7, 1974, Pub. L. 93-515, title III, 88 Stat. 1616, provided: "The amendments [to §§ 46-303, 46-312] made by section 302¹ of this title shall take effect with respect to petitions filed after the date of enactment of this title for review of decisions or orders."

¹ So in original. Probably should be section "301".

NOTES TO DECISIONS

Construction

Merit rating system of unemployment compensation is intended to stir employers to stabilize employment by providing tax incentive for avoidance of economic layoffs; heart of this statutory scheme is to relieve employers from standard payroll tax rate if they can demonstrate by experience over stated period that compensable layoffs have been held below certain percentage. *G. A. Hollingsworth v. District of Columbia Unemployment Compensation Board* (D.C. App. 1977, 375 A.2d 515).

Provision of section 46-301 defining "computation date" as 30th day of June of each year as of which rates of contributions by employers are determined for next following calendar year do not apply to this section authorizing District Unemployment Compensation Board to increase employer contribution rates if amount of fund as of June 30th of any year is less than four percent of total payrolls subject to contributions for 12-consecutive-month period ending on preceding December 1, and such section does not require finding that Board cannot increase contribution rates until beginning of calendar year beginning after the June 30 determination. *District Unemployment Compensation Board v. Security Storage Company of Washington et al.* (D.C. App. 1976, 365 A.2d 785; cert. denied 97 S. Ct. 2651, 431 U.S. 939).

Permitting employers to make lower contribution rates to an unemployment compensation fund constitutes an exemption from standard contribution rate and, like any tax exemption, privilege of paying lower rates must be strictly construed against tax-paying employer and in favor of taxing authority. *Id.*

As this section clearly and unambiguously provided that the standard contribution rate for unemployment compensation insurance should be 2.7% except that after December 31, 1971, each employer "newly subject" to this chapter should pay contributions at a rate later determined to be 1.1%, and as petitioner first became subject to the chapter in October of 1969, petitioner was not "newly" subject to the chapter and was not entitled to a reduced rate until it had been an employer for a sufficient period to qualify for a reduced rate based on experience; further, the statutory classification was reasonable and the act was therefore constitutional as applied to petitioner. *Temporaries Incorporated v. District Unemployment Compensation Board* (D.C. App. 1973, 304 A.2d 14).

Continuing base period employer

Unemployment compensation may be charged only against accounts of former employers and not against accounts of continuing employers, and thus present employer's account could not be charged for unemployment benefits paid to present part-time employee, who had lost his full-time job and applied for unemployment benefits, simply because it was a base period employer. *American Security and Trust Company v. District Unemployment Compensation Board* (D.C. App. 1977, 376 A.2d 824).

§ 46-304. Method of paying employer contributions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established By Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 46-307. Amount and duration of benefits.

* * * * *

(g) **EXTENDED BENEFITS PROGRAM.**—Notwithstanding any other provisions of this section, this subsection provides a program of extended benefits on and after January 1, 1972.

* * * * *

(7) Effective with respect to compensation for weeks of unemployment beginning before December

31, 1976, and beginning after December 31, 1974, the determination of whether there has been:

(1) a State "on" or "off" indicator for the District beginning or ending any extended benefit period shall be made under this subsection as if this subsection did not contain paragraphs (1) (D) (i) and (1) (E) (i) thereof, and

(2) a national "on" or "off" indicator beginning or ending any extended benefit period shall be made under the provisions of this subsection as if the phrase "4.5 percentum" contained in paragraphs (1) (B) and (1) (C) thereof read "4.0 percentum".

(As amended May 13, 1975, D.C. Law 1-2, § 1(2), 21 DCR 3941.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established By Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Act May 13, 1975, D.C. Law 1-2, amended subsec. (g) by adding at the end thereof a new par. (7).

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of section, see sec. 2(k), (l) of the Emergency District of Columbia Unemployment Compensation Act Amendments of 1977 (D.C. Act 2-126, Dec. 29, 1977, 24 DCR 5759).

1975—For temporary amendment of subsec. (g) (7), see sec. 1(2) of D.C. Act 1-1-1, Jan. 22, 1975, 21 DCR 1687.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 46-303.

NOTES TO DECISIONS

Construction

For purpose of provision of this section that unemployment benefits payable to an individual with respect to a week shall be reduced by any amount received with respect to such week as a retirement pension or annuity under a public or private retirement plan or system provided or contributed to by any base period employer, the federal government is to be deemed a single employer for purposes of this section when a claimant is retired from military service and the job from which he is seeking unemployment compensation was civil service. *K. L. Billings v. District Unemployment Compensation Board* (D.C. App. 1976, 367 A.2d 116).

Federal findings

In respect to retired Army officer's application for unemployment compensation after he resigned, on his doctor's advice, from his job as a museum guard, a federal finding, under the code of federal regulations, that petitioner was a federal employee for purposes of unemployment compensation is final and conclusive, and the unemployment compensation board is required to accept that as a given fact. *K. L. Billings v. District Unemployment Compensation Board* (D.C. App. 1976, 367 A.2d 116).

Notice

Where on appeal from denial of unemployment compensation benefits because petitioner's base period wages were not within \$70 of 1½ times his high quarter wages petitioner was notified of time and place for hearing and that issue was "whether computation was proper," and, after appeals examiner opened hearing and explained its nature to petitioner, hearing was recessed so petitioner could examine relevant statutory provision, petitioner, who was not represented by counsel but was well educated being a qualified English teacher, was given adequate notice of nature of hearing. *A. W. Vedder v. District Unemployment Compensation Board* (D.C. App. 1976, 360 A.2d 485).

Wages

Monies withheld for taxes in high quarter are properly included as wages "actually received" in the high quarter for purposes of requirement of this section that total of applicant's base period wages, at a minimum, be within \$70 of 1½ times the wages he actually received during high calendar quarter. *A. W. Vedder v. District Unemployment Compensation Board* (D.C. App. 1976, 360 A.2d 485).

§ 46-309. Eligibility for benefits.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established By Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EMERGENCY ACT AMENDMENT

1977—For temporary amendment of section, see sec. 2(m) of the Emergency District of Columbia Unemployment Compensation Act Amendments of 1977 (D.C. Act 2-126, Dec. 29, 1977, 24 DCR 5761).

NOTES TO DECISIONS

Available for work

Claimant's enrollment as a day student at a state university for nine hours of classes per week is sufficient to render him ineligible for unemployment benefits since by not devoting full time to seeking other jobs claimant failed to make himself available for reemployment. *B. L. Wood v. District Unemployment Compensation Board* (D.C. App. 1975, 334 A.2d 183).

Evidence of availability

In view of petitioner's failure to apply in person to more than one employer in her attempt to find new employment after refusing to return to her job as directory assistance operator upon termination of maternity leave and in view of petitioner's failure to try to return to her former job or even to inquire as to possibility of working on assignment for schedule of hours consistent with her obligations to her children when her babysitter was not on duty, evidence supports finding of Unemployment Compensation Board that petitioner was ineligible for employment benefits on ground that petitioner was not "available" for work. *G. A. Hollingsworth v. District of Columbia Unemployment Compensation Board* (D.C. App. 1977, 375 A.2d 515).

Evidence that claimant, who had been employed as a saleswoman in a department store prior to voluntarily leaving her employment in the District of Columbia and going to rural area in Virginia to live, was willing to drive 10 or 15 miles from her home to work but was unwilling to drive 25 miles to nearest sizable town where there were many opportunities to find work sustained determination that claimant was not available for work and was not entitled to unemployment compensation. *M. L. Hollar v. District of Columbia Unemployment Compensation Board* (D.C. App. 1974, 317 A.2d 868).

Evidence did not support decision of Unemployment Compensation Board that unemployment compensation claimant who lived one mile from public transportation, made constant effort to obtain employment, registered with both local and state employment agencies and made numerous job contacts had not been available for work during period for which benefits were claimed and was not entitled to unemployment benefits. *M. L. Hill v. District Unemployment Compensation Board* (D.C. App. 1973, 302 A.2d 226).

Federal employees

Where express terms of statute relating to assignment of federal service and wages required that the Defense Department, which was former employer of unemployment compensation claimant, who had worked at the Pentagon, had no other choice than to assign claimant's federal service and wages to Virginia, the state where his last duty station was located, and where statute made it clear that a state agency had no authority to set aside

a federal agency's certification with respect to the last official duty station, claimant could not recover unemployment compensation from the District of Columbia, and fact that letterheads on official stationery of the Secretary and Assistant Secretaries of Defense identified their mailing address as a Washington, D.C. postal zone would not change the result. *J. D. Hemenway v. District Unemployment Compensation Board* (D.C. App. 1974, 326 A. 2d 776).

Job contacts

Neither unemployment compensation statute nor the Unemployment Compensation Board's regulations require a claimant for unemployment benefits to make, as a condition precedent, at least three job contacts weekly. *M. L. Hill v. District Unemployment Compensation Board* (D.C. App. 1973, 302 A. 2d 226).

Official notice

Agency must notify the parties to an administrative proceeding that a material fact is being officially noticed so that the parties have an opportunity to rebut that fact. *P. E. Carey v. District Unemployment Compensation Board* (D.C. App. 1973, 304 A. 2d 18).

Proposed findings and decision of District Unemployment Compensation Board denying unemployment compensation benefits on ground, inter alia, that claimant was not available for work due to her refusal to accept the aid of the United States Employment Service did not notify claimant that the Board was invoking its prerogative to take official notice of a nonrecord fact consisting of agency record, and thus claimant did not waive her right to contest that fact by failing to request an opportunity to rebut the evidence. *Id.*

§ 46-310. Disqualification for benefits.

(h) The eligibility of any individual, who is or has recently been pregnant, for benefits under this chapter, shall be determined under the same standards and procedures as for any other claimant under this chapter. (As amended Nov. 1, 1975, D.C. Law 1-34, § 4, 22 DCR 2553.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established By Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Subsec. (h) amended generally by act Nov. 1, 1975, D.C. Law 1-34.

EFFECTIVE DATE OF 1975 AMENDMENT

See Effective Date note under section 46-327.

NOTES TO DECISIONS

Labor disputes

Where initial cause of unemployment was employees' refusal to work after expiration of collective bargaining agreement, even though employees offered to return to work until new contract was signed and employer refused, the continued unemployment was not involuntary and was not outside scope of this section disqualifying claimants for unemployment compensation benefits if they are unemployed as result of labor dispute. *National Broadcasting Co., Inc. v. District Unemployment Compensation Board* (D.C. App. 1977, 380 A.2d 998).

In view of record indicating that unemployment compensation claimant's failure to return to work was an entirely voluntary decision by claimant who chose to comply with his union's directive to honor another union's picket lines at place of employment and he had been receiving strike benefits, evidence was insufficient to support finding of Unemployment Compensation Board that claimant was eligible for unemployment compensation benefits because he was not unemployed as direct result of labor dispute still in active progress or in participation therein.

The Washington Post Company v. District Unemployment Compensation Board (D.C. App. 1977, 379 A.2d 694).

Where failure to cross picket line stems from reasonable fear of violence or threats to person's safety, claimant would be eligible for unemployment compensation. *Id.*

Where unemployment compensation claimants' refusal to work without overtime stemmed directly from labor dispute which involved legality of newspaper's attempt under contractual agreement to force its pressmen to work without overtime, employer and employees were involved in labor dispute and claimants were thus disqualified from receiving unemployment compensation. *The Washington Post Company v. District Unemployment Compensation Board* (D.C. App. 1977, 377 A. 2d 436).

Misconduct

In absence of showing that employer had established a specifically required procedure that was to be followed to notify employer when employee was unable to report to work, fact that absent employee did not personally telephone job site to report job absences and rather provided notice through a coemployee does not show "misconduct" sufficient to preclude former employee's entitlement to unemployment compensation benefits. *E. Hawkins v. District Unemployment Compensation Board* (D.C. App. 1977, 381 A. 2d 619).

Police officer's willingness to accept assignments to harbor police job or plainclothes squad, assignments which he claimed were not covered by hair-grooming regulations, would not justify his refusal to conform to rule prescribing standards of hair length for purposes of determining whether police officer's refusal to follow rules was "misconduct" disqualifying him for unemployment compensation benefits. *M.A. Marshall v. District Unemployment Compensation Board* (D.C. App. 1977, 377 A. 2d 429).

Alleged company rule prohibiting performance of paid overtime work at home without supervisor's approval, which was allegedly violated and thus formed basis of finding of petitioner's misconduct in unemployment compensation proceeding, falls short of standard requiring that conduct be act of wanton or willful disregard of employer's interest, deliberate violation of employer's rules, disregard of standards of behavior which employer has right to expect of employer, or negligence in such degree or recurrence as to manifest culpability, wrongful intent, or evil design, or show intentional or substantial disregard of employer's interest or of employee's duties and obligations to employer. *C. M. Green v. District Unemployment Compensation Board* (D.C. App. 1975, 346 A.2d 252).

In unemployment compensation proceeding, where petitioner was denied unemployment benefits on ground she violated alleged company rule against doing overtime work at home without supervisor's approval even though employer testified petitioner was discharged from job on grounds of falsified overtime records and specifically disavowed Board's ground as being basis for dismissal, Board should not have made independent judgment that other grounds existed sufficient to support finding of misconduct which, in Board's opinion, should be cause for employer to discharge employee and deny unemployment benefits on that ground. *Id.*

Separation from employment as wage rate director for international union due to affirmation of conviction for violating Landrum-Griffin Act by falsifying financial records which union was required by law to keep, which conviction precluded employment with union for five years, was tantamount to a discharge for misconduct so as to render wage rate director, disqualified for unemployment compensation. *M. Rudzanowski v. District Unemployment Compensation Board* (D.C. App. 1974, 326 A. 2d 243).

Where outside salesman, despite warnings from his supervisor, on several occasions cut short his workday to attend to personal affairs without first receiving permission and on those occasions he had, without authorization, released two new employees who had been assigned to him to learn his duties, route and customers, employee breached his contractual duty to devote his entire time, attention and energies to his employment and was guilty of misconduct as a matter of law, justifying denial of unemployment benefits for five weeks. *G. R. Colvin v. District Unemployment Compensation Board* (D.C. App. 1973, 306 A. 2d 662).

— Burden of proof

Where unemployment compensation appeals examiner gave full consideration to employer's unsworn comment given by telephone, he deprived plaintiff of right to cross-examine on issues of company rules and misconduct. *E. Hawkins v. District Unemployment Compensation Board* (D.C. App. 1977, 381 A.2d 619).

Claimant for unemployment compensation was not denied procedural due process on theory that he was not instructed that burden of proof was on employer, which alleged misconduct of employee as ground for discharge, and that, in absence of affirmative proof of such misconduct, employee was not obliged to offer any testimony nor would any misconduct be presumed from his failure to testify, where claimant had been informed by appeals examiner prior to hearing that burden was on employer, he had been represented by counsel at both hearings and regulation respecting burden of proof was matter of public record. *G. R. Colvin v. District Unemployment Compensation Board* (D.C. App. 1973, 306 A.2d 662).

— Most recent work

Even though claimant was employed as president of local union at time he was convicted of violating Landrum-Griffin Act by falsifying financial records which union was required to keep and did not commence employment as wage rate director for international union until ten months after his conviction, where claimant held both positions at time his conviction was affirmed, both jobs were claimant's "most recent work" within meaning of statute rendering an individual who is discharged for misconduct occurring in the course of his most recent work ineligible for unemployment benefits and claimant's alleged misconduct occurred during both his employment as wage rate director and as union president. *M. Budzanoski v. District Unemployment Compensation Board* (D.C. App. 1974, 326 A.2d 243).

Voluntary unemployment

Answer given to court by Ohio Bureau of Employment Services to the effect that circumstances under which unemployment insurance claimant left employment in Ohio would generally be considered a quit without just cause and would disqualify him from benefits demonstrates that the claimant did not have any covered employment in Ohio which could be transferred to the District of Columbia and combined with his military service there for purposes of determining eligibility for unemployment compensation benefits; fact that the claimant would not have been disqualified under District of Columbia law because he had not left his most recent work voluntarily without good cause is irrelevant. *Benjamin Rose Institute v. District Unemployment Compensation Board* (D.C. App. 1976, 355 A.2d 569; cert. denied 97 S. Ct. 101, 429 U.S. 835).

§ 46-311. Determination of claims.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Evidence—Availability

Evidence did not support decision of Unemployment Compensation Board that unemployment compensation claimant who lived one mile from public transportation, made constant effort to obtain employment, registered with both local and state employment agencies and made numerous job contacts had not been available for work during period for which benefits were claimed and was not entitled to unemployment benefits. *M. L. Hill v. District Unemployment Compensation Board* (D.C. App. 1973, 302 A.2d 226).

— Substantial

District Unemployment Compensation Board's decision, reversing appeals examiner's decision against claimant, is not supported by "reliable, probative, and substantial evidence," where the Board ruled out as hearsay the sworn

testimony given by employer at hearing before the examiner, where the main thrust of the employer's testimony was, however, not based on hearsay but on company records which, if accepted as true, would upset the Board's premise that claimant was making a bona fide effort to obtain employment, and where the Board, without scheduling or hearing oral argument, deemed controlling a series of unsworn, self-serving statements made by claimant. *General Railway Signal Company v. District Unemployment Compensation Board* (D.C. App. 1976, 354 A.2d 529).

Unless the persons who supply the answers to questionnaires are available for cross-examination by the adverse party, such documents do not meet the requirements of "reliable, probative, and substantial evidence" in an administrative proceeding where impeaching evidence has been introduced. *Id.*

Exhaustion of administrative remedies

Court will not speculate as to likely response of Unemployment Compensation Board to a timely appeal from decision of appeals examiner which sustained award of benefits and thus cannot permit base period employer to avoid its failure to exhaust administrative remedies by appealing to the Board on the theory that the Board had conclusively demonstrated its agreement with the decision of the appeals examiner. *Malcolm Price, Inc. v. District Unemployment Compensation Board* (D.C. App. 1976, 350 A.2d 730).

Final decision

District Unemployment Compensation Board is authorized to provide by a procedural rule that appeals examiner's decision constitutes the proposed findings and decision of the Board and in so doing the Board should at the same time the appeals examiner's decision is issued provide a time limit in which to file with the Board objections to the appeals examiner's decision with a date for oral argument before the Board or any such objections set at that time or at a later date. *P. E. Carey v. District Unemployment Compensation Board* (D.C. App. 1973, 304 A.2d 18).

Findings

In view of record indicating that unemployment compensation claimant's failure to return to work was an entirely voluntary decision by claimant who chose to comply with his union's directive to honor another union's picket lines at place of employment and he had been receiving strike benefits, evidence was insufficient to support finding of Unemployment Compensation Board that claimant was eligible for unemployment compensation benefits because he was not unemployed as direct result of labor dispute still in active progress or in participation therein. *The Washington Post Company v. District Unemployment Compensation Board* (D.C. App. 1977, 379 A.2d 694).

In pressmen's action for unemployment compensation, record did not support findings of the District Unemployment Compensation Board that newspaper informed union that due to economic conditions there would not be sufficient presses working to support the list of full-time regular employees and that general manager of newspaper made public announcement that reduction in number of regular full-time employees was in anticipation of a reduction in size of paper. *The Washington Post Company v. District Unemployment Compensation Board* (D.C. App. 1977, 377 A.2d 436).

Findings and conclusions of the Unemployment Compensation Board are conclusive upon the Court of Appeals if supported by evidence in whole of the administrative record. *M. L. Hill v. District Unemployment Compensation Board* (D.C. App. 1973, 302 A.2d 226).

Notice to base period employers

Requirement of this section that prompt notice of initial eligibility determination be given to unemployment insurance claimant and other parties to the proceedings requires, at the least, notice to all base period employers. *Malcolm Price, Inc. v. District Unemployment Compensation Board* (D.C. App. 1976, 350 A.2d 730).

Official notice

Agency must notify the parties to an administrative proceeding that a material fact is being officially noticed

so that the parties have an opportunity to rebut that fact. *P. E. Carey v. District Unemployment Compensation Board* (D.C. App. 1973, 304 A.2d 18).

Proposed findings and decision of District Unemployment Compensation Board denying unemployment compensation benefits on ground, inter alia, that claimant was not available for work due to her refusal to accept the aid of the United States Employment Service did not notify claimant that the Board was invoking its prerogative to take official notice of a nonrecord fact consisting of agency record, and thus claimant did not waive her right to contest that fact by failing to request an opportunity to rebut the evidence. *Id.*

Time to appeal

Under this section providing that appeal to Unemployment Compensation Board from initial determination shall be filed within ten days after notification thereof, or after the date such notification was mailed to claimant's last known address, as amended to provide that only in the absence of mailing would the actual date of delivery be used, Board had no authority to extend limitation time as to petitioner who filed his appeal from determination that he had received benefits to which he was not entitled three days beyond the ten-day time limit, even though petitioner explained failure to file timely appeal as due to death of his wife. *G. Gaskins, Sr. v. District Unemployment Compensation Board* (D.C. App. 1974, 315 A.2d 567).

§ 46-312. Court review.

Any person aggrieved by the decision of the Board may seek review of such decision in the District of Columbia Court of Appeals in accordance with the District of Columbia Administrative Procedure Act [D.C. Code, secs. 1-1501 to 1-1510]. (As amended Dec. 7, 1974, Pub. L. 93-515, title III, § 301(2), 88 Stat. 1617.)

AMENDMENT

1974—Section 301(2) of Act Dec. 7, 1974, Pub. L. 93-515, amended section generally. For provisions prior to amendment, see main 1973 ed. of the Code.

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 46-303.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 46-311.

§ 46-313. Administration.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 46-314. Method of paying administrative expenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 46-315. District Unemployment Compensation Board.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 46-316. Reciprocal arrangements.

NOTES TO DECISIONS

Interstate claims cases

Where claimant, by combining his military service with his later private employment in Ohio, claims to be qualified for increased benefits under the Interstate Arrangement for Combining Employment and Wages, his military service constitutes "employment" under interstate arrangement entered into by District of Columbia, and since the District is the paying state and Ohio is the transferring state, Ohio law governs whether claimant's employment is subject to transfer to the District so as to qualify him for increased benefits. *Benjamin Rose Institute v. District Unemployment Compensation Board* (D.C. App. 1975, 338 A.2d 104).

§ 46-317. Records and reports.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 46-326. Commissioner of the District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 46-327. Pregnancy.

There shall be no presumption that a person who is pregnant is physically unable to work, even when pregnancy was an issue in the separation from employment. (Aug. 28, 1935, ch. 794, § 28, as added Nov. 1, 1975, D.C. Law 1-34, § 3, 22 DCR 2553.)

EFFECTIVE DATE

Section 6 of act Nov. 1, 1975, D.C. Law 1-34, provided: "This act [enacting § 46-327 and amending § 46-310] shall be effective at the end of the period provided for Congressional review by section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

FINDINGS

Section 2 of act Nov. 1, 1975, D.C. Law 1-34, provided: "The Council of the District of Columbia finds that persons who are or who have recently been pregnant are subject to special and unfair disadvantages in obtaining unemployment compensation benefits."

REPEAL OF INCONSISTENT RULES AND REGULATIONS

Section 5 of act Nov. 1, 1975, D.C. Law 1-34, provided: "The District of Columbia Rules and Regulations, Title 18, section 300.4, and any other regulations, policies, and practices of the District Unemployment Compensation Board not consistent with this act, are repealed or prohibited."

TITLE 47.—TAXATION AND FISCAL AFFAIRS

Chap.		Sec.
2A. Budget and Financial Management—Borrowing—Deposit of Funds.....		47-221
6A. Real Property Tax.....		47-621
22. Permits and Fees.....		47-2201

Chapter 1.—GENERAL PROVISIONS

Sec.		
47-120.	Auditor—Appointment, tenure, and compensation—Duties—Accessibility of records—Reports.	
47-120-1.	Annual audit of accounts and operations of District government by General Accounting Office—Accessibility of records—Reports—Compliance with audit recommendations.	
47-120-2.	Independent annual audit of financial operations of District government—Reports.	
47-130b.	General and special funds.	
47-130c.	General Fund—Deposits—Establishment of accounts—Special accounts—Audit of certain special funds.	

§ 47-101. Fiscal year for District of Columbia—Commencement.

The fiscal year of the District shall, beginning on October 1, 1976, commence on the first day of October of each year and shall end on the thirtieth day of September of the succeeding calendar year. Such fiscal year shall also constitute the budget and accounting year. However, the fiscal year for the Armory Board shall begin on the first day of January and shall end on the thirty-first day of December of each calendar year. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 441, 87 Stat. 798; Aug. 29, 1974, Pub. L. 93-395, § 1(3), 88 Stat. 793; Nov. 15, 1977, Pub. L. 95-185, § 1, 91 Stat. 1383.)

AMENDMENTS

1977—Act Nov. 15, 1977, Pub. L. 95-185, amended section by adding the last sentence.

1974—Act Aug. 29, 1974, Pub. L. 93-395, amended the first sentence of the section generally. Prior to amendment the sentence read: "The fiscal year of the District shall begin on the first day of July and shall end on the thirtieth day of June of the succeeding calendar year."

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

PRIOR LAW

A prior section based on Leg. Assem., Aug. 22, 1871, ch. 65, p. 78, provided: "The fiscal year of the District of Columbia shall commence on the first day of July in each and every year until otherwise provided by law."

TRANSITION TO NEW FISCAL YEAR

Section 502 of Act July 12, 1974, Pub. L. 93-344, title V, 88 Stat. 321, provided:

"(a) As soon as practicable, the President shall prepare and submit to the Congress—

"(1) after consultation with the Committees on Appropriations of the House of Representatives and the Senate, budget estimates for the United States Government for the period commencing July 1, 1976, and ending on September 30, 1976, in such form and detail as he may determine; and

"(2) proposed legislation he considers appropriate with respect to changes in law necessary to provide authorizations of appropriations for that period.

"(b) The Director of the Office of Management and Budget shall provide by regulation, order, or otherwise for the orderly transition by all departments, agencies, and instrumentalities of the United States Government and the government of the District of Columbia from the use of the fiscal year in effect on the date of enactment of this Act to the use of the new fiscal year prescribed by section 237(a)(2) of the Revised Statutes [31 U.S.C. 1020 (a)(2)]. The Director shall prepare and submit to the Congress such additional proposed legislation as he considers necessary to accomplish this objective.

"(c) The Director of the Office of Management and Budget and the Director of the Congressional Budget Office jointly shall conduct a study of the feasibility and advisability of submitting the Budget or portions thereof, and enacting new budget authority or portions thereof, for a fiscal year during the regular session of the Congress which begins in the year preceding the year in which such fiscal year begins. The Director of the Office of Management and Budget and the Director of the Congressional Budget Office each shall submit a report of the results of the study conducted by them, together with his own conclusions and recommendations, to the Congress not later than 2 years after the effective date of this subsection."

TEMPORARY COMMISSION ON FINANCIAL OVERSIGHT OF THE DISTRICT OF COLUMBIA

Sections 1 to 3 and 5 to 7 of Pub. L. 94-399, Sept. 4, 1976, 90 Stat. 1205, provided: "That there is hereby established the Temporary Commission on Finance Oversight of the District of Columbia (hereinafter referred to as the 'commission')."

"(b) The commission shall consist of eight members as follows:

"(1) three Members of the Senate appointed by the President of the Senate (or any designee of any such Member so appointed, which designee shall act for such Member in his stead);

"(2) three Members of the House of Representatives appointed by the Speaker of the House of Representatives (or any designee of any such Member so appointed, which designee shall act for such Member in his stead);

"(3) the Mayor of the District of Columbia (or any designee of the Mayor, which designee shall act for the Mayor in his stead); and

"(4) the Chairman of the Council of the District of Columbia (or any designee of the Chairman, which designee shall act for the Chairman in his stead).

"(c) Five members of the commission shall constitute a quorum.

"(d) (1) A chairman and vice chairman of the commission shall be selected by a majority vote of the full commission from among the members thereof. The vice chairman shall act in the place and stead of the chairman in the absence of the chairman.

"(2) The commission is authorized to establish such operating procedures as it determines necessary to enable it to carry out its functions under this Act.

"(e) The first meeting of the commission shall be called by the majority leader of the Senate and the Speaker of the House of Representatives, jointly.

"(f) The commission is authorized to utilize the personnel of the government of the District of Columbia, with the approval of the Mayor, or the Chairman of the Council of the District of Columbia, as the case may be, and the Committee on the District of Columbia of the Senate, the Committee on the District of Columbia of the House of Representatives, the Committee on Appropriations of the Senate, or the Committee on Appropriations of the House of Representatives, with the approval of the chairman of such committee. The commission is authorized to utilize, on a reimbursable basis, the services and personnel of the General Accounting Office to assist the commission in carrying out its functions under this Act.

"Sec. 2. (a) For the purpose of meeting the responsibilities imposed by the Constitution on the Congress with respect to the District of Columbia, it shall be the function of the commission, after consultation with the Comptroller General, to select such qualified persons as the commission may determine necessary for the development of certain plans on behalf of the government of the District of Columbia (including assistance in the implementation thereof) for the purpose of improving the financial planning, reporting, and control systems of such government. Plans to be considered for development and implementation pursuant to this Act shall include, among others, plans for the following: immediate improvement in financial control and reporting; assessing the scope of further necessary improvements; financial management system improvements; personnel-payroll system improvements; water-sewerage billing and information system improvements; purchasing and material management system improvements; property accounting system improvements; real property system improvements; welfare payments system improvements; human resources eligibility, payment, and reporting system improvements; health care financial system improvements; and traffic ticket system control improvements.

"(b) Each contract entered into with a person pursuant to subsection (c) of this section for the development of a system improvements plan shall contain a provision requiring that person to include within such plan procedures for the establishment of an ongoing training program for operating personnel of the government of the District of Columbia whose duties involve matters covered by such plan or part thereof in order to provide training for such personnel in connection with the operation of such system. Each such contract shall further contain provisions comparable to those provided by Standard Form 32, section 1-16.901-32 of title 41, Code of Federal Regulations.

"(c) Upon the selection by the commission of each qualified person to develop and implement a plan pursuant to this section, the chairman of the commission shall enter into a negotiated fixed price contract or contracts with that person for the development and implementation of such plan.

"(d) (1) Each such contract so entered into shall set forth the scope of the work to be performed, amounts to be paid thereunder, and a schedule of reporting and completion dates, including a schedule of implementation dates, for each portion of such work. Each contractor shall have full access to such books, individuals, accounts, financial records, reports, files, and other papers, things, or property of the government of the District of Columbia as such contractor deems necessary to complete such contract. The Comptroller General shall have full access to all documents produced under each contract.

"(2) After establishment of the schedule for completing each such contract and until the completion of such contract, each contractor shall report, at such time as such contract shall provide, to the commission and the Comptroller General on the progress toward completion of such contract, except that each such contractor shall report at least once during the one-hundred-and-eighty-day period after establishment of such schedule for completion of such contract.

"(e) (1) With respect to any such contract or part thereof involving the design (including a preliminary design) of a system referred to in subsection (a) of this section, the contractor, upon the completion of the plan or part relating to such design (including procedures for its implementation), shall submit such plan or part,

together with a schedule for its implementation, to the Comptroller General.

"(2) With respect to any such contract involving work other than the design of such a system, the contractor, upon the completion of the plan or part thereof relating to such work, shall submit such plan or part thereof, together with a schedule for implementing such plan or part, to the Comptroller General.

"(3) Notwithstanding the foregoing provisions of paragraphs (1) and (2) of this subsection, in no case shall any contractor under this Act submit a plan, part, or schedule to the Comptroller General unless such plan, part, or schedule has first been submitted by that contractor to the contractor responsible for the development and implementation of a financial management system improvements plan for such contractor's review, comments, and recommendations. A copy of such comments and recommendations, if any, shall be submitted, together with such plan, part, or schedule, to the Comptroller General in accordance with paragraphs (1) and (2) of this subsection.

"(4) Within the sixty-day period following the date of the receipt by him of such plan or part thereof, and after consultation with the commission, the Comptroller General shall approve, disapprove, or modify such plan or part (including any schedule for the implementation thereof), in whole or in part. On or before the expiration of such sixty-day period, the Comptroller General shall submit such plan or part, as so approved, modified, or disapproved to the Congress for its consideration, together with his reasons for such modification or disapproval.

"(f) (1) Each such plan or part thereof so approved by the Comptroller General without modification shall be deemed on the date of such approval, to be a part of the financial planning, reporting, accounting, control, and operating procedures of the government of the District of Columbia. Each such plan or part thereof modified by the Comptroller General shall, upon the expiration of the forty-five-day period of continuous session of the Congress following the date on which such modified plan or part thereof is so submitted to the Congress, be deemed to be a part of the financial planning, reporting, accounting, control, and operating procedures of the government of the District of Columbia, unless within such forty-five-day period, the Congress adopts a concurrent resolution disapproving the action of the Comptroller General with respect to such modifications. In any case in which any such concurrent resolution is so adopted by the Congress, such plan or part thereof, as it existed immediately prior to any such modification, shall be deemed a part of such procedures as of the date of the adoption by Congress of such concurrent resolution. No such plan or part thereof disapproved by the Comptroller General shall take effect, unless, within such forty-five-day period following the date of its submission to the Congress, the Congress adopts a concurrent resolution disapproving the action of the Comptroller General in disapproving such plan or part thereof. If such action of the Comptroller General is so disapproved, such plan or part thereof shall be deemed a part of such procedures as of the date of the adoption by Congress of such concurrent resolution.

"(2) For purposes of this section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in computation of such forty-five-day period.

"(g) With respect to any such plan or part so deemed to be a part of the financial planning, reporting, accounting, control, and operating procedures of the government of the District of Columbia under subsection

(f) (1), the Mayor of the District of Columbia, with the assistance of the contractor responsible for such plan or part, shall implement such plan or part for the government of the District of Columbia in accordance therewith. The Comptroller General shall monitor such implementation and report as he deems appropriate to the commission.

"Sec. 3. (a) (1) For the purpose of meeting the oversight responsibilities imposed by the Constitution on the

Congress with respect to the District of Columbia, the Congress hereby authorizes the commission, in accordance with the provisions of paragraph (2) of this subsection, to cause to be undertaken, on behalf of the government of the District of Columbia, by a certified public accountant licensed in the District of Columbia, a balance sheet audit of the financial position of the District of Columbia as of September 30, 1977. Such audit may—

"(A) include an identification of assets, liabilities, accumulated surplus or deficit; and

"(B) exclude statements of revenues and expenses, changes in fund balances, statements of changes in financial position for enterprise funds, and property and equipment.

"(2) The balance sheet audit authorized by paragraph (1) of this subsection shall cover the financial position of the District of Columbia as of September 30, 1977, unless the commission, on or before August 1, 1977, is notified by the Comptroller General to the effect that such an audit as of that date is not practicable, in which case the commission is authorized to cause to be undertaken a balance sheet audit of the financial position of the District of Columbia as of such date as the Comptroller General shall recommend to the commission.

"(b) The commission is further authorized to cause to be undertaken, on behalf of the government of the District of Columbia, by a certified public accountant licensed in the District of Columbia, an audit or audits of the financial position and results of operations of the District of Columbia for each fiscal year or years next following September 30, 1977, or the date recommended by the Comptroller General for the conduct of a balance sheet audit pursuant to subsection (a) of this section, whichever last occurs, and which precede the fiscal year commencing October 1, 1979.

"(c) Upon the selection by the commission of each qualified person to conduct an audit pursuant to this section, the chairman of the commission shall enter into a negotiated fixed price contract with that person for that purpose. Each such audit shall be carried out in accordance with generally accepted auditing standards and the financial statements shall be prepared in accordance with generally accepted accounting principles. The results of each such audit shall be submitted to the Congress, the President of the United States, the Council of the District of Columbia, the Mayor of the District of Columbia, and the Comptroller General.

"(d) Such contractor shall have full access to such books, individuals, accounts, financial records, reports, files, tax returns, and other papers, things, or property of the government of the District of Columbia as such contractor deems necessary to complete each such audit required by such contract.

"Sec. 5. (a) For the purpose of making payments under contracts entered into under sections 2 and 3 of this Act, for reimbursing the Comptroller General under subsection (f) of the first section of this Act, and for meeting other expenses incurred by the commission under this Act, there is authorized to be appropriated to the commission the sum of \$16,000,000, of which \$8,000,000 shall be from funds in the Treasury not otherwise appropriated, and \$8,000,000 shall be from funds in the Treasury to the credit of the District of Columbia. Sums appropriated pursuant to this section are authorized to remain available until expended.

"(b) No funds appropriated pursuant to subsection (a) of this section out of funds in the Treasury to the credit of the District of Columbia may be used for any payment under any contract entered into pursuant to section 2 or 3 of this Act, for any payment as reimbursement to the General Accounting Office, or for expenses of the commission, in an amount greater than 50 per centum of the total amount of any such payment.

"(c) The chairman of the commission may enter into contracts under sections 2 and 3 of this Act only to the extent and in such amounts as are provided in appropriation Acts.

"Sec. 6. As used in this Act, the term—

"(1) 'person' means any individual, partnership, firm, corporation, or other entity; and

"(2) 'government of the District of Columbia' includes the Mayor of the District of Columbia, the Council of the District of Columbia, the courts of the District of Columbia, and all agencies (as defined in paragraph (3) of section 3 of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1502(3))).

"Sec. 7. Thirty days after notification by the Comptroller General to the commission of the completion and implementation of all plans and designs under this Act, or thirty days after final payment of all contracts entered into pursuant to sections 2 and 3 of this Act, whichever last occurs, the commission shall cease to exist."

§ 47-106. Apportionment of appropriations for contingent and miscellaneous expenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-110. Permanent appropriations continued.

(a) The funds appearing on the books of the Government and listed in subsections (b) and (c) of this section shall be classified on the books of the Treasury as trust funds. All moneys accruing to these funds are hereby appropriated, and shall be disbursed in compliance with the terms of the trust. Hereafter moneys received by the Government as trustee analogous to the funds named in subsections (b) and (c) of this section, not otherwise herein provided for, except moneys received by the Comptroller of the Currency or the Federal Deposit Insurance Corporation, shall likewise be deposited into the Treasury as trust funds with appropriate title, and all amounts credited to such trust-fund accounts are hereby appropriated and shall be disbursed in compliance with the terms of the trust: *Provided, That*, effective July 1, 1935, expenditures from the trust fund "Soldiers' Home, Permanent Fund" (8t184) shall be made only in pursuance of appropriations annually made by Congress, and such appropriations are hereby authorized: *Provided further*, That personal funds of deceased inmates, Naval Home, now deposited with the pay officer of the Naval Home, shall be deposited in the Treasury to the credit of the trust fund account "Personal Funds of Deceased Inmates, Naval Home" (7t989): *Provided further*, That on September 30 of each year there shall be transferred to the trust fund receipt account directed to be established in section 725p of title 31, U.S. Code, such portion of the balances in any trust-fund account hereinbefore or hereafter listed or established, except the balances in the accounts listed in subsection (c) of this section, which have been in any such fund for more than one year and represent moneys belonging to individuals whose whereabouts are unknown, and subsequent claims therefor shall be disbursed from the trust fund receipt account "Unclaimed Moneys of Individuals Whose Whereabouts are Unknown," directed to be established in section 725p of title 31, U.S. Code.

* * * * *

(As amended Apr. 21, 1976, Pub. L. 94-273, § 2(16), 90 Stat. 375.)

AMENDMENT

1976—Act Apr. 21, 1976, Pub. L. 94-273, amended third proviso of subsec. (a) by substituting "September" for "June".

§ 47-112. Disbursing officer — Appointment — Bond — Duties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-113a. Appointment of deputy disbursing officer and assistant disbursing officers—Compensation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-113c. Penalties for official misconduct of disbursing officers—Bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-120. Auditor—Appointment, tenure, and compensation—Duties—Accessibility of records—Reports.

(a) There is established for the District of Columbia the Office of District of Columbia Auditor who shall be appointed by the Chairman, subject to the approval of a majority of the Council. The District of Columbia Auditor shall serve for a term of six years and shall be paid at a rate of compensation as may be established from time to time by the Council.

(b) The District of Columbia Auditor shall each year conduct a thorough audit of the accounts and operations of the government of the District in accordance with such principles and procedures and under such rules and regulations as he may prescribe. In the determination of the auditing procedures to be followed and the extent of the examination of vouchers and other documents and records, the District of Columbia Auditor shall give due regard to generally accepted principles of auditing including the effectiveness of the accounting organizations and systems, internal audit and control, and related administrative practices.

(c) The District of Columbia Auditor shall have access to all books, accounts, records, reports, findings and all other papers, things, or property belonging to or in use by any department, agency, or other instrumentality of the District government and necessary to facilitate the audit.

(d) The District of Columbia Auditor shall submit his audit reports to the Congress, the Mayor, and the Council. Such reports shall set forth the scope of the audits conducted by him and shall include such comments and information as the District of Columbia Auditor may deem necessary to

keep the Congress, the Mayor, and the Council informed of the operations to which the reports relate, together with such recommendations with respect thereto as he may deem advisable.

(e) The Council shall make such report, together with such other material as it deems pertinent thereto, available for public inspection.

(f) The Mayor shall state in writing to the Council, within an appropriate time, what action he has taken to effectuate the recommendations made by the District of Columbia Auditor in his reports. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 455, 87 Stat. 803.)

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

PRIOR LAW

A prior section based on Leg. Assem., Aug. 23, 1871, ch. 108, § 10, p. 146, provided for the duties of the Auditor of the District.

CROSS REFERENCES

Annual audit,

Advisory Neighborhood Commissions, see § 1-171f.

Boxing and Wrestling Commission, see § 2-1237.

Audit of certain expenditures of President of University of the District of Columbia, see § 31-1721.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-120-1, 47-271.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in section 61 of title 31, United States Code.

§ 47-120-1. Annual audit of accounts and operations of District government by General Accounting Office—Accessibility of records—Reports—Compliance with audit recommendations.

(a) In addition to the audit carried out under section 47-120, the accounts and operations of the District government shall be audited annually by the General Accounting Office in accordance with such principles and procedures, and in such detail, and under such rules and regulations as may be prescribed by the Comptroller General of the United States. In the determination of the auditing procedures to be followed and the extent of the examination of vouchers and other documents, the Comptroller General shall give due regard to generally accepted principles of auditing, including consideration of the effectiveness of the accounting organizations and systems, internal audit and control, and related administrative practices. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files, and all other papers, things, or property belonging to or in use by the District and necessary to facilitate the audit, and such representatives shall be afforded full facilities for auditing the accounts and operations of the District government.

(b) (1) The Comptroller General shall submit his audit reports to the Congress, the Mayor, and the Council. The reports shall set forth the scope of the

audits and shall include such comments and information as the Comptroller General may deem necessary to keep the Congress, the Mayor, and the Council informed of the operations to which the reports relate, together with such recommendations with respect thereto as the Comptroller General may deem advisable.

(2) After the Mayor has had an opportunity to be heard, the Council may make such report, together with such other material as it deems pertinent thereto, available for public inspection.

(3) The Mayor, within ninety days after receipt of the audit from the Comptroller General, shall state in writing to the Council, with a copy to the Congress, what has been done to comply with the recommendations made by the Comptroller General in the report. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 736, 87 Stat. 823.)

CODIFICATION

Section is also classified to 31 U.S.C. 61.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

§ 47-120-2. Independent annual audit of financial operations of District government—Reports.

(a) For the fiscal year beginning October 1, 1979, and each fiscal year thereafter, the government of the District of Columbia shall conduct, out of funds of the government of the District of Columbia, an audit of the financial operations of such government. Each such audit shall be conducted by a certified public accountant licensed in the District of Columbia and carried out in accordance with generally accepted auditing standards and the financial statements shall be prepared in accordance with generally accepted accounting principles.

(b) For the purpose of conducting an audit for each such fiscal year as required by subsection (a) of this section, the Mayor of the District of Columbia shall, on or after January 2, 1979, select, subject to the advice and consent of the Council of the District of Columbia, a qualified person to conduct such audits for the fiscal year commencing October 1, 1979, and the next following three fiscal years. Thereafter, each individual elected as Mayor in a general election held for Mayor of the District of Columbia shall on or after January 2 next following his or her election to, and the assuming of the Office of Mayor, select, subject to the advice and consent of the Council of the District of Columbia, a qualified person to conduct such audits for the fiscal year commencing October 1 of the calendar year in which such Mayor takes office, and the next following three fiscal years. The person previously selected for a four-year period shall not succeed himself or herself. If the Council fails to act on any such selection within a thirty-day period following the date on which it receives from

the Mayor the name of such person so selected, the Mayor shall be authorized to enter into a contract with that person for the conduct of such audits. If any person so selected by the Mayor to conduct any such audits for such fiscal years is rejected by the Council, the Mayor shall submit to the Council the name of another qualified person selected by the Mayor to conduct such audits. In the event that the Council rejects the second person so selected by the Mayor, the Mayor shall, within thirty days following that rejection, notify the chairman of the Committee on Appropriations of the Senate and the chairman of the Committee on Appropriations of the House of Representatives, in writing, of that fact. Within fifteen days following the receipt of that notice, such chairmen shall jointly select a person to conduct such audits and shall inform the Mayor, in writing, of the name of the person so selected. Within ten days following the receipt by the Mayor of such name, the Mayor shall enter into a contract with such person pursuant to which that person shall conduct such audits for such fiscal years as herein provided.

(c) The Mayor shall submit a copy of the audit report with respect to each such audit so conducted to the Congress, the President of the United States, the Council of the District of Columbia, and the Comptroller General. (Sept. 4, 1976, Pub. L. 94-399, § 4, 90 Stat. 1208.)

§ 47-120a. Liability of auditor or employees—Exceptions—Bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-122. Chief clerk to act in event of absence or disability of auditor.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-125. Disbursing officer's checks—Payment to holders of outstanding checks.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-130b. General and special funds.

The general fund of the District shall be composed of those District revenues which on the effective date of this title are paid into the Treasury of the United States and credited either to the general fund of the District or its miscellaneous receipts, but shall not include any revenues which are applied by law to any special fund existing on the date of enactment of this title. The Council may from time to

time establish such additional special funds as may be necessary for the efficient operation of the government of the District. All money received by any agency, officer, or employee of the District in its or his official capacity shall belong to the District government and shall be paid promptly to the Mayor for deposit in the appropriate fund. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 450, 87 Stat. 803.)

REFERENCE IN TEXT

"This title", referred to in the text, is title IV (consisting of sections 401 to 495) of the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 88 Stat. 785-811). For classification of title IV to the Code, see Parallel Reference Tables. For the effective date of title IV, see the Effective Date note set out below.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

§ 47-130c. General Fund—Deposits—Establishment of accounts—Special accounts—Audit of certain special funds.

(a) There is established for the District of Columbia the General Fund of the District of Columbia (hereinafter in this section referred to as the "General Fund") which shall consist of the following revenues:

(1) Taxes, fees, charges, and miscellaneous receipts.

(2) Federal payments authorized by sections 43-1541 and 43-1611 and by section 47-2501(d).

(3) Loans advanced to the District of Columbia by the Secretary of the Treasury, and other loans for operating expenses of the District of Columbia government.

(4) Any moneys for operating expense purposes not otherwise designated to be deposited in another fund of the District of Columbia government.

(b) The Council of the District of Columbia may, from time to time, establish accounts within the General Fund and may direct the Mayor of the District of Columbia to institute such accounting procedures as may be necessary to separately report the revenue and expenditures related to individual programs and activities as it may designate, except that such directives shall not be construed as limiting the authority to transfer funds between accounts established in the General Fund. Within sixty (60) days of the effective date of the establishment of any such account by the Council of the District of Columbia, the Mayor shall submit for Council approval by resolution, a list of the specific taxes, fees, charges, other receipts and expenditures deemed to fully represent the revenues and expenditures associated with the activity or program of each account established.

(c) The Council hereby establishes in the General Fund special accounts for receipts and expenditures related to the following:

(1) The provision of water service, including the operation of the Washington Aqueduct.

(2) The provision of sewer service, including the District of Columbia's share of the cost of Potomac interceptor.

(3) Revenue derived from the ownership, licensure, and operation of privately-owned automobiles and other modes of private transportation, including, but not limited to, taxicabs and other motorized conveyances not supported in their operation by public funds; and all public expenditures related to highways traffic control and, transportation of persons.

(d) Within 180 days of the effective date of this act abolishing certain special funds, the Mayor shall conduct an audit of each fund as closed and shall submit such audit report to the Council. (Jan. 22, 1976, D.C. Law 1-42, § 9, 22 DCR 6318.)

REFERENCE IN TEXT

This act, referred to in the text, is act Jan. 22, 1976, D.C. Law 1-42. For classification of the act to the Code, see Parallel Reference Tables. For the effective date of the act, see the Effective Date note set out below.

REFERENCES IN OTHER LAWS TO FUNDS ABOLISHED BY D.C. LAW 1-42

Section 8 of act Jan. 22, 1976, D.C. Law 1-42, provided: "Any reference in any law or pertaining to the District of Columbia, or in any paper, rule, regulation, order, or other document of the District of Columbia government (including any department, agency, or instrumentality thereof) to any fund which is abolished by this act shall be, after the effective date of this act, deemed to be a reference to the General Fund of the District of Columbia established by this act."

EFFECTIVE DATE

Section 10 of act Jan. 22, 1976, D.C. Law 1-42, provided: "This act [for classification of act see Tables] shall be deemed to have taken effect on July 1, 1975, except for subsections (b) and (d) of section 9 [this section] which shall take effect as provided for acts of the Council in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act Jan. 22, 1976, D.C. Law 1-42, provided "That this act [for classification of act see Tables] may be cited as the 'Revenue Funds Availability Act of 1975'".

PURPOSE

Section 2 of act Jan. 22, 1976, D.C. Law 1-42, provided: "It is the purpose of this act to establish for the District of Columbia a General Fund for the allocating and accounting for appropriations and their expenditure (including obligations and disbursements), and for accounting for cash receipts and balances. To that end, it is further the purpose of this act to abolish the Highway Fund of the District of Columbia, the Motor Vehicle Parking Fund, the Metrobus Fund, the Water Fund, the D.C. Sanitary Sewage Works Fund, and the Alcoholic Rehabilitation Fund, and to provide that all moneys previously paid into these funds shall be paid into the General Fund of the District of Columbia established by this act."

CROSS REFERENCES

Deposits in the General Fund:
gifts for rehabilitation of alcoholics, see § 24-535;
motor fuel taxes, see § 47-1901;

motor vehicle registration fees, see § 40-103;
parking fees, see § 40-808;
sewer charges, see §§ 43-1605, 43-1609;
water rents from Washington Aqueduct, see § 43-1524;
water tax, see § 43-1523.

Availability of the General Fund:

for sanitary sewage works, see §§ 43-1603, 43-1614;
to repay advances from Treasury, see § 43-1604.

§ 47-135. Investment of District of Columbia's funds in United States Government securities—Deposit of interest to credit of appropriate fund—Sale and exchange of such securities.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Deposit and investment of public funds generally, see §§ 47-271 et seq.

§ 47-136. Maintenance and repairs of vehicles—Working fund.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-137. Working fund for printing, duplicating, and photographing.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-138. Restoration of lapsed appropriations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-140. Trust funds held by District of Columbia—Lack of communication by owners of fund—Notice to owners that claims will be barred.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-141. Publication of notice relating to unclaimed funds—Form and contents of notice—Deposit of unclaimed funds in the Treasury of the United States.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-142. Small sums—Exemptions from notice requirements.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-143. Deductions of expenses upon refunds to depositors—Deposit of deductions in the Treasury of the United States.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-144. "Commissioner" defined.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-145. Use of appropriated funds to promote demonstrations to influence legislation or other governmental action—Exception.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2.—BUDGET ESTIMATES

Sec.

47-213. Omitted.

§ 47-204. Certain expenses of United States District Court for the District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-204b. Certain expenses of United States Court of Appeals for the District of Columbia Circuit.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-205. Commissioner's annual estimates—To include report of assignment of certain market employees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-209. Estimates for assessment of real estate.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-210. Estimates for water department.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-211. Estimates for expenses of District—Order of arrangement.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-211a. Estimates and information concerning funds available to District from Federal and private grants.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-213. Omitted.

Section, Acts Aug. 2, 1949, 63 Stat. 491, ch. 383, § 6; July 29, 1970, Pub. L. 91-358, § 173(c), title I, 84 Stat. 592, required the Director of the Administrative Office of the United States Courts to submit annual estimates of appropriations for the offices of probation officer and Register of Wills and Commission on Mental Health until 18 months after the effective date of the District of Columbia Court Reorganization Act of 1970. Since that Act was effective for the purposes of this section the first day of the seventh calendar month after July 29, 1970, this section has been omitted as obsolete.

Chapter 2A.—BUDGET AND FINANCIAL MANAGEMENT—BORROWING—DEPOSIT OF FUNDS

SUBCHAPTER I.—BUDGET AND FINANCIAL MANAGEMENT

Sec.

- 47-221. Submission of annual budget.
- 47-222. Multiyear plan.
- 47-223. Multiyear capital improvements plan.
- 47-224. Adoption of budget by Council—Enactment of appropriations by Congress.
- 47-225. Consistency of budget, accounting, and personnel systems.

Sec.

- 47-226. Financial duties of Mayor.
- 47-227. Accounting supervision and control.
- 47-228. Budget process—Limitations on borrowing and spending.

SUBCHAPTER II.—BORROWING

- 47-241. Authority to issue and redeem general obligation bonds for capital projects.
- 47-242. Contents of borrowing legislation.
- 47-243. Publication of borrowing legislation.
- 47-244. Short period of limitation.
- 47-245. Acts for issuance of general obligation bonds.
- 47-246. Public sale.
- 47-247. Borrowing to meet obligations.
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- 47-249. Notes redeemable prior to maturity.
- 47-250. Sale of notes.
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- 47-252. Tax exemption.
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- 47-271. Definitions.
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SUBCHAPTER I.—BUDGET AND FINANCIAL MANAGEMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 31-1905.

§ 47-221. Submission of annual budget.

(a) At such time as the Council may direct, the Mayor shall prepare and submit to the Council each year, and make available to the public, an annual budget for the District of Columbia government which shall include—

(1) the budget for the forthcoming fiscal year in such detail as the Mayor determines necessary to reflect the actual financial condition of the District government for such fiscal year, and specify the agencies and purposes for which funds are being requested; and which shall be prepared on the assumption that proposed expenditures resulting from financial transactions undertaken on either an obligation or cash-outlay basis, for such fiscal year shall not exceed estimated resources from existing sources and proposed resources;

(2) an annual budget message which shall include supporting financial and statistical information on the budget for the forthcoming fiscal year and information on the approved budgets and expenditures for the immediately preceding three fiscal years;

(3) a multiyear plan for all agencies of the District government as required under section 47-222;

(4) a multiyear capital improvements plan for all agencies of the District government as required under section 47-223;

(5) a program performance report comparing actual performance of as many programs as is

practicable for the last completed fiscal year against proposed goals for such programs for such year, and, in addition, presenting as many qualitative or quantitative measures of program effectiveness as possible (including results of statistical sampling or other special analyses), and indicating the status of efforts to comply with the reports of the District of Columbia Auditor and the Comptroller General of the United States;

(6) an issue analysis statement consisting of a reasonable number of issues, identified by the Council in its action on the budget in the preceding fiscal year, having significant revenue or budgetary implications, and other similar issues selected by the Mayor, which shall consider the cost and benefits of alternatives and the rationale behind action recommended or adopted; and

(7) a summary of the budget for the forthcoming fiscal year designed for distribution to the general public.

(b) The budget prepared and submitted by the Mayor shall include, but not be limited to, recommended expenditures at a reasonable level for the forthcoming fiscal year for the Council, the District of Columbia Auditor, the District of Columbia Board of Elections and Ethics, the District of Columbia Judicial Nomination Commission, the Zoning Commission of the District of Columbia, the Public Service Commission, the Armory Board, and the Commission on Judicial Disabilities and Tenure.

(c) The Mayor from time to time may prepare and submit to the Council such proposed supplemental or deficiency budget recommendations as in his judgment are necessary on account of laws enacted after transmission of the budget or are otherwise in the public interest. The Mayor shall submit with such proposals a statement of justifications, including reasons for their omission from the annual budget. Whenever such proposed supplemental or deficiency budget recommendations are in an amount which would result in expenditures in excess of estimated resources, the Mayor shall make such recommendations as are necessary to increase resources to meet such increased expenditures. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 442, 87 Stat. 798; Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458.)

AMENDMENT

1974—Act Aug. 14, 1974, Pub. L. 93-376, amended subsec. (b) by substituting "Board of Elections and Ethics" for "Board of Elections".

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this subchapter.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment effective on and after Aug. 14, 1974, see section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, set out as § 1-1156(a).

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this subchapter and subchapter II of this chapter is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

CROSS REFERENCES

Annual Federal payment, duties of Mayor and Council in preparation of budget, see § 47-2501c.

District of Columbia courts' budget, see § 445 of title 11, Appendix.

University of the District of Columbia budget, see § 31-1716.

§ 47-222. Multiyear plan.

The Mayor shall prepare and include in the annual budget a multiyear plan for all agencies included in the District budget, for all sources of funding, and for such program categories as the Mayor identifies. Such plan shall be based on the actual experience of the immediately preceding three fiscal years, on the approved current fiscal year budget, and on estimates for at least the four succeeding fiscal years. The plan shall include, but not be limited to, provisions identifying—

(1) future cost implications of maintaining programs at currently authorized levels, including anticipated changes in wage, salary, and benefit levels;

(2) future cost implications of all capital projects for which funds have already been authorized, including identification of the amount of already appropriated but unexpended capital project funds;

(3) future cost implications of new, improved, or expanded programs and capital project commitments proposed for each of the succeeding four fiscal years;

(4) the effects of current and proposed capital projects on future operating budget requirements;

(5) revenues and funds likely to be available from existing revenue sources at current rates or levels;

(6) the specific revenue and tax measures recommended for the forthcoming fiscal year and for the next following fiscal year necessary to balance revenues and expenditures;

(7) the actuarial status and anticipated costs and revenues of retirement systems covering District employees; and

(8) total debt service payments in each fiscal year in which debt service payments must be made for all bonds which have been or will be issued, and all loans from the United States Treasury which have been or will be received, to finance the total cost on a full funding basis of all projects listed in the capital improvements plan prepared under section 47-223; and for each such fiscal year, the percentage relationship of the total debt service payments (with payments for issued and proposed bonds and loans from the United States Treasury, received or proposed, separately identified) to the bonding limitation for the current and forthcoming fiscal year as specified in section 47-228(b).

(Dec. 24, 1973, Pub. L. 93-198, title IV, § 443, 87 Stat. 799.)

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-221.

§ 47-223. Multiyear capital improvements plan.

The Mayor shall prepare and include in the annual budget a multiyear capital improvements plan for all agencies of the District which shall be based upon

the approved current fiscal year budget and shall include—

(1) the status, estimated period of usefulness, and total cost of each capital project on a full funding basis for which any appropriation is requested or any expenditure will be made in the forthcoming fiscal year and at least four fiscal years thereafter, including an explanation of change in total cost in excess of 5 per centum for any capital project included in the plan of the previous fiscal year;

(2) an analysis of the plan, including its relationship to other programs, proposals, or elements developed by the Mayor as the central planning agency for the District pursuant to section 1-163;

(3) identification of the years and amounts in which bonds would have to be issued, loans made, and costs actually incurred on each capital project identified; and

(4) appropriate maps or other graphics.

(Dec. 24, 1973, Pub. L. 93-198, title IV, § 444, 87 Stat. 800.)

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1007, 47-221, 47-222.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in section 71f of title 40, United States Code.

§ 47-224. Adoption of budget by Council—Enactment of appropriations by Congress.

The Council, within fifty calendar days after receipt of the budget proposal from the Mayor, and after public hearing, shall by act adopt the annual budget for the District of Columbia government. Any supplements thereto shall also be adopted by act by the Council after public hearing. Such budget so adopted shall be submitted by the Mayor to the President for transmission by him to the Congress. No amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act. Notwithstanding any other provision of this Act, the Mayor shall not transmit any annual budget or amendments or supplements thereto, to the President of the United States until the completion of the budget procedures contained in this Act. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 446, 87 Stat. 801.)

REFERENCE IN TEXT

"This Act", referred to in text, is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-144, section 445 of title 11 Appendix, 47-247, 47-254.

§ 47-225. Consistency of budget, accounting, and personnel systems.

The Mayor shall implement appropriate procedures to insure that budget, accounting, and personnel control systems and structures are syn-

chronized for budgeting and control purposes on a continuing basis. No employee shall be hired on a full-time or part-time basis unless such position is authorized by Act of Congress. Employees shall be assigned in accordance with the program, organization, and fund categories specified in the Act of Congress authorizing such position. Hiring of temporary employees and temporary employee transfers among programs shall be consistent with applicable Acts of Congress and reprogramming procedures to insure that costs are accurately associated with programs and sources of funding. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 447, 87 Stat. 801.)

EFFECTIVE DATE

See note under § 47-221.

§ 47-226. Financial duties of Mayor.

Subject to the limitations in section 47-228, the Mayor shall have charge of the administration of the financial affairs of the District and to that end he shall—

(1) supervise and be responsible for all financial transactions to insure adequate control of revenues and resources and to insure that appropriations are not exceeded;

(2) maintain systems of accounting and internal control designed to provide—

(A) full disclosure of the financial results of the District government's activities,

(B) adequate financial information needed by the District government for management purposes,

(C) effective control over and accountability for all funds, property, and other assets,

(D) reliable accounting results to serve as the basis for preparing and supporting agency budget requests and controlling the execution of the budget;

(3) submit to the Council a financial statement in any detail and at such times as the Council may specify;

(4) submit to the Council, by February 1 of each fiscal year, a complete financial statement and report for the preceding fiscal year;

(5) supervise and be responsible for the assessment of all property subject to assessment and special assessments within the corporate limits of the District for taxation, prepare tax maps, and give such notice of taxes and special assessments, as may be required by law;

(6) supervise and be responsible for the levying and collection of all taxes, special assessments, license fees, and other revenues of the District, as required by law, and receive all moneys receivable by the District from the Federal Government or from any court, agency, or instrumentality of the District;

(7) have custody of all public funds belonging to or under the control of the District, or any agency of the District government, and deposit all funds coming into his hands, in such depositories as may be designated and under such terms and conditions as may be prescribed by act of the Council;

(8) have custody of all investments and invested funds of the District government, or in possession

of such government in a fiduciary capacity, and have the safekeeping of all bonds and notes of the District and the receipt and delivery of District bonds and notes for transfer, registration or exchange; and

(9) apportion the total of all appropriations and funds made available during the fiscal year for obligation so as to prevent obligation or expenditure thereof in a manner which would indicate a necessity for deficiency or supplemental appropriations for such fiscal year, and with respect to all appropriations or funds not limited to a definite period, and all authorizations to create obligations by contract in advance of appropriations, apportion the total of such appropriations or funds or authorizations so as to achieve the most effective and economical use thereof.

(Dec. 24, 1973, Pub. L. 93-198, title IV, § 448, 87 Stat. 801; Oct. 13, 1977, Pub. L. 95-131, § 2, 91 Stat. 1155.)

AMENDMENT

1977—Act Oct. 13, 1977, Pub. L. 95-131, amended par. (4) by substituting "February" for "November".

EFFECTIVE DATE

See note under § 47-221.

CONTRACTS WITH FINANCIAL INSTITUTIONS TO RECEIVE, PROCESS, AND RETAIN CERTAIN DISTRICT FUNDS; AUTHORITY; POLICY; REQUIREMENTS

Sections 701 to 703, title VII, of act June 15, 1976, D.C. Law 1-70, provided:

"Sec. 701. The Council hereby authorizes the Mayor to contract, for a period not to exceed two years from the effective date of the contract, with private financial institutions having an office for the transaction of business with the public located in the District and engaged in business in the District to act as the agent of the District for the receipt, processing and retention of District funds paid as registration fees for motor vehicles and trailers, excise taxes on certificates of title for motor vehicles and trailers, water rates, charges for sanitary sewer service, fees, user charges, real property taxes or personal property taxes.

"Sec. 702. A contract entered into by the Mayor under section 701 of this act may be made on the basis of competitive bidding or negotiated bidding.

"Sec. 703. (a) The Mayor shall inform the Council of the names and terms of the bids of each of the financial institutions submitting a bid under section 702 of this act and, for each bidder, the information submitted under subsection (b) of this section, no later than five legislative days before the Mayor enters into a contract under section 701 of this act.

"(b) In entering into contracts under this title it shall be the policy of the government of the District of Columbia to enter into contracts only with those financial institutions which have the best records of serving the citizens of the District through their lending and employment policies. To be eligible for such contracts, an institution must submit, along with its bid whether negotiated or competitive, the following information regarding its lending and employment practices in the District for the most recent year:

"(1) That information required to be disclosed under section 304, Title III of P.L. 94-200 (12 USC 2403) [12 USC 2803] as originally enacted, and under any subsequent amendments providing for additional (but not less) disclosure;

"(2) The total dollar amounts and percentages of its deposits by Census Tract with sufficient data to show those deposits received from within and without the District; and

"(3) The numbers and percentages of its Board of Directors, officers, professional and nonprofessional employees, respectively, who are:

"(A) 'White', 'black', or 'other'; and

"(B) Residents and nonresidents of the District.

"(c) In entering into contracts under this title, the Mayor shall give preference to those institutions which, based on the information submitted under subsection (b) of this section, show clear evidence of marked and exceptional improvement in their lending and employment practices in recent years."

For temporary provisions, similar to those of title VII of act June 15, 1976, D.C. Law 1-70, see the First Emergency Revenue Act of 1976 Amendment (D.C. Act 1-124, May 24, 1976, 22 DCR 6633).

CROSS REFERENCES

Duties of Mayor, generally, see § 1-162.

Submission of statement of impact on taxpayers of proposed revenue measures, see § 1-162a.

§ 47-227. Accounting supervision and control.

The Mayor shall—

(a) prescribe the forms of receipts, vouchers, bills and claims to be used by all the agencies, offices, and instrumentalities of the District government;

(b) examine and approve all contracts, orders, and other documents by which the District government incurs financial obligations, having previously ascertained that money has been appropriated and allotted and will be available when the obligations shall become due and payable;

(c) audit and approve before payment all bills, invoices, payrolls, and other evidences of claims, demands, or charges against the District government and with the advice of the legal officials of the District determine the regularity, legality, and correctness of such claims, demands, or charges; and

(d) perform internal audits of accounts and operations and agency records of the District government, including the examination of any accounts or records of financial transactions, giving due consideration to the effectiveness of accounting systems, internal control, and related administrative practices of the respective agencies.

(Dec. 24, 1973, Pub. L. 93-198, title IV, § 449, 87 Stat. 802.)

EFFECTIVE DATE

See note under § 47-221.

§ 47-228. Budget process—Limitations on borrowing and spending.

(a) Nothing in this Act shall be construed as making any change in existing law, regulation, or basic procedure and practice relating to the respective roles of the Congress, the President, the Federal Office of Management and Budget, and the Comptroller General of the United States in the preparation, review, submission, examination, authorization, and appropriation of the total budget of the District of Columbia government.

(b) (1) No general obligation bonds (other than bonds to refund outstanding indebtedness) or Treasury capital project loans shall be issued during any fiscal year in an amount which would cause the amount of principal and interest required to be paid both serially and into a sinking fund in any fiscal year on the aggregate amounts of all outstanding general obligation bonds and such Treasury loans, to exceed 14 per centum of the District revenues (less court fees, any fees or revenues directed to servicing revenue bonds, retirement contributions, revenues from retirement systems, and

revenues derived from such Treasury loans and the sale of general obligation or revenue bonds) which the Mayor estimates, and the District of Columbia Auditor certifies, will be credited to the District during the fiscal year in which the bonds will be issued. Treasury capital project loans include all borrowings from the United States Treasury, except those funds advanced to the District by the Secretary of the Treasury under the provisions of section 47-2501.

(2) Obligations incurred pursuant to the authority contained in subchapter II of chapter 17 of title 2, and obligations incurred by the agencies transferred or established by sections 201 and 202, whether incurred before or after such transfer or establishment, shall not be included in determining the aggregate amount of all outstanding obligations subject to the limitation specified in the preceding subsection.

(3) The 14 per centum limitation specified in paragraph (1) shall be calculated in the following manner:

(A) Determine the dollar amount equivalent to 14 percent of the District revenues (less court fees, any fees or revenues directed to servicing revenue bonds, retirement contributions, revenues from retirement systems, and revenues derived from such Treasury loans and the sale of general obligation or revenue bonds) which the Mayor estimates, and the District of Columbia Auditor certifies, will be credited to the District during the fiscal year for which the bonds will be issued.

(B) Determine the actual total amount of principal and interest to be paid in each fiscal year for all outstanding general obligation bonds and such Treasury loans.

(C) Determine the amount of principal and interest to be paid during each fiscal year over the term of the proposed general obligation bond or such Treasury loan to be issued.

(D) If in any one fiscal year the sum arrived at by adding subparagraphs (B) and (C) exceeds the amount determined under subparagraph (A), then the proposed general obligation bond or such Treasury loan in subparagraph (C) cannot be issued.

(c) The Council shall not approve any budget which would result in expenditures being made by the District Government, during any fiscal year, in excess of all resources which the Mayor estimates will be available from all funds available to the District for such fiscal year. The budget shall identify any tax increases which shall be required in order to balance the budget as submitted. The Council shall be required to adopt such tax increases to the extent its budget is approved. For the purposes of this section, the Council shall use a Federal payment amount not to exceed the amount authorized by Congress. In determining whether any such budget would result in expenditures so being made in excess of such resources, amounts included in the budget estimates of the District of Columbia courts in excess of the recommendations of the Council shall not be applicable.

(d) The Mayor shall not forward to the President for submission to Congress a budget which is not

balanced according to the provision of subsection (c).

(e) Nothing in this Act shall be construed as affecting the applicability to the District government of the provisions of section 3679 of the Revised Statutes of the United States (31 U.S.C. 665), the so-called Anti-Deficiency Act. (Dec. 24, 1973, Pub. L. 93-198, title VI, § 603, 87 Stat. 814.)

REFERENCES IN TEXT

"This Act", referred to in subsecs. (a) and (e), is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). "Sections 201 and 202", referred to in subsec. (b) (2), are sections 201 and 202 of such Act. For classification of the Act to the Code, see the Parallel Reference Tables.

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-124, 1-125, 1-144, section 445 of title 11 Appendix, 43-1619, 47-222, 47-226, 47-241.

SUBCHAPTER II.—BORROWING

§ 47-241. Authority to issue and redeem general obligation bonds for capital projects.

(a) Subject to the limitations in section 47-228(b), the District may incur indebtedness by issuing general obligation bonds to refund indebtedness of the District at any time outstanding and to provide for the payment of the cost of acquiring or undertaking its various capital projects. Such bonds shall bear interest, payable annually or semi-annually, at such rate and at such maturities as the Mayor, subject to the provisions of section 47-242, may from time to time determine to be necessary to make such bonds marketable.

(b) The District may reserve the right to redeem any or all of its obligations before maturity in such manner and at such price as may be fixed by the Mayor prior to the issuance of such obligations. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 461, 87 Stat. 804.)

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this subchapter.

EFFECTIVE DATE

See note under § 47-221.

INTERIM LOAN AUTHORITY

Section 723 of title VII of Act Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 821, as amended Oct. 13, 1977, Pub. L. 95-131, § 1, 91 Stat. 1155, provided:

"(a) The Mayor is authorized to accept loans for the District from the Treasury of the United States, and the Secretary is authorized to lend to the Mayor, such sums as the Mayor may determine are required to complete capital projects for which construction and construction services funds have been authorized or appropriated, as the case may be, by Congress prior to October 1, 1979. In addition, such loans may include funds to pay the District's share of the cost of the adopted regional system specified in the National Capital Transportation Act of 1969 [§ 1-1441 et seq.].

"(b) Loans advanced pursuant to this section during any six-month period shall be at a rate of interest determined by the Secretary as of the beginning of such period, which, in his judgment, would reflect the cost of money to the Treasury for borrowing at a maturity approximately equal to the period of time the loan is outstanding.

"(c) Subject to the limitations contained in section 603(b) [§ 47-228(b)], there are authorized to be appro-

priated such sums as may be necessary to make loans under this section.

"(d) The authority contained in this section to make loans shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts."

REPAYMENT AUTHORIZATION

Section 101 of title I of the District of Columbia Appropriation Act, 1977 (Oct. 1, 1976, Pub. L. 94-446, 90 Stat. 1493), provided in part that "the District [of Columbia] is authorized to repay outstanding loans from the United States Treasury with funds received from the sale of general obligation bonds authorized for such purpose".

Similar provisions were contained in the following prior appropriation acts:

1976—June 30, 1976, Pub. L. 94-333, 90 Stat. 789.

REFUNDING BOND AUTHORIZATION

Act Dec. 20, 1975, D.C. Law 1-41, 22 DCR 3307, provided: "That this act may be cited as the 'Refunding Bond Authorization Act.'"

"Sec. 2. The issuance of general obligation bonds of the District of Columbia in the maximum principal amount of \$50,000,000 (herein called the "Bonds"), is hereby authorized in accordance with the provisions of this act and Title IV of the District of Columbia Self-Government and Governmental Reorganization Act (Public Law 93-198, herein called the "District Charter") for the purpose of refunding the outstanding principal amount of loans made to the General Fund of the District of Columbia from the United States Treasury, as follows:

Date of loan	Outstanding principal amount to be refunded
March 31, 1975	\$ 6,000,000
May 30, 1975	\$44,000,000

"Sec. 3. The following determinations are hereby made: "(a) The maximum rate of interest to be paid on any maturity of the bonds shall be eight per centum (8%) per annum;

"(b) The maximum allowable maturity for the Bonds, computed from the date of the Bonds, shall be thirty years; and

"(c) The maximum debt service payable in any year on the Bonds shall be \$5,200,000.

"Sec. 4. The Bonds shall be executed in the name of the District of Columbia by the facsimile signature of the Mayor and the Chairman of the Council of the District of Columbia and by the manual signature of the Director of the Office of Budget and Management Systems, or in the absence or inability of such Director to act, by the manual signature of a Deputy Director of said office, and shall be sealed with the corporate seal of the District of Columbia or a facsimile thereof, and the coupons appertaining to Bonds issued in bearer coupon form shall bear the facsimile signature of said Mayor and said Chairman.

"Sec. 5. The full faith and credit of the District of Columbia are hereby irrevocably pledged for the payment of the principal of and interest on the Bonds as the same become due and payable. A special tax upon all real property subject to taxation in the District of Columbia is hereby authorized and shall be levied annually, without limitation as to rate or amount, in an amount which, together with other revenues of the District of Columbia available and applicable for said purposes, will be sufficient to pay the principal of and interest on the Bonds and the premium, if any, upon the redemption thereof, as the same respectively become due and payable, which tax shall be levied and collected at the same time and in the same manner as other District taxes are levied and collected, and when collected, shall be set aside, together with such other revenues, in the sinking fund required to be established by the Mayor pursuant to section 481 of the District Charter [§ 47-251], and irrevocably dedicated to the payment of such principal, interest and premium.

"Sec. 6. In accordance with the provisions of section 465 of the District Charter [§ 47-245], the Bonds may be issued in one or more series, but no issue of the Bonds shall be advertised for sale unless the Mayor shall have filed with the Secretary of the Council of the District of Columbia, not less than two days prior to the first publication of the notice of such sale, excluding Satur-

days, Sundays and holidays: (1) a copy of his certificate executed pursuant to such section, determining the amount of such issue, the maturities and the other terms and details of such issue, (ii) the form of such notice of sale, and (iii) the form of the official statement or other similar brochure to be distributed in relation to such issue, *Provided*, however, that subsequent to such filing, the Mayor, without any further filing, may make such minor changes, insertions, additions and modifications in such official statement or brochure as he shall deem appropriate.

"Sec. 7. The Bonds and the interest thereon shall be payable at such place or places within or without the District of Columbia as the Council of the District of Columbia may by resolution determine.

"Sec. 8. The Mayor may issue temporary Bonds pending the printing or engraving and delivery in definitive form of the Bonds after public sale. Such temporary Bonds shall be of substantially the same form and tenor as the definitive Bonds, but with such omissions, insertions, and variations as may be appropriate to temporary Bonds. Such temporary Bonds shall provide that they are exchangeable for definitive Bonds when such definitive Bonds are ready for delivery, and if such definitive Bonds are coupon Bonds, the temporary Bonds need not have coupons attached, but may provide for the payment of interest upon their presentation for notation of such payment thereon. Such temporary Bonds may be issued in such denominations as the purchaser may request.

"Sec. 9. The Mayor may contract from time to time for a period or periods not exceeding five years each, with any bank or trust company located within or without the District of Columbia for the purpose of having such bank or trust company act in connection with the Bonds, as the Registrar for the District of Columbia and for related services, and for the payment by the District of reasonable compensation for the services to be performed pursuant to such contract. Any such contract shall provide that it may be terminated by the District of Columbia at any time.

"Sec. 10. (a) In case any definitive or temporary Bond shall become mutilated, or be destroyed, lost, or stolen, the Mayor in his discretion may cause to be prepared and executed and delivered a new Bond (with coupons corresponding to the coupons, if any, appertaining to the mutilated, destroyed, lost or stolen Bond) in exchange for the mutilated Bond and its coupons (if any), or in lieu of and substitution for the Bond and its coupons (if any) so destroyed, lost or stolen. In case any coupon or coupons appertaining to any temporary or definitive Bond shall become mutilated or be destroyed, lost, or stolen, the Mayor in his discretion may cause to be prepared and authenticated and delivered, a new Bond (with coupons corresponding to the coupons appertaining to such temporary or definitive Bond) in exchange and substitution for such definitive or temporary Bond and any coupons appertaining thereto which shall not be destroyed, lost or stolen and in lieu of and substitution for the coupons appertaining thereto which shall be mutilated, destroyed, lost or stolen. In every case of exchange or substitution, the applicant shall furnish to the District such security or indemnity as may be required by the Mayor to save the District harmless from all risks, however remote, and the applicant shall also furnish to the District evidence to the satisfaction of the Mayor of the mutilation, destruction, loss or theft of the applicant's Bond (or coupon or coupons) and of the ownership thereof. Upon the issue of any Bond upon such exchange or substitution, the Mayor may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses, including counsel fees, of the District. In case any Bond or any coupon which has matured or is about to mature shall become mutilated or be destroyed, lost or stolen, the Mayor may, instead of issuing a Bond in exchange or substitution therefor, authorize the payment of the same (without surrender thereof except in the case of a mutilated Bond or coupon) if the applicant for such payment shall furnish to the District such security or indemnity as the Mayor may require to save the District harmless, and

evidence to the satisfaction of the Mayor of the mutilation, destruction, loss or theft of such Bond or coupon and of the ownership thereof.

"(b) Every Bond issued pursuant to the provisions of this act in exchange or substitution for any Bond which (or coupon appertaining to which) is destroyed, lost, or stolen, shall constitute an additional contractual obligation of the District, whether or not the destroyed, lost, or stolen Bond or coupon or coupons shall be found at any time, or be enforceable by anyone, and shall be entitled to all benefits equally and proportionately with any and all other Bonds and coupons of the same issue.

"Sec. 11. This act shall become law and become effective in accordance with the provisions of sections 404(e) and 602(c) of the District Charter [§§ 1-144(e) and 1-147(c)]."

CROSS REFERENCE

District share of costs of Adopted Regional System payable from proceeds of sale of general obligation bonds, see § 1-144.3a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-242, 47-245, 47-251, 47-271.

§ 47-242. Contents of borrowing legislation.

The Council may by act authorize the issuance of general obligation bonds for the purposes specified in section 47-241. Such an act shall contain, at least, provisions—

- (1) briefly describing each project to be financed by the act;
- (2) identifying the Act authorizing each such project;
- (3) setting forth the maximum amount of the principal of the indebtedness which may be incurred for each such project;
- (4) setting forth the maximum rate of interest to be paid on such indebtedness;
- (5) setting forth the maximum allowable maturity for the issue and the maximum debt service payable in any year; and
- (6) setting forth, in the event that the Council determines in its discretion, to submit the question of issuing such bonds to a vote of the qualified voters of the District, the manner of holding such election, the manner of voting for or against the incurring of such indebtedness, and the form of ballot to be used at such election.

(Dec. 24, 1973, Pub. L. 93-198, title IV, § 462, 87 Stat. 804; Aug. 29, 1974, Pub. L. 93-395, § 1(4), 88 Stat. 793.)

AMENDMENTS

1974—Act Aug. 29, 1974, Pub. L. 93-395, amended clause (1) by substituting "project to be financed by the act" for "such project".

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-241, 47-245, 47-251.

§ 47-243. Publication of borrowing legislation.

The Mayor shall publish any act authorizing the issuance of general obligation bonds at least once within five days after the enactment thereof, together with a notice of the enactment thereof in substantially the following form:

"NOTICE

"The following act (published herewith) authorizing the issuance of general obligation bonds,

has become effective. The time within which a suit, action, or proceeding questioning the validity of such bonds can be commenced, will expire twenty days from the date of the first publication of this notice, as provided in the District of Columbia Self-Government and Governmental Reorganization Act.

_____,
"Mayor."

(Dec. 24, 1973, Pub. L. 93-198, title IV, § 463, 87 Stat. 804.)

REFERENCE IN TEXT

The District of Columbia Self-Government and Governmental Reorganization Act, referred to in text, is the Act of Dec. 24, 1973, Pub. L. 93-198. For classification of the Act to the Code, see the Parallel Reference Tables.

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-245, 47-251.

§ 47-244. Short period of limitation.

At the end of the twenty-day period beginning on the date of publication of the notice of the enactment of an act authorizing the issuance of general obligation bonds without the submission of the proposition for the issuance thereof to the qualified voters, or upon the expiration of twenty days from the date of publication of the promulgation of the results of an election upon the proposition of issuing bonds, as the case may be—

(1) any recitals or statements of fact contained in such act or in the preambles or the titles thereof or in the results of the election of any proceedings in connection with the calling, holding, or conducting of election upon the issuance of such bonds shall be deemed to be true for the purpose of determining the validity of the bonds thereby authorized, and the District and all others interested shall thereafter be estopped from denying same;

(2) such act and all proceedings in connection with the authorization of the issuance of such bonds shall be conclusively presumed to have been duly and regularly taken, passed, and done by the District and the Board of Elections and Ethics in full compliance with the provisions of this Act and of all laws applicable thereto; and

(3) the validity of such act and said proceedings shall not thereafter be questioned by either a party plaintiff or a party defendant, and no court shall have jurisdiction in any suit, action, or proceeding questioning the validity of same, except in a suit, action, or proceeding commenced prior to the expiration of such twenty-day period.

(Dec. 24, 1973, Pub. L. 93-198, title IV, § 464, 87 Stat. 805; Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458.)

REFERENCE IN TEXT

"This Act", referred to in par. (2), is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973, (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

AMENDMENTS

1974—Act Aug. 14, 1974, Pub. L. 93-376, amended par. (2), by substituting "Board of Elections and Ethics" for "Board of Elections".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment effective on and after Aug. 14, 1974, see section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, set out as § 1-1156(a).

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-245, 47-251.

§ 47-245. Acts for issuance of general obligation bonds.

At the end of the twenty-day period specified in section 47-244, the Mayor may issue general obligation bonds as authorized pursuant to the provisions of sections 47-241 to 47-245. An issue of general obligation bonds is hereby defined to be all or any part of an aggregate principal amount of bonds authorized pursuant to such sections, but no indebtedness shall be deemed to have been incurred within the meaning of this Act until such bonds have been sold, delivered, and paid for, and then only to the extent of the principal amount of such bonds so sold and delivered. The bonds of each issue shall be payable in annual installments beginning not more than three years after the date of such bonds and ending not more than thirty years from such date. The amount of said issues to be payable in each year shall be so fixed that when the annual interest is added to the principal amount payable in each year, the total amount payable either serially or to a sinking fund shall be substantially equal. It shall be an immaterial variance if the difference between the largest and smallest amounts of principal and interest so payable during each fiscal year during the term of the general obligation bonds does not exceed 3 per centum of the total authorized amount of such series. Such bonds and coupons may be executed by the facsimile signatures of the officer designated by the act authorizing such bonds, to sign the bonds, within the exception that at least one signature shall be manual. Such bonds may be issued in coupon form in the denomination of \$1,000, or \$1,000 and \$5,000, registerable as to principal only or as to both principal and interest, and if registered as to both principal and interest may be issuable in denominations of multiples of \$1,000. Such bonds and the interest thereon may be payable at such place or places within or without the District as the Council may determine. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 465, 87 Stat. 805; Aug. 29, 1974, Pub. L. 93-395, § 1(5), 88 Stat. 793.)

REFERENCE IN TEXT

"This Act", referred to in text, is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

AMENDMENT

1974—Act Aug. 29, 1974, Pub. L. 93-395, amended the first sentence by substituting "Mayor may issue" for "Council may by act establish an issue of", and by deleting "inclusive, hereof" at the end thereof.

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-251.

§ 47-246. Public sale.

All general obligation bonds issued under this part shall be sold at public sale upon sealed proposals

after publication of a notice of such sale at least once not less than ten days prior to the date fixed for sale in a daily newspaper carrying municipal bond notices and devoted primarily to financial news or to the subject of State and municipal bonds published in the city of New York, New York, and in one or more newspapers of general circulation published in the District. Such notice shall state, among other things, that no proposal shall be considered unless there is deposited with the District as a downpayment a certified check or cashier's check for an amount equal to at least 2 per centum of the par amount of general obligation bonds bid for, and the Mayor shall reserve the right to reject any and all bids. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 466, 87 Stat. 806; Aug. 29, 1974, Pub. L. 93-395, § 1(6), 88 Stat. 793.)

REFERENCE IN TEXT

"This part", referred to in text, refers to Part E (comprising sections 461 to 490) of title IV of Act of Dec. 24, 1973, Pub. L. 93-198. For classification of the Act to the Code, see the Parallel Reference Tables.

AMENDMENT

1974—Act Aug. 29, 1974, Pub. L. 93-395, amended the second sentence by substituting "Mayor" for "Council".

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-251.

§ 47-247. Borrowing to meet obligations.

In the absence of unappropriated available revenues to meet appropriations made pursuant to section 47-224, the Council may by act authorize the issuance of negotiable notes, in a total amount not to exceed 2 per centum of the total appropriations for the current fiscal year, each of which may be renewed from time to time, but all such notes and renewals thereof shall be paid not later than the close of the fiscal year following that in which such act becomes effective. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 471, 87 Stat. 806.)

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-251, 47-271.

§ 47-248. Borrowing in anticipation of revenues.

For any fiscal year, in anticipation of the collection or receipt of revenues of that fiscal year, the Council may by act authorize the borrowing of money by the execution of negotiable notes of the District, not to exceed in the aggregate at any time outstanding 20 per centum of the total anticipated revenue, each of which shall be designated "Revenue Note for the Fiscal Year 19--". Such notes may be renewed from time to time, but all such notes, together with the renewals, shall mature and be paid not later than the end of the fiscal year for which the original notes have been issued. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 472, 87 Stat. 806.)

EFFECTIVE DATE

See note under § 47-221.

CROSS REFERENCE

Taxes not to be anticipated by sale or hypothecation, see § 1-219.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-251, 47-271.

§ 47-249. Notes redeemable prior to maturity.

No notes issued pursuant to this part shall be made payable on demand, but any note may be made subject to redemption prior to maturity on such notice and at such time as may be stated in the note. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 473, 87 Stat. 806.)

REFERENCE IN TEXT

"This part", referred to in text, refers to Part E (comprising sections 461 to 490) of title IV of Act of Dec. 24, 1973, Pub. L. 93-198. For classification of the Act to the Code, see the Parallel Reference Tables.

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-251.

§ 47-250. Sale of notes.

All notes issued pursuant to this part may be sold at not less than par and accrued interest at private sale without previous advertising. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 474, 87 Stat. 806.)

REFERENCE IN TEXT

"This part", referred to in text, refers to Part E (comprising sections 461 to 490) of title IV of Act of Dec. 24, 1973, Pub. L. 93-198. For classification of the Act to the Code, see the Parallel Reference Tables.

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-251.

§ 47-251. Payment of bonds and notes—Special tax.

(a) The act of the Council authorizing the issuance of general obligation bonds pursuant to this title, shall, where necessary, provide for the levy annually of a special tax or charge without limitation as to rate or amount in amounts which, together with other revenues of the District available and applicable for said purposes, will be sufficient to pay the principal of and interest on such bonds and the premium, if any, upon the redemption thereof, as the same respectively become due and payable, which tax shall be levied and collected at the same time and in the same manner as other District taxes are levied and collected, and when collected shall be set aside in a sinking fund and irrevocably dedicated to the payment of such principal, interest, and premium.

(b) The full faith and credit of the District shall be and is hereby pledged for the payment of the principal of and the interest on all general obligation bonds and notes of the District hereafter issued pursuant to sections 47-241 to 47-251 whether or not such pledge be stated in such bonds or notes or in the act authorizing the issuance thereof.

(c) (1) As soon as practicable following the beginning of each fiscal year, the Mayor shall review the amounts of District revenues which have been set aside and deposited in a sinking fund as provided in subsection (a). Such review shall be carried out with a view to determining whether the amounts so set aside and deposited are sufficient to pay the principal of and interest on general obligation bonds issued pursuant to this title, and the premium (if any) upon

the redemption thereof, as the same respectively become due and payable. To the extent that the Mayor determines that sufficient District revenues have not been so set aside and deposited, the Federal payment made for the fiscal year within which such review is conducted shall be first utilized to make up any deficit in such sinking fund.

(2) The Comptroller General of the United States shall make annual audits of the amounts set aside and deposited in the sinking fund. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 481, 87 Stat. 807.)

REFERENCE IN TEXT

"This title", referred to in subsecs. (a) and (c) (1), is title IV (consisting of sections 401 to 495) of the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 88 Stat. 785-811). For classification of title IV to the Code, see Parallel Reference Tables.

EFFECTIVE DATE

See note under § 47-221.

§ 47-252. Tax exemption.

Bonds and notes issued by the Council pursuant to this title and the interest thereon shall be exempt from all Federal and District taxation except estate, inheritance, and gift taxes. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 485, 87 Stat. 807.)

REFERENCE IN TEXT

"This title", referred to in text, is title IV (consisting of sections 401 to 495) of the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 88 Stat. 785-811). For classification of title IV to the Code, see Parallel Reference Tables.

EFFECTIVE DATE

See note under § 47-221.

§ 47-253. Legal investment.

Notwithstanding any restriction on the investment of funds by fiduciaries contained in any other law, all domestic insurance companies, domestic insurance associations, executors, administrators, guardians, trustees, and other fiduciaries within the District may legally invest any sinking funds, moneys, trust funds, or other funds belonging to them or under or within their control in any bonds issued pursuant to this title, it being the purpose of this section to authorize the investment in such bonds or notes of all sinking, insurance, retirement, compensation, pension, and trust funds. National banking associations are authorized to deal in, underwrite, purchase and sell, for their own accounts or for the accounts of customers, bonds and notes issued by the Council to the same extent as national banking associations are authorized by paragraph seven of section 5136 of the Revised Statutes (12 U.S.C. 24), to deal in, underwrite, purchase and sell obligations of the United States, States, or political subdivisions thereof. All Federal building and loan associations and Federal savings and loan associations; and banks, trust companies, building and loan associations, and savings and loan associations, domiciled in the District, may purchase, sell, underwrite, and deal in, for their own account or for the account of others, all bonds or notes issued pursuant to this title. Nothing contained in this section shall be construed as relieving any person, firm, association, or

corporation from any duty of exercising due and reasonable care in selecting securities for purchase or investment. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 486, 87 Stat. 807.)

REFERENCE IN TEXT

"This title", referred to in text, is title IV (consisting of sections 401 to 495) of the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 88 Stat. 785-811). For classification of title IV to the Code, see Parallel Reference Tables.

EFFECTIVE DATE

See note under § 47-221.

§ 47-254. Revenue bonds and other obligations.

(a) The Council may by act issue revenue bonds, notes, or other obligations (including refunding bonds, notes, or other obligations) to borrow money to finance or assist in the financing of undertakings in the areas of housing, health facilities, transit and utility facilities, recreational facilities, college and university facilities, and industrial and commercial development. Such bonds, notes, or other obligations shall be fully negotiable and payable, as to both principal and interest, solely from and secured solely by a pledge of the revenues realized from the property, facilities, developments, and improvements whose financing is undertaken by the issuance of such bonds, notes, or other obligations, including existing facilities to which such new facilities and improvements are related, which financing may be effected through loans made directly or indirectly (including the purchase of mortgages, in those cases described in subsection (b) of this section, notes, or other securities) to any public, quasi-public, or private corporation, partnership, association, person, or other legal entity.

(b) Except in the case of housing, recreation, commercial and industrial development, the property, facilities, developments, and improvements being financed may not be mortgaged as additional security for bonds, notes, or other obligations, but in no event shall any property owned by the District of Columbia or the United States be mortgaged for the purpose of this section.

(c) Any and all such bonds, notes, or other obligations shall not be general obligations of the District and shall not be a pledge of or involve the faith and credit or the taxing power of the District, shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as contained in section 1-147(a)(2).

(d) Any and all such bonds, notes, or other obligations shall be issued pursuant to an act of the Council without the necessity of submitting the question of such issuance to the registered qualified electors of the District for approval or disapproval.

(e) Any such act may contain provisions—

(1) briefly describing the purpose for which such bond, note, or other obligation is to be issued;

(2) identifying the Act authorizing such purpose;

(3) prescribing the form, terms, provisions, manner or method of issuing and selling (including negotiated as well as competitive bid sale), and the time of issuance, of such bonds, notes, or other obligations; and

(4) prescribing any and all other details with respect to any such bonds, notes, or other obligations and the issuance and sale thereof.

The act may authorize and empower the Mayor to do any and all things necessary, proper, or expedient in connection with the issuance and sale of such notes, bonds, or other obligations authorized to be issued under the provisions of this section.

(f) The fourth sentence of section 47-224 shall not apply to (1) the transfer to a private college or university of funds derived from the sale of any revenue bond, note, or other obligation issued pursuant to an act under this section solely to finance, or assist in the financing of, facilities for such college or university, or (2) the payment (as to either principal or interest or both) of any such bond, note, or other obligation. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 490, 87 Stat. 809; Dec. 28, 1977, Pub. L. 95-218, 91 Stat. 1612.)

AMENDMENT

1977—Act Dec. 28, 1977, Pub. L. 95-218, added subsection (f).

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-271.

SUBCHAPTER III.—DEPOSIT OF FUNDS

§ 47-271. Definitions.

For the purposes of this subchapter:

(a) "average demand deposit balance" means the daily average, computed monthly, of the District's demand deposits with a depository.

(b) "Board of Appeals and Review" means the board established under Organizational Order Number 112, dated August 11, 1955.

(c) "community credit union" means a financial institution chartered and insured by the National Credit Union Administration and serving designated geographical areas within the District.

(d) "Council" mean the Council of the District of Columbia.

(e) "default or insolvency" means either:

(1) the inability or failure of a designated depository to repay any public deposit upon demand or at maturity; or

(2) the acknowledgement by a designated depository of such inability or failure to repay; or

(3) the issuance of an order from the appropriate regulatory agency advising a stipulated regulatory agency to arrange for the supervision of the portfolio of a depository which falls under subsection (e) (1) or (e) (2).

(f) "demand deposit" means public funds, exclusive of any savings deposit, which are held by a designated depository subject to withdrawal upon demand by the District or upon a check or warrant of the District.

(g) "District" means the District of Columbia government or any agency, board, commission, institution, committee, office, officer or instrumentality thereof; or, if required by the context, the word "District" means the geographical area of the District of Columbia.

(h) "eligible depository" means any commercial bank, savings and loan association, or credit union which is insured by the Federal government pursuant to chapter 16 of title 12 of the United States Code (64 Stat. 873) and whose main office is located in the District.

(i) "employment practices" means the record of employment of minority persons and women as defined by the Equal Employment Opportunity Act of 1972 (86 Stat. 103).

(j) "financial services" means those services normally performed by a demand depository in connection with the retention of demand deposits, including but not limited to check payment, check clearing, the reconciliation of accounts, check printing, the collection and transfer of taxes and fees, night depository services and such other services as may be necessary for the efficient utilization of public funds.

(k) "installment credit" means any personal loan of eight thousand dollars (\$8,000) or less, made to an individual District resident and payable in installments, for the purchase of consumer durables or services or for personal expenses (excluding home improvements, home rehabilitation, personal lines of credit, and student loans).

(l) "interest dividend rate bid" means the interest offered to be paid on a savings deposit by an eligible depository computed from the day of deposit to the day of withdrawal of such deposit and subject to appropriate federal requirements.

(m) "loan origination" means the placement and extension of credit directly to a borrower.

(n) "Mayor" means the Mayor of the District of Columbia, established under section 1-161(a), or the Mayor's designee.

(o) "moderately-priced housing loan" means any loan to:

(1) a prospective owner-occupant for the purchase of a building containing one (1) to four (4) residential units in the District selling at or below one hundred and twenty percent (120%) of the median sale price for such housing sold in the District, according to the latest data available from the Mayor for an entire calendar year; or

(2) a prospective owner-occupant of real property in the District for the construction of a building containing one (1) to four (4) residential units in the District selling at or below one hundred and twenty percent (120%) of the median sale price for such housing sold in the District, according to the latest data available from the Mayor for an entire calendar year; or

(3) an owner of real property in the District for the rehabilitation of a building containing one (1) to four (4) residential units in a loan amount not exceeding twenty thousand dollars (\$20,000).

(p) "moderately-priced multi-family housing loan" means any loan for either:

(1) the purchase or construction of a building containing five (5) or more residential units in the District sold at a per unit value at or below one hundred and twenty percent (120%) of the median sale price for all multi-family units sold in the District according to the latest data avail-

able from the Mayor for an entire calendar year; or

(2) the rehabilitation of a building containing five (5) or more residential units in the District in a loan amount not to exceed fifteen thousand dollars (\$15,000) per unit.

(q) "obligations of agencies of the United States" mean instruments issued by agencies of the United States government and not directly by the United States Treasury.

(r) "obligations of the District" means obligations issued by the District pursuant to sections 47-241, 47-247, 47-248, and 47-254.

(s) "obligation of the United States government" means an instrument of the United States public debt that is issued by the United States Treasury and fully backed by the United States government, including United States Treasury Bills, United States Treasury Notes, and United States Treasury Bonds.

(t) "Office of the District of Columbia Auditor" means that office as established under section 47-120.

(u) "public funds" means all monies belonging to or under the control of the District, including but not limited to the federal payment, federal grants, taxes, fees, special assessments, all other monies received from the federal government and monies paid to or received by a court, agency or instrumentality of the District, or from any other source: *Provided, however*, That before October 1, 1978 the term "public funds" does not include pension funds held by the District and: *Provided, further*, That nothing in this subchapter shall be construed to require the reinvestment of securities owned by a pension fund on September 30, 1978 and: *Provided, further*, That the term "public funds" does not include the pension funds for the public school teachers of the District.

(v) "repurchase agreements" means the sale or purchase of securities subject to the condition that, after a stated period of time, the original seller will buy back such securities at an agreed price plus interest at an agreed rate.

(w) "savings deposit" means any public funds which are held by a depository and upon which a dividend or interest is paid. The term "savings deposit" includes, inter alia, those instruments commonly known as time certificates of deposit, time deposits, share deposits, share certificate accounts, open accounts, and savings deposits.

(x) "small business loan" means a loan to a business whose principle place of business is in the District:

(1) for secured loans not to exceed a total of five hundred thousand dollars (\$500,000) during the previous calendar year; or

(2) for a loan guaranteed by the United States Small Business Administration.

(y) "student loan" means any loan to a district resident enrolled part-time or full-time in an institution of higher education to provide for the costs directly related to the resident's education. A depository's participation in a student loan pooling arrangement shall be credited to the depository according to its pro rata share in the pool. (Oct. 26, 1977, D.C. Law 2-32, § 2, 24 DCR 3725.)

REFERENCES IN TEXT

Organizational Order Number 112, referred to in par. (a), is set out in the Appendix to title 1.

The Equal Employment Opportunity Act of 1972, referred to in par. (i), is Act Mar. 24, 1972, Pub. L. 92-261, 86 Stat. 103, which is classified to sections 5108 and 5314-5316 of title 5 and sections 2000e to 2000e-6, 2000e-8, 2000e-9, 2000e-13, 2000e-14, 2000e-16, and 2000e-17 of title 42, United States Code.

EFFECTIVE DATE

Section 12 of act Oct. 26, 1977, D.C. Law 2-32, provided: "This act [enacting this subchapter] shall take effect as provided for acts of the Council in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)(1)]."

SHORT TITLE

The first section of act Oct. 26, 1977, D.C. Law 2-32, provided "That this act [enacting this subchapter] may be cited as the 'District of Columbia Depository Act of 1977'."

§ 47-272. Investment of public funds.

(a) The Mayor shall invest or deposit all public funds received which are not required to be disbursed immediately. The investments or deposits shall have the longest maturities possible under the circumstances: *Provided*, That the period the Mayor may hold an investment in an obligation of the United States government or it agencies and/or in repurchase agreements shall not exceed ninety-one (91) days: *Provided, further*, That to the maximum extent practicable the Mayor shall invest public funds in savings deposits.

(b) Public funds may be invested in obligations of the United States government or its agencies directly or through repurchase agreements or deposited in eligible depositories in accordance with this subchapter. (Oct. 26, 1977, D.C. Law 2-32, § 3, 24 DCR 3725.)

EFFECTIVE DATE

See note under § 47-271.

§ 47-273. Selection of depositories and investments.

(a) *Short-term deposits and investments.*—A short-term deposit or an investment of ninety-one (91) days or less shall be made on the basis of the highest interest rate yield available at that time for a similar investment permitted under this subchapter and in a manner consistent with liquidity and safety. To the maximum extent possible, consistent with the highest interest rate yield and the intent of this subchapter, the Mayor shall utilize the evaluation criteria in section 47-274(a) to select financial institutions for short-term investments.

(b) *Term deposits.*—All term deposits exceeding ninety-one (91) days shall be placed with depositories in the following manner:

(1) Equal amounts, not in excess of one hundred thousand dollars (\$100,000), shall be offered to be deposited in each community credit union at rates of interest equal to each credit union's current share deposit interest rate: *Provided, however*, That the amount on deposit in any single community credit union at any time pursuant to this subsection shall not exceed one hundred thousand dollars (\$100,000). Deposits made pursuant to this subsection may be maintained in the community credit union after their original maturity regardless of whether any other District funds are placed therein for term deposit.

(2) Of any remaining funds available for term deposit, not less than one-third ($\frac{1}{3}$) of the total amount of each solicitation for the placement of term deposits shall be set aside for the two (2) highest ranking savings and loan associations and the (2) highest ranking commercial banks, based on the criteria in section 47-274(a), which bid on the solicitation.

(3) The Mayor shall solicit interest rate bids not less than three (3) weeks before the deadline for the submission of the bids. The Mayor shall set forth the term of the proposed deposit, the minimum acceptable rate of interest for deposits placed in non-community credit unions and savings and loan associations, and the minimum acceptable rate of interest for deposits placed in commercial banks.

(4) A depository shall submit interest dividend rate bids setting forth the minimum and maximum amount of deposits it will accept. In addition, depositories shall submit in the form required by the Mayor information necessary for ranking bidders in accordance with the criteria in section 47-274(a).

(5) The District shall deposit one-fourth ($\frac{1}{4}$) of the funds set-aside pursuant to paragraph (2) in each of the two (2) highest ranking savings and loan associations and each of the two (2) highest ranking commercial banks, based on the criteria in section 47-274(a), submitting an interest dividend rate bid equal to or greater than the District's applicable minimum acceptable bid: *Provided, however*, That the deposit shall not be in excess of the maximum amount bid by the depository. Interest on deposits of funds set-aside pursuant to paragraph (2) shall be at the applicable minimum acceptable interest rate regardless of the depository's interest dividend rate bid.

(6) The funds not set-aside and any funds set-aside pursuant to paragraph (2) of this subsection (b) but not deposited pursuant to subsection (b)(5) shall be placed in the depositories submitting interest dividend rate bids equal to or greater than the applicable minimum acceptable rates of interest so as to yield the maximum return to the District: *Provided, however*, That no depository increasing its score less than two (2) percentage points in each category in section 47-274(a) for each calendar year after 1977 shall be eligible for any deposit. The depositories receiving funds set-aside pursuant to paragraph (2) shall be considered for non-set-aside deposits at their interest dividend rate bid for amounts by which their maximum bid exceeds deposits made pursuant to paragraph (5) of this subsection (b).

(7) In the event that two (2) bids are identical, the institution ranked highest pursuant to the criteria in section 47-274(a) shall be given precedence for the award.

(c) *Demand deposits.*—(1) The Mayor shall promulgate a list of financial services required to be performed by demand depositories in connection with the retention of deposits. The Mayor shall conduct public hearings concerning which of the financial services shall be set-aside for award only to the highest ranking commercial banks based on the

evaluation criteria in section 47-274(a). After the public hearings and prior to the solicitation of any bid for placing demand deposits, the Mayor shall determine which financial services shall be set-aside. The set-aside shall provide that one-third ($\frac{1}{3}$) of the public funds be deposited on an annual basis pursuant to set-aside contracts.

(2) Not later than December 1, 1977, unless an earlier date is set by the Mayor, and at intervals of not longer than every three (3) years thereafter, each commercial bank desiring to bid for the placement of demand deposits shall submit the information, in the form required by the Mayor, necessary for ranking the performance of commercial banks in accordance with the evaluation criteria in section 47-274(a). The Mayor shall give notice in the District of Columbia Register of the ranking of all commercial banks submitting information prior to soliciting bids for placing demand deposits.

(3) All commercial bank depositories may be ranked in the first ranking by the Mayor pursuant to subsection (c) (2).

(4) Not less than two (2) months prior to the deadline for the submission of bids for the placement of demand deposits, the Mayor shall solicit bids for the performance of those financial services set-aside pursuant to subsection (c) (1) from the two (2) commercial banks ranked highest pursuant to subsection (c) (2) and shall solicit bids from all commercial bank depositories for the remaining financial services. The solicitation shall request bids to provide financial services for three (3) years.

(5) The bids submitted shall state the cost to the District in terms of both the payment for financial services and the maintenance of compensating balances. The bid solicitation may require bids on either single financial services or groups of financial services.

(6) The award of the financial services set-aside pursuant to subsection (c) (1) and of those not set-aside shall be made based on the lowest cost to the District: *Provided, however*, That the cost to the District of specific financial services within the set-aside portion shall not exceed one hundred and seventy-five percent (175%) of the cost to the District of identified financial services awarded on non-set-aside bids received in the same solicitation and: *Provided, further*, That the Mayor shall select not less than three (3) demand depositories for the District and shall deposit funds with those depositories according to the following timetable:

(A) the first deposit within one hundred and eighty (180) days after October 26, 1977;

(B) the second deposit within two hundred and seventy (270) days after October 26, 1977; and

(C) the third deposit within three hundred and sixty (360) days after October 26, 1977.

Of the above mentioned depositories at least one of the first two (2) shall be a depository with a set-aside pursuant to subsection (c) (1).

(7) No award to a commercial bank may be made unless that bank's evaluation score pursuant to section 47-274(a) has increased by five (5) percentage points in each evaluation category for each three (3) year period after the first ranking.

(8) In the event that two (2) bids are identical the depository ranked highest pursuant to section 47-274(a) shall be given precedence for the award.

(d) Notwithstanding any other provision of this section, no depository shall be required to exceed a score of fifty percent (50%) in each of the evaluation criteria in section 47-274(a). (Oct. 26, 1977, D.C. Law 2-32, § 4, 24 DCR 3725.)

CODIFICATION

In subsec. (c) (6) (A), (B), and (C), "October 26, 1977" was substituted for "the effective date of this act".

EFFECTIVE DATE

See note under § 47-271.

§ 47-274. Evaluation criteria.

(a) The ranking of depositories shall be made based on the average of the three (3) following categories:

(1) two (2) year loan origination for qualifying loans, as defined in subsection (b) of this section, expressed as a percentage of total loans originated;

(2) outstanding loans to an individual District resident or a business whose primary place of business is in the District expressed as a percentage of total deposits at the end of the previous calendar year; and

(3) employment practices expressing the average number of minority persons and women in management level positions and on the board of directors as a percentage of the total number of such positions and board seats, respectively, for an eligible depository during the previous calendar year.

(b) Qualifying loans shall be comprised of:

(1) all moderately-priced housing loans;

(2) all moderately-priced housing loans on houses priced at or below eighty percent (80%) of the median sales price for those houses in the District;

(3) all student loans;

(4) all small business loans;

(5) all installment credit loans;

(6) all moderately-priced multi-family housing loans;

(7) all obligations of the District;

(8) all eligible rehabilitation loans for a term of ten (10) years or longer;

(9) all eligible mortgage loans for moderately-priced housing or multi-family units for a term of twenty-five (25) years or longer; and

(10) all eligible small business loans for five (5) years or longer.

(Oct. 26, 1977, D.C. Law 2-32, § 5, 24 DCR 3725.)

EFFECTIVE DATE

See note under § 47-271.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-273.

§ 47-275. Limitation on amounts of public funds on deposit.

Notwithstanding any other provision of this subchapter, no depository shall at any time have on deposit public funds in an amount exceeding the lesser of (1) an amount equal to twenty-five percent (25%) of the total assets, exclusive of public funds,

of such depository, or (2) an amount equal to twenty-five percent (25%) of the total public funds of the District on/or available for deposit during the fiscal year. (Oct. 26, 1977, D.C. Law 2-32, § 6, 24 DCR 3725.)

EFFECTIVE DATE

See note under § 47-271.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-276.

§ 47-276. Collateral required upon deposit of public funds.

(a) No collateral shall be required for any deposit to the extent that the deposit is fully insured by an agency of the United States government, but if required the collateral shall be received by the Mayor at the close of the business day on which the deposit is made.

(b) Any public funds on deposit in excess of the amount insured by any agency of the Federal government shall be fully secured by:

(1) obligations issued and fully insured or guaranteed by the United States or any United States government agency and obligations of government sponsored corporations which under specific statute may be accepted as security for public funds at market value or par value, whichever is lower, at the close of business on the day previous to their placement as collateral;

(2) obligations insured or guaranteed by an agency of the United States government or a District agency at a value equal to the amount of the insurance or guarantee: *Provided*, That insured mortgages shall be secured by property located in the District.

(c) Each eligible depository shall submit with its bid the financial information and reports the Mayor determines are necessary to evaluate the condition of each eligible depository: *Provided*, That no eligible depository shall be required to submit information and reports not made public under Federal regulations. Depositories shall keep current the information required to be submitted under this subsection and shall immediately notify the Mayor of any change which causes deposits to exceed the limitation in section 47-275.

(d) No depository shall be entitled to the return of collateral except upon the repayment of the public funds on deposit with such depository: *Provided*, however, That any depository may, with the approval of the Mayor, substitute different and acceptable collateral of the type specified in subsection (b) of this section.

(e) Upon the insolvency or default of any depository, the District shall be entitled to such of the collateral as may be necessary to recover all public funds on deposit with such depository, net of such public funds as may be fully insured by an agency of the Federal government. Each depository shall, at the time of the deposit of collateral, deliver to the Mayor a power of attorney authorizing him or her to transfer any securities or any part thereof for the purpose of repaying any deposit made under this subchapter.

(f) Nothing in this section shall be construed as limiting any right of the District to share in any

distribution of the assets of any depository to the extent that the public funds on deposit at the time of the depository's default or insolvency exceed the net proceeds of the collateral. (Oct. 26, 1977, D.C. Law 2-32, § 7, 24 DCR 3725.)

EFFECTIVE DATE

See note under § 47-271.

§ 47-277. Public disclosure.

(a) All bids and information submitted by eligible depositories to the Mayor pursuant to this subchapter shall also be submitted to the Office of the District of Columbia Auditor.

(b) All such bids and information shall be available for public inspection and reproduction during regular working hours at the offices of the Mayor and the District of Columbia Auditor.

(c) Within ten (10) days after the last day of each calendar month and wherever requested by the Mayor or the District of Columbia Auditor, each depository receiving public funds shall submit to the Mayor and to the Office of the District of Columbia Auditor a written report, under oath, indicating:

(1) the total amount of public funds held by it at the close of business on the last banking day in the month;

(2) the average daily balance for the month of all public funds held by it during the month;

(3) a detailed schedule of pledged collateral at its value for the purpose of collateral at the close of business on the last banking day in the month; and

(4) any other information that may be required by the Mayor with respect to public funds.

(d) The Mayor shall quarterly report to the Council concerning which depositories hold public funds, the amounts of public funds, and the interest dividend rate bid for each individual depository.

(e) The Mayor shall have available for public inspection the free balances and short-term investments at the close of business on the previous day.

(f) The Mayor shall identify investments of pension fund assets. (Oct. 26, 1977, D.C. Law 2-32, § 8, 24 DCR 3725.)

EFFECTIVE DATE

See note under § 47-271.

§ 47-278. Termination of depositories.

(a) Any depository which misrepresents any material information required to be submitted pursuant to this subchapter shall be terminated as a depository by the Mayor and shall be ineligible as a depository for public funds for a period of not less than two (2) years.

(b) Any demand depository which is unable to provide financial services pursuant to its contract or bid shall be terminated or refused a contract as a demand depository by the Mayor.

(c) The Mayor shall, prior to terminating or refusing a contract pursuant to this section, provide the affected depository and the Office of the District of Columbia Auditor with the following written information:

(1) the proposed date of the termination or refusal;

(2) the specific reason for the termination or refusal;

(3) the right of the affected depository to appeal the proposed termination or refusal to the Board of Appeals and Review within one (1) week of receipt by that depository of the notice to terminate or the refusal.

(d) The Mayor may, upon a written determination that the interests of the District require the immediate withdrawal of public funds, withdraw the public funds immediately after a proper notice is submitted to the affected depository and the Office of the District of Columbia Auditor.

(e) After receiving notice of a withdrawal under subsection (d) of this section, the affected depository is entitled to a hearing by the Board of Appeals and Review within three (3) days following receipt of such notice (exclusive of Saturdays, Sundays and holidays and of any continuance(s) which may be requested by such depository). Any notice of an immediate withdrawal shall state clearly the right of the affected depository to have a hearing by the Board of Appeals and Review within three (3) business days following the receipt of such notice.

(f) The District of Columbia Auditor may intervene, as an independent party to the dispute, in any hearing before the Board of Appeals and Review concerning any dispute between the Mayor and a depository. (Oct. 26, 1977, D.C. Law 2-32, § 9, 24 DCR 3725.)

EFFECTIVE DATE

See note under § 47-271.

§ 47-279. Powers of the Mayor and the District of Columbia Auditor.

(a) The Mayor and the District of Columbia Auditor are authorized to:

(1) make and enforce regulations necessary and proper to the full complete performance of his or her respective functions under this subchapter;

(2) inspect and reproduce all information and documents in the possession of a depository necessary to determine compliance with and to the enforcement of this subchapter; and

(3) perform such duties and responsibilities as may be required by this subchapter.

(b) The District of Columbia Auditor shall be directly accountable to the Council, through its Committee on Employment and Economic Development, for the purpose of reporting on the implementation of this subchapter: *Provided*, That the District of Columbia Auditor shall prepare and submit to the Council an annual report on the District's depository activities including the ranking of each institution submitting bids for the deposit of public funds. (Oct. 26, 1977, D.C. Law 2-32, § 10, 24 DCR 3725.)

EFFECTIVE DATE

See note under § 47-271.

§ 47-280. Staff.

(a) The Office of the District of Columbia Auditor is authorized two (2) positions to carry out the purposes of this subchapter, together with the necessary supporting facilities.

(b) The Committee on Employment and Economic Development is authorized two (2) staff positions for the purposes of coordinating the implementation of this subchapter with the Office of the District of Columbia Auditor and of assuming the responsibilities specified in this subchapter. (Oct. 26, 1977, D.C. Law 2-32, § 11, 24 DCR 3725.)

EFFECTIVE DATE

See note under § 47-271.

Chapter 3.—COLLECTION AND DISBURSEMENT OF TAXES

SUBCHAPTER I.—GENERAL PROVISIONS

Sec.

- 47-301. Repealed.
- 47-302. Collector of taxes—Bond.
- 47-303. Deputy collector of taxes—Duties—Bond.
- 47-304. Cashier in collector's office—Duties—Responsibility.
- 47-305. Account books to be kept by collector.
- 47-306. Certificate of taxes and assessments due—Fee.
- 47-307. Waiver of interest and penalties.
- 47-308. Collector may omit uncollectible taxes from record of assets.
- 47-309. Disbursement of taxes and appropriations—Vouchers—Settlement of accounts.
- 47-310. Requisition by Commissioner—Appropriations not to be exceeded—Accounting.
- 47-311. "Miscellaneous Trust Fund Deposits"—Advances—Audit—Separate accounts to be kept.
- 47-312. Collection of taxes by distraint—Acquisition of liens.
- 47-313. Jeopardy assessments of taxes by assessing authority of the District.
- 47-314. Abatement of taxes.

SUBCHAPTER II.—PAYMENTS FOR INFORMATION LEADING TO REVENUE RECOVERY

- 47-331. Definitions.
- 47-332. Payments by Mayor for information leading to revenue recovery—Limitation.
- 47-333. Contracts by Mayor for payment for information.
- 47-334. Persons ineligible to receive payments.
- 47-335. Regulations.

SUBCHAPTER I.—GENERAL PROVISIONS

§ 47-301. Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(b), 88 Stat. 1065; Jan. 3, 1975, Pub. L. 93-635, § 8(c), 88 Stat. 2177.

Section, Act Mar. 3, 1881, ch. 134, § 1, 21 Stat. 460, provided that the collector of tax shall collect all revenues of the District and deposit same with the U.S. Treasurer, and is now covered in part by § 47-631.

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that this section is repealed effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621.

§ 47-302. Collector of taxes—Bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-303. Deputy collector of taxes—Duties—Bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-305. Account books to be kept by collector.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-307. Waiver of interest and penalties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-308. Collector may omit uncollectible taxes from record of assets.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-309. Disbursement of taxes and appropriations—Vouchers—Settlement of accounts.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-310. Requisition by Commissioner—Appropriations not to be exceeded—Accounting.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-311. "Miscellaneous Trust Fund Deposits"—Advances—Audit—Separate accounts to be kept.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-312. Collection of taxes by distraint—Acquisition of liens.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45-735, 47-1567g.

§ 47-314. Abatement of taxes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER II.—PAYMENTS FOR INFORMATION LEADING TO REVENUE RECOVERY

§ 47-331. Definitions.

For the purposes of this subchapter, the following words, terms, phrases, and their derivations shall have the meanings respectively ascribed to them in this section unless the context clearly indicates otherwise:

(a) "collection" or "collected" means the actual receipt by or payment to the District of Columbia of a sum of money representing taxes, penalties, or interest or any combination thereof which has been finally determined as being owed to the District of Columbia or which has been paid pursuant to a settlement;

(b) "net taxes, penalties, and interest" means the taxes, penalties, and interest collected by the District of Columbia less the costs incurred by the District of Columbia in collecting such taxes, penalties, and interest; and

(c) "revenue laws" means subchapter II of chapter 15 of title 47, the District of Columbia Revenue Act of 1937, as amended, any other tax or revenue law of the District of Columbia, and any rule or regulation adopted pursuant thereto. (Sept. 23, 1977, D.C. Law 2-20, § 2, 24 DCR 3339.)

REFERENCE IN TEXT

The District of Columbia Revenue Act of 1937, referred to in par. (c), is Act Aug. 17, 1937, 50 Stat. 673, ch. 690. For classification to the Code, see the Parallel Reference Tables.

EFFECTIVE DATE

Section 7 of act Sept. 23, 1977, D.C. Law 2-20, provided: "This act [enacting this subchapter] shall take effect as provided in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act Sept. 23, 1977, D.C. Law 2-20, provided "That this act [enacting this subchapter] may be cited as the 'District of Columbia Revenue Recovery Act of 1977'."

§ 47-332. Payments by Mayor for information leading to revenue recovery—Limitation.

The Mayor of the District of Columbia, or his or her duly authorized representative or representatives, is authorized to make such monetary payments as he or she may deem suitable to any person or persons who furnish information leading to the collection of taxes, penalties, or interest, or a combination thereof, owed to the District of Columbia by any person, partnership, corporation, unincorporated association, trust, or estate violating the revenue laws of the District of Columbia. The determinations of the Mayor as to whether such payments shall be made and as to the amount thereof shall be final and conclusive and shall not be subject to review in any court. The amount of any such payment shall not exceed ten (10) percent of the net taxes, penalties, and interest or any combination thereof collected by the District of Columbia

as a result of the information furnished. Such payments shall be based on the collection of taxes, penalties, and interest, or any combination thereof, only for the periods and the types of taxes for which the information was provided. In no event shall any such payment be made prior to the expiration of all appeal periods applicable to the assessments involved. (Sept. 23, 1977, D.C. Law 2-20, § 3, 24 DCR 3339.)

§ 47-333. Contracts by Mayor for payment for information.

The Mayor may enter into contracts for the payment of such sums of money as he or she may deem suitable for information subject to the provisions of this subchapter. No person, in the absence of express authority from the Mayor, is authorized to make any offer, promise, or contract or otherwise bind the Mayor with respect to such payments or the amount thereof. (Sept. 23, 1977, D.C. Law 2-20, § 4, 24 DCR 3339.)

§ 47-334. Persons ineligible to receive payments.

The following persons shall be ineligible to file a claim for any monetary payment authorized by this subchapter:

(a) *Federal, District of Columbia, and Other Governmental Employees*—No person who was an officer or employee of the United States Department of the Treasury, the District of Columbia Department of Finance and Revenue, or any other state or local government department, agency, or office with similar functions, duties, or obligations at the time he or she came into possession of information relating to violations of the revenue laws, or at the time he or she divulged such information, shall be eligible to file a claim for any payment authorized by this subchapter. Any other Federal, District of Columbia, or other state or local government employee, or former employee, shall be eligible to file a claim for any payment authorized by this subchapter if the information submitted came to his or her knowledge other than in the course of his or her duties, except as otherwise provided in this section.

(b) *Attorneys*—No person who was employed by, retained by, or appointed to represent any other person as an attorney or who was otherwise involved in an attorney-client privileged relationship with such other person at the time he or she came into possession of information relating to violations of a revenue law, or connivance at the same, by such other person shall be eligible to file a claim for any payment authorized by this subchapter.

(c) *Legal Representatives*—No person who was an executor, administrator, or other legal representative of a deceased person at the time he or she came into possession of information relating to violations of a revenue law by such deceased person shall be eligible to file a claim for any payment authorized by this subchapter.

(d) *Other Persons*—No person who derived, either directly or indirectly, information relating to violations of a revenue law from a person ineligible to file a claim for any payment authorized by this sub-

chapter shall be eligible to file a claim for such payment. (Sept. 23, 1977, D.C. Law 2-20, § 5, 24 DCR 3339.)

§ 47-335. Regulations.

The Mayor shall promulgate such rules and regulations as may be necessary to carry out the purposes of this subchapter. (Sept. 23, 1977, D.C. Law 2-20, § 6, 24 DCR 3339.)

Chapter 4.—DESIGNATION OF PROPERTY FOR ASSESSMENT AND TAXATION

§ 47-401. Squares, lots, blocks, parcels, to be numbered.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-403. Daily transcript from records of recorder of deeds and register of wills.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-405. Designation of land to be numbered.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-406. Designation of land—Plat books to be made under authority of Commissioner—Custody of surveyor.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-407. Surveyor's office to make daily transcripts of records of deeds, wills, condemnations, and decrees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 5.—RATES, RECORDS, AND SURPLUS FUNDS

Sec.

47-501a. Repealed.

47-504. Delegation of general taxing authority to Council.

§ 47-501. Assessment of taxes on real and personal property—Rate of taxation—Collection.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Tax on real property, see § 47-631 et seq.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-631.

§ 47-501a. Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(a), 88 Stat. 1065.

Section, Act May 18, 1954, ch. 218, title XV, § 1501, 68 Stat. 119, provided a minimum rate of taxation on real property. For current provisions, see § 47-631 et seq.

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that this section is repealed effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621.

§ 47-503. Disposition of surplus funds—To be applied to succeeding year's expenditures.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-504. Delegation of general taxing authority to Council.

In order to provide for additional revenue to meet additional expenditures resulting from a compensation increase adopted for persons paid under the District of Columbia Teachers' Salary Act of 1955 (chapter 15 of title 31), policemen, and firemen, the Council, in accordance with section 406 of Reorganization Plan Numbered 3 of 1967, is authorized to change the rate of the taxes imposed under—

(1) the District of Columbia Income and Franchise Tax Act of 1947 (subchapter II of chapter 15 of this title),

(2) the District of Columbia Sales Tax Act (chapter 26 of this title),

(3) The District of Columbia Use Tax Act (chapter 27 of this title),

(4) the District of Columbia Cigarette Tax Act (chapter 28 of this title),

(5) the District of Columbia Alcoholic Beverage Control Act (chapter 1 of title 25),

(6) the Act of April 23, 1924 (relating to motor vehicle fuel tax) (chapter 19 of this title),

(7) title V of the District of Columbia Revenue Act of 1937 (chapter 16 of this title), and

(8) any other Act of Congress imposing a tax solely in the District of Columbia.

(Sept. 3, 1974, Pub. L. 93-407, title IV, § 471, 88 Stat. 1064.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

Reorganization Plan Numbered 3 of 1967, referred to in the text, is set out in the Appendix to title 1, Administration, in the main edition.

CODIFICATION

Section was enacted by title IV of Act Sept. 3, 1974, Pub. L. 93-407, and is therefore subject to the definitions and regulations provisions of such title IV, as set out in §§ 47-622 and 47-661.

EFFECTIVE DATE

Section 472 of Act Sept. 3, 1974, Pub. L. 93-407, provided: "Section 461 [enacting § 47-504] shall take effect on the date of enactment of this Act."

CROSS REFERENCE

Council authorized to establish real property tax rate, see § 47-632.

Chapter 6.—TAX ASSESSOR

Sec.

47-602 to 47-605. Repealed.

§ 47-601. Assessor of District of Columbia to prepare annual tax ledgers—Statement of assessment and taxes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-602. Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(c), 88 Stat. 1065.

Section, Act July 7, 1898, ch. 571, § 1, 30 Stat. 666, required the assessor of the District to furnish bond.

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that this section is repealed effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621.

§ 47-603. Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(d), 88 Stat. 1065.

Section, Act June 25, 1938, ch. 702, § 11, 52 Stat. 1202, related to records to be kept by the District assessor, and his duties.

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that this section is repealed effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621.

§ 47-604. Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(f), 88 Stat. 1065.

Section, Acts Aug. 14, 1894, 28 Stat. 282, ch. 287, § 2; July 1, 1902, 32 Stat. 617, ch. 1352, § 6, par. 1; Mar. 3, 1917, 39 Stat. 1005, ch. 160; July 3, 1926, 44 Stat. 832, ch. 759, § 1; Aug. 3, 1954, 68 Stat. 651, ch. 654, § 1, related to the appointment and qualifications of a permanent board of assistant assessors and the clerk thereof.

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that this section is repealed effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621.

§ 47-605. Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(e), 88 Stat. 1065.

Section, Acts July 1, 1902, 32 Stat. 617, ch. 1352, § 6, par. 1; July 3, 1926, 44 Stat. 832, ch. 759, § 1, provided for designation of three of the members of the Board of Assistant Assessors to assess personal property.

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that this section is repealed effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621.

§ 47-606. Assessor to have power to administer oaths and summon witnesses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Composition and functions of Board of Equalization and Review, see § 47-646.

Penalty for violations, see § 47-649.

Similar provisions, see § 47-647.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-649.

Chapter 6A.—REAL PROPERTY TAX

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SUBCHAPTER I.—GENERAL PROVISIONS

§ 47-621. Declaration of purpose.

It is the intent of Congress to revise the real property tax in the District of Columbia to achieve the following objectives:

(1) Equitable sharing of the financial burden of the government of the District of Columbia.

(2) Full public information regarding assessments and appeal procedures.

(3) Promotion of economic activity, diversity of land use, and preservation of the character of the District of Columbia.

(4) Assurance that shifts in the tax burden on individual taxpayers will not be excessive.

(5) Comparability of tax effort between the District of Columbia and surrounding jurisdictions in the metropolitan area and cities of comparable size.

(Sept. 3, 1974, Pub. L. 93-407, title IV, § 402, 88 Stat. 1051.)

EFFECTIVE DATE

Section 478 of Act Sept. 3, 1974, Pub. L. 93-407, title IV, 88 Stat. 1065, provided: "Except as specifically provided in this title [for classifications of title IV, consisting of secs. 401 to 478, see Tables], the provisions of this title shall take effect on the date of enactment of this title, except that Part 1 [§§ 47-621, 47-622] and subparts A through G of Part 2 [§§ 47-631 to 47-658] shall apply beginning with the fiscal year beginning July 1, 1975."

SHORT TITLES

The first section of act Mar. 26, 1976, D.C. Law 1-57, provided "That this act [amending § 47-651] may be cited as the 'Tax Incentive Time Extension act.'"

The first section of act Mar. 12, 1976, D.C. Law 1-52, provided "That this act [amending § 47-646] may be cited as the 'Real Property Tax Appellate Provisions Act of 1975.'"

Section 401 of Act Sept. 3, 1974, Pub. L. 93-407, title IV, provided: "This title [enacting this chapter, sections 47-504, 47-801-1, and 47-1567g, and provisions set out in notes under this section and sections 47-504 and 47-632; amending sections 47-801a, 47-2405, and 47-2601; and repealing sections 47-301, 47-501a, 47-602 to 47-605, 47-701 to 47-709, and 47-713] may be cited as the 'District of Columbia Real Property Tax Revision Act of 1974.'"

POWERS OF COMMISSIONER AND COUNCIL; DELEGATION OF FUNCTIONS

Section 475 of Act Sept. 3, 1974, Pub. L. 93-407, title IV, 88 Stat. 1065, provided: "Except as specifically pro-

vided in this title, nothing in this title [for classifications of title IV, consisting of secs. 401 to 478, see Tables] or any amendments made by this Act, shall be construed so as to affect the authority vested in the Commissioner of the District of Columbia or the authority vested in the District of Columbia Council by Reorganization Plan Numbered 3 of 1967. The performance of any function vested by this title in the Commissioner of the District of Columbia or in any office or agency under his jurisdiction and control, or in the District of Columbia Council, may be delegated by the Commissioner or by the Council, as the case may be, in accordance with the provisions of such plan."

Section 501 of Act Sept. 3, 1974, Pub. L. 93-407, title V, 88 Stat. 1066, provided: "Notwithstanding any other provision of law, or any rule of law, nothing in this Act [for classification of Act to the Code, see Tables] shall be construed as limiting the authority of the Council of the District of Columbia to enact any act, resolution, or regulation, after January 2, 1975, pursuant to the District of Columbia Self-Government and Governmental Reorganization Act with respect to any matter covered by this Act."

SAVINGS PROVISIONS

Section 476 of Act Sept. 3, 1974, Pub. L. 93-407, title IV, 88 Stat. 1065, provided: "(a) The repeal or amendment by this title [for classifications of title IV, consisting of secs. 401 to 478, see Tables] of any provision of law shall not affect any act done or any right accrued or accruing under such provision of law before the effective date of this title or any suit or proceeding had or commenced before the effective date of this title, but all such rights and liabilities under such law shall continue, and may be enforced in the same manner and to the same extent, as if such repeal or amendment had not been made.

"(b) All offenses committed, and all penalties incurred, prior to the effective date of this title, under any provision of law hereby repealed or amended, may be prosecuted and punished in the same manner and with the same effect as if this title had not been enacted."

§ 47-622. Definitions.

For the purposes of this chapter—

(1) The term "real property" means real estate identified by plat on the records of the District of Columbia Surveyor according to lot and square together with improvements thereon.

(2) The term "Commissioner" means the Commissioner of the District of Columbia established under Reorganization Plan Numbered 3 of 1967.

(3) The term "Council" means the District of Columbia Council established under Reorganization Plan Numbered 3 of 1967.

(4) The term "estimated market value" means 100 per centum of the most probable price at which a particular piece of real property, if exposed for sale in the open market with a reasonable time for the seller to find a purchaser, would be expected to transfer under prevailing market conditions between parties who have knowledge of the uses to which the property may be put, both seeking to maximize their gains and neither being in a position to take advantage of the exigencies of the other.

(5) The term "regulation", unless specifically identified as a regulation of the Commissioner, means a regulation of the Council enacted under section 406 of the Reorganization Plan Numbered 3 of 1967, and after January 2, 1975, such term means an act of the Council of the District of Columbia enacted under section 412 [D.C. Code § 1-146] (and related sections) of the District of Columbia Self-Government and Governmental Reorganization Act.

(6) The term "tax year" means—

(A) with respect to a real property tax rate proposed by the Mayor or established by the Council after January 1 but before June 30 of any calendar year, the next following fiscal year; and

(B) with respect to a real property tax rate proposed by the Mayor or established by the Council after June 30 in any calendar year, the fiscal year during which the rate was proposed or established.

(Sept. 3, 1974, Pub. L. 93-407, title IV, § 403, 88 Stat. 1051.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCES IN TEXT

"This chapter", referred to in text, in the original was "this title", meaning title IV of Act Sept. 3, 1974, Pub. L. 93-407. Such title IV enacted this chapter, §§ 47-504, 47-801-1, 47-1567g, and provisions set out as notes under §§ 47-504, 47-621, 47-632; amended §§ 47-801a, 47-2405, 47-2601; and repealed §§ 47-301, 47-501a, 47-602 to 47-605, 47-701 to 47-709, 47-713.

Reorganization Plan Numbered 3 of 1967, referred to in pars. (2), (3), and (5), is set out in the Appendix to title 1, Administration, in the main edition.

The District of Columbia Self-Government and Governmental Reorganization Act, referred to in par. (5), is the Act of Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 774. For classification of the Act to the Code, see the Parallel Reference Tables.

SUBCHAPTER II.—AUTHORITY AND PROCEDURE TO ESTABLISH REAL PROPERTY TAX RATES

SUBPART A.—REAL PROPERTY TAX RATE

§ 47-631. Tax on real property.

Notwithstanding the provisions of section 47-501, there is hereby levied for each fiscal year a tax on the real property in the District of Columbia at a rate or rates determined according to the provisions of this chapter. Unless otherwise provided by law, all revenues received from such tax shall be deposited, from time to time, in the Treasury of the United States, to the credit of the District of Columbia. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 411, 88 Stat. 1052; June 15, 1976, D.C. Law 1-70, title III, § 305, 23 DCR 540.)

REFERENCE IN TEXT

"This chapter", referred to in text, in the original was "this title", meaning title IV of Act Sept. 3, 1974, Pub. L. 93-407. Such title IV enacted this chapter, §§ 47-504, 47-801-1, 47-1567g, and provisions set out as notes under §§ 47-504, 47-621, 47-632; amended §§ 47-801a, 47-2405, 47-2601; and repealed §§ 47-301, 47-501a, 47-602 to 47-605, 47-701 to 47-709, 47-713.

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-70, amended section by inserting "or rates" immediately after "rate".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 1402 of act June 15, 1976, D.C. Law 1-70, set out as a note under § 47-1209.

EFFECTIVE DATE

See note under § 47-621.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-633.

§ 47-632. Council to establish tax rate—Public hearings.

The Council, after public hearing, shall by resolution establish each year, within twenty days after the receipt of the Mayor's recommendation under section 47-633, a rate or rates of taxation which, except as provided in section 47-651, shall be applied, during the tax year, to the assessed value of all real property subject to taxation. The Council, acting by resolution, may extend the time for setting the rates of taxation. If the Council does extend the time for setting the rates of taxation of real property, it must establish those rates for the year. If the Council fails to establish the rates of taxation of real property by resolution within those twenty days and fails to extend the time for setting the rates, the rates of taxation of real property submitted by the Mayor pursuant to section 47-633 shall be the rates of taxation of real property. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 412, 88 Stat. 1052; June 15, 1976, D.C. Law 1-70, title III, §§ 302(a), 305, 23 DCR 538, 540.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Section 302(a) of act June 15, 1976, D.C. Law 1-70, amended section generally. Prior to amendment section read: "The Council, after public hearing, shall establish each year, within thirty days after receipt of the Commissioner's recommendation under section 47-633, a rate of taxation which, except as provided in section 47-651, shall be applied, during the tax year, to the assessed value of all real property subject to taxation. The Council may by resolution extend the time for any year for setting such rate of taxation, except that if the Council does make such an extension, it must establish such a rate for that tax year. If the Council fails to establish such a rate within such thirty days, and fails to extend the time for establishing such a rate, the rate calculated by the Commissioner, pursuant to section 47-633, shall be the rate for that tax year."

Section 305 of such act amended section by inserting "or rates" immediately after "rate".

EMERGENCY ACT AMENDMENTS

1977—For temporary provision establishing the tax rate for real property, see sec. 2 of the Emergency Real and Personal Property Tax Rates Act for Tax Year 1978 (D.C. Act 2-70, Aug. 10, 1977, 24 DCR 1558) and the Second Emergency Real and Personal Property Tax Rates Act for Tax Year 1978 (D.C. Act 2-108, Dec. 1, 1977, 24 DCR 4808).

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 1402 of act June 15, 1976, D.C. Law 1-70, set out as a note under § 47-1209.

PROPERTY TAX RATE FOR FISCAL YEAR 1975

Section 461 of Act Sept. 3, 1974, Pub. L. 93-407, 88 Stat. 1064, provided: "Notwithstanding any other provision of law the property tax rate for the District of Columbia for fiscal year 1975 shall be set by the Council at such an amount to yield at least \$146 million in fiscal year 1975; except that such amount may be reduced by any amount raised by the Council pursuant to delegation of authority contained in section 471 of this Act [§ 47-504], or by any revenue obtained pursuant to any other provision of law, or by any amount raised by reprogramming or reallocation of the fiscal year 1975 budget."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-633.

§ 47-632a. Classification of real property.

(a) The Council shall establish different categories of real property, including by way of example but not by way of limitation the following: (1) single family residential property, (2) multifamily property and (3) commercial property.

(b) When the uses of a property fall within more than one of the classes enumerated in subsection (a) of this section, the property shall be apportioned into the proper classes and each of the areas resulting from the apportionment shall be taxed at the appropriate real property tax rate. (June 15, 1976, D.C. Law 1-70, title III, § 303, 23 DCR 539.)

CODIFICATION

This section was enacted as part the Revenue Act of 1976, and not as a part of title IV of the District of Columbia Real Property Tax Revision Act of 1974 which comprises this chapter.

EFFECTIVE DATE

See sec. 1402 of act June 15, 1976, D.C. Law 1-70, set out as a note under § 47-1209.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-632b.

§ 47-632b. Applicable tax rate when real property classifications are declared invalid or inapplicable.

If the classes of real property established under section 47-632a and/or the differing rates of taxation of real property set by the Council are declared to be invalid or inapplicable to any property, the real property tax rate in effect for that property for the immediately preceding year ending June 30th shall be deemed to have continued in effect. (June 15, 1976, D.C. Law 1-70, title III, § 304, 23 DCR 539.)

CODIFICATION

This section was enacted as part the Revenue Act of 1976, and not as a part of title IV of the District of Columbia Real Property Tax Revision Act of 1974 which comprises this chapter.

EFFECTIVE DATE

See sec. 1402 of act June 15, 1976, D.C. Law 1-70, set out as a note under § 47-1209.

§ 47-633. Commissioner to recommend tax rate to Council.

(a) (1) Except as provided in paragraph (2), by July 1 of each year, the Commissioner shall calculate and submit to the Council a proposed real property tax rate or rates for the tax year, and inform the Council of his certification of the assessment roll pursuant to section 47-646(g). The Commissioner may extend the period for submitting such recommendation.

(2) With respect to the real property tax rate for the fiscal year ending June 30, 1975, the Commissioner shall submit his recommendation to the Council within 30 days after September 3, 1974.

(b) At the time the Commissioner submits to the Council the proposed real property tax rate or rates under subsection (a), he shall also submit the following:

(1) The total aggregate assessed value of taxable real property for the year preceding the tax year by major class or type of property.

(2) The estimated total aggregate assessed value of taxable real property for the tax year for which the property tax rate or rates recommenda-

tion is being made, by major class or type of property, indicating separately for each class or type the estimated value attributable to new construction.

(3) The real property tax rate or rates (rounded to the nearest penny) calculated to yield in the tax year the same amount of revenue (exclusive of the revenue attributable to new construction) as was raised by that tax at the rate or rates applicable during the year preceding the tax year.

(c) The real property tax rate or rates submitted by the Commissioner pursuant to subsection (b) (3) shall become the real property tax rate or rates applicable during the tax year for which it is submitted unless the Council acts to set a different such rate or rates pursuant to section 47-632.

(d) On or before February 1 of each year the Commissioner shall estimate as closely as possible the rate or rates to be calculated in subsection (b) (3) and shall so inform the Council.

(e) The real property tax rate or rates applicable in the District for the fiscal year ending June 30, 1975, calculated according to the provisions of sections 47-631, 47-632, and 47-633, and section 461, shall be applied to the assessment roll for 1975 determined according to provisions of law in effect prior to the effective date of this chapter. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 413, 88 Stat. 1052; Jan. 3, 1975, Pub. L. 93-635, § 6(a) (1), (b), 88 Stat. 2176; June 15, 1976, D.C. Law 1-70, title III, §§ 302 (b), 305, 23 DCR 539, 540.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCES IN TEXT

"Section 461," referred to in subsec. (e), refers to section 461 of act Sept. 3, 1974, Pub. L. 93-407, which is set out as a note under § 47-632.

"This chapter", referred to in subsec. (e), in the original was "this title", meaning title IV of Act Sept. 3, 1974, Pub. L. 93-407. Such title IV enacted this chapter, §§ 47-504, 47-801-1, 47-1567g, and provisions set out as notes under §§ 47-504, 47-621, 47-632; amended §§ 47-801a, 47-2405, 47-2601; and repealed §§ 47-301, 47-501a, 47-602 to 47-605, 47-701 to 47-709, 47-713. For the effective date, see note set out under § 47-621.

CODIFICATION

In subsec. (a) (2), "September 3, 1973" was substituted for "the date of enactment of this title."

AMENDMENTS

1976—Section 302(b) of act June 15, 1976, D.C. Law 1-70, amended subsec. (a) by substituting "July 1" for "July 15".

Section 305 of such act amended section by inserting "or rates" immediately after "rate" each place it appeared.

1975—Act Jan. 3, 1975, Pub. L. 93-635, amended subsecs. (c) and (d) by striking out "subsection (a)" and inserting in lieu thereof "subsection (b) (3)"; and amended subsec. (e) by striking out "Act" and inserting in lieu thereof "chapter".

EMERGENCY ACT AMENDMENTS

1977—For temporary provisions requiring the Mayor to report and provide information to the Council on certain assessment changes and certain residential properties, see secs. 6 and 7 of the Emergency Residential Property Tax

Relief Act of 1977 (D.C. Act 2-69, Aug. 10, 1977, 24 DCR 1554) and the Second Emergency Residential Property Tax Relief Act of 1977 (D.C. Act 2-111, Dec. 5, 1977, 24 DCR 4826).

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 1402 of act June 15, 1976, D.C. Law 1-70, set out as a note under § 47-1209.

EFFECTIVE DATE OF 1975 AMENDMENTS

Section 6(a) (2) of Act Jan. 3, 1975, Pub. L. 93-635, provided: "The amendments [to subsecs. (c) and (d) of § 47-633] made by paragraph (1) shall take effect January 2, 1975."

Section 6(h) of such Act provided: "The amendments [to §§ 47-633(e), 47-641(a), (f), 47-642(b), 47-646(f), (i)] made by subsections (b), (c), (d), (e), (f), and (g) shall take effect as provided in section 478 of that Act [District of Columbia Real Property Tax Revision Act of 1974] as if the sections (as amended) amended by such subsections had been included in Public Law 93-407 on the date of its enactment."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-632, 47-634.

§ 47-634. Commissioner to submit information concerning tax exempt real property.

At the time the Commissioner submits to the Council the proposed real property tax rate or rates under section 47-633, he shall also submit the following:

(1) The total aggregate assessed value of real property exempt from the real property tax levied in the District for the current fiscal year by major class or type of exempt status and the tax that would have been paid during such fiscal year had such property not been exempt.

(2) The estimated total aggregate assessed value of real property exempt from the real property tax levied in the District by major class or type of exempt status and the tax that would be paid during the fiscal year under the real property tax rate or rates proposed by the Commissioner pursuant to section 47-633.

(Sept. 3, 1974, Pub. L. 93-407, title IV, § 414, 88 Stat. 1053; June 15, 1976, D.C. Law 1-70, title III, § 305, 23 DCR 540.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-70, amended section by inserting "or rates" immediately after "rate" each place it appeared.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 1402 of act June 15, 1976, D.C. Law 1-70, set out as a note under § 47-1209.

§ 47-635. Comparison of tax rates and burdens.

In establishing a real property tax rate or rates the Council shall make a comparison of tax rates and burdens applicable to residential and nonresidential property in the District with those such rates applicable to such property in jurisdictions in the vicinity of the District. The comparison shall include other major taxes in addition to the tax on real property. Without in any way limiting the authority of the Council, it is the intention of Congress, that

tax burdens in the District be reasonably comparable to those in the surrounding jurisdictions of the Washington metropolitan area. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 415, 88 Stat. 1053; June 15, 1976, D.C. Law 1-70, title III, § 305, 23 DCR 540.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-70, amended section by inserting "or rates" immediately after "rate".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 1402 of act June 15, 1976, D.C. Law 1-70, set out as a note under § 47-1209.

§ 47-636. Publication of tax comparisons.

The Commissioner shall, by June 30 of each year, compile and publish information regarding the relative amount of tax for all major taxes in the District compared with those in surrounding jurisdictions in the Washington metropolitan area and with those in other cities. The information shall include the rate or rates of the property tax levied on residential and nonresidential property, and the effect of major taxes levied on families of different income levels and on businesses. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 416, 88 Stat. 1053; June 15, 1976, D.C. Law 1-70, title III, § 305, 23 DCR 540.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-70, amended section by inserting "or rates" immediately after "rate".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 1402 of act June 15, 1976, D.C. Law 1-70, set out as a note under § 47-1209.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

SUBPART B.—ASSESSMENT AND ADMINISTRATION

§ 47-641. Assessment of real property—Regulations.

(a) The assessed value of all real property shall be listed on the assessment roll for real property taxation purposes annually as provided in this subpart. The assessed value for all real property shall be the estimated market value of such property as of January 1 of the year preceding the tax year, as determined by the Commissioner. In determining estimated market value for various kinds of real property the Commissioner shall take into account any factor which might have a bearing on the market value of the real property including, but not limited to, sales information on similar types of real property, mortgage, or other financial considerations, re-

production cost less accrued depreciation because of age, condition, and other factors, income earning potential (if any), zoning, and government-imposed restrictions. Assessments shall be based upon the sources of information available to the Commissioner which may include actual view.

(b) All real property shall be assessed no less frequently than once every two years, and as soon as practicable such assessment shall be made annually. The Council may authorize and direct assessments to be made annually for some or all classes of real property, except that for fiscal year 1978, and for each fiscal year thereafter, all real property shall be assessed on an annual basis.

(c) The Council may adopt regulations concerning the assessment and reassessment of real property and matters relating thereto which shall be consistent with the provisions of this chapter and other applicable provisions of law.

(d) The Council may adopt regulations regarding information to be furnished the Commissioner by owners of real property. Such regulations shall provide, under penalty of law, that all such information with respect to income derived from investment on income-producing real property shall be handled in the same confidential manner as income tax returns and supporting data required to be submitted to the government of the District of Columbia under laws applicable in the District.

(e) The Commissioner shall submit to the Council, within forty-five days after September 3, 1974, proposed regulations to be adopted by the Council pursuant to subsection (c).

(f) Consistent with the provisions of this chapter and regulations of the Council, the Commissioner shall promulgate necessary regulations and administrative orders. If the Council shall not have adopted regulations concerning assessment pursuant to subsection (c) within ninety days after September 3, 1974, the Commissioner shall promulgate such regulations. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 421, 88 Stat. 1053; Jan. 3, 1975, Pub. L. 93-635, § 6(c), (d), 88 Stat. 2176.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

"This chapter", referred to in subsecs. (c) and (f), in the original was "this title", meaning title IV of Act Sept. 3, 1974, Pub. L. 93-407. Such title IV enacted this chapter, §§ 47-504, 47-801-1, 47-1567g, and provisions set out as notes under §§ 47-504, 47-621, 47-632; amended §§ 47-801a, 47-2405, 47-2601; and repealed §§ 47-301, 47-501a, 47-602 to 47-605, 47-701 to 47-709, 47-713.

CODIFICATION

In subsecs. (e) and (f), "September 3, 1974" was substituted for "the date of enactment of this title".

AMENDMENT

1975—Act, Jan. 3, 1975, Pub. L. 93-635, amended the first sentence of subsec. (a) by striking out "this subchapter" and inserting in lieu thereof "this subpart"; and amended the first sentence of subsec. (f) by striking out "Act" and inserting in lieu thereof "chapter".

EMERGENCY ACT AMENDMENTS

1977—For temporary provisions relating to deductions from the estimated market value of certain residential property, see secs. 2, 3, 8, and 9 of the Emergency Residential Property Tax Relief Act of 1977 (D.C. Act 2-69, Aug. 10, 1977, 24 DCR 1543) and the Second Emergency Residential Property Tax Relief Act of 1977 (D.C. Act 2-111, Dec. 5, 1977, 24 DCR 4815).

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 47-633.

EFFECTIVE DATE

See note under § 47-621.

NOTES TO DECISIONS UNDER PRIOR LAW

Parties in court suit

Where class of taxpayers sought to be represented by purported intervenors in suit brought on behalf of city commercial property owners seeking declaratory judgment that practice of assessing commercial property at higher percentage of market value than residential property violated former section 47-713 and the Fifth Amendment had economic interest in outcome of suit, and District of Columbia, which had agreed to set up single level of assessment and had not denied that its dual assessments violated that section and Fifth Amendment principles of equal protection, did not adequately represent such taxpayers, proposed intervenors should be allowed to intervene under Superior Court rule on behalf of all taxpayers other than commercial ones. *Calvin-Humphrey et al. v. District of Columbia et al.* (D.C. App. 1975, 340 A.2d 795).

§ 47-642. Separate valuation of land and improvements—Appointment of assessors.

(a) The Commissioner shall assess all real property, identifying separately the value of land and improvements thereon, and administer and collect the real property tax within the District. The Commissioner shall also notify owners of real property of assessments and of appeal procedures. In addition, he shall maintain adequate records relating to the administration of the real property tax in the District, and provide appropriate public information concerning such tax.

(b) The Commissioner shall appoint assessors competent to determine values of real property to carry out the provisions of this subpart and other relevant portions of this chapter. Each person so appointed shall take and subscribe an oath to diligently, faithfully, and impartially assess all real property according to applicable law and regulations and otherwise perform the duties of office.

(c) The Commissioner shall assure that information regarding the characteristics of real property, sales and exchanges of all such property, building permits, land use plans, and any other information pertinent to the assessment process shall be made available to the assessors on a timely basis. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 422, 88 Stat. 1054; Jan. 3, 1975, Pub. L. 93-635, § 6(e), 88 Stat. 2176.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

"This chapter", referred to in subsec. (b), in the original was "this title", meaning title IV of Act Sept. 3, 1974, Pub. L. 93-407. Such title IV enacted this chapter, §§ 47-504, 47-801, 47-1567g, and provisions set out as

notes under §§ 47-504, 47-621, 47-632; amended §§ 47-801a, 47-2405, 47-2601; and repealed §§ 47-301, 47-501a, 47-602 to 47-605, 47-701 to 47-709, 47-713.

AMENDMENT

1975—Act Jan. 3, 1975, Pub. L. 93-635, amended the first sentence of subsec. (b) by striking out "this chapter" the first place it appears and inserting in lieu thereof "this subpart".

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of subsec. (d), see sec. 5 of the Emergency Residential Property Tax Relief Act of 1977 (D.C. Act 2-69, Aug. 10, 1977, 24 DCR 1552) and the Second Emergency Residential Property Tax Relief Act of 1977 (D.C. Act 2-111, Dec. 5, 1977, 24 DCR 4824).

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 47-633.

§ 47-643. Assessments to be made in name of owner and by address and lot and square.

(a) All real property, except as hereinafter provided, shall be assessed in the name of the owner, or trustee or trustees of the owner thereof. All undivided real property of a deceased person may be assessed in the name of such deceased person until such undivided real property is divided according to law, or has otherwise passed into the possession of some other person; and all real property, the ownership of which is unknown, shall be assessed as owner unknown.

(b) All real property, whether taxable or not, shall be assessed according to the address and the number of the squares and lots thereof, or part of lots, and upon the number of the square or superficial feet in each square or lot or part of a lot. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 423, 88 Stat. 1054.)

§ 47-644. Preliminary assessment roll—Public inspection of records—Publication of assessment-sales ratio studies and assessed property values.

(a) The Commissioner shall, on or before March 1 of each year, compile in tabular form and place in a book, known as the preliminary assessment roll, the name of the owner, address, lot and square, amount, description, and value, as of January 1 of that year, of the land and improvements of all real property whether such property is taxable or exempt.

(b) The preliminary assessment roll, together with all maps, field books, assessment-sales ratio studies, surveys, and plats, shall be open to public inspection during normal business hours. In addition, any notes and memorandums relating to the assessment of his real property, or a statement clearly indicating the basis upon which his real property has been assessed, shall be open to inspection by the taxpayer or his designated representative during normal business hours. Provision shall be made to furnish copies of all material to any person, upon request, at the lowest charge which covers cost of making such copies.

(c) The Commissioner shall undertake, publish, and otherwise publicize the results of assessment-sales ratio studies for different types of real property for the entire District and for different types of real property within each of the districts utilized in making assessments. If, for a given year, adequate sales data are lacking for particular studies, the Commissioner shall so indicate.

(d) The Commissioner shall, either himself or in a newspaper of general circulation, publish a listing

of the assessed value of each property by address, lot, and square, and he shall also make such listing available at the main public library in the District and at such other points as he may determine. Such publication can be by neighborhood areas so long as maps showing the assessment areas are generally available. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 424, 88 Stat. 1054.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-645, 47-646.

§ 47-645. Annual notice or statement of assessment—Contents.

Beginning as soon as possible after January 1, but no later than March 1 of each year, each taxpayer shall be notified of the assessment of his real property for the next fiscal year. The notice, or statement accompanying the notice, shall include—

- (1) the address, lot, square, and type of land use by major category of the property;
- (2) the assessed value of the land and improvements (shown separately and in total) of the property for the next fiscal year and such amounts for the previous fiscal year;
- (3) the amount and percentage of change in assessed value over the previous fiscal year;
- (4) an indication of the reason for such change in assessment, such as, but not limited to, improvements to the property, zoning change, changing market values;
- (5) statement of appeal procedures pursuant to section 47-646(i);
- (6) the citation to the regulations or orders under which the property was assessed;
- (7) the location of the assessment roll, studies, and notes referred to in sections 47-644 and 47-646(g) and the hours during which the information is available;
- (8) the availability of a listing of the assessed value of property referred to in section 47-644(c); and
- (9) an explanation of all special benefits, incentives, limitations, or credits which relate to real property taxes as a result of this or any other Act. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 425, 88 Stat. 1055.)

§ 47-646. Board of Equalization and Review—Meetings—Appeals—Assessment revisions.

(a) There is established a Board of Equalization and Review for the District (hereinafter in this chapter referred to as the "Board") which shall be composed of fifteen members, a majority of whom shall be residents of the District, appointed by the Commissioner, with the advice and consent of the

Council. The Council may authorize a larger size if the caseload so requires. Members of the Board shall be persons having knowledge of the valuation of property, real estate transactions, building costs, accounting, finance, or statistics. The Commissioner shall name one member as Chairman. None of the members may be officers of the District of Columbia government. Each member shall serve for a term of five years, except of the members first appointed under this section, the Commissioner shall designate equal numbers for terms of one, two, three, four, and five years. The terms of the members first appointed under this section shall begin on January 1, 1975. Any person appointed to fill a vacancy shall be appointed to serve for the remainder of the term during which the vacancy arose. Each member shall receive compensation at a rate to be determined by the Council unless otherwise prohibited by law, but not to exceed one two-thousandth of the annual salary of the highest step of grade 15 of the General Schedule in section 5332 of title 5 of the United States Code for each hour such member is engaged in the actual performance of duties vested in the Board.

(b) The Commissioner shall provide such other support as is needed for the efficient operation of the Board.

(c) The Board shall convene as business necessities from the first Monday in January until the Commissioner shall be presented with the assessment roll for the fiscal year as provided in subsection (g). The Board shall also convene as business necessities for a period of thirty days following any special assessment which shall be generally applicable to a class of real property, and as business in the Board otherwise makes necessary.

(d) A majority of the Board shall constitute a quorum for transacting business, except the Board may provide for the establishment of three member panels for hearing and deciding individual appeals. The Board shall adopt and publish necessary rules, and all applicable provisions of the District of Columbia Administrative Procedures Act (D.C. Code, secs. 1-1501—1-1510) shall apply to the rules and procedure of the Board.

(e) On or before April 15 of each year any taxpayer may appeal the amount of his assessment for the forthcoming fiscal year.

(f) Pursuant to applicable provisions of law, regulations adopted by the Council, or orders of the Commissioner, the Board shall attempt to assure that all real property is assessed at the estimated market value. Based on the record of complaints or of other information available to or solicited by the Board, the Board shall raise or lower the estimated market value of any real property which it finds to be more than 5 per centum above or below the estimated market value contained in the preliminary assessment roll prepared by the Commissioner according to section 47-644 and shall revise the assessment roll accordingly.

(g) On or before June 1 the Board shall present the revised assessment roll for the forthcoming fiscal year to the Commissioner. The Commissioner shall make such further revisions to the assessment roll as are required under other applicable provisions of

law, and shall approve such assessment roll not later than June 30. Except as otherwise provided by law, the approved assessment roll shall constitute the basis of assessment for the forthcoming fiscal year and until another assessment roll is made according to law.

(h) Neither the Board nor any court shall order the increase of the assessed value of any parcel of real property above its estimated market value, nor the decrease of the assessed value of any parcel of real property below its estimated market value solely on the basis of average ratio studies comparing sales and assessments, unless such studies are the primary basis for the assessment, or reassessment of the concerned property.

(i) Any person aggrieved by any assessment, equalization, or valuation made, may, within six months after October 1 of the calendar year in which such assessment, equalization, or valuation is made, appeal from such assessment, equalization, or valuation in the same manner and to the same extent as provided in sections 47-2403 and 47-2404, if such person shall have first made his complaint to the Board respecting such assessment as herein provided, except that in any case where no notice in writing of such increase of valuation was given the taxpayer prior to March 15 of the particular year, no such complaint shall be required for appeal. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 426, 88 Stat. 1055; Jan. 3, 1975, Pub. L. 93-635, § 6 (f), (g) 88 Stat. 2176; Mar. 12, 1976, D.C. Law 1-52, § 2, 22 DCR 5130.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1976—Act Mar. 12, 1976, D.C. Law 1-52, amended subsec. (i) by substituting "within six months after October 1" for "by October 15".

1975—Act Jan. 3, 1975, Pub. L. 93-635, amended the last sentence of subsec. (f) by striking out "section 47-643" and inserting in lieu thereof "section 47-644"; and amended subsec. (i) by striking out "sections 47-2404 and 47-24143" and inserting in lieu thereof "sections 47-2403 and 47-2404".

EMERGENCY ACT AMENDMENT

1975—For temporary amendment of subsec. (i), see sec. 2 of the Emergency Extension of the Appeal Time of Real Property Tax Assessments to the Superior Court of the District of Columbia act (D.C. Act 1-55, Oct. 10, 1975, 22 DCR 1960).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 3 of act Mar. 12, 1976, D.C. Law 1-52, provided: "The amendment [to this section] made by this act shall take effect as provided for acts of the Council in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 47-633.

PRIOR PROVISIONS

Provisions which related to composition and functions of the Board of Equalization and Review were formerly contained in act Aug. 14, 1894, ch. 287, § 9, 28 Stat. 284, and act Aug. 17, 1937, ch. 690, title IX, § 5(a), as added May 16, 1938, ch. 223, § 8, 52 Stat. 372, as amended, and were formerly classified to § 47-708.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-633, 47-645.

NOTES TO DECISIONS

Valuation by court

Fact that property owner, which specifically challenged 1973 real property tax assessment, did not amend the petition specifically to include the 1974 assessment, which was received prior to hearing on the 1973 assessment and which was a mere duplicate of the challenged assessment, did not deprive trial court of power to grant relief as to the 1974 assessment since the trial court is not limited in granting relief to that which a party formally has requested; in any event, taxpayer contested the entire valuation process and not merely a single tax payment. *District of Columbia v. Burlington Apartment House Company* (D.C. App. 1977, 375 A. 2d 1052).

A final judgment of the Superior Court on the lawful assessment of a particular property must be treated in the same manner as an equalized assessment from the Board of Equalization and Review, that is, it becomes the basis for taxation until a subsequent reassessment has been made according to law; once the Superior Court has jurisdiction over valuation, such jurisdiction is co-extensive with the existence of the valuation itself. *Id.*

§ 47-647. Power to administer oaths and summon witnesses—Witness fees—Perjury.

Each assessor of the District, and each assistant assessor, in the discharge of any of his duties, or the Board, may administer all necessary oaths or affirmations. The Commissioner or, in his absence, his designated agent, and the Chairman of the Board, shall have power to summon the attendance of any person to be examined under oath touching such matters and things as the Commissioner or the Board may deem advisable in the discharge of their duties; and any member of the Metropolitan Police force of the District of Columbia may serve subpoenas in his behalf. Such fees shall be allowed witnesses so examined, to be paid out of funds available to the Commissioner, as are allowed in civil actions before the United States District Court for the District of Columbia. Any person summoned and examined as aforesaid who shall knowingly make false oath or affirmation shall be guilty of perjury, and upon conviction thereof be punished according to the laws in force for the punishment of perjury. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 427, 88 Stat. 1056.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

The Board, referred to in text, is the Board of Equalization and Review, see § 47-646(a).

CROSS REFERENCE

Similar provisions, see § 47-606.

§ 47-648. Class actions.

Within one year after September 3, 1974, the Superior Court of the District of Columbia shall establish a method which it deems appropriate by which class action cases regarding any matter relating to real and personal property taxes may be brought before the Superior Court. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 428, 88 Stat. 1057.)

CODIFICATION

"September 3, 1974" was substituted for "the date of enactment of this title".

§ 47-649. Penalties.

Any person who shall refuse or knowingly neglect to perform any duty enjoined on him by law, or who shall consent to or connive at any evasion of the provision of the first section of the Act of March 3, 1881 (D.C. Code, sec. 47-209), or section 13 of the Act of August 14, 1894 (D.C. Code, sec. 47-606), or any other provision of this chapter shall, for each offense, be removed from office and fined not more than \$10,000, or imprisoned for no longer than one year, or both, in the discretion of the court. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 429, 88 Stat. 1057.)

REFERENCES IN TEXT

"The first section of the Act of March 3, 1881 (D.C. Code, sec. 47-209)", referred to in text, appears identical with the original. However, the citation to sec. 47-209 of the Code appears to be erroneous as that section is based on section 14 of Act Aug. 14, 1894, 28 Stat. 285, rather than the 1881 Act. So much of the first section of the 1881 Act as was classified to sec. 47-301 of the Code was repealed by section 474(b) of Act Sept. 3, 1974, Pub. L. 93-407. Other portions of the first section of the 1881 Act have been classified to secs. 7-1206, 32-813, and 47-210 of the Code. The remainder of the first section of the 1881 Act has not been classified to the Code.

"This chapter", referred to in text, in the original was "this title", meaning title IV of Act Sept. 3, 1974, Pub. L. 93-407. Such title IV enacted this chapter, §§ 47-504, 47-801-1, 47-1567g, and provisions set out as notes under §§ 47-504, 47-621, 47-632; amended §§ 47-801a, 47-2405, 47-2601; and repealed §§ 47-301, 47-501a, 47-602 to 47-605, 47-701 to 47-709, 47-713.

SUBPART C.—HOMEOWNER EXEMPTION

§ 47-650. Exemption for low and moderate income families.

(a) In order that the shift to equalized assessment at the same percentage of estimated market value for all properties not result in increases in proportionate tax burden for households of low or moderate income who own or rent property identified on the assessment roll as row dwellings, detached dwellings, or semi-detached dwellings, the Council by regulation is authorized to provide that the amount of up to \$3,000 of market value may be deducted from the estimated market value of some or all of such property.

(b) Subsection (a) shall take effect on and after July 1, 1974. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 430, 88 Stat. 1057.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EMERGENCY ACT AMENDMENT

1977—For temporary provision repealing this section, see sec. 10 of the Emergency Residential Property Tax Relief Act of 1977 (D.C. Act 2-69, Aug. 10, 1977, 24 DCR 1556) and the Second Emergency Residential Property Tax Relief Act of 1977 (D.C. Act 2-111, Dec. 5, 1977, 24 DCR 4828).

SUBPART D.—TAX INCENTIVES

§ 47-651. Tax incentives—Rehabilitation and new construction in areas—Preservation of historic buildings.

(a) The Council shall, before September 3, 1976, after public hearing, adopt regulations providing tax incentives for the rehabilitation of existing structures and for new construction, including rehabilitation or construction of commercial property, located in areas of the District as designated by the Council. The Council shall also adopt regulations providing tax incentives for the rehabilitation and maintenance of historic buildings. Such tax incentives may include, but are not limited to—

(1) establishing different tax rates for land and for improvements thereon; and

(2) providing that any increase in assessed value of improvements resulting from rehabilitation or new construction be ignored for tax purposes for up to five years from the year of such reassessment.

(b) To be eligible for incentive under this section, historic buildings must be property designated as an historic landmark and conform to the provisions of subpart E. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 431, 88 Stat. 1057; Jan. 3, 1975, Pub. L. 93-635, § 15 (a), (b), 88 Stat. 2178; Mar. 26, 1976, D.C. Law 1-57, § 2, 22 DCR 5471.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

"Subpart E", referred to in subsec. (b), refers to subpart E of this subchapter, commencing with § 47-652.

AMENDMENTS

1976—Act Mar. 26, 1976, D.C. Law 1-57, amended subsec. (a) by substituting "before September 3, 1976" for "before December 2, 1975". For prior temporary amendment of this provision, see Emergency Act Amendment note set out below.

1975—Act Jan. 3, 1975, Pub. L. 93-635, amended subsecs. (a) and (b) by striking out "historic property" and inserting in lieu thereof "historic buildings".

EMERGENCY ACT AMENDMENT

1976—Section 2 of the Emergency Tax Incentive Time of Deliberation Act (D.C. Act 1-44, Aug. 15, 1975, 22 DCR 1131) amended subsec. (a) by substituting "before December 2, 1975" for "within one year after the date of enactment of this title". Section 3 of such act provided that the act would take effect on September 2, 1975, and would be effective for ninety days thereafter.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 3 of act Mar. 26, 1976, D.C. Law 1-57, provided: "This act [amending this section] shall be deemed to have taken effect on December 1, 1975."

EFFECTIVE DATE

See note under § 47-621.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-632.

SUBPART E.—TAX RELIEF FOR CERTAIN HISTORIC BUILDINGS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 47-651.

§ 47-652. Assessment of officially designated historic buildings.

For certain officially designated historic buildings in the District, the Commissioner shall, in addition to assessing at full market value, assess land and improvement on the basis of current use and structures of the buildings, which latter assessment, if it is less than full market value, shall be the basis of tax liability to the District. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 432, 88 Stat. 1058; Jan. 3, 1975, Pub. L. 93-635, § 15(c), 88 Stat. 2178.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Act Jan. 3, 1975, Pub. L. 93-635, amended section by striking out "property" wherever it appeared therein and inserting in lieu thereof "buildings".

EFFECTIVE DATE

See note under § 47-621.

§ 47-653. Eligibility for historic property tax relief.

To be eligible for historic property tax relief, real property must be a historic building designated by the Joint Committee on Landmarks of the National Capital and, in addition, must be approved by the Commissioner under section 47-654. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 433, 88 Stat. 1058; Jan. 3, 1975, Pub. L. 93-635, § 15(d), 88 Stat. 2178.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Act Jan. 3, 1975, Pub. L. 93-635, amended section by striking out "historic property" and inserting in lieu thereof "a historic building"; and by striking out "Planning Commission and the Commission on Fine Arts," immediately following "National Capital".

§ 47-654. Agreements for maintenance and use of historic buildings.

The Council may provide that the owners of historic buildings which have been so designated by the Joint Committee on Landmarks of the National Capital may enter into agreements with the government of the District of Columbia for periods of at least twenty years which will assure the continued maintenance of historic buildings in return for property tax relief. Such a provision shall, as a condition for tax relief, require reasonable assurance that such buildings will be used and properly maintained and such other conditions as the Council finds to be necessary to encourage the preservation of historic buildings. The Council shall also provide for the recovery of back taxes, with interest, which would have been due and payable in the absence of the exemption, if the conditions for such exemption are not fulfilled. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 434, 88 Stat. 1058; Jan. 3, 1975, Pub. L. 93-635, § 15(e), 88 Stat. 2178.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Act Jan. 3, 1975, Pub. L. 93-635, amended section generally. Prior to amendment the section read: "The Council may provide that the owners of properties which have been designated historic landmarks by the Joint Committee on Landmarks of the National Capital Planning Commission and the Commission of Fine Arts may enter into agreements with the government of the District of Columbia for periods of at least twenty years which will assure the continued maintenance of historic properties in return for property tax relief. Such a provision shall, as a condition for tax relief, require reasonable assurance that such property will be used and properly maintained and such other conditions as the Council finds to be necessary to encourage the preservation of historic property. The Council shall also provide for the recovery of back taxes, with interest, which would have been due and payable in the absence of the exemption, if the conditions for such exemption are not fulfilled."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-653.

SUBPART F.—TAX DEFERRAL

§ 47-655. Tax deferral—Homeowner whose adjusted gross income does not exceed \$20,000.

(a) An eligible taxpayer may defer each year any real property tax owed in excess of 110 per centum of his immediately preceding year's real property tax liability. To be eligible for such deferral the taxpayer must—

(1) have owned for at least five years the residential real property for which deferral is claimed;

(2) certify that the combined household adjusted gross income (for purposes of District income taxes) does not exceed \$20,000 in one year;

(3) file a written request for deferral on a form prescribed by the Commissioner;

(4) certify that such residential real property is the principal place of residence of the taxpayer;

(5) certify that the zoning classification of such residential property has not changed in the immediately past fiscal year;

(6) certify that increases in the assessed valuation of such residential real property attributable to improvements which increase the intrinsic value of such residential real property are not included in the calculation of the increase in real property tax payable; and

(7) certify that the assessment of such residential real property for the immediately previous fiscal year was not the result of an obvious arithmetical error.

(b) Taxes deferred under this section shall bear interest compounded annually. The rate of interest which shall be applied in each year shall be the average Treasury bill rate for the preceding twelve months as certified by the Secretary of the Treasury to the Commissioner.

(c) No further deferrals of real property tax shall be granted a taxpayer when his deferred tax plus

interest equals more than 10 per centum of the current assessed value of his property.

(d) Taxes deferred under this section, together with all accumulated interest, shall constitute a preferential lien upon the real property which shall be immediately payable by the seller, transferor, or conveyer whenever the real property is sold, refinanced, transferred, or conveyed in any manner, or whenever additional co-owners (other than spouse) are added to the real property. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 435, 88 Stat. 1058.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EFFECTIVE DATE

See note under § 47-621.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-656.

§ 47-656. Same; Homeowner whose adjusted gross income exceeds \$20,000.

(a) Any owner of residential real property whose combined household adjusted gross income is in excess of \$20,000, and who meets the qualification specified in clauses (1), (3), (4), (5), and (6) of subsection (a) of section 47-655, may defer the amount of real property tax attributable to an increase by more than 25 per centum in any one year over the assessment of the immediately previous fiscal year. For the purposes of this section and section 47-655, for the fiscal year 1975 the assessed value of all properties assessed at 55 per centum of estimated market value shall be the assessed value of the property divided by 0.55.

(b) Taxes deferred under this section shall bear interest compounded annually. Notwithstanding any other provision of law, the rate of interest which shall be applied in each year is the average Treasury bill rate for the preceding twelve months as certified by the Secretary of the Treasury to the Commissioner.

(c) No further deferrals of real property tax shall be granted a taxpayer when his deferred tax plus interest equals more than 10 per centum of the current assessed value of his property.

(d) Taxes deferred under this section, together with all accumulated interest, shall constitute a preferential lien upon the property which shall be immediately payable by the seller, transferor, or conveyer whenever the property is sold, refinanced, transferred, or conveyed in any manner, or whenever additional co-owners (other than spouse) are added to the property.

(e) The deferral provided in this section shall terminate June 30, 1979 unless specifically extended by the Council. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 436, 88 Stat. 1059.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBPART G.—DISPOSAL OF TAX DELINQUENT PROPERTY TO ENCOURAGE HOMEOWNERSHIP

§ 47-657. Tax delinquent property to be deeded to District—Redemption.

Notwithstanding any other provision of law, whenever any real property in the District of Columbia has been, or shall hereafter be, offered for sale for nonpayment of taxes or assessments of any kind whatsoever, and shall have been bid off in the name of the District of Columbia, and two years or more have elapsed since such property was bid off as aforesaid, and the same has not been redeemed as provided by law, the Commissioner of the District may enforce the lien of the District for taxes or other assessments on such real property by ordering that a deed in fee simple to such property be issued by the Commissioner of the District of Columbia to the District of Columbia, and up to the time of the issuance of the deed such property may be redeemed by the owner or other person having an interest therein by the payment of all taxes or assessments due the District of Columbia upon said property, and all legal penalties, interest and costs thereon, together with such other expenses and costs, including costs of publication, as may have been incurred by the District. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 437, 88 Stat. 1059.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EFFECTIVE DATE

See note under § 47-621.

CROSS REFERENCE

Delinquent tax list, publication of notice, competitive proposals, sales, see § 47-1001.

§ 47-658. Council to establish program for homeowner-ship of tax delinquent property.

The Council is hereby authorized to establish a program whereby title to properties acquired by tax sale pursuant to section 47-657 may, for whatever sum it deems appropriate, be transferred to persons meeting criteria which shall be established by the Council, who guarantee to pay taxes on and to live in the property for at least five years, and who give assurance of bringing such property into reasonable compliance with the building code in the District. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 438, 88 Stat. 1059.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-657.

SUBCHAPTER III.—MISCELLANEOUS

§ 47-661. Regulations—Penalties.

Except as specifically provided in this chapter, or in other provisions of law applicable to the District of Columbia, the Council may by regulation establish penalties for violations of any provisions of this chapter, including any regulation issued pursuant to this chapter. Such penalties may not exceed imprisonment for longer than one year, or a fine not to exceed \$10,000, or both, for each offense. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 477, 88 Stat. 1065; Jan. 3, 1975, Pub. L. 93-635, § 8(d), 88 Stat. 2177.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

"This chapter", referred to in text, in the original was "this title", meaning title IV of Act Sept. 3, 1974, Pub. L. 93-407. Such title IV enacted this chapter, §§ 47-504, 47-801-1, 47-1567g, and provisions set out as notes under §§ 47-504, 47-621, 47-632; amended §§ 47-801a, 47-2405, 47-2601; and repealed §§ 47-301, 47-501a, 47-602 to 47-605, 47-701 to 47-709, 47-713.

AMENDMENT

1975—Section 8(d) of Act Jan. 3, 1975, Pub. L. 93-635, amended section by striking out "Act" and inserting in lieu thereof "chapter".

EFFECTIVE DATE OF 1975 AMENDMENT

Section 8(e) of Act Jan. 3, 1975, Pub. L. 93-635, provided: "The amendments made by this section shall take effect on and after September 3, 1974."

Chapter 7.—ASSESSMENT OF REAL PROPERTY

Sec.

47-701 to 47-709. Repealed.

47-713. Repealed.

§§ 47-701, 47-702. Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(f), 88 Stat. 1065.

Section 47-701, Act Aug. 14, 1894, ch. 287, § 1, 28 Stat. 283, provided that assessments be made in the name of the owner, and is now covered by § 47-643.

Section 47-702, Acts Aug. 14, 1894, 28 Stat. 283, ch. 287, § 3; Sept. 1, 1916, 39 Stat. 678, ch. 433; July 3, 1926, 44 Stat. 834, ch. 759, § 10, provided that assessments be made annually, and is now covered by § 47-641.

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that these sections are repealed effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621.

NOTES TO DECISIONS UNDER FORMER § 47-701

Notice of assessment

Heirs at law of deceased record owner of realty were not deprived of due process of law by tax sale of the property without actual notice where the district complied with the statutory requirements on notice and the provisions governing the manner in which real property is to be assessed, i. e., mailing the required notices to the record owner. *W. J. Moore et al. v. Government of the District of Columbia et al.* (D.C. App. 1975, 332 A. 2d 749).

Although statutory scheme relating to tax sales might be considered for modernization, i. e., so as to avoid tax sales of property without actual notice to a property owner, such as where the record owner has died and his property has passed to others, such task is not for the court but, rather, for the legislature. *Id.*

§ 47-703. Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(h), 88 Stat. 1065.

Section, Act Mar. 3, 1883, ch. 137, § 5, 22 Stat. 569, provided that assessments be by lot and square, and is now covered by § 47-643.

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that this section is repealed effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621.

§§ 47-704 to 47-707. Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(f), 88 Stat. 1065.

Section 47-704, Act Aug. 14, 1894, ch. 287, § 4, 28 Stat. 283, required the District Commissioner to supply the Board of Assistant Assessors with plats.

Section 47-705, Act Aug. 14, 1894, ch. 287, § 6, 28 Stat. 283, provided that the Board Assistant Assessor's valuation be made separately for improvements and each tract or lot, and is now covered by § 47-642.

Section 47-706, Acts Aug. 14, 1894, 28 Stat. 283, ch. 287, § 7; Sept. 1, 1916, 39 Stat. 678, ch. 433; July 3, 1926, 44 Stat. 834, ch. 759, § 10, required Board of Assistant Assessors to make annual tabulated report of property assessed, and is now covered by § 47-644.

Section 47-707, Act Aug. 14, 1894, ch. 287, § 8, 28 Stat. 283, provided penalties for violations of the Act.

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that these sections are repealed effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621.

§§ 47-708, 47-709. Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(g), 88 Stat. 1065; Jan. 3, 1975, Pub. L. 93-635, § 9, 88 Stat. 2177.

Section 47-708, Acts Aug. 17, 1937, ch. 690, title IX, § 5 (a) (1st five sentences), as added May 16, 1938, 52 Stat. 372, ch. 223, § 8, and amended July 26, 1939, 53 Stat. 1109, ch. 367, title IV § 5(b); July 10, 1952, 66 Stat. 544, ch. 649, § 3(c), related to the composition and duties of the Board of Equalization and Review, and is now covered by § 47-646.

Section 47-709, Acts Aug. 17, 1937, ch. 690, title IX, § 5(a) (last three sentences), as added May 16, 1938, 52 Stat. 372, § 223, § 8, and amended July 26, 1939, 53 Stat. 1109, ch. 367, title IV, § 5(b); July 10, 1952, 66 Stat. 544, ch. 649, § 3(c); July 29, 1970, Pub. L. 91-358, title I, § 161(a) (5), 84 Stat. 580, provided that valuation of real property be complete on the first Monday of May annually, that the valuation be approved by the Commissioner by July 1, annually, and constitute the basis for taxation; and provided for appeals for persons aggrieved by any assessment, equalization, or valuation. See new § 47-646.

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that these sections are repealed effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621. Section 9 of Act Jan. 3, 1975, Pub. L. 93-635, also provided that these sections are repealed effective June 30, 1975.

NOTES TO DECISIONS UNDER FORMER § 47-709

Exhaustion of administrative remedy

Subject matter jurisdiction of Superior Court to grant refund for taxes illegally or erroneously assessed and voluntarily paid does not attach unless taxpayer has made a complaint to Board of Equalization and Review. *District of Columbia et al. v. A. H. Keyes, Jr., et al.* (D.C. App. 1976, 362 A. 2d 729; cert. denied 97 S. Ct. 1651, 430 U.S. 968).

In case wherein taxpayers, who did not appeal within permitted time to Board of Equalization and Review, seek refund of portion of taxes paid due to change in level of assessment from 55% to 60% of estimated value as part of "stairstep" approach to achieve phased increase in de-basement factor for single-family residential properties,

equitable intervention is not justified on theory that District officials' concealment of "stairstep" plan prevented taxpayers from pursuing administrative remedies, in light of fact that other taxpayers were able to discover "stairstep" plan while pursuing administrative remedies. *Id.*

Where taxing officials did not disclose change in assessment levels until after time for administrative review of District of Columbia tax assessments had passed, affected real property owners were not barred from seeking injunctive relief by their failure to exhaust administrative remedies. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A. 2d 848).

Injunctions

Where real property owners who had not sought administrative review of District of Columbia tax assessments were excused from so doing because of lack of knowledge that debasement factor had been raised, those property owners who had sought administrative review of assessments would not be required to wait statutory period and pay tax before applying for relief by injunction. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A. 2d 848).

— Compliance

Where previous judgment of trial court required real property tax assessment of all single-family property at 55%, trial court did not err in rejecting District of Columbia's method of computation which was designed to comply with such judgment and which resulted in average level of assessment of 55.00772%, in ordering that District recompute assessed value, correct tax roll and reissue supplementary tax bills or refunds within 90 days using method suggested by trial court which was designed to reach greater mathematical exactitude in computation of real property taxes, and in declining to view as de minimis differences in amounts of real property taxes between the methods of computation. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1975, 348 A. 2d 305).

Refunds

Taxes, which are illegally or erroneously assessed and voluntarily paid, cannot be refunded, absent an authorizing statute. *District of Columbia et al. v. A. H. Keyes, Jr., et al.* (D.C. App. 1976, 362 A. 2d 729).

Even if it were appropriate to apply principles of equity in uncertified class action, in which taxpayers seek refund of \$1.1 million to \$1.6 million in taxes paid due to certain change in level of assessment and in which taxpayers allege that District's treatment of the tax matter in question is not characterized by candor or adherence to principles of good fiscal management, award of such refunds on equitable principles is not justified, in that adverse impact of refunds on citizenry outweighs economic interest of plaintiff taxpayers. *Id.*

Valuation by court

Fact that property owner, which specifically challenged 1973 real property tax assessment, did not amend the petition specifically to include the 1974 assessment, which was received prior to hearing on the 1973 assessment and which was a mere duplicate of the challenged assessment, did not deprive trial court of power to grant relief as to the 1974 assessment since the trial court is not limited in granting relief to that which a party formally has requested; in any event, taxpayer contested the entire valuation process and not merely a single tax payment. *District of Columbia v. Burlington Apartment House Company* (D.C. App. 1977, 375 A. 2d 1052).

A final judgment of the Superior Court on the lawful assessment of a particular property must be treated in the same manner as an equalized assessment from the Board of Equalization and Review, that is, it becomes the basis for taxation until a subsequent reassessment has been made according to law; once the Superior Court has jurisdiction over valuation, such jurisdiction is co-extensive with the existence of the valuation itself. *Id.*

§ 47-710. Real property and improvements becoming subject to taxation to be listed annually.

CROSS REFERENCE

Composition and functions of Board of Equalization and Review, see § 47-646.

NOTES TO DECISIONS

Assessment

Since taxpayer's allegation that taxes imposed on building which was completed in second half of the year should have been imposed only for the second half and should not have been imposed under statute providing for annual assessment was an attack on the propriety of the annual assessment, taxpayer's attack was on entire assessment, even though taxpayer recognized validity of assessment for the second half, and Superior Court was without jurisdiction to hear the appeal where taxpayer had paid only the first installment of the tax. *George Hyman Construction Co. et al. v. District of Columbia* (D.C. App. 1974, 315 A. 2d 175).

§ 47-711. New buildings under roof to be included in list.

PRIOR PROVISIONS

Provisions which related to the assessment of new buildings under roof were formerly contained in act July 3, 1926, ch. 759, § 3, 44 Stat. 833.

CROSS REFERENCE

Composition and functions of Board of Equalization and Review, see § 47-646.

NOTES TO DECISIONS

Assessment

Since taxpayer's allegation that taxes imposed on building which was completed in second half of the year should have been imposed only for the second half and should not have been imposed under statute providing for annual assessment was an attack on the propriety of the annual assessment, taxpayer's attack was on entire assessment, even though taxpayer recognized validity of assessment for the second half, and Superior Court was without jurisdiction to hear the appeal where taxpayer had paid only the first installment of the tax. *George Hyman Construction Co. et al. v. District of Columbia* (D.C. App. 1974, 315 A. 2d 175).

§ 47-712. Assessment of omitted property—Voided assessments, reassessment of property.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-2405.

§ 47-713. Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(e), 88 Stat. 1065; Jan. 3, 1975, Pub. L. 93-635, § 9, 88 Stat. 2177.

Section, Acts July 1, 1902, 32 Stat. 616, ch. 1352, § 5; Mar. 1, 1921, 41 Stat. 1195, ch. 95, § 1; June 29, 1922, 42 Stat. 669, ch. 249; July 3, 1926, 44 Stat. 833, ch. 759, § 4, provided for assessments according to true value of the property, and for taxes on subdivisions made from July to December, and is now covered by § 47-641.

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that this section is repealed effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621. Section 9 of Act Jan. 3, 1975, Pub. L. 93-635, also provided that this section is repealed effective June 30, 1975.

NOTES TO DECISIONS UNDER PRIOR LAW

Debasement

Where previous judgment of trial court required real property tax assessment of all single-family property at 55%, trial court did not err in rejecting District of Columbia's method of computation which was designed to comply with such judgment and which resulted in average level of assessment of 55.00772%, in ordering that District recompute assessed value, correct tax roll and reissue supplementary tax bills or refunds within 90 days using method suggested by trial court which was designed to reach greater mathematical exactitude in computation of real property taxes, and in declining to view as de minimis differences in amounts of real property taxes between the methods of computation. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1975, 348 A. 2d 305).

Action of District of Columbia taxing authorities in raising debasement factor as to some but not all single-family residences from 55 to 60 percent of fair market value, without any administrative resort left to the taxpayers for amelioration of tax inequities, was unconstitutional and arbitrary action, despite contention that action was taken as part of effort to equalize tax assessments through "stair step" increases of debasement factor for single-family residences so as to bring such properties ultimately into equality with other types of property. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A. 2d 848).

Parties in court suit

Where class of taxpayers sought to be represented by purported intervenors in suit brought on behalf of city commercial property owners seeking declaratory judgment that practice of assessing commercial property at higher percentage of market value than residential property violated this section and the Fifth Amendment had economic interest in outcome of suit, and District of Columbia, which had agreed to set up single level of assessment and had not denied that its dual assessments violated this section and Fifth Amendment principles of equal protection, did not adequately represent such taxpayers, proposed intervenors should be allowed to intervene under Superior Court rule on behalf of all taxpayers other than commercial ones. *Calvin-Humphrey et al. v. District of Columbia et al.* (D.C. App. 1975, 340 A. 2d 795).

Rulemaking

Interpretation or implementation by taxing authorities of words "full and true value" by changing debasement factor for taxation of single-family residences from 55 percent of estimated market value to 60 percent is, within meaning of District of Columbia Administrative Procedure Act, "rulemaking" such as to require publication of notice despite contention that change was part of effort to equalize District of Columbia tax assessments as required by Constitution. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A. 2d 848).

§ 47-716. Application for redistribution or reassessment—Notice—Validity.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Composition and functions of Board of Equalization and Review, see § 47-646.

§ 47-717. Reassessment of real estate by Board of Assistant Assessors.

The Board of Assistant Assessors charged with the assessment of real estate in the District of Columbia is hereby authorized and directed to reassess or redistribute any such general or special assessment or tax levied or due and unpaid in accordance with the provisions of laws for the assessment and equalizations of the valuations of real estate in the District of Columbia for taxation, after notice to owners of record of the land to be assessed, with right of appeal within ten days to the Board of Equalization and Review, as prescribed in section 9 of the Act of August 14, 1894 (28 Stat. 284); and the assessor of said District is hereby authorized and directed to promptly reassess or redistribute any general or special assessment of any kind levied or due and unpaid, as hereinbefore provided. (Mar. 1, 1921, 41 Stat. 1196, ch. 95, § 5.)

REFERENCE IN TEXT

Section 9 of the Act of August 14, 1894, referred to in text, was formerly classified to § 47-708. It was superseded by section 5(a) of the District of Columbia Revenue Act, 1937, as added May 16, 1938, ch. 223, § 8, 52 Stat. 372, which was classified in part to § 47-708. Such section 5(a) was repealed in part by section 474(g) of Act Sept. 3, 1974, Pub. L. 93-407, 88 Stat. 1065. Present provisions relating to the Board of Equalization and Review are set out in § 47-646.

§ 47-721. Reassessment of taxes declared void by court.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-722. Valuation of United States property in the District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 8.—EXEMPTIONS FROM TAXATION

Sec.

§ 47-801-1. Publication of list of exempt property.

§ 47-801-1. Publication of list of exempt property.

The Mayor shall publish, by class and by individual property, a listing of all real property exempt from the real property tax in the District. Such listing shall include the address, lot, and square, the name of the owner, the assessed value of the land and improvements of such property, and the amount of the tax exemption in the previous fiscal year. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 442, 88 Stat. 1060.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was enacted by title IV of Act Sept. 3, 1974, Pub. L. 93-407, and is therefore subject to the definitions and regulations provisions of such title IV, as set out in §§ 47-622 and 47-661.

EFFECTIVE DATE

See note under § 47-621.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 47-801a. Government property—Property of educational, charitable, religious or scientific institutions—Profits arising from sale of property.

The real property exempt from taxation in the District of Columbia shall be the following and none other:

(s) Buildings owned by and actually occupied and used for legitimate theater, music, or dance purposes by a corporation which is not organized or operated for commercial purposes or for private gain, which buildings are open to the public, generally, and for admission to which charges may be made to cover the cost of expenses. (As amended Sept. 3, 1974, Pub. L. 93-407, title IV, § 441, 88 Stat. 1060; Jan. 3, 1975, Pub. L. 93-635, § 8(a), 88 Stat. 2177.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Par. (s), being enacted by title IV of Act Sept. 3, 1974, Pub. L. 93-407, is therefore subject to the definitions and regulations provisions of such title IV, as set out in §§ 47-622 and 47-661.

AMENDMENTS

1975—Section 8(a) of Act Jan. 3, 1975, Pub. L. 93-635, made a technical amendment to the 1974 amendatory act (sec. 441 of Pub. L. 93-407) without making change in the text of the section. Section 8(e) of such Act made this amendment effective on and after Sept. 3, 1974.

1974—Section 441 of Act Sept. 3, 1974, Pub. L. 93-407, added par. (s).

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 47-621.

CROSS REFERENCE

Exemption of international organizations from property taxes, see 22 U.S.C. 288c.

NOTES TO DECISIONS

Application for exemption

Categorically exempt parties must file written application for each change in real estate ownership before first day of next fiscal year after purchase in order to obtain tax exempt status. *Trustees of the Nineteenth Street Baptist Church etc. v. District of Columbia* (D.C. App. 1977, 378 A. 2d 661).

Construction

Where January 5, 1971 was the effective date of amendment of this section providing, inter alia, that any building should not be considered a building used for purposes of public charity, " * * * except that this sentence will not apply to those organizations granted an exemption under this paragraph before the date of enactment of this sentence.", the specific exception or saving clause was controlling, and neither the District of Columbia nor any court had jurisdiction to make thereafter a determination of binding legal effect that the building and grounds of taxpayer corporation were used for purposes of public charity and, thus, exempt from taxation. *District of Columbia v. Linda Pollin Memorial Housing Corporation* (D.C. App. 1973, 313 A. 2d 579).

Subsection (m) of this section exempting from real property tax the property of churches, including buildings and structures reasonably necessary and usual in the performance of activities of the church, and subsection (n) exempting from property tax the buildings which belong to religious corporations or societies and which are primarily and regularly used for religious worship, study, training and missionary activities, are not mutually exclusive, but are complementary; Congress enacted the latter subsection to provide tax exemption to organizations with buildings which, by virtue of their use, could not be classified as churches, but which Congress felt should nonetheless be exempt from real property tax due to character of work carried on within. *District of Columbia v. The Maryland Synod of the Lutheran Church in America* (D.C. App. 1973, 307 A. 2d 735).

Educational purposes

Fact that nonprofit professional resident theater and drama school spent nearly five times more money for its professional theater productions than it did for the school and that the productions generated over five times more income than the school tuitions, although relevant, was not a crucial factor in determining whether school should be granted exemption from real estate taxation on basis that it was an educational institution. *The Washington Theater Club, Inc. v. District of Columbia* (1973, 311 A. 2d 492).

Religious corporation

Real property which was owned by religious organization and rented by the organization with an offer to purchase to church and which the church used primarily and regularly for religious worship, study, training and missionary activities was exempt from real estate tax under subsection (n) of this section exempting from real property tax the buildings which belong to religious corporations or societies and which are primarily and regularly used for religious worship, study, training, and missionary activities. *District of Columbia v. The Maryland Synod of the Lutheran Church in America* (D.C. App. 1973, 307 A. 2d 735).

Fact that rent or income was secured from exempt property was not, standing alone, sufficient reason to assess and tax the property; rather, crux of exemption determination was use of the property and not fact that income might be derived from it. *Id.*

Review

Complaint of church trustees who disputed liability for assessed real estate taxes against previously exempt property was barred by limitations, where petition protesting assessment was filed more than six months after mailing of assessment. *Trustees of the Nineteenth Street Baptist Church etc. v. District of Columbia* (D.C. App. 1977, 378 A. 2d 661).

§ 47-801c. Report as to use of exempt property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-801d. Abatement or refund of tax assessed against exempt property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-801e. Appeal.

NOTES TO DECISIONS

Time to appeal

Specifically exempt educational institutions are excused from making written application for tax exempt status; any real estate acquired by such institutions is considered to be exempt ab initio so long as it is used for educational purposes and that presumption justifies allowing institutions to administratively appeal disputed assessments before litigating them in court; and usual six-month limitations period to petition court is tolled for duration of administrative consideration. *Trustees of the Nineteenth Street Baptist Church etc. v. District of Columbia* (D.C. App. 1977, 378 A. 2d 661).

Complaint of church trustees who disputed liability for assessed real estate taxes against previously exempt property was barred by limitations, where petition protesting assessment was filed more than six months after mailing of assessment. *Id.*

Requirement that petition contesting assessment of real property be filed within six months "after payment of the tax" applies to tax exempt property, and such six-month period runs from date of assessment. *National Graduate University v. District of Columbia* (D.C. App. 1975, 346 A.2d 740).

§ 47-801f. Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-811. Howard University.

NOTES TO DECISIONS

Appeals

Specifically exempt educational institutions are excused from making written application for tax exempt status; any real estate acquired by such institutions is considered to be exempt ab initio so long as it is used for educational purposes and that presumption justifies allowing institutions to administratively appeal disputed assessments before litigating them in court; and usual six-month limitations period to petition court is tolled for duration of administrative consideration. *Trustees of the Nineteenth Street Baptist Church etc. v. District of Columbia* (D.C. App. 1977, 378 A.2d 661).

Chapter 10.—REAL PROPERTY TAX SALES

§ 47-1001. Delinquent tax list—Publication of notice—Competitive proposals—Sale.

The assessor of the District of Columbia shall prepare a list of all taxes on real property in said District subject to taxation on which said taxes are levied and in arrears on the first day of July of each year hereafter; and the Council of the District of Columbia shall fix date of sale. The notice of sale and the delinquent tax list shall be advertised according to regulations prescribed by the Council of the District of Columbia in not less than two major daily newspapers published in the District. If the taxes due, together with the penalties and costs that may have accrued thereon, shall not be paid prior to the day fixed for sale, the property will be sold, under the direction of the Mayor of the District of Columbia, at public auction at the office of the said collector of taxes, commencing at least three weeks after the first publication of said notice and continuing on each following day, Sundays and legal holidays excepted, until all said delinquent property is sold; a description sufficient to identify the property shall be considered a proper description. (Feb. 28, 1898, 30 Stat. 250, ch. 32, § 1; July 1, 1902, 32 Stat. 632, ch. 1358, § 1(1); July 3, 1926, 44 Stat. 834, ch. 759, § 9; Mar. 2, 1927, 44 Stat. 1303, ch. 271; May 21, 1928, 45 Stat. 650, ch. 659; Feb. 25, 1929, 45 Stat. 1268, ch. 314; Oct. 26, 1973, Pub. L. 93-140, § 25(a), 87 Stat. 508.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Acts Feb. 28, 1898, July 1, 1902, and July 3, 1926, contained a provision for the publication of a pamphlet and

for notice of the publication thereof. Acts Mar. 3, 1927, May 21, 1928, and Feb. 25, 1929, abolished this pamphlet and enacted the following provisions which (prior to enactment of Act Oct. 26, 1973) were set out as the second sentence of this section: "The notice of sale and the delinquent tax list shall be advertised once a week for two weeks in the regular issue of one morning and one evening newspaper published in the District of Columbia; and notice shall be given, by advertising twice a week for two successive weeks in the regular issue of two daily newspapers published in the District of Columbia, that such delinquent tax list has been published in two daily newspapers, giving the name of each and the dates and the issues containing said list, and such notice shall be published in the two weeks immediately following the week in which the delinquent tax list shall have been published: *Provided further*, That competitive proposals shall be invited by the Commissioner of the District of Columbia from the several newspapers published in the District of Columbia for publishing the said delinquent tax list."

AMENDMENT

1973—Act Oct. 26, 1973, amended second sentence generally. For prior provisions, see "Codification" note above.

APPROPRIATIONS

See note under § 1-226a.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising, see § 1-809.

Disposal of tax delinquent property to encourage homeownership, see §§ 47-657, 47-658.

NOTES TO DECISIONS

Notice—Deceased owners

Heirs at law of deceased record owner of realty were not deprived of due process of law by tax sale of the property without actual notice where the district complied with the statutory requirements on notice and the provisions governing the manner in which real property is to be assessed, i.e., mailing the required notices to the record owner. *W. J. Moore et al. v. Government of the District of Columbia et al.* (D.C. App. 1975, 332 A.2d 749).

Although statutory scheme relating to tax sales might be considered for modernization, i.e., so as to avoid tax sales of property without actual notice to a property owner, such as where the record owner has died and his property has passed to others, such task is not for the court but, rather, for the legislature. *Id.*

—Sufficiency

Property owners who had actual knowledge of tax debt, the manner in which tax sales are announced, the fact that a sale had occurred, the existence of the two-year redemption period and had extensive experience with tax sales and redemptions and personally visited assessor's office before redemption period had expired, were not denied due process with respect to tax sale of property, despite claim that notice by publication, even though accompanied by notice through the mail, is per se deficient to permit divesting an individual of property consistent with due process of law. *W. T. Coleman et al. v. T. J. Scheve et al.* (D.C. App. 1976, 367 A.2d 135).

Fact that Council changed time of year in which tax sales are made does not rise to level of a due process deprivation, particularly in light of the District's efforts to acquaint property owners with the expiring redemption period. *Id.*

Actual notice to taxpayer would not preclude tax sale from being void for failure to strictly comply with statutory notice. *Potomac Building Corporation v. M. H. Karkenny* (D.C. App. 1976, 364 A.2d 809; cert. denied 97 S. Ct. 2192, 431 U.S. 921).

Where final notice of delinquency was mailed to landowner, announcing that further nonpayment would result in sale, and where certified or registered letter notifying landowner that redemption period was soon to expire was received by person who customarily delivered mail to the landowner, fact that the landowner claimed that he did not receive any notice does not prove that efforts

of the District of Columbia to notify him were insufficient. *T. L. Dodson v. T. J. Scheve et al.* (D.C. App. 1975, 339 A.2d 39; cert. denied 96 S. Ct. 1103, 424 U.S. 909).

§ 47-1001a. Notice to record owner of amount of tax levy.

NOTES TO DECISIONS

Notice—Deceased owners

Heirs at law of deceased record owner of realty were not deprived of due process of law by tax sale of the property without actual notice where the district complied with the statutory requirements on notice and the provisions governing the manner in which real property is to be assessed, i.e., mailing the required notices to the record owner. *W. J. Moore et al. v. Government of the District of Columbia et al.* (D.C. App. 1975, 332 A.2d 749).

Although statutory scheme relating to tax sales might be considered for modernization, i.e., so as to avoid tax sales of property without actual notice to a property owner, such as where the record owner has died and his property has passed to others, such task is not for the court but, rather, for the legislature. *Id.*

—Sufficiency

Where final notice of delinquency was mailed to landowner, announcing that further nonpayment would result in sale, and where certified or registered letter notifying landowner that redemption period was soon to expire was received by person who customarily delivered mail to the landowner, fact that the landowner claimed that he did not receive any notice does not prove that efforts of the District of Columbia to notify him were insufficient. *T. L. Dodson v. T. J. Scheve et al.* (D.C. App. 1975, 339 A.2d 39; cert. denied 96 S. Ct. 1103, 424 U.S. 909).

§ 47-1002. Sale of property—Purchase by District.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1003. Deposit required—Certificate of sale—Tax deed—Redemption.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Redemption—Rights of purchaser

In light of owner's redemption of her property pursuant to judgment of trial court, even though redemption was made on equitable grounds, after expiration of statutory period, the relief available to purchaser of tax certificate is repayment of money he paid to the District for the tax certificate on the property. *J. Robinson et al. v. District of Columbia* (D.C. App. 1977, 372, A.2d 1005).

§ 47-1005. Property sold for taxes redeemable within 2 years from sale.

NOTES TO DECISIONS

Redemption—Rights of purchaser

In light of owner's redemption of her property pursuant to judgment of trial court, even though redemption was made on equitable grounds, after expiration of statutory period, the relief available to purchaser of tax certificate is repayment of money he paid to the District for the tax certificate on the property. *J. Robinson et al. v. District of Columbia* (D.C. App. 1977, 372 A.2d 1005).

§ 47-1006. Report of tax sale to be filed with recorder of deeds—Disposition of surplus on redemption.

NOTES TO DECISIONS

Redemption—Rights of purchaser

In light of owner's redemption of her property pursuant to judgment of trial court, even though redemption was made on equitable grounds, after expiration of statutory period, the relief available to purchaser of tax certificate is repayment of money he paid to the District for the tax certificate on the property. *J. Robinson et al. v. District of Columbia* (D.C. App. 1977, 372 A.2d 1005).

§ 47-1007. Commissioner not to convey any property if sale is void.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Redemption—Rights of purchaser

In light of owner's redemption of her property pursuant to judgment of trial court, even though redemption was made on equitable grounds, after expiration of statutory period, the relief available to purchaser of tax certificate is repayment of money he paid to the District for the tax certificate on the property. *J. Robinson et al. v. District of Columbia* (D.C. App. 1977, 372, A.2d 1005).

§ 47-1008. Payment of expenses of advertising.

The expenses of advertising the notice of sale and delinquent tax list for real property taxes, water charges, sanitary sewer service charges, and special assessments in arrears together with penalties and costs, shall be reimbursed to the District by a charge to be fixed annually by the Mayor and assessed against each lot or piece of property advertised. The amounts so received shall be deposited to such fund of the District as the Mayor shall from time to time determine. (Feb. 28, 1898, 30 Stat. 252, ch. 32, § 7; July 1, 1902, 32 Stat. 635, ch. 1358, § 1(7); May 21, 1928, 45 Stat. 650, ch. 659; Oct. 26, 1973, Pub. L. 93-140, § 25(b), 87 Stat. 508.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1973—Act Oct. 26, 1973, amended section generally. Prior to amendment, the section read: "The expenses of advertising shall be paid by a charge of fifty cents for each lot or piece of property advertised."

1928—Act May 21, 1928, deleted the words "and the printing of said pamphlet" following the word "advertising".

1902—Act July 1, 1902, reduced the charge from one dollar and twenty cents to fifty cents.

APPROPRIATIONS

See note under § 1-226a.

CHARGE FOR PROPERTY ADVERTISED

The District of Columbia Appropriation Act, 1961 (approved Apr. 8, 1960, Pub. L. 86-412, 74 Stat. 18), authorized the Commissioners to fix annually a charge "for each lot or piece of property advertised". This authority was continued by subsequent Appropriation Acts, and was

last continued for fiscal year 1974 by § 10 of the District of Columbia Appropriation Act, 1974 (approved Aug. 14, 1973, Pub. L. 93-91, 87 Stat. 310).

§ 47-1011. Liens on real estate for unpaid taxes—Enforcement—Redemption before sale.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1012. Real estate to be sold—Notice to owner—Parties defendant—Court order—Validity of service and sale.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

NOTES TO DECISIONS

Notice—Deceased owners

Heirs at law of deceased record owner of realty were not deprived of due process of law by tax sale of the property without actual notice where the district complied with the statutory requirements on notice and the provisions governing the manner in which real property is to be assessed, i. e., mailing the required notices to the record owner. *W. J. Moore et al. v. Government of the District of Columbia et al.* (D.C. App. 1975, 332 A. 2d 749).

Although statutory scheme relating to tax sales might be considered for modernization, i. e., so as to avoid tax sales of property without actual notice to a property owner, such as where the record owner has died and his property has passed to others, such task is not for the court but, rather, for the legislature. *Id.*

§ 47-1013. Court to decree sale—No penalty if defect in tax sale.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 47-1016. Taxes erroneously paid to be refunded.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Time limits

Trial court erred in directing District to refund property tax overpayment within ten days of its order; the requisite finality is defined by this section and sections 47-2404 and 47-2407 and is not satisfied by mere lapse of ten days after entry of trial court's order. *District of Columbia v. Burlington Apartment House Company* (D.C. App. 1977, 375 A.2d 1052).

Chapter 11.—SPECIAL ASSESSMENTS

§ 47-1101. Protest against special assessment—Hearing—Report and exceptions—Decision.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1102. Abatement, reduction, or adjustment of special assessment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1103. Notice of levying of special assessment—Publication—Payment of special assessment—Interest.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 47-1105. Assessment for removal of nuisance—Sale for nonpayment.

All assessments authorized to be levied by the District of Columbia to reimburse it for money expended in the removal of nuisances shall bear interest at the rate of one and one-half percent per month or part thereof from the date such assessment was levied. If any such assessment shall remain unpaid after the expiration of sixty days from the date such assessment was levied the property against which such assessment was levied may be sold for such assessment with interest and penalties thereon at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general taxes, if such assessment with interest and penalties thereon shall not have been paid in full prior to said sale. (June 25, 1938, 52 Stat. 1200, ch. 702, § 5; Apr. 19, 1977, D.C. Law 1-124, title VII, § 701, 23 DCR 8749.)

AMENDMENT

1977—Act Apr. 19, 1977, D.C. Law 1-124, amended section by substituting "one and one-half percent" for "one-half of 1 per centum".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 1101 of act Apr. 19, 1977, D.C. Law 1-124, set out as a note under § 47-1557a.

§ 47-1106. Reassessment where special assessment set aside—Hearing—Agent's report to Commissioners.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 12.—TAXATION OF PERSONAL PROPERTY

Sec.

47-1209. Payment of taxes—Late payment penalty—Mandamus to compel filing sworn return—Expenses.

§ 47-1201. Three assistant assessors to assess personal property.

NOTES TO DECISIONS

Mandamus

Mandamus is not the proper remedy for seeking to compel District of Columbia officials to collect taxes from suburban banks on bank credit card business conducted in the District and from large multistate corporations that had not filed or paid taxes on business done within the District, and to adopt procedures to discover, audit, assess, and collect gross sales taxes, where there was no allegation of specific instances in which defendants had failed to assess and collect taxes and where statutes referred to did not set forth any specific procedures for discovery, audit, assessment or collection of the taxes in question. *N. M. Debevoise v. K. Back et al.* (D.C. App. 1976, 359 A. 2d 279).

— Standing of taxpayer

District of Columbia taxpayer lacks standing to maintain suit seeking to compel Director of Department of Finance and Revenue and the Mayor to collect taxes from suburban banks on bank credit card business conducted in the District and from large multistate corporations that had not filed or paid taxes on business done in the District, where taxpayer suggests only that her tax bills might be reduced or her municipal services improved if defendants are required to proceed in the manner requested by her. *N. M. Debevoise v. K. Back et al.* (D.C. App. 1976, 359 A. 2d 279).

§ 47-1202. Personal property to be assessed at full value.

CODIFICATION

That portion of the source statute relating to assessment of real property was classified to § 47-713. Section 47-713, as based on the first paragraph of section 5 of Act July 1, 1902 (32 Stat. 616), was repealed by section 474(e) of Act Sept. 3, 1974, Pub. L. 93-407, 88 Stat. 1065.

§ 47-1207. Rate of taxation—Exceptions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EMERGENCY ACT AMENDMENTS

1977—For temporary provision establishing the tax rate for personal property, see sec. 3 of the Emergency Real and Personal Property Tax Rates Act for Tax Year 1978 (D.C. Act 2-70, Aug. 10, 1977, 24 DCR 1558) and the Second Emergency Real and Personal Property Tax Rates Act for Tax Year 1978 (D.C. Act 2-108, Dec. 1, 1977, 24 DCR 4808).

NOTES TO DECISIONS

Property in bonded warehouse

Taxing authority of District of Columbia does not extend to storage of imported alcoholic beverages in bonded warehouse prior to sale; accordingly, importer who held such beverages in bonded warehouse for sale to diplomatic representatives of foreign governments was not liable for personal property taxes. *District of Columbia v. Samuel Meisel & Company, Inc.* (D.C. App. 1974, 316 A. 2d 546).

§ 47-1208. Personal property exempt from taxation.

NOTES TO DECISIONS

Property in bonded warehouse

Taxing authority of District of Columbia does not extend to storage of imported alcoholic beverages in bonded warehouse prior to sale; accordingly, importer who held such beverages in bonded warehouse for sale to diplo-

matic representatives of foreign governments was not liable for personal property taxes. *District of Columbia v. Samuel Meisel & Company, Inc.* (D.C. App. 1974, 316 A. 2d 546).

§ 47-1209. Payment of taxes—Late payment penalty—Mandamus to compel filing sworn return—Expenses.

Real estate taxes are due and payable in full on or before September 15 annually except that where the real estate tax is less than \$100,000, such tax shall be due and payable semiannually in two equal installments, the first installment to be paid on or before September 15, and the second installment to be paid on or before March 31. Personal taxes of all kinds are due and payable in full at the time prescribed for the filing of the tax return. If any such tax, or any installment thereof, is not paid within the time prescribed, there shall be added to such tax or installment a penalty of 10% of the unpaid amount plus interest on such unpaid amount at the rate of 1% per month or portion of a month until the tax or installment is paid. The amount of unpaid tax, or installment thereof, plus the penalty or interest due, shall constitute a delinquent tax to be collected in the manner prescribed by law.

If any person neglects or refuses to file a return of personal property as required by law, and the assessor certifies to the Mayor of the District of Columbia that, in his opinion, the best information obtainable does not afford a satisfactory basis for assessment, the Mayor may, by petition to the Superior Court of the District of Columbia for mandamus against such person, compel the filing of a sworn return, and in such case the court shall require the person at fault to pay all expenses of the proceeding. (July 3, 1926, 44 Stat. 833, ch. 759, § 5; Feb. 18, 1929, 45 Stat. 1227, ch. 259, § 5; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; May 18, 1954, 68 Stat. 112, ch. 218, § 606; July 29, 1970, Pub. L. 91-358, title I, § 155(c) (48), 84 Stat. 573; June 15, 1976, D.C. Law 1-70, title III, § 301, 23 DCR 537; Apr. 19, 1977, D.C. Law 1-124, title III, § 301(a), 23 DCR 8749.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1977—Act Apr. 19, 1977, D.C. Law 1-124, amended the first paragraph of the section generally.

1976—Act June 15, 1976, D.C. Law 1-70, amended the first paragraph of the section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 1101 of act Apr. 19, 1977, D.C. Law 1-124, set out as a note under § 47-1557a.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402 of act June 15, 1976, D.C. Law 1-70, provided: "The amendments made by Title III, VI, VII, VIII, IX, and X (except sections 1002 and 1003) of this act [for classification of amendments see Tables] shall take effect on the date this act becomes law according to the provisions of section 602(c) of the District of

Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)].”

REPORT ON TAX PAYMENT INCENTIVES OR DISCOUNTS

Section 301(b) of act Apr. 19, 1977, D.C. Law 1-124, title III, provided: “The Mayor of the District of Columbia is directed to report to the Council his recommendations with respect to a program of real property tax payment incentives and/or discounts which would allow for optional participation, and be operational for the payment for real and personal property taxes becoming due and payable after June 30, 1978. A report on this program shall be submitted to the Council on or before 270 days after the effective date of this act, and prior to implementation of such program.”

§ 47-1212. Mercantile establishments and carriers by water.

NOTES TO DECISIONS

Stock in trade

Where art objects were consigned and not sold to art gallery, such art objects did not constitute part of gallery's “stock in trade” so as to be taxable to gallery under personal property tax on stock in trade. *District of Columbia v. Powers Gallery, Inc.* (D.C. App. 1975, 335 A. 2d 244).

§ 47-1214. Clerk of board of personal tax appraisers—Appointment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 13.—ENFORCEMENT OF PERSONAL PROPERTY TAXES BY DISTRAINT OR LEVY

§ 47-1301. Distraint of property for nonpayment of taxes—Sale—Disposition of surplus.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 47-1302. Sale of distrained goods for nonpayment of taxes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 14.—ENFORCEMENT OF PERSONAL PROPERTY TAXES BY ACQUISITION OF LIEN

§ 47-1402. Neglect or refusal to pay personal property taxes—Collection by distraint—Levy—Public notice of intended sale—Sale to be public—Report—Disposition of surplus above taxes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1407. Wrongful distraints—Recoveries.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1412. Secrecy of returns.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 15.—INCOME AND FRANCHISE TAXES

SUBCHAPTER II.—INCOME AND FRANCHISE TAXES FOR TAXABLE YEARS AFTER JANUARY 1, 1947

TITLE V.—RETURNS

Sec.

47-1564. Form of returns and duty to file—Certificates of nonresidence.

TITLE VI.—TAX ON RESIDENTS AND NONRESIDENTS

47-1567a. Personal exemptions.

47-1567e. Repealed.

47-1567f. Credit for campaign contributions.

47-1567g. Credit for property taxes accrued and payable by District of Columbia residents.

SUBCHAPTER I.—INCOME TAX FOR TAXABLE YEARS PRIOR TO JANUARY 1, 1947

§ 47-1504. Gross income and exclusions therefrom.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1505. Deductions from gross income.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1509. Personal exemptions and credit for dependents.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1513. Installment basis.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1515. Individual returns—Husband and wife—Persons under disability—Fiduciaries.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1516. Corporation returns.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1523. Fiduciary returns.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1528. Information from the Bureau of Internal Revenue.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1529. Assessor to administer.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1535. Closing agreements.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1536. Compromises—Concealment of assets—Penalties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1537. Failure to file return.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1543. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1544. Information returns.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1545. Withholding of tax at source.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1546. Licenses — Corporations liable—Duration—Posting — Revocation — Renewal — Penalties — "Business" defined.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER II.—INCOME AND FRANCHISE TAXES FOR TAXABLE YEARS AFTER JANUARY 1, 1947

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1-1182, 5-916, 5-1291, 21-311, 26-702, 29-1121, 47-331, 47-504, 47-1701, 47-2413.

TITLE I.—REPEAL OF PRIOR INCOME TAX LAW AND APPLICABILITY OF SUBCHAPTER; GENERAL DEFINITIONS

§ 47-1551. Repeal of subchapter I and retention of certain provisions thereof.

SHORT TITLES

The first section of act Sept. 23, 1977, D.C. Law 2-19, provided "That this act [amending §§ 47-1557b and 47-1806] may be cited as the 'Act to provide certain deductions for deed recordation taxes and motor vehicle fees and for the accelerated payment of taxes on insurance premium receipts'."

The first section of act Apr. 19, 1977, D.C. Law 1-124, provided "That this act [for classification of act see Tables] may be cited as the 'Revenue Act for Fiscal Year 1978'."

The first section of act June 15, 1976, D.C. Law 1-70, provided "That this act [for classification of the act see Tables] may be cited as the 'Revenue Act of 1976'."

The first section of act Oct. 21, 1975, D.C. Law 1-23, provided "That this act [for classification of act see Tables] may be cited as the 'Revenue Act of 1975'."

REPORT ON FRANCHISE TAX DEDUCTIONS, EXEMPTIONS, AND EXCLUSIONS

Section 801, title VIII, of act June 15, 1976, D.C. Law 1-70, provided:

"(a) The Mayor shall, within twelve months after the effective date of this title, submit to the Committee on Finance and Revenue of the Council and to the District of Columbia Auditor, a report analyzing the deductions, exemptions and exclusions available to entities subject to the provisions of the District franchise tax. This report shall include, but not necessarily be limited to, the following information: (1) the policy and economic justification for each deduction, exemption, and exclusion, (2) a sample of the dollar amounts deducted, exempted, and excluded both in the aggregate and according to the size and category of the business taxed, (3) a sample of the revenue loss to the District resulting from each deduction, exemption and exclusion, both in the aggregate and according to the size and the category of the business taxed, and (4) a bill amending the code of laws for the District to close the loopholes occasioned by the present deductions, exemptions and exclusions available to entities subject to the District franchise tax.

"(b) The Mayor shall report to the Committee on Finance and Revenue of the Council bi-monthly on the status of this report."

SEVERABILITY AND SAVINGS PROVISIONS OF D.C. LAW 1-124

Section 904 of act Apr. 19, 1977, D.C. Law 1-124, title IX, provided:

"(a) The provisions of this act are severable, and if any provision, sentence, clause, section or part is held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the act or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this act would have been adopted if such illegal, invalid, inapplicable or unconstitutional provision, sentence, clause, section or part had not been included herein and if the person or circumstances to which the act or any part is inapplicable had been specifically exempted.

"(b) The repeal or amendment by this act of any provision of law shall not affect any act done or any right accrued or accruing under such provision of law before the effective date of this act, or any suit or proceeding had or commenced, but all rights and liabilities under such law shall continue and may be enforced in the same manner and to the same extent as if the repeal or amendment had not been made. Any act, statute or law inconsistent with the provisions of this act are hereby repealed to the extent of such inconsistency."

PROMULGATION OF REGULATIONS TO IMPLEMENT D.C. LAW 1-124

Section 905 of act Apr. 19, 1977, D.C. Law 1-124, title IX, provided: "The Mayor is hereby delegated the authority to and directed to promulgate regulations implementing this act, but not inconsistent with this act. Such regulations shall be issued in accordance with the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501)."

SEVERABILITY AND SAVINGS PROVISIONS OF D.C. LAW 1-70

Section 1501 of act June 15, 1976, D.C. Law 1-70, title XV, provided:

"(a) The provisions of this act are severable, and if any provision, sentence, clause, section or part is held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses sections or parts of the act or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this act would have been adopted if such illegal, invalid, inapplicable or unconstitutional provision, sentence, clause, section or part had not been included herein and if the person or circumstances to which the act or any part is inapplicable had been specifically exempted.

"(b) The repeal or amendment by this act of any provision of law shall not affect any act done or any right accrued or accruing under such provision of law before the effective date of this act, this act, or any suit or proceeding had or commenced before the effective date of this act, but all rights and liabilities under such law shall continue and may be enforced in the same manner and to the same extent as if the repeal or amendment had not been made."

PROMULGATION OF REGULATIONS TO IMPLEMENT D.C. LAW 1-70

Section 1502 of act June 15, 1976, D.C. Law 1-70, title XV, provided:

"(a) No later than ten legislative days after the date this act becomes law pursuant to section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act, the Mayor shall submit to the Council proposed regulations implementing this act.

"(b) The Council, acting by resolution, shall approve regulations implementing this act no later than five legislative days after the date the Mayor submits the proposed regulations required by subsection (a) of this section. If the Council fails to act within the five legislative day period, the regulations proposed by the Mayor shall be deemed to have been approved, effective the fifth legislative day after the date the Mayor submitted the proposed regulations pursuant to subsection (a) of this section."

SEVERABILITY AND SAVINGS PROVISIONS OF D.C. LAW 1-23

Section 802 of act Oct. 21, 1975, D.C. Law 1-23, title VIII, provided:

"Sec. 802(a) If any provision of this act, including any amendment made by this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act, including the remaining amendments, and the application of such provision to other persons or circumstances shall not be affected thereby.

"(b) The repeal or amendment by this Act of any provision of law shall not affect any act done or any right accrued or accruing under such provision of law before the effective date of this Act or any suit or proceeding had or commenced before the effective date of this Act, but all such rights and liabilities in the same manner and to the same extent, as if such repeal or amendment had not been made.

"(c) All offenses committed, and all penalties incurred, prior to the effective date of this Act, under any provision of law hereby repealed or amended, may be prosecuted and punished in the same manner and with the same effect as if this Act had not been enacted."

REPORT ON TOTAL IMPACT OF TAXES AND USER CHARGES

Section 602 of act Oct. 21, 1975, D.C. Law 1-23, provided: "The Mayor of the District of Columbia shall, within six months after the effective date of this section, submit to the Finance and Revenue Committee of the Council of the District of Columbia and to the District of Columbia Auditor, a report which shall analyze the total impact of all District of Columbia taxes and user charges. This report shall set forth all information which the Mayor deems useful to a full understanding of the impact of the tax structure. It shall specifically set forth the impact and revenue of all taxes, as a sum, on individual residents grouped by income class and family status, (including unmarried, married, single parent, retired, and such other classifications as are appropriate). The same analysis shall be given for each separate tax on individuals. Such analysis shall include consideration of business taxes and charges likely to be passed on to consumers. The report shall also set forth the impact and revenue of each tax on commercial and professional activity, and on businesses grouped by type and size of business activity. In addition to the impact and revenue analysis, the report shall set forth the distribution of returns for each tax grouped by quartile of revenue starting from the quartile containing the fewest returns. An estimate of the revenue effect and collection expense should be given for changes in major exemptions and deductions."

§ 47-1551c. General definitions.

For the purposes of this subchapter and wherever appearing herein, unless otherwise required by the context—

(h) The words "trade or business" include the engaging in or carrying on of any trade, business, profession, vocation or calling or commercial activity in the District of Columbia; and include the performance of the functions of a public office: *Provided, however*, That the words "trade or business" shall not include, for the purposes of this subchapter—

(1) Sales of tangible personal property whereby title to such property passes within or without the District, by a corporation or unincorporated business which does not physically have or maintain an office, warehouse, or other place of business in the District, and which has no officer, agent, or representative having an office or other place of business in the District, during the taxable year; or

(2) Repealed. Oct. 21, 1975, D.C. Law 1-23, title VI, § 609, 22 DCR 2114.

For purposes of this proviso, the words "agent" or "representative" shall not include any independent broker engaged independently in regularly soliciting orders in the District for sellers and who holds himself out as such.

(u) The term "dependent" means a dependent as defined in section 152 of the Internal Revenue Code of 1954 [26 U.S.C. 152].

(v) The term "head of a family" means an individual who maintains in one household one or more dependents as defined in paragraph (u) of this section. The term "head of a family" means an individual who is single, or if married, separated from husband or wife.

(As amended Oct. 21, 1975, D.C. Law 1-23, title VI, §§ 601 (1), (2), 609, 22 DCR 2105, 2106, 2114.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended section as follows:

- (1) Repealed subsec. (h) (2).
- (2) Amended subsec. (u) generally.
- (3) Amended the last sentence of subsec. (v) generally.

EFFECTIVE DATE OF 1975 AMENDMENT

Sec. 801(d) of act Oct. 21, 1975, D.C. Law 1-23, provided: "The amendments made by section 601 [amending §§ 47-1551c, 47-1554, 47-1557a, 47-1557b, 47-1564a, 47-1567a, 47-1567b, and repealing § 47-1567e] shall apply with respect to taxable years beginning on and after January 1, 1975."

Sec. 801(g) of act Oct. 21, 1975, D.C. Law 1-23, provided: "Sections 603, 604, 605, and 609 [amending §§ 47-1571a, 47-1574b, 47-1574, and 47-1551c, respectively] shall take effect with taxable years beginning on and after January 1, 1975."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-147, 47-1557b, 47-1561, 47-1564, 47-1580.

NOTES TO DECISIONS

Resident

For purposes of income tax liability, former resident of the District of Columbia who had obtained employment at a Navy establishment in Japan, who worked there for five years, who returned to the District of Columbia only once, for the purpose of attending the funeral of father, who, upon learning that he was being transferred to Hawaii, requested that his Internal Revenue Service forms be sent to his mother's address in the District of Columbia because he was uncertain of his new address, whose transfer to Hawaii never materialized, and who returned to work in the District of Columbia only when he could not find other work in Japan was not domiciled in the District of Columbia. *J. A. Alexander, Jr. v. District of Columbia* (D.C. App. 1977, 370 A.2d 1327).

TITLE II.—EXEMPT ORGANIZATIONS

§ 47-1554. Exempt organizations.

The following organizations shall be exempt from taxation under this subchapter, except to the extent that such organizations have unrelated business taxable income subject to tax under sections 511 of the Internal Revenue Code of 1954 [26 U.S.C. 511], in which event such organizations shall be subject to tax under this article on said unrelated business taxable income:

(As amended Oct. 21, 1975, D.C. Law 1-23, title VI, § 601(3), 22 DCR 2106.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended the commencing phrase generally to add the exception relating to organizations having unrelated business taxable income.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(d) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1551c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1571a, 47-1574b.

TITLE III.—NET INCOME, GROSS INCOME AND EXCLUSIONS THEREFROM, AND DEDUCTIONS

§ 47-1557a. Gross income and exclusions therefrom.

(b) The words "gross income" shall not include the following:

(18) *Unemployment Compensation*.—Payments received by an individual from the District of Columbia Unemployment Compensation Board or a similar State agency for those periods during which he is unemployed.

(c) *Adjusted gross income*.—The words "adjusted gross income" as used in this subchapter mean gross income less the deductions allowed under section 47-1557b(a), *Provided* That the deductions were directly incurred in carrying on a trade or business, and less alimony payments; *And provided further*, That in determining adjusted gross income, no deductions shall be allowed for charitable contributions, medical and dental expenses, an optional standard deduction, losses of property not connected with a trade or business or for an allowance for salaries or compensation for personal services of the

person or persons liable for the tax. Alimony payments mean periodic payments made by one spouse to his or her spouse or former spouse pursuant to a decree of divorce or a legally binding separate maintenance agreement. Alimony payments allowed as an adjustment to gross income shall be included in the gross income of the recipient, if the recipient is a resident of the District. (As amended Oct. 21, 1975, D.C. Law 1-23, title VI, § 601(4), 22 DCR 2106; Apr. 19, 1977, D.C. Law 1-124, title IV, § 401(a), 23 DCR 8749.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1977—Act Apr. 19, 1977, D.C. Law 1-124, amended subsec. (c) generally. For prior provisions, see the 1973 edition of the Code.

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended subsec. (b) by adding at the end thereof a new par. (18).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 1101 of act Apr. 19, 1977, D.C. Law 1-124, title XI, provided:

"This act [for classification of act, see Tables] shall become effective in accordance with the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)], provided that:

"a. Sections 101(a)(1) [amending § 40-103(b)] (relating to the motor vehicle registration fee) shall apply after September 30, 1977.

"b. Section 301 [amending § 47-1209] (relating to the time for payment of real property and personal taxes) shall apply with respect to taxes, or installments thereof, becoming due and payable after June 30, 1978.

"c. Title IV [amending §§ 47-1557a, 47-1557b, 47-1564a, 47-1567d, 47-1567g, 47-1589e, and 47-1591] (except sections 401(b)(5) [amending § 47-1557b(a)(18)] (relating to the deduction for child care) and 401(d)(2) A [amending § 47-1567g(a)(2)] (relating to eligibility for the property tax credit) shall apply with respect to taxable years beginning after December 31, 1976.

"d. Section 401(d)(2) A [amending § 47-1567g(a)(2)] (relating to eligibility for the property tax credit) shall apply with respect to taxable years beginning after December 31, 1977."

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(d) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1551c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-933, 47-1567g, 47-15771, 47-1580.

§ 47-1557b. Deductions.

(a) *Deductions allowed.*—The following deductions shall be allowed from gross income in computing net income:

* * * * *

(2) *Interest.*—(a) There shall be allowed as a deduction all interest paid or accrued within the taxable year on indebtedness.

(b) (i) If personal property or educational services are purchased under a contract—

A. which provides that payment of part or all of the purchase price is to be made in installments, and

B. in which carrying charges are separately stated but the interest charge cannot be ascer-

tained, then, the payments made during the taxable year under the contract shall be treated for the purposes of this section as if they included interest equal to 6 percent of the average unpaid balance under the contract during the taxable year. For the purposes of the preceding sentence, the average unpaid balance is the sum of the unpaid balance outstanding on the first day of each month beginning during the taxable year divided by 12. For the purposes of this subsection (b), the term "educational services" means any service (including lodging)

(i) which is purchased from an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on and (ii) which is provided for a student of such institution.

(ii) In the case of any contract to which paragraph (i) applies, the amount treated as interest for any taxable year shall not exceed the aggregate carrying charge which is properly attributable to that taxable year.

(c) For the purposes of this title, any annual or periodic rental under a redeemable ground rent (excluding amounts in redemption thereof) shall be treated as interest on an indebtedness secured by a mortgage.

(d) (i) In the case of a taxpayer other than a corporation or an unincorporated business, the amount of investment interest (as defined in subparagraph (vi) D) otherwise allowable as a deduction under this subparagraph (2) shall be limited, in the following order, to—

A. \$10,000 (\$5,000, in the case of a separate return by a married individual), plus

B. the amount of the net investment income (as defined in subparagraph (vi) A) plus the amount (if any) by which the deductions allowable under this subsection (a)(2) (determined without regard to this subsection (d)(i)) and subsections (a)(1) (as it relates to the deduction for ordinary and necessary trade or business expenses), (a)(3) (as it relates to the deduction for taxes on real and personal property) and (a)(12) (relating to the deduction for non-trade or non-business expenses) of this section attributable to property of the taxpayer subject to a net lease exceeds the rental income produced by the property for the taxable year. In the case of a trust, the \$10,000 amount specified in subparagraph A. shall be zero.

(ii) The amount of disallowed investment interest for any taxable year shall be treated as investment interest paid or accrued in the succeeding taxable year, but in no event shall a carryover apply to a carryover determined in a taxable year beginning before January 1, 1977.

(iii) A. For the purposes of this subsection (d), property subject to a lease shall be treated as property held for investment and not as property used in a trade or business, for a taxable year, if—

i. for such taxable year the sum of the deductions of the lessor with respect to such property which are allowable solely by reason of subsec-

tion (a) (1) of this section (other than rents and reimbursed amounts with respect to such property) is less than 15 percent of the rental income produced by such property, or

ii. the lessor is either guaranteed a specified return or is guaranteed in whole or in part against loss of income.

B. In the case of a partnership (other than an unincorporated business as defined in section 47-1574) each partner shall take into account separately his distributive share of the partnership's investment interest and the other items of income and expense taken into account under this subsection (d).

C. For the purposes of this subsection (d), interest paid or accrued on indebtedness incurred or continued in the construction of property to be used in a trade or business shall not be treated as investment interest.

(iv) This subsection (d) shall not apply with respect to investment interest, investment income, and investment expenses attributed to a specific item of property, if the indebtedness with respect to such property—

A. is for a specified term, and

B. was incurred before October 28, 1976 or is incurred after October 27, 1976 pursuant to a written contract or commitment which, on such date and at all times thereafter prior to the incurring of such indebtedness, is binding on the taxpayer.

For taxable years beginning after December 31, 1976, this paragraph shall be applied on an allocation basis rather than a specific item basis.

(v) For the purposes of subparagraph (iii) A of this subsection (d)—

A. if a parcel of real property of the taxpayer is leased under two or more leases, paragraph (iii) A. i. shall, at the election of the taxpayer, be applied to treating all leased portions of such property as subject to a single lease; and

B. at the election of the taxpayer, paragraph (iii) A. i. shall not apply with respect to real property of the taxpayer which has been in use for more than 5 years. An election under subsection A. or B. of subparagraph (iii) shall be made at such time and in such manner as the Mayor prescribes by regulations.

In the case of any 50 percent owned corporation, unincorporated business, or partnership, the \$10,000 figure specified in subsection (d) (i) shall be increased by the lesser of—

i. \$15,000, or

ii. the interest paid or accrued during the taxable year on investment indebtedness incurred or continued in connection with the acquisition of the interests in such corporation, unincorporated business, or partnership.

In the case of a separate return by a married individual, \$7,500 shall be substituted for the \$15,000 figure in clause i of this subsection B.

This paragraph shall apply with respect to indebtedness only if the taxpayer, his spouse, and his or her children own 50 percent or more of the total value of all classes of stock of the corporation or 50 percent or more of all capital interests in the

unincorporated business or partnership, as the case may be.

(vi) For the purposes of this subparagraph (2)—

A. The term “net investment income” means the excess of investment income over investment expenses.

B. The term “investment income” means—

i. the gross income from interest, dividends, rents and royalties,

ii. the net short-term capital gain attributable to the disposition of property held for investment and

iii. any amount treated under sections 1245 (relating to gain from dispositions of certain depreciable property) and 1250 (relating to gain from dispositions of certain depreciable realty) of the Internal Revenue Code of 1954 [26 U.S.C. 1245 and 1250], as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231 of the Internal Revenue Code of 1954 [26 U.S.C. 1231] (relating to property used in the trade or business and involuntary conversions), but only to the extent such income, gain, and amounts are not derived from the conduct of a trade or business.

C. The term “investment expenses” means the deductions allowable under subsections (a) (1) (relating to ordinary and necessary business expenses), (a) (3) (a) (1) (as it relates to real and personal property taxes), (a) (5) (relating to bad debts), (a) (7) (relating to depreciation), or (a) (12) (relating to nontrade or nonbusiness expenses) of this section directly connected with the production of investment income. For the purposes of this subparagraph (2), the deduction allowable with respect to any property under subsection (a) (7) of this section may be treated as the amount which would have been allowable had the taxpayer depreciated the property under the straight line method for each taxable year of its useful life for which the taxpayer has held the property.

D. The term “investment interest” means interest paid or accrued on indebtedness incurred or continued to purchase or carry property held for investment.

E. The term “disallowed investment interest” means, with respect to any taxable year, the amount not allowable as a deduction solely by reason of the limitation in subparagraph (d) (i) of this subparagraph (2).

(3) *Taxes.*—(a) Except as otherwise provided in this section, the following taxes shall be allowed as a deduction for the taxable year within which paid or accrued:

(i) State and local taxes paid on real property, personal property or intangibles, *Provided* That the property or intangible is non-income producing;

(ii) State and local taxes on income producing real property, personal property or intangibles, but only to the extent that and in the ratio that the income from the property or intangible is subject to taxation under this subchapter:

(iii) State and local sales taxes,

(iv) State and local taxes on the sale of gasoline and other motor fuels,

(v) The District tax imposed pursuant to subsection (a) of section 45-723 (relating to the tax on deeds).

(vi) Effective for taxable years beginning before January 1, 1978, the District fee imposed pursuant to section 40-103 (relating to the motor vehicle registration fee).

(vii) State and local taxes not described in the preceding subsections which are paid or accrued within the taxable year in carrying on a trade or business or an activity described in subparagraph (12) of subsection (a) (relating to the deduction for nontrade or nonbusiness expense); provided that no deduction shall be allowed on account of (i) the tax imposed under sections 47-1571 and 47-1571a (relating to the tax on corporations) or sections 47-1574 to 47-1574e (relating to the tax on unincorporated businesses) or (ii) state, local or foreign income taxes.

(b) No deduction shall be allowed for the following taxes:

(i) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed; but this paragraph shall not prevent the deduction of so much of such taxes as is properly allocable to maintenance of interest charges,

(ii) Taxes on real property, to the extent that subsection (c) requires such taxes to be treated as imposed on another taxpayer,

(iii) Taxes taken as a credit under section 47-1567d(a),

(iv) Taxes imposed pursuant to section 1451 of the Internal Revenue Code of 1954 [26 U.S.C. 1451] (relating to tax-free covenant bonds), and

(v) Federal income taxes, including—

A. the tax imposed by section 3101 of the Internal Revenue Code of 1954 [26 U.S.C. 3101] (relating to the tax on employees under the Federal Insurance Contributions Act);

B. the taxes imposed by sections 3201 and 3211 of the Internal Revenue Code of 1954 [26 U.S.C. 3201 and 3211] (relating to the taxes on railroad employees and railroad employee representatives); and

C. the tax withheld at source on wages under section 3402 of the Internal Revenue Code of 1954 [26 U.S.C. 3402] and corresponding provisions of prior revenue laws,

(vi) Federal war profits and excess profits taxes,

(vii) estate, inheritance, legacy, succession, and gift taxes,

(viii) income, war profits, and excess profits taxes imposed by the authority of any foreign country or possession of the United States, if the taxpayer chooses to take to any extent the benefits of section 901 of the Internal Revenue Code of 1954 [26 U.S.C. 901] (relating to the foreign tax credit).

(c) (i) For the purposes of subsection (a) of this subparagraph (3), if real property is sold during any real property tax year, then—

A. so much of the real property tax as is properly allocable to that part of such year which ends on the day before the date of the sale shall be treated as a tax imposed on the seller, and

B. so much of the real property tax as is properly allocable to that part of such year which begins on the date of the sale shall be treated as a tax imposed on the purchaser.

(ii) A. In the case of any sale of real property, if—

(1). a taxpayer may not, by reason of his method of accounting, deduct any amount for taxes unless paid and

(2). the other party to the sale is (under the law imposing the real property tax) liable for the real property tax for the real property tax year, then for the purposes of subsection (a) of this subparagraph (3) the taxpayer shall be treated as having paid, on the date of the sale, so much of the real property tax as, under subsection C(i) ¹ of this subsection is treated as imposed on the taxpayer. For the purposes of the preceding sentence, if neither party is liable for the tax, then the party holding the property at the time the tax becomes a lien on the property shall be considered liable for the real property tax for the real property tax year.

B. Subsection (b) (i) of this subparagraph (3) shall not apply to taxable years ending after December 31, 1976 but only in the case of sales after December 31, 1976.

C. In the case of a sale of real property, if the taxpayer's taxable income for the taxable year during which the sale occurs is computed under an accrual method of accounting, and if no election under section 461(c) of the Internal Revenue Code of 1954 [26 U.S.C. 461(c)] as of January 1, 1977 (relating to the accrual of real property taxes) applies, then, for the purposes of subsection (a) of this subparagraph (3), that portion of such tax which—

i. is treated, under subsection (c) (i) of this subparagraph (3) as imposed on the taxpayer, and

ii. may not, by reason of the taxpayer's method of accounting, be deducted by the taxpayer for any taxable year, shall be treated as having accrued on the date of the sale.

(d) Where a corporation pays a tax imposed on a shareholder on his interest as a shareholder and where the shareholder does not reimburse the corporation, then—

(i) the deduction allowed by subsection (a) of this subparagraph (3) shall be allowed to the corporation; and

(ii) no deduction shall be allowed to the shareholder for such tax.

(e) For the purposes of this subparagraph (3):

(i) The term "personal property tax" means an ad valorem tax which is imposed on an annual basis in respect of personal property.

¹ So in original.

(ii) A. The term "general sales tax" means a tax imposed at one rate in respect of the sale at retail of a broad range of classes of items.

B. In the case of items of food, clothing, medical supplies, and motor vehicles—

i. the fact that the tax does not apply in respect of some or all of such items shall not be taken into account in determining whether the tax applies in respect of a broad range of classes of items, and

ii. the fact that the rate of tax applicable in respect of some or all of such items is lower than the general rate of tax shall not be taken into account in determining whether the tax is imposed at one rate.

C. Except in the case of a lower rate of tax applicable in respect of an item described in subparagraph (ii) B of this subsection (e), no deduction shall be allowed under this subparagraph (3) for any general sales tax imposed in respect of an item at a rate other than the general rate of tax.

D. A compensating use tax in respect of an item shall be treated as a general sales tax. For the purposes of the preceding sentence, the term "compensating use tax" means, in respect of any item, a tax which—

i. is imposed on the use, storage, or consumption of the item, and

ii. is complimentary to a general sales tax, but only if a deduction is allowable under subsection (a) (iii) in respect of items sold at retail in the taxing jurisdiction which are similar to such item.

E. A state or local tax includes only a tax imposed by a state, a possession of the United States, a political subdivision of either of the foregoing, or by the District.

F. A foreign tax includes only a tax imposed by the authority of a foreign country.

G. If the amount of any general sales tax or of any tax on the sale of gasoline or other motor fuel is separately stated, then, to the extent that the amount so stated is paid by the consumer (otherwise than in connection with the consumer's trade or business) to his seller, the amount shall be treated as a tax imposed on and paid by the consumer.

* * * * *

(9) *Medical, dental and other expenses.* (a) There shall be allowed as a deduction the following amounts, not compensated for by insurance or otherwise—

(i) the amount by which the amount of the expenses paid during the taxable year (reduced by any amount deductible under subparagraph (ii) for medical care of the taxpayer, his or her spouse, and dependents (as defined in section 47-1551c(u)) exceeds 3 percent of the adjusted gross income, and

(ii) an amount (not in excess of \$150) equal to one-half of the expenses paid during the taxable year for insurance which constitutes medical care for the taxpayer, his or her spouse, and dependents.

(b) Amounts paid during the taxable year for medicine and drugs which (but for this subsection (b)) would be taken into account in computing the deduction under subsection (a) shall be taken into account only to the extent that the aggregate of those amounts exceeds 1 percent of the adjusted gross income.

(c) (i) For the purposes of subsection (a), expenses for the medical care of the taxpayer which are paid out of his or her estate during the 1-year period beginning with the day after the date of his or her death shall be treated as paid by the taxpayer at the time incurred.

(ii) Paragraph (i) shall not apply if the amount paid is claimed on any other District of Columbia tax return as a deduction in computing the taxable estate of the decedent, but this paragraph shall not apply if (within the time and in the manner and form prescribed by the Mayor) there is filed—

A. a statement that such amount has not been allowed as a deduction on any other District of Columbia tax return and

B. a waiver of the right to have such amount allowed at any time as a deduction on any other District of Columbia tax return.

(d) For the purposes of this subsection (9)—

(i) The term "medical care" means amounts paid—

A. for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body,

B. for transportation primarily for and essential to medical care referred to in subparagraph (a), or

C. for insurance (including amounts paid as premiums under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.]) (relating to supplementary medical insurance for the aged) covering medical care referred to in subparagraphs A and B.

(ii) In the case of an insurance contract under which amounts are payable for other than medical care referred to in subparagraphs A and B of subparagraph (i) of this subsection (d)—

A. no amount shall be treated as paid for insurance to which paragraph (i) C. applies unless the charge for the insurance is either separately stated in the contract, or furnished to the policyholder by the insurance company in a separate statement.

B. the amount taken into account as the amount paid for the insurance shall not exceed the charge, and

C. no amount shall be treated as paid for the insurance if the amount specified in the contract (or furnished to the policyholder by the insurance company in a separate statement) as the charge for the insurance is unreasonably large in relation to the total charges under the contract.

(iii) Subject to the limitations of subparagraph (ii), premiums paid during the taxable

year by a taxpayer before he or she attains the age of 65 for insurance covering medical care (within the meaning of subparagraphs A. and B. of subparagraph (i)) for the taxpayer, his or her spouse, or a dependent after the taxpayer attains the age of 65 shall be treated as expenses paid during the taxable year for insurance which constitutes medical care if premiums for the insurance are payable (on a level payment basis) under the contract for a period of 10 years or more or until the year in which the taxpayer attains the age of 65 (but in no case for a period of less than 5 years).

(iv) The determination of whether an individual is married at any time during the taxable year shall be made as follows:

A. the status as husband and wife of two individuals having taxable years beginning on the same day shall be determined—

i. if both have the same taxable year, as of the close of such year; and

ii. if one dies before the close of the taxable year of the other, as of the time of such death.

B. An individual who is legally separated from his or her spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(e) Any expense for household and dependent care shall not be treated as an expense paid for medical care.

(10) Repealed. Apr. 19, 1977, D.C. Law 1-124, title IV, § 401(b) (4), 23 DCR 8749.

(13) *Optional standard deduction and irrevocable election.*—In lieu of the foregoing deductions, any resident may elect to deduct for the taxable year an optional standard deduction of 10 per centum of the adjusted gross income or \$1,000, whichever is lesser; in the case of joint returns filed by husband and wife living together, the combined standard deduction shall be limited to 10 per centum of the adjusted gross income of both, or \$1,000, whichever is lesser; in the case of separate returns by husband and wife living together, the standard deduction of each spouse shall be limited to 10 per centum of the adjusted gross income of that spouse or \$500, whichever is lesser, but the standard deduction shall be allowed to neither if the net income of one of the spouses is determined by itemizing the deductions.

A change in a taxpayer's election to claim the optional standard deduction or to itemize deductions may be made in the same manner as is required and to the same extent as is permitted under the provisions of section 144(b) of the Federal Internal Revenue Code [26 U.S.C. 144(b)].

In the case of a part year resident whose taxable year is less than twelve calendar months, the optional standard deduction shall be ten percent of his adjusted gross income or \$1,000.00 prorated by the number of months in which he was a resident, whichever is lesser. For this purpose, more than one half of a month shall be considered a full

month and one half of a month or less shall not be considered.

(15) *Reasonable allowances for salaries.*—A reasonable allowance for salaries or other compensation for personal services actually rendered, except that—

(A) in the case of an unincorporated business

(i) which by law, custom, or ethics cannot be incorporated

(ii) which can be incorporated only under chapter 11 of title 29; or

(iii) in which more than 80 percent of the income is derived from the personal services actually rendered by the individual owners or members of the partnership or other entity and in which capital is not a material income-producing factor,

the aggregate deduction for services rendered by the individual owners or members actively engaged in the conduct of such an unincorporated business shall in no event exceed 70 percent of the net income of such unincorporated business computed without benefit of this deduction; and

(B) in the case of all other unincorporated businesses to which paragraph (A) does not apply, the aggregate deduction for services rendered by the individual owners or members actively engaged in the conduct of the unincorporated business shall in no event exceed 30 percent of the net income of such unincorporated business computed without benefit of this deduction.

Nothing contained in paragraphs (A) or (B) shall be construed to exempt any salary or other compensation for personal services from taxation as a part of the taxable income of the person receiving such salary or other compensation.

(17) *Real estate investment trusts.*—In the case of a real estate investment trust as defined in section 856 of the Internal Revenue Code of 1954 [26 U.S.C. 856], which meets the requirements of section 857(a) of the Internal Revenue Code of 1954 [26 U.S.C. 857(a)], the dividends paid by the real estate investment trust which qualify for the dividends-paid deduction under section 857(b) (2) (C) and section 857(b) (3) (A) (ii) of the Internal Revenue Code of 1954 [26 U.S.C. 857(b) (2) (C) and 857(b) (3) (A) (ii)], including dividends considered as having been paid during the taxable year by reason of section 858 of the Internal Revenue Code of 1954 [26 U.S.C. 858].

(18) *Household and dependent care services.*—To the same extent that such amount is deductible under section 214 of the Internal Revenue Code of 1954 [26 U.S.C. 214], any amount expended by an individual for household and dependent care services necessary for gainful employment; *Provided, however,* that the requirement of section 214 of the Internal Revenue Code of 1954 that married

couples must file a single return jointly, shall not be applicable.

* * * * *

(As amended Oct. 21, 1975, D.C. Law 1-23, title VI, § 601(5), (6), 22 DCR 2107; Nov. 1, 1975, D.C. Law 1-31, § 2, 22 DCR 2547; Feb. 3, 1976, D.C. Law 1-44, §§ 2, 3, 23 DCR 4055; June 15, 1976, D.C. Law 1-70, title XI, § 1101, 23 DCR 562; Apr. 19, 1977, D.C. Law 1-124, title IV, § 401(b), 23 DCR 8749; Sept. 23, 1977, D.C. Law 2-19, § 2, 24 DCR 3338.)

AMENDMENT OF SUBSECTION (a) (18)

Section 401(b) (5) of act Apr. 19, 1977, D.C. Law 1-124, provided that effective for taxable years beginning after December 31, 1974, but before January 1, 1977, subsection (a) (18) was amended to read as follows:

(18) Household and dependent care services.—To the same extent that such amount was deductible under section 214 of the Internal Revenue Code of 1954 [26 U.S.C. 214] on January 1, 1975, any amount expended by an individual for household and dependent care services necessary for gainful employment; Provided, That the requirement that married couples file a single return jointly shall not be applicable.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCES IN TEXT

Section 214 of the Internal Revenue Code [26 U.S.C. 214], referred to in subsec. (a) (18), was repealed by Pub. L. 94-455, § 504(b) (1), Oct. 14, 1976, 90 Stat. 1565. The repeal is applicable to taxable years beginning after Dec. 31, 1975.

AMENDMENTS

1977—Act Sept. 23, 1977, D.C. Law 2-19, reenacted subsec. (a) (3) (a) (v) and (vi).

Section 401(b) (1)-(4) of act Apr. 19, 1977, D.C. Law 1-124, amended subssecs. (a) (2), (3), and (9) generally and repealed subsec. (a) (10). For prior provisions, see the 1973 edition of the Code.

Section 401(b) (5) of that act amended subsec. (a) (18) generally effective for taxable years beginning after December 31, 1974, but before January 1, 1977.

1976—Act June 15, 1976, D.C. Law 1-70, amended subsec. (a) (13) by striking out the last sentence of the first paragraph and the second paragraph and by adding the second and third paragraphs.

Section 2 of act Feb. 3, 1976, D.C. Law 1-44, repealed act Nov. 1, 1975, D.C. Law 1-31, cited as a source credit.

Section 3 of such act amended subsec. (a) (15) generally. For prior provisions, see 1973 edition of the Code.

1975—Act Nov. 1, 1975, D.C. Law 1-31, amended subsec. (a) (15) by striking out the figure "20" and inserting in lieu thereof "55".

Act Oct. 21, 1975, D.C. Law 1-23, renumbered par. (16) of subsec. (a), relating to Real Estate Investment Trusts, as par. (17), and added par. (18) relating to Household and Dependent Care Services.

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of subsec. (a) (18), see sec. 2 of the Emergency Household and Dependent Care Services Deduction Act of 1977 (D.C. Act 2-17, Mar. 30, 1977, 23 DCR 8183).

1976—For temporary amendment of subsec. (a) (18), see sec. 2 of the Emergency Household and Dependent Care

Services Deduction Act of 1976 (D.C. Act 1-185, Dec. 30, 1976, 23 DCR 4931).

1975—For temporary amendment of subsec. (a) (15), see secs. 2 and 3 of the Emergency Amended Unincorporated Business Franchise Tax Revision Act of 1975 (D.C. Act 1-78, Dec. 18, 1975, 22 DCR 3453).

EFFECTIVE DATES OF 1977 AMENDMENTS

Section 4 of act Sept. 23, 1977, D.C. Law 2-19, provided: "This act [amending §§ 47-1557b and 47-1806] shall become effective in accordance with the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

For effective date of act Apr. 19, 1977, D.C. Law 1-124, see section 1101 of that act set out as a note under § 47-1557a.

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 1404 of act June 15, 1976, D.C. Law 1-70, provided: "The amendments [to this section and § 47-1564 and 47-1567b] made by Titles XI and XII shall take effect with respect to taxable years beginning on or after January 1, 1976."

Section 5 of act Feb. 3, 1976, D.C. Law 1-44, provided: "The amendments [to this section and § 47-1574c] made by this act shall apply with respect to taxable years beginning on or after January 1, 1975."

EFFECTIVE DATE OF 1975 AMENDMENT BY D.C. LAW 1-31

Section 3 of act Nov. 1, 1975, D.C. Law 1-31, provided that "This act [amending § 47-1557b(a) (15)] shall apply with respect to taxable years beginning on and after January 1, 1975." Act Nov. 1, 1975, D.C. Law 1-31, was repealed by section 2 of act Feb. 3, 1976, D.C. Law 1-44.

EFFECTIVE DATE OF 1975 AMENDMENT MADE BY D.C. LAW 1-23

See sec. 801(d) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1551c.

SHORT TITLES

The first section of act Feb. 3, 1976, D.C. Law 1-44, provided "That this act [amending this section and § 47-1574c] may be cited as the 'Amended Unincorporated Business Franchise Tax Revision Act of 1975'."

The first section of act Nov. 1, 1975, D.C. Law 1-31, provided "That this act [amending § 47-1557b(a) (15)] may be cited as the 'District of Columbia Unincorporated Business Franchise Tax Revision Act of 1975'." Act Nov. 1, 1975, D.C. Law 1-31, was repealed by section 2 of act Feb. 3, 1976, D.C. Law 1-44.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1192, 29-1121, 47-1557a, 47-1567b, 47-1577d, 47-1577g, 47-1583e.

TITLE V.—RETURNS

§ 47-1564. Form of returns and duty to file—Certificates of nonresidence.

* * * * *

(d) *Certificates of Nonresidence.*—Except for elective officers of the United States Government and any member of the Executive Branch of the United States Government appointed by the President of the United States and subject to confirmation by the Senate of the United States and who serves at the pleasure of the President, all individuals described in the second sentence of section 47-1551c(s) shall file with the Mayor of the District of Columbia a certificate of nonresidence in such form, manner, and at such times as the Mayor shall, by regulation, prescribe. (As amended June 15, 1976, D.C. Law 1-70, title XI, § 1102, 23 DCR 563.)

AMENDMENT

1976—Act June 15, 1976, D.C. Law 1-70, added subsec. (d).

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 1404 of act June 15, 1976, D.C. Law 1-76, set out as a note under § 47-1557b.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1564b, 47-1564c.

§ 47-1564a. Requirement—Who must file.

Each of the following persons shall file a return with the Assessor stating specifically the items of his gross income and the items claimed as deductions and credits allowed under this subchapter, and such other information for the purpose of carrying out the provisions of this subchapter as the Assessor may require:

(a) *Residents and nonresidents.*—Every nonresident of the District receiving income subject to tax under this subchapter and every resident of the District, except fiduciaries, when—

(1) his gross income for the taxable year, if single, or if married and not living with husband or wife, exceeds the personal exemptions authorized for the taxpayer as of July 1, 1975, by subsection (b) of section 151 of the Internal Revenue Code of 1954 [26 U.S.C. 151(b)]; or

(2) his gross income for the taxable year, if married and living with husband or wife, exceeds the combined amount of the personal exemptions authorized for the taxpayer and the spouse of the taxpayer as of July 1, 1975, by subsection (b) of section 151 of the Internal Revenue Code of 1954 [26 U.S.C. 151(b)]; or

(3) his gross sales or gross receipts from any trade or business other than an unincorporated business subject to tax under sections 47-1574 to 1574e, exceeds \$5,000, regardless of the amount of his gross income; or

(4) the combined gross income for the taxable year of a husband and wife living together exceeds the combined amount of the personal exemptions authorized as of July 1, 1975, for the taxpayer and the spouse of the taxpayer by subsection (b) of section 151 of the Internal Revenue Code of 1954 [26 U.S.C. 151(b)], or the combined gross sales or gross receipts from any trade or business, other than an unincorporated business subject to tax under sections 47-1574 to 47-1574e, exceeds \$5,000, regardless of the amount of their gross income.

(b) *Fiduciaries.*—Every fiduciary (except a receiver appointed by authority of law in possession of only part of the property of an individual) for—

(1) every individual if single, or if married and not living with husband or wife, for whom he acts having a gross income for the taxable year in excess of the amount of his personal exemption as authorized for the taxpayer as of July 1, 1975, by subsection (b) of section 151 of the Internal Revenue Code of 1954 [26 U.S.C. 151(b)];

(2) every individual, if married and living with husband or wife, for whom he acts having a gross income for the taxable year in excess of their personal exemptions as authorized for the taxpayer as of July 1, 1975, by subsection (b) of section 151

of the Internal Revenue Code of 1954 [26 U.S.C. 151(b)];

(3) every estate for which he acts, the gross income of which for the taxable year is in excess of its personal exemption, which is equivalent to the personal exemption authorized for an individual as of July 1, 1975, by subsection (b) of section 151 of the Internal Revenue Code of 1954 [26 U.S.C. 151(b)]; or

(4) every trust for which he acts, the gross income of which for the taxable year is \$100 or over.

* * * * *

(f) *Unincorporated businesses.*—Every unincorporated business engaging in or carrying on any trade or business within the District or receiving income from sources within the District within the meaning of sections 47-1580 to 47-1580b and having a gross income of more than \$12,000, regardless of whether it has a net income. The return shall be made by the taxpayer or taxpayers liable for the payment of the tax.

* * * * *

(As amended Oct. 21, 1975, D.C. Law 1-23, title VI, § 601(7), 22 DCR 2107; Apr. 19, 1977, D.C. Law 1-124, title IV, § 401(c), 23 DCR 8749.)

AMENDMENTS

1977—Act Apr. 19, 1977, D.C. Law 1-124, amended par. (f) generally. For prior provisions, see the 1973 edition of the Code.

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended pars. (a) and (b) generally.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 1101 of act Apr. 19, 1977, D.C. Law 1-124, set out as a note under § 47-1557a.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(d) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1551c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-1564b.

§ 47-1564b. Filing of returns.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1586f, 47-1586l-1.

§ 47-1564c. Divulging of information.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-1586g.

TITLE VI.—TAX ON RESIDENTS AND NONRESIDENTS

§ 47-1567a. Personal exemptions.

(a) (1) There shall be allowed to residents the same deductions for personal exemptions as are allowed as of July 1, 1975, under section 151 of the Internal Revenue Code of 1954 [26 U.S.C. 151].

(2) A taxpayer who qualifies as head of a family shall be allowed a personal exemption in an amount which is twice the amount allowed the taxpayers as of July 1, 1975, by subsection (b) of section 151 of the Internal Revenue Code of 1954 [26 U.S.C. 151(b)].

(b) In the case of a return made for a fractional part of a taxable year, the personal exemptions shall

be reduced to amounts which bear the same ratio to the full exemptions provided as the number of months in the period for which the return is made bears to twelve months. (July 16, 1947, 61 Stat. 343, ch. 258, Art. I, title VI, § 2; May 27, 1949, 63 Stat. 132, ch. 146, title IV, § 412; Mar. 31, 1956, 70 Stat. 70, ch. 154, § 6; Sept. 4, 1957, 71 Stat. 605, Pub. L. 85-281, § 2; Oct. 21, 1975, D.C. Law 1-23, title VI, § 601(8), 22 DCR 2109.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended section generally.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(d) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1551c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1567, 47-1574e, 47-1577b, 47-1577d.

§ 47-1567b. Imposition and rates of tax—Optional method of computation.

(a) In the case of a taxable year beginning after December 31, 1975, there is hereby imposed on the taxable income of every resident a tax determined in accordance with the following table:

<i>If the taxable income is:</i>	<i>The tax is:</i>
Not over \$1,000-----	2% of the taxable income.
Over \$1,000 but not over \$2,000----	\$20, plus 3% of excess over \$1,000.
Over \$2,000 but not over \$3,000----	\$50, plus 4% of excess over \$2,000.
Over \$3,000 but not over \$4,000----	\$90, plus 5% of excess over \$3,000.
Over \$4,000 but not over \$5,000----	\$140, plus 6% of excess over \$4,000.
Over \$5,000 but not over \$10,000---	\$200, plus 7% of excess over \$5,000.
Over \$10,000 but not over \$13,000--	\$550, plus 8% of excess over \$10,000.
Over \$13,000 but not over \$17,000--	\$790, plus 9% of excess over \$13,000.
Over \$17,000 but not over \$25,000--	\$1,150, plus 10% of excess over \$17,000.
Over \$25,000-----	\$1,950, plus 11% of excess over \$25,000.

(b) In lieu of the method of computation prescribed by subsection (a), a resident reporting on a cash basis for any full calendar year who does not claim credit for taxes paid by him to any State or Territory of the United States or political subdivision thereof under the provisions of section 47-1567d on the whole or any part of his income for such calendar year and, if his gross income for such calendar year is \$5,000 or less, and is derived solely from salaries, wages, dividends, and interest, may elect to pay the tax in accordance with a table to be included in regulations of the Council of the District of Columbia.

(1) In applying such table the taxpayer's marital status on the last day of the taxable year shall control.

* * * * *

(As amended Oct. 21, 1975, D.C. Law 1-23, title VI, § 601(9), 22 DCR 2110; June 15, 1976, D.C. Law 1-70, title XII, § 1201(a), 23 DCR 564.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1976—Act June 15, 1976, D.C. Law 1-70, amended subsec. (a) generally. For prior provisions, see the 1973 edition of the Code.

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended subsec. (b) (1) generally.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 1404 of act June 15, 1976, D.C. Law 1-70, set out as a note under § 47-1557b.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(d) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1551c.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

NOTES TO DECISIONS

Domicile as a prerequisite to tax liability

For purposes of income tax liability, former resident of the District of Columbia who had obtained employment at a Navy establishment in Japan, who worked there for five years, who returned to the District of Columbia only once, for the purpose of attending the funeral of father, who, upon learning that he was being transferred to Hawaii, requested that his Internal Revenue Service forms be sent to his mother's address in the District of Columbia because he was uncertain of his new address, whose transfer to Hawaii never materialized, and who returned to work in the District of Columbia only when he could not find other work in Japan was not domiciled in the District of Columbia. *J. A. Alexander, Jr. v. District of Columbia* (D.C. App. 1977, 370 A.2d 1327).

§ 47-1567d. Credits against tax.

* * * * *

(c) (i) In the case of an individual who maintains a household which includes as a member one or more qualifying individuals, there shall be allowed as a credit against the tax imposed by this title for the taxable year an amount equal to 6 percent of the employment-related expenses paid by an individual during the taxable year, but in no event shall the credit allowed exceed the amount of tax otherwise due without preference to this subsection.

(ii) The amount of the employment related expenses incurred during any taxable year which may be taken into account under subparagraph (i) shall not exceed

A. \$2,000 if there is 1 qualifying individual with respect to the taxpayer for such taxable year, or

B. \$4,000 if there are 2 or more qualifying individuals with respect to the taxpayer for such taxable year.

(iii) Except as otherwise provided in this subsection (c), the amount of the employment-related expenses incurred during any taxable year which may be taken into account under subparagraph (i) shall not exceed—

A. in the case of an individual who is not married at the close of the taxable year, the individual's earned income for the year, or

B. In the case of an individual who is married at the close of the taxable year, the lesser of the

individual's earned income or the earned income of his or her spouse for the taxable year.

(iv) In the case of a spouse who is a student or a qualified individual, for the purposes of subparagraph (iii) the spouse shall be deemed for each month during which he or she is a full-time student at an educational institution or is a qualifying individual to be gainfully employed and to have earned income of not less than—

A. \$166 if subsection (ii) A. applies for the taxable year, or

B. \$333 if subsection (ii) B. applies for the taxable year.

In the case of any husband and wife, this paragraph shall apply with respect to only the spouse for any one month.

(v) For the purposes of this subsection (c)—

A. An individual shall be treated as maintaining a household for any period only if over half the cost of maintaining the household for the period is furnished by the individual (or, if the individual is married during such period, is furnished by his or her spouse).

B. If the taxpayer is married at the close of the taxable year, the credit shall be allowed under subparagraph (i) only if the taxpayer and his or her spouse file a joint return or separate returns on a combined form for the taxable year.

C. An individual legally separated from his or her spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(vi) If—

A. an individual who is married and who files a separate return—

(i) maintains as his or her home a household which constitutes for more than one-half of the taxable year the principal place of abode of a qualifying individual, and

(ii) furnishes over half of the cost of maintaining the household during the taxable year, and

B. during the last 6 months of the taxable year the individual's spouse is not a member of the household, the individual shall not be considered as married.

(vii) If—

A. a child (i.e., a son, stepson, daughter or stepdaughter) who is under the age of 15 or who is physically or mentally incapable of caring for himself or herself receives over half of his or her support during the calendar year from his or her parents who are divorced under a decree of divorce or legally separated under a written separation agreement, and

B. such child is in the custody of one or both of his or her parents for more than one-half of the calendar year, in the case of any taxable year beginning in the calendar year the child shall be treated as being a qualifying individual with respect to that parent who has custody for a longer period during the calendar year than the other parent, and shall not be treated as being a qualifying individual with respect to the other parent.

(viii) A. Except as provided in subsection B. no credit shall be allowed under subsection C.(i) for any amount paid by the taxpayer to an individual bearing a relationship to the taxpayer described in paragraphs (1) through (8) of section 152(a) of the Internal Revenue Code of 1954 [26 U.S.C. 152(a)] (relating to the definition of dependent) or to a dependent described in paragraph (9) of such section 152(a).

B. Subsection A. shall not apply to any amount paid by the taxpayer to an individual with respect to whom, for the taxable year of the taxpayer in which the service is performed, neither the taxpayer nor his or her spouse is entitled to a deduction under the provisions of subsection (e) of section 151 of the Internal Revenue Code of 1954 [26 U.S.C. 151(e)] (relating to the personal exemption for dependents), but only if the service with respect to which the amount is paid constitutes employment within the meaning of section 3121(b) of the Internal Revenue Code of 1954 [26 U.S.C. 3121(b)].

(ix) For the purposes of this subparagraph (c):

A. The term "qualifying individual" means—

(i) a dependent of the taxpayer who is under the age of 15 and with respect to whom the taxpayer is entitled to a deduction under section 151(e) of the Internal Revenue Code of 1954,

(ii) a dependent of the taxpayer who is physically or mentally incapable of caring for himself or herself, or

(iii) the spouse of the taxpayer, if he or she is physically or mentally incapable of caring for himself or herself.

B.(i) The term "employment-related expenses" means amounts paid for the following expenses, but only if the expenses are incurred to enable the taxpayer to be gainfully employed for any period for which there are 1 or more qualifying individuals with respect to the taxpayer:

A. expenses for household services, and

B. expenses for the care of a qualifying individual:

(ii) Employment-related expenses as described in subparagraph B.(i) which are incurred for services outside the taxpayer's household shall be taken into account only if incurred for the care of a qualifying individual described in subparagraph (viii) A.

C. The term "student" means an individual who during each of 5 calendar months during the taxable year is a fulltime student at an educational organization.

D. The term "educational organization" means an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(As amended Apr. 19, 1977, D.C. Law 1-124, title IV, § 401(d) (1), 23 DCR 8749.)

AMENDMENT

1977—Act Apr. 19, 1977, D.C. Law 1-124, added subsec. (c).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 1101 of act Apr. 19, 1977, D.C. Law 1-124, set out as a note under § 47-1557a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1557b, 47-1567b, 47-1574e, 47-1577b.

§ 47-1567e. Repealed. Oct. 21, 1975, D.C. Law 1-23, title VI, § 601(10), 22 DCR 2110.

Section, act July 16, 1947, ch. 258, Art. I, title VI, § 6, as added Oct. 31, 1969, Pub. L. 91-106, title VI, § 605(a), 83 Stat. 179, provided a tax credit to certain low-income residents for sales tax paid on purchases of groceries.

EFFECTIVE DATE OF REPEAL

See sec. 801(d) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1551c.

§ 47-1567f. Credit for campaign contributions.

(a) For the purpose of encouraging residents of the District to participate in the election process in the District, there shall be allowed to an individual a credit against the tax (if any) imposed by this subchapter in an amount equal to 50 per centum of any campaign contribution made to any candidate for election to any office referred to in section 1-1101, but in no event shall such credit exceed the amount of \$25, or \$50 in the case of married persons filing a joint return.

(b) (1) A husband and wife filing separate returns for a taxable year for which a joint return could have been made by them may claim between them only the total credit (or refund) to which they would have been entitled under this section had a joint return been filed.

(2) No individual for whom a personal exemption was allowed on another individual's return shall be entitled to a credit (or refund) under this section. (July 16, 1947, ch. 258, Art. I, title VI, § 7, as added Aug. 14, 1974, Pub. L. 93-376, title VII, § 702(a), 88 Stat. 470; Sept. 2, 1976, D.C. Law 1-79, title VIII, § 804, 23 DCR 2050.)

AMENDMENT

1976—Act Sept. 2, 1976, D.C. Law 1-79, amended subsec. (a) by substituting "\$25, or \$50" for "\$12.50, or \$25".

EMERGENCY ACT AMENDMENT

1977—For temporary provision relating to the effective date of the amendment of subsec. (a) by sec. 804 of D.C. Law 1-79, see sec. 403 of the Elections and Latino Community Development Emergency Amendments Act of 1976 (D.C. Act 1-215, Jan. 12, 1977, 23 DCR 5108).

EFFECTIVE DATE

Section effective Aug. 14, 1974, see section 705(b) of the Act Aug. 14, 1974, Pub. L. 93-376, set out as a note under § 1-1121.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 403 of act Apr. 23, 1977, D.C. Law 1-126, title IV, provided: "The amendment [to § 47-1567f(a)] made by section 804 of the District of Columbia Election Act Amendments of 1976 (D.C. Law No. 1-79) shall be deemed effective for taxable years beginning on or after January 1, 1976."

See section 808 of act Sept. 2, 1976, D.C. Law 1-79, set out as a note under § 1-1121.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1574e, 47-1577b.

§ 47-1567g. Credit for property taxes accrued and payable by District of Columbia residents.

(a) (1) For purposes of providing relief to certain District of Columbia residents who own or rent their

principal place of abode and who reside in same, a credit shall be allowed to the eligible claimant equal to the amount by which all or a portion of real property taxes the taxpayer pays, or rent paid constituting property taxes, on his principal place of residence for the taxable year, exceeds a percentage (determined under subsection (a) (2)) of his household gross income for that year.

(2) The percentage required by paragraph (1) to be determined under this subsection for taxpayers shall be the percentage specified in the following table, *Provided however*, That the credit shall not exceed \$400.

If household gross income is:	The percentage of the real property tax paid or rent constituting the real property tax, which shall constitute the credit is:
Under \$3,000-----	95 per centum of tax in excess of 2 per centum of income.
\$3,000 to \$4,999-----	90 per centum of tax in excess of 3 per centum of income.
\$5,000 to \$6,999-----	85 per centum of tax in excess of 4 per centum of income.
\$7,000 to \$10,000-----	80 per centum of tax in excess of 4 per centum of income.

(b) For purposes of this section:

(1) (A) The term "household gross income" means gains, profits, and income derived from salaries, wages, or compensation for personal services of whatever kind and in whatever form paid, including salaries, wages, and compensation paid by the United States to its officers and employees, or income derived from any trade or business or sales or dealings in property whether real or personal, including capital assets as defined in this subchapter growing out of the ownership or sale of or interest in such property; income from rent, royalties, interest, dividends, securities, of transactions of any trade or business carried on for gain or profit, or gains or profits and income derived from any source whatever, including but not limited to alimony, and separate maintenance payments (including amounts received under separate maintenance agreements), strike benefits, cash public assistance and relief (not including relief or credit granted under this section), sick pay, workmen's compensation, proceeds of life insurance policies, the gross amount of any pension or annuity (including railroad retirement benefits, veterans' disability pensions, or payment received under the Federal Social Security Act [42 U.S.C. 301 et seq.]), State or District of Columbia unemployment compensation laws, and nontaxable interest received from the United States, a State or any agency or instrumentality thereof. The word "income" does not include gifts from nongovernmental sources, food stamps, or food or other relief in kind supplied by a governmental agency.

(B) In determining household gross income the exclusions from gross income as provided by subsection (b) of section 47-1557a shall not apply.

(2) The term "household income" shall have the same meaning as the words "adjusted gross income"

are defined in subsection (c) of section 47-1557a. For purposes of determining adjusted gross income within the meaning of this section, gross income shall mean household income as defined in this section.

(3) The term "home" means the claimant's dwelling house, whether owned or rented by the claimant, and so much of the land surrounding it as is reasonably necessary for use of the dwelling as a home, and may include a multiunit building or a multipurpose building and a part of the land upon which it is located.

(4) The term "claimant" means a person who has filed a claim under this section, was an owner of record of a home in the District, or a lessee, tenant at will or tenant at sufferance paying rent on a home in the District, during the entire calendar year preceding the year in which he files a claim for relief under this section. Only one claimant per home and per household per year shall be entitled to relief under this section.

(5) (A) The term "rent paid" is that amount paid by or on behalf of a claimant to a landlord solely for the right of occupancy of a home in the District, including the right to use the personal property located therein. Utility charges may be included in the amount of rent paid if they are included in the amount paid to a landlord in connection with the right to occupancy. "Rent paid" does not include: advance rental payments for another period; rental deposits, whether or not expressly set out in the rental agreement; any charges for medical services or food provided by the landlord; or payments made to a landlord for the right of occupancy of property which is exempt from District real property taxes.

(B) The term "rent constituting property taxes accrued" means 15 per centum of the rent paid in any calendar year by a claimant solely for the right of occupancy of his home in the calendar year, and which constitutes the basis of a claim in the succeeding calendar year for a credit for property taxes paid.

(c) In the event that any installment of rent for a calendar year for which a claim is filed is paid prior to the beginning of or subsequent to the end of such calendar year, it shall be included as rent for the year for which the claim was made and for no other year, and shall not be included as rent for purposes of this section for the year in which the installment was paid.

(d) If the Mayor determines that the rent paid was not the result of an agreement entered into at arm's length between the tenant and his landlord, the Mayor may adjust the rent to a reasonable amount for the purposes of this section.

(e) (1) Beginning with calendar year 1977 and for each succeeding calendar year, if a claimant owns and occupies his home in the District on December 31 of any such year, "property taxes accrued" means real property taxes (exclusive of special assessments, interest on a delinquency in payment of tax, and any penalties and service charges) as reflected on the District real estate tax bill ordinarily sent out in September of such year. If a home is an integral part of a larger unit such as a multipurpose building or a multidwelling building, property taxes accrued shall be that percentage of the total property taxes

accrued as the value of the home bears to the total value of the property.

(2) When a claimant owns or rents two or more different homes in the District in the same calendar year, property taxes accrued" or "rent constituting property taxes accrue" ¹ shall be based on the claimant's status as an owner or renter on December 31 of such calendar year.

(3) When a claimant rents two or more different homes in the District in the same calendar year, rent paid by the claimant during that year shall be determined by dividing the rent paid pursuant to the last rental agreement in force during that calendar year by the number of months during that calendar year for which this rent was paid and by multiplying the result by twelve.

(f) The right to file under this section shall be personal to the claimant, but such right may be exercised by his legal guardian or attorney-in-fact. The right to file a claim shall not survive the death of a claimant. If a claimant dies after having filed a claim, any amount refunded as a result thereof shall be disbursed to his estate: *Provided*, That if no executor or administrator qualifies therein within two years of the filing of the claim, or no petition for distribution of a small estate is filed pursuant to sections 20-2101 and 20-2102, the claim shall not be allowed.

(g) Subject to the limitations provided in this section, commencing with the taxable year beginning after December 31, 1974, and for succeeding taxable years, the claimant may claim as a credit against the District income taxes otherwise due on his income, property taxes accrued or rent constituting property taxes accrued for that year. If the allowable amount of such claim exceeds the income taxes otherwise due from the claimant, or other tax liabilities of the claimant to the District, or if there are no District income taxes due from the claimant, the amount of the claim not used as an offset against income taxes or other tax liabilities of the claimant to the District shall be paid or credited to the claimant. No interest shall be allowed on any payment made to a claimant pursuant to this section.

(h) No claim with respect to property taxes accrued or with respect to rent constituting property taxes accrued shall be allowed unless a District of Columbia individual income tax return or (if the claimant is not required to file such return) a claim for credit under this section is filed with the District on the forms and in such manner and with such information as the Mayor may prescribe. Any claim for credit shall be filed with the District on or before the expiration of the three (3) year statute of limitations. The statute of limitations shall commence to run on April 15 of the year following the year for which the claim is made.

(i) The amount of any claim otherwise payable under this section may be applied by the District against any outstanding tax liability of the claimant to the District.

(j) (1) In determining eligibility for the credit allowable under this section, and for the purpose of determining outstanding tax liability (if any) of

¹ So in original. Probably should be "property taxes accrued" or "rent constituting property taxes accrued".

the claimant to the District household income for which the claim is filed and the claimant's outstanding tax liability (if any) shall be determined on the basis of the combined household income of all members present in the household.

(2) In the case of husband and wife, who during the entire calendar year for which a claim is filed under this section, maintains separate homes, for the purpose of determining household income and the claimant's outstanding tax liability (if any), such husband and wife shall be deemed to have been unmarried during the calendar year for which the claim is made.

(k) No credit shall be allowed under this title for any year during which the person claiming the credit was a dependent, under any State, Federal, or District law levying a tax on income, unless during that year such person is or becomes sixty-five years of age or older.

(l) Repealed. Apr. 19, 1977, D.C. Law 1-124, title IV, § 401(d) (2) F, 23 DCR 8749.

(m) A claimant whose claim is based on the amount of rent paid shall substantiate the rent paid upon a request by the Mayor.

(n) (1) If, on an audit of any claim filed under this section, the Mayor finds the amount to have been incorrectly computed, he shall determine the correct amount and notify the claimant in accordance with the procedures set forth in section 47-1586d.

(2) If it is determined that a claim was filed with fraudulent intent, it shall be disallowed in full. If the claim has been paid or a credit has been allowed against income taxes otherwise payable, the credit shall be canceled and the amount paid shall be assessed against the claimant and recovered in the same manner as provided for the collection of taxes under section 47-312.

(o) No claim for relief under this section shall be allowed to any person who was not living in a home which was subject to District of Columbia real property taxation during the calendar year for which the claim is filed.

(p) Repealed. Apr. 19, 1977, D.C. Law 1-124, title IV, § 401(d) (2) H, 23 DCR 8749.

(q) The Mayor is authorized to provide a table which will approximate, as closely as feasible, the amount of relief allowable under this section.

(r) If it is determined by the District that a claimant received title to his home in the District or became legally obligated to pay rent for his home in the District primarily for the purpose of receiving benefits under the provisions of this section, his claim shall be disallowed.

(s) The Council of the District of Columbia is empowered to make such changes in the amount of annual relief provided under subsection (a) of this section as it may deem proper. (July 16, 1947, ch. 258, Art. I, title VI, § 8, formerly § 7, as added Sept. 3, 1974, Pub. L. 93-407, title IV, § 451, 88 Stat. 1060; renumbered and amended Jan. 3, 1975, Pub. L. 93-635, § 7(a) (1), (b) (1), (c)-(e), 88 Stat. 2176; Apr. 19, 1977, D.C. Law 1-124, title IV, § 401(d) (2), 23 DCR 8749.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was enacted by title IV of Act Sept. 3, 1974, Pub. L. 93-407, and is therefore subject to the definitions and regulations provisions of such title IV, as set out in §§ 47-622 and 47-661.

AMENDMENTS

Section 401(d) (2) A of act Apr. 19, 1977, D.C. Law 1-124, amended subsec. (a) (2) generally, effective for taxable years beginning after December 31, 1977.

Section 401(d) (2) B of such act amended subsec. (b) (5) (A) generally and added subsec. (b) (5) (B).

Section 401(d) (2) C of such act amended subsec. (e) generally.

Section 401(d) (2) D of such act amended subsec. (h) by substituting the last two sentences for "Any claim for credit shall be filed on or before the time prescribed for the filing of a return of individual income under this subchapter. The Mayor may grant a reasonable extension of time, not to exceed six months, for the filing of a return or claim for credit under this section whenever in his judgment good cause exists therefor."

Section 401(d) (2) E of such act amended subsec. (j) (1) by striking out " , except there shall be excluded from the computation of gross household income the first \$1,000 earned by a dependent".

Section 401(d) (2) F of such act repealed subsec. (l). Section 401(d) (2) G of such act amended subsec. (m) generally.

Section 401(d) (2) H of such act repealed subsec. (p).

1975—Section 7(a) (1) of Act Jan. 3, 1975, Pub. L. 93-635, made technical amendments to the source statute (sec. 451 of Pub. L. 93-407) without making change in the text of the section. Section 7(a) (2) of such Act made these amendments effective on and after Sept. 3, 1974.

Section 7(b) (1) of such Act renumbered section 7 of the 1947 Act as section "(8)". Section 7(b) (3) of such Act made this amendment effective on and after Jan. 1, 1975.

Section 7(c) of such Act amended subsec. (f) by striking out "the first section of the Act of September 14, 1965 (D.C. Code, secs. 20-2101 and 20-2102)" and inserting in lieu thereof "sections 20-2101 and 20-2102".

Section 7(d) of such Act amended subsec. (p) by striking out "paragraph (1)" and inserting in lieu thereof "subsection (n) (1)".

Section 7(e) of such Act amended subsec. (s) by striking out "section 7(a) of this title" and inserting in lieu thereof "subsection (a) of this section".

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of subsecs. (a) (2) and (b) (5)-(8), see sec. 4 of the Emergency Residential Property Tax Relief Act of 1977 (D.C. Act 2-69, Aug. 10, 1977, 24 DCR 1548) and the Second Emergency Residential Property Tax Relief Act of 1977 (D.C. Act 2-111, Dec. 5, 1977, 24 DCR 4820).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 1101 of act Apr. 19, 1977, D.C. Law 1-124, set out as a note under § 47-1557a.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 7(f) of Act Jan. 3, 1975, Pub. L. 93-635, provided: "The amendments [to subsecs. (f), (p), and (s)] made by subsections (c), (d), and (e) shall take effect as provided in section 451 of that Act [Public Law 93-407] as if the sections (as amended) amended by such subsections had been included in Public Law 93-407 on the date of its enactment."

EFFECTIVE DATE

Section 451 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that this section is effective Jan. 1, 1975.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1574e, 47-1577b.

TITLE VII.—TAX ON CORPORATIONS

§ 47-1571. Taxable income defined.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1557b, 47-1574, 47-1589.

§ 47-1571a. Imposition and rate of tax.

For the privilege of carrying on or engaging in any trade or business within the District and of receiving income from sources within the District, there is hereby levied (a) for one taxable year beginning on or after January 1, 1975, a tax at the rate of 12 per centum upon the taxable income of every corporation, whether domestic or foreign, (except those expressly exempt under section 47-1554), and (b) for the taxable years beginning on or after January 1, 1976, a tax at the rate of 9 per centum upon the taxable income of every corporation, whether domestic or foreign (except those expressly exempt under section 47-1554), and (c) for the taxable years beginning on or after January 1, 1976, but before January 1, 1978, a surtax at the rate of 10 per centum of the tax determined under clause (b) hereof. The minimum tax payable under this section shall be \$25.00. (July 16, 1947, 61 Stat. 345, ch. 258, Art. I, title VII, § 2; Aug. 2, 1968, Pub. L. 90-450, title II, § 202(a), 82 Stat. 612; Oct. 31, 1969, Pub. L. 91-106, title VI, § 604(a)(1), 83 Stat. 178; Dec. 15, 1971, Pub. L. 92-196, title IV, §§ 401, 403, 85 Stat. 653, 654; Oct. 21, 1975, D.C. Law 1-23, title VI, § 603, 22 DCR 2111; July 27, 1976, D.C. Law 1-77, § 2, 23 DCR 1218.)

AMENDMENTS

1976—Act July 27, 1976, D.C. Law 1-77, amended section generally.

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended section generally.

EMERGENCY ACT AMENDMENT

1976—For temporary amendment of section, see sec. 801 of the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1860).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 5 of act July 27, 1976, D.C. Law 1-77, provided: "This act [amending this section and § 47-1574b] shall take effect on the date this act becomes law according to the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(g) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1551c.

SHORT TITLE

The first section of act July 27, 1976, D.C. Law 1-77, provided "That this act [amending this section and § 47-1574b] may be cited as the 'Corporate and Unincorporated Business Franchise Surtax Act of 1976'."

IMPLEMENTATION BY MAYOR OF D.C. LAW 1-77

Section 4 of act July 27, 1976, D.C. Law 1-77, provided: "The Mayor is hereby authorized to promulgate rules and regulations to carry out the provisions of this act."

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1557b, 47-1574, 47-1589.

NOTES TO DECISIONS

Construction

Notwithstanding fact that this section uses word "and" in describing the "privilege" which is basis for imposi-

tion of local corporate income tax, stating that the tax is levied "for the privilege of carrying on or engaging in any trade or business within the District and of receiving income from sources within the District," section was intended to be read in the disjunctive and, therefore, section covers foreign corporation which is receiving income from a District source even if the foreign corporation is not engaging in business within the District. *Capital Holding Corporation v. District of Columbia* (D.C. App. 1977, 374 A.2d 573).

Sources within the District

In light of relevant constitutional limitations, provisions imposing franchise tax for the privilege of engaging in any trade or business within the District or of receiving income from sources within the District do not authorize the District to assess such franchise tax against entire dividends paid by District of Columbia subsidiary to Kentucky parent corporation where such dividends were the result of doing business in 14 states as well as in the District; the foreign corporation's liability on the income it obtained from its District of Columbia subsidiary cannot exceed the amount of net income derived from sources within the District. *Capital Holding Corporation v. District of Columbia* (D.C. App. 1977, 374 A.2d 573).

Phrase "other income" in section 47-1580 which declares that it is the purpose of this subchapter to impose a franchise tax on every corporation for the privilege of carrying on business within the District and of receiving such "other income" as is derived from sources within the District establishes that purpose of second clause is to reach income not derived from the business, if any, carried on by a corporate taxpayer; therefore, if Kentucky corporation through its local subsidiary was doing business in the District, dividend paid by its subsidiary was the fruit of such operational activity and was not "other income" than that received while engaged in such business. *Id.*

TITLE VIII.—TAX ON UNINCORPORATED BUSINESSES

§ 47-1574. Definition of unincorporated business.

For the purposes of this subchapter (not alone of this title) and unless otherwise required by the context, the words "unincorporated business" means any trade or business, conducted or engaged in by any individual, whether resident or nonresident, statutory or common-law trust, estate, partnership, or limited or special partnership, society, association, executor, administrator, receiver, trustee, liquidator, conservator, committee assignee, or by any other entity or fiduciary, other than a trade or business conducted or engaged in by any corporation; and include any trade or business which if conducted or engaged in by a corporation would be taxable under sections 47-1571 and 47-1571a. (July 16, 1947, 61 Stat. 345, ch. 258, Art. I, title VIII, § 1; Dec. 10, 1971, Pub. L. 92-180, § 21, 85 Stat. 582; Oct. 21, 1975, D.C. Law 1-23, title VI, § 605, 22 DCR 2113.)

REFERENCE IN TEXT

The words "this title", referred to in the first sentence, refer to sections 47-1574 to 47-1574e.

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, struck out the last sentence which read: "The words 'unincorporated business' do not include any trade or business which by law, customs or ethics cannot be incorporated, any trade, business, or profession which can be incorporated only under the District of Columbia Professional Corporation Act, or any trade or business in which more than 80 per centum of the gross income is derived from the personal services actually rendered by the individual or members of the partnership or other entity in the conducting or carrying on of any trade or business and in which capital is not a material income-producing factor."

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(g) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1551c.

CROSS REFERENCE

Professional corporation treated as an unincorporated business, see § 29-1121.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-1121, 47-1557a, 47-1557b, 47-1564a, 47-1567, 47-1567d, 47-1589, 47-1591.

§ 47-1574a. Taxable income defined.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-1121, 47-1557a, 47-1557b, 47-1564a, 47-1567, 47-1567d, 47-1589.

§ 47-1574b. Imposition and rate of tax.

For the privilege of carrying on or engaging in any trade or business within the District and of receiving income from sources within the District, there is hereby levied (a) for one taxable year beginning on or after January 1, 1975, a tax at the rate of 12 per centum upon the taxable income of every unincorporated business, whether domestic or foreign, (except those expressly exempt under section 47-1554), and (b) for the taxable years beginning on or after January 1, 1976, a tax at the rate of 9 per centum upon the taxable income of every unincorporated business, whether domestic or foreign, (except those expressly exempt under section 47-1554), and (c) for the taxable year beginning on or after January 1, 1976 but prior to January 1, 1977 and for the taxable year beginning on or after January 1, 1977 but prior to January 1, 1978, a surtax at the rate of 10 per centum of the tax determined under clause (b) hereof. The minimum tax payable under this section shall be \$25.00. (July 16, 1947, 61 Stat. 346, Art. I, title VIII, § 3; Aug. 2, 1968, Pub. L. 90-450, title II, § 202(b), 82 Stat. 612; Oct. 31, 1969, Pub. L. 91-106, title VI, § 604(a)(2), 83 Stat. 179; Dec. 15, 1971, Pub. L. 92-196, title IV, §§ 402, 404, 85 Stat. 654; Oct. 21, 1975, D.C. Law 1-23, title VI, § 604, 22 DCR 2112; July 27, 1976, D.C. Law 1-77, § 3, 23 DCR 1219.)

AMENDMENTS

1976—Act July 27, 1976, D.C. Law 1-77, amended section generally.

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended section generally.

EMERGENCY ACT AMENDMENT

1976—For temporary amendment of section, see sec. 802 of the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1860).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 5 of act July 27, 1976, D.C. Law 1-77, set out as a note under § 47-1571a.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(g) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1551c.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-1121, 47-1557a, 47-1557b, 47-1564a, 47-1567, 47-1567d, 47-1574c, 47-1574d, 47-1589.

§ 47-1574c. Exemption.

Before computing the tax on the taxable income of—

(a) an unincorporated business—

(1) which by law, custom or ethic cannot be incorporated;

(2) which can be incorporated only under chapter 11 of title 29; or

(3) in which more than 80 percent of the gross income is derived from the personal services actually rendered by the individual owners or members of the partnership or other entity and in which capital is not a material income-producing factor,

there shall be deducted therefrom an exemption of \$2500, except that where the period covered by any return is for less than a year, or where a return shows that an unincorporated business has been engaged in for less than twelve months, such exemption shall be prorated on a daily basis; and

(b) all other unincorporated businesses to which paragraph (a) does not apply, there shall be deducted therefrom an exemption of \$5000, except where the period covered by any return is for less than a year, or where the return shows that the unincorporated business has been engaged in for less than twelve months, such exemption shall be prorated on a daily basis.

Any amount exempted under the provisions of this section from the tax imposed by section 47-1574b shall be reported and included in the gross income of that person or those persons entitled to a share therein in proportion to the share to which each person is entitled, and shall be reported in the return of each such person for his taxable year in which is ended the taxable year of the unincorporated business. (July 16, 1947, 61 Stat. 346, Art. I, title VIII, § 4; May 27, 1949, 63 Stat. 132, ch. 146, title IV, § 416; Feb. 3, 1976, D.C. Law 1-44, § 4, 23 DCR 4057.)

AMENDMENT

1976—Act Feb. 3, 1976, D.C. Law 1-44, amended section generally. For prior provisions, see the 1973 edition of the Code.

EMERGENCY ACT AMENDMENT

1975—For temporary amendment of section, see sec. 4 of the Emergency Amended Unincorporated Business Franchise Tax Revision act of 1975 (D.C. Act 1-78, Dec. 18, 1975, 22 DCR 3455).

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 5 of act Feb. 3, 1976, D.C. Law 1-44, set out as a note under § 47-1557b.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-1121, 47-1557a, 47-1557b, 47-1564a, 47-1567, 47-1567d, 47-1574a, 47-1589.

§ 47-1574d. By whom payable.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-1121, 47-1557a, 47-1557b, 47-1564a, 47-1567, 47-1567d, 47-1589.

§ 47-1574e. Partners only taxable.

Individuals carrying on any trade or business in partnership in the District, other than an unincorporated business, shall be liable for income tax only in their individual capacities. The tax on all such income shall be assessed against the individual partners under sections 47-1567 to 47-1567g. There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year; or if his net income for such taxable year is computed upon the basis of a period different

from that upon the basis of which the net income of the partnership is computed, then his distributive share of the net income of the partnership for any accounting period of the partnership ending within the taxable year upon the basis of which the partner's net income is computed. (July 16, 1947, 61 Stat. 346, ch. 258, Art. I, title VIII, § 6.)

CODIFICATION

Section is set out in this supplement to correct translations therein.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-1121, 47-1557a, 47-1557b, 47-1564a, 47-1567, 47-1567d, 47-1589.

TITLE IX.—TAX ON ESTATES AND TRUSTS

§ 47-1577b. Imposition of tax.

The taxes imposed by sections 47-1567 to 47-1567g upon residents shall apply to the income of resident estates, and income from any kind of property held in resident trusts, including—

(a) income accumulated in trust for the benefit of unborn or unascertained person or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(b) income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of any infant or incompetent person which is to be held or distributed as the court may direct;

(c) income received by estates of deceased persons during the period of administration or settlement of the estate; and

(d) income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated. (July 16, 1947, 61 Stat. 347, ch. 258, Art. I, title IX, § 3.)

CODIFICATION

Section is set out in this supplement to correct translations therein.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

TITLE X.—PURPOSE OF SUBCHAPTER AND ALLOCATION AND APPORTIONMENT

§ 47-1580. Purpose of subchapter.

It is the purpose of this subchapter to impose (1) an income tax upon the entire net income of every resident and every resident estate and trust, and (2) a franchise tax upon every corporation and unincorporated business for the privilege of carrying on or engaging in any trade or business within the District and of receiving such other income as is derived from sources within the District: *Provided, however*, That, in the case of any corporation, the amount received as dividends from a corporation which is subject to taxation under this subchapter or under chapter 18 of this title, and, in the case of a corporation not engaged in carrying on any trade or business within the District, interest received by it from a corporation which is subject to taxation under this subchapter or under chapter 18 of this title shall not be considered as income from sources within the District for purposes of this subchapter; and in the case of any corporation organized as a bank holding

company under the provisions of the Bank Holding Company Act of 1956 and the Bank Holding Company Act Amendments of 1970, the amount received as dividends from a corporation which is subject to taxation under this subchapter or under the provisions of sections 47-1701 and 47-1703, and in the case of any such bank holding company not engaged in carrying on any trade or business within the District, interest received by it from a corporation which is subject to taxation under such sections, shall not be considered as income from sources within the District for purposes of this subchapter. *Provided further*, That income derived from the sale of tangible personal property by a corporation or unincorporated business not carrying on or engaging in trade or business within the District as defined in sections 47-1551 to 47-1551c shall not be considered as income from sources within the District for purposes of this subchapter, with the exception of income from sale to the United States not excluded from gross income as provided in section 47-1557a(b)(13). (July 16, 1947, 61 Stat. 349, ch. 258, Art. I, title X, § 1; May 3, 1948, 62 Stat. 207, ch. 246, § 2; Apr. 17, 1974, Pub. L. 93-268, § 1, 88 Stat. 85.)

REFERENCES IN TEXT

The Bank Holding Company Act of 1956, referred to in text, is classified to chapter 17 (§ 1841 et seq.) of title 12, and sections 1101 to 1103 of title 26, U.S. Code.

The Bank Holding Company Act Amendments of 1970 are classified principally to chapter 17 (§ 1841 et seq.) and chapter 22 (§ 1971 et seq.) of title 12, U.S. Code.

AMENDMENT

1974—Act Apr. 17, 1974, Pub. L. 93-268, amended the first proviso generally. Prior to amendment, the proviso read: "*Provided, however*, That, in the case of any corporation, the amount received as dividends from a corporation which is subject to taxation under this subchapter, and, in the case of a corporation not engaged in carrying on any trade or business within the District, interest received by it from a corporation which is subject to taxation under this subchapter shall not be considered as income from sources within the District for the purposes of this subchapter. The measure of the franchise tax shall be that portion of the net income of the corporation and unincorporated business as is fairly attributable to any trade or business carried on or engaged in within the District and such other net income as is derived from sources within the District;".

EFFECTIVE DATE OF 1974 AMENDMENT

Section 2 of act Apr. 17, 1974, Pub. L. 93-268, provided: "The amendment made by the first section of this Act shall apply with respect to all taxable years ending after December 31, 1973."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-852, 47-1557b, 47-1564a, 47-1571, 47-1574a.

NOTES TO DECISIONS

Construction

Notwithstanding fact that section 47-1571a uses word "and" in describing the "privilege" which is basis for imposition of local corporate income tax, stating that the tax is levied "for the privilege of carrying on or engaging in any trade or business within the District and of receiving income from sources within the District," section was intended to be read in the disjunctive and, therefore, section covers foreign corporation which is receiving income from a District source even if the foreign corporation is not engaging in business within the District. *Capital Holding Corporation v. District of Columbia* (D.C. App. 1977, 374 A.2d 573).

Taxable income

In light of relevant constitutional limitations, provisions imposing franchise tax for the privilege of engaging

in any trade or business within the District or of receiving income from sources within the District do not authorize the District to assess such franchise tax against entire dividends paid by District of Columbia subsidiary to Kentucky parent corporation where such dividends were the result of doing business in 14 states as well as in the District; the foreign corporation's liability on the income it obtained from its District of Columbia subsidiary cannot exceed the amount of net income derived from sources within the District. *Capital Holding Corporation v. District of Columbia* (D.C. App. 1977, 374 A.2d 573).

Phrase "other income" in this section which declares that it is the purpose of this subchapter to impose a franchise tax on every corporation for the privilege of carrying on business within the District and of receiving such "other income" as is derived from sources within the District establishes that purpose of second clause is to reach income not derived from the business, if any, carried on by a corporate taxpayer; therefore, if Kentucky corporation through its local subsidiary was doing business in the District, dividend paid by its subsidiary was the fruit of such operational activity and was not "other income" than that received while engaged in such business. *Id.*

§ 47-1580a. Allocation and apportionment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-852, 47-1557b, 47-1564a, 47-1571, 47-1574a.

§ 47-1580b. Allocation of income and deductions between organizations, etc.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-852, 47-1557b, 47-1564a, 47-1571, 47-1574a.

TITLE XII.—ASSESSMENT AND COLLECTION; TIME OF PAYMENT

§ 47-1586d. Determination and assessment of deficiency.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1567g, 47-1586f, 47-1586i, 47-1593.

§ 47-1586f. Payment of tax.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1586g. Withholding of tax.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1586j. Refunds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1586k. Closing agreements.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1586l. Compromises.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1586l-1. Declarations of estimated tax by corporations and unincorporated businesses—Failure by corporation or unincorporated business to pay estimated tax—Overpayment; credit of tax.

* * * * *

(b) *Failure by corporation or unincorporated business to pay estimated tax.*—(1) *Addition to the tax.*—In case of any underpayment of estimated tax by a corporation or an unincorporated business, there shall be added to the tax for the taxable year an amount determined at the rate of 9 per centum per annum upon the amount of the underpayment (determined under paragraph (2)) for the period of the underpayment (determined under paragraph (3)).

* * * * *

(As amended Oct. 21, 1975, D.C. Law 1-23, title VI, § 608, 22 DCR 2114.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended subsec. (b) (1) by striking out the figure "6" and inserting "9" in lieu thereof.

EFFECTIVE DATE OF 1975 AMENDMENT

Sec. 801(h) of act Oct. 21, 1975, D.C. Law 1-23, provided "Sections 606, 607, and 608 [amending §§ 47-1586l-1, 47-1589, 47-1589a, 47-1589c, 47-1589d] shall take effect on January 1, 1976."

TITLE XIII.—PENALTIES AND INTEREST

§ 47-1589. Failure to file return.

(a) *Failure to file return.*—In case of any failure to make and file a return required by this subchapter, within the time prescribed by law or prescribed by the Mayor or Council or Assessor in pursuance of law, 5 per centum of the tax shall be added to the tax for each month or fraction thereof that such failure continues, not to exceed 25 per centum in the aggregate, except that when a return is filed after such time and it is shown that the failure to file it was due to reasonable cause and not due to willful neglect, no such addition shall be made to the tax. With respect to declarations of estimated tax, for the purposes of this subsection, the amount and due date of each installment shall be the same as if a declaration had been filed within the time

prescribed showing an estimated tax equal to the correct tax reduced by the amount of credit for tax withheld.

(b) *Failure to pay.*—In the case of any failure to pay the amount of tax required by sections 47-1571, 47-1571a, and 47-1574 to 47-1574e within the time prescribed by law or prescribed by the Mayor or Council in pursuance of law, 5 per centum of the tax shall be added to the tax for each month or fraction thereof that such failure continues, not to exceed 25 per centum in the aggregate except that when the tax is paid after such time and it is shown that the failure to pay was due to reasonable cause and not due to willful neglect, no such addition shall be made to the tax.

(c) *Failure to file employer's return.*—In the case of any employer—

(1) who pursuant to this subchapter is required to withhold taxes on wages, make a return of such taxes, and pay to the District the taxes required to be withheld pursuant to this subchapter, and

(2) who fails to withhold such taxes, make such return, or pay to the District the taxes required to be withheld pursuant to this subchapter, there shall be imposed on such employer a civil penalty (in addition to any criminal penalty provided for in this subchapter) of 5 per centum of the amount required to be shown as tax on such return if the failure is for not more than one month, with an additional 5 per centum for each additional month or fraction thereof during which such failure continues, not exceeding 25 per centum in the aggregate.

(d) *Underestimate of tax by residents.*—If 80 per centum of the tax, determined without regard to the amount of credit for tax withheld, exceeds the estimated tax, increased by such credit, there shall be added to the tax an amount equal to such excess, or equal to 9 per centum of the amount by which such tax so determined exceeds the estimated tax so increased, whichever is the lesser. This subsection shall not apply to the taxable year in which falls the death of the taxpayer, nor shall it apply to the taxable year in which the taxpayer makes a timely payment on April 15, July 15, and October 15, of such year, and January 15 of the succeeding year, and the total of all such payments is an amount at least as great as though computed on the basis of the facts shown on his return for the preceding taxable year.

(e) *Collection of penalties added to tax.*—The amount added to any tax under this section shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be assessed and collected. (July 16, 1947, 61 Stat. 356, ch. 258, Art. I, title XIII, § 1; Mar. 31, 1956, 70 Stat. 79, ch. 154, § 13; Aug. 2, 1968, Pub. L. 90-450, title II, § 203(b), 82 Stat. 612; Oct. 21, 1975, D.C. Law 1-23, title VI, § 607, 22 DCR 2113.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended section as follows:

(1) Redesignated subssecs. (b), (c), and (d) as "(c)", "(d)", and "(e)", respectively.

(2) In redesignated subsec. (d), struck the figure "6" and inserted "9" in lieu thereof.

(3) Added a new subsec. (b).

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(h) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1586l-1.

§ 47-1589a. Interest on deficiencies.

(a) *Assessment and collection.*—Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the Collector, and shall be collected as a part of the tax, at the rate of three-fourths of 1 per centum per month or portion of a month from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed.

(b) *If extension granted for payment of deficiency.*—If the time for payment of any part of a deficiency is extended, there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended at the rate of three-fourths of 1 per centum per month or portion of a month for the period of the extension. If a part of the deficiency the time for payment of which is so extended is not paid in full, together with all penalties and interest due thereon, prior to the expiration of the period of the extension, then interest at the rate of three-fourths of 1 per centum per month or portion of a month shall be added and collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid. (July 16, 1947, 61 Stat. 356, ch. 258, Art. I, title XIII, § 2; Mar. 31, 1956, 70 Stat. 79, ch. 154, § 14; Oct. 21, 1975, D.C. Law 1-23, title VI, § 606, 22 DCR 2113.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, struck out the words "one-half of 1 per centum" wherever they appeared and inserted "three-fourths of 1 per centum" in lieu thereof.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(h) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1586l-1.

§ 47-1589c. Additions to the tax in case of nonpayment.

(a) *Tax shown on return.*

(1) *General rule.*—Where the amount determined by the taxpayer as the tax imposed by this subchapter, or any installment thereof, or any part of such amount or installment, is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax interest upon such unpaid amount at the rate of three-fourths of 1 per centum per month or portion of a month from the date prescribed for its payment until it is paid.

(2) *If extension granted.*—Where an extension of time for payment of the amount so determined as the tax by the taxpayer, or any installment thereof, has been granted, and the amount the time for

payment of which has been extended, and the interest thereon determined under section 47-1589d is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in subsection (a) (1) of this section, interest at the rate of three-fourths of 1 per centum per month or portion of a month shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) *Deficiency*.—Where a deficiency, or any interest or additional amounts assessed in connection therewith under section 47-1589a or under section 47-1589b, or any addition to the tax in case of delinquency provided for in section 47-1589 is not paid in full within ten days from the date of assessment thereof, there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of three-fourths of 1 per centum per month or portion of a month from the date of such notice and demand until it is paid. (July 16, 1947, 61 Stat. 357, ch. 258, Art. I, title XIII, § 4; Mar. 31, 1956, 70 Stat. 79, ch. 154, § 14; Oct. 21, 1975, D.C. Law 1-23, title VI, § 606, 22 DCR 2113.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, struck out the words "one-half of 1 per centum" wherever they appeared and inserted "three-fourths of 1 per centum" in lieu thereof.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(h) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1586l-1.

§ 47-1589d. Time extended for payment of tax shown on return.

If the time for payment of the amount determined as the tax by the taxpayer, or any installment thereof, is extended under the authority of section 47-1586f(b), there shall be collected, as a part of such amount, interest thereon at the rate of three-fourths of 1 per centum per month or portion of a month from the date when such payment should have been made if no extension had been granted, until the expiration of the period of the extension. (July 16, 1947, 61 Stat. 357, ch. 258, Art. I, title XIII, § 5; Mar. 31, 1956, 70 Stat. 79, ch. 154, § 14; Oct. 21, 1975, D.C. Law 1-23, title VI, § 606, 22 DCR 2113.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, struck out the words "one-half of 1 per centum" and inserted "three-fourths of 1 per centum" in lieu thereof.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(h) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1586l-1.

§ 47-1589e. Penalties.

* * * * *

(b) *Failure to file return or pay tax due thereunder*.—Any person required under this subchapter to pay or collect any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information for the purposes of this subchapter who shall fail or neglect to pay or collect such tax, to make such return, or keep such records, or to supply such information, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and shall be fined not more than \$3,000 or imprisoned for not more than six months, or both. All prosecutions under this

section shall be brought in the Superior Court of the District of Columbia on an information by the Corporation Counsel for the District of Columbia or one of his or her assistants in the name of the District.

(c) *Definition of "person"*.—The term "person" as used in this title includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under duty to perform the act in respect to which the violation occurs. (As amended Apr. 19, 1977, D.C. Law 1-124, title IV, § 401(e), 23 DCR 8749.)

AMENDMENT

1977—Act Apr. 19, 1977, D.C. Law 1-124, amended section by redesignating subsec. (b) as subsec. (c) and adding a new subsec. (b).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 1101 of act Apr. 19, 1977, D.C. Law 1-124, set out as a note under § 47-1557a.

TITLE XIV.—LICENSES

§ 47-1591. Requirement.

Trade, business, or professional license.—Every person, other than a corporation, who, as an individual, sole proprietor, partner, associate, or joint venturer shall, in the District of Columbia, engage in or conduct a trade, business, or profession, which is excluded from the imposition of the District of Columbia tax on unincorporated businesses under the definition set forth in section 47-1574, shall file with the Assessor prior to December 1st of the calendar year 1957, and prior to December 1st of each calendar year thereafter, an application for a trade, business, or professional license, accompanied by a license fee of \$25, which license, upon issuance, shall entitle such person to engage in or conduct a trade, business, or profession in the District of Columbia during the next ensuing calendar year: *Provided*, That no license shall be required under this subsection to be obtained by any individual or sole proprietor engaging in or conducting a trade, business, or profession in the District of Columbia whose annual gross receipts from such trade, business, or profession in the District of Columbia were, during the prior calendar year, less than \$12,000, and no partner, associate, or joint venturer shall be required to obtain a license where the annual gross receipts of the partnership, association, or joint venture in the District of Columbia were, during the prior calendar year, less than \$12,000: *And provided further*, That every person who, during any calendar year, commences as an individual, sole proprietor, partner, associate, or joint venturer, to engage in or conduct a trade, business, or profession in the District of Columbia without having so engaged in the prior calendar year, shall, within fifteen days after the date in said commencement year on which such trade, business, or profession attains gross receipts of \$12,000, make application to the Assessor, accompanied by a license fee of \$25, for the license required by this subsection for the calendar year during which the trade, business, or profession was commenced, and any person who, during the prior calendar year, although engaged in a trade, business, or profession, did not attain gross receipts of \$12,000,

shall, within fifteen days after the date within the calendar year on which such trade, business, or profession attains gross receipts of \$12,000, make application to the Assessor, accompanied by a license fee of \$25, for the license required by this subsection for the calendar year during which the trade, business, or profession, attained gross receipts of \$12,000.

(As amended Apr. 19, 1977, D.C. Law 1-124, title IV, § 401(f), 23 DCR 8749.)

AMENDMENT

1977—Act Apr. 19, 1977, D.C. Law 1-124, amended the first paragraph of section by substituting "\$12,000" for "\$5,000".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 1101 of act Apr. 19, 1977, D.C. Law 1-124, set out as a note under § 47-1557a.

§ 47-1591d. Revocation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1591e. Renewal.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE XV.—APPEAL

§ 47-1593. Appeal to Superior Court of the District of Columbia.

NOTES TO DECISIONS

Construction

Where statutory period for challenging excessive tax payment had expired before sections of Court Reorganization Act of 1970 putatively eliminating common-law remedies became effective, the Act could not be construed to curtail or destroy the preexisting common-law rights of property owners to maintain an action at common law for recovery from the District of Columbia. *E. P. Block et al. v. District of Columbia* (1974, 492 F. 2d 646, 160 U.S. App. D.C. 380).

Evidence—Admissibility

Where taxpayer's business records were admissible under Federal Shop Book Act (28 U.S.C. 1732), and taxpayer alleged that such records were essential in judicial proceeding seeking redetermination of franchise tax deficiency, failure to admit such records at trial is reversible error despite trial court's posttrial admission of records for purpose of determining final order which dealt with dollar amount of tax deficiency. *Petworth Pharmacy, Inc. v. District of Columbia* (D.C. App. 1975, 385 A. 2d 256).

TITLE XVI.—RULES AND REGULATIONS

§ 47-1595. District of Columbia Council to prescribe and publish rules.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

§ 47-1595a. District of Columbia Council authorized to make rules and regulations in regard to District of Columbia Revenue Act of 1956.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 16.—INHERITANCE AND ESTATE TAXES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 47-504.

ARTICLE I.—INHERITANCE TAX

§ 47-1601. Imposition of tax.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

NOTES TO DECISIONS

Jointly owned property

Where sister and brother, as partners, owned realty and savings accounts as joint tenants, all of the four unities of joint tenancy were present, record showed no evidence that any partnership creditors' claims were not met by partnership assets which were not held in joint tenancy there was no indication that partners did not understand and intend survivorship consequences of joint tenancy, and there was no evidence that they at any time intended to sever joint tenancy, such partnership assets became sister's by right of survivorship on brother's death and are subject to District of Columbia inheritance tax as part of sister's estate. *District of Columbia v. The Riggs National Bank of Washington, D.C., Executor etc.* (D.C. App. 1975, 335 A. 2d 238).

District of Columbia regulation precluding, in computing inheritance tax, deduction from value of jointly held property, passing by right of survivorship, any funeral, administration or other expenses and debts of decedent, is to be considered in juxtaposition with, and is consistent with, statute providing that deduction will be allowed only when claim therefor can be enforced against jointly owned property and the regulation does not conflict with statute imposing inheritance tax. *C. A. Hankin v. District of Columbia* (D.C. App. 1973, 310 A. 2d 56).

Inasmuch as no claims, excepting prior liens, can be enforced against a decedent's former interest in jointly owned property, regulation precluding allowing deductions against such property in computing inheritance taxes is reasonable and constitutional classification. *Id.*

Taxpayer who filed joint income tax return with her husband had individual obligation to pay all income taxes involved so that payment of such taxes was a payment of personal obligation and was not deductible from joint assets which became solely hers on her husband's death, for purposes of computing D.C. inheritance tax. *Id.*

Where husband and wife created inter vivos trust agreement whereby they contemplated ultimate contribution to student aid fund of \$150,000 to be conveyed to university on basis of 30% of total income in one year, upon acceptance of offer by university, and similar contribution annually during life of surviving donor, with remainder upon death of survivor, the university could not validly have claimed prior lien against joint property upon death of husband and therefore wife was not entitled to deduct the amount she paid to fund upon death of husband from one-half of joint assets, in computing inheritance tax. *Id.*

Survivor annuity

Neither portion of survivor annuity unpaid on death of retired decedent and attributable to contributions to Federal Civil Service Retirement Fund by decedent, who

had to make contributions as condition of government employment and whose annuity was reduced by statute so as to provide survivor benefits for spouse if she survived because decedent did not elect to receive a larger annuity without survivor benefits, nor portion attributable to federal contributions is subject to inheritance taxation, in that decedent did not die "seized or possessed" of the unpaid survivor annuity. *District of Columbia v. C. K. Von Schrader* (D.C. App. 1975, 345 A. 2d 475).

§ 47-1602. Tax based on market value—Appraisal.

NOTES TO DECISIONS

Jointly owned property

Where sister and brother, as partners, owned realty and savings accounts as joint tenants, all of the four unities of joint tenancy were present, record showed no evidence that any partnership creditors' claims were not met by partnership assets which were not held in joint tenancy, there was no indication that partners did not understand and intend survivorship consequences of joint tenancy, and there was no evidence that they at any time intended to sever joint tenancy, such partnership assets became sister's by right of survivorship on brother's death and are subject to District of Columbia inheritance tax as part of sister's estate. *District of Columbia v. The Riggs National Bank of Washington, D.C., Executor etc.* (D.C. App. 1975, 335 A. 2d 238).

District of Columbia regulation precluding, in computing inheritance tax, deduction from value of jointly held property, passing by right of survivorship, any funeral, administration or other expenses and debts of decedent, is to be considered in juxtaposition with, and is consistent with, statute providing that deduction will be allowed only when claim therefor can be enforced against jointly owned property and the regulation does not conflict with statute imposing inheritance tax. *C. A. Hankin v. District of Columbia* (D.C. App. 1973, 310 A. 2d 56).

Inasmuch as no claims, excepting prior liens, can be enforced against a decedent's former interest in jointly owned property, regulation precluding allowing deductions against such property in computing inheritance taxes is reasonable and constitutional classification. *Id.*

Taxpayer who filed joint income tax return with her husband had individual obligation to pay all income taxes involved so that payment of such taxes was a payment of personal obligation and was not deductible from joint assets which became solely hers on her husband's death, for purposes of computing D.C. inheritance tax. *Id.*

Where husband and wife created inter vivos trust agreement whereby they contemplated ultimate contribution to student aid fund of \$150,000 to be conveyed to university on basis of 30% of total income in one year, upon acceptance of offer by university, and similar contribution annually during life of surviving donor, with remainder upon death of survivor, the university could not validly have claimed prior lien against joint property upon death of husband and therefore wife was not entitled to deduct the amount she paid to fund upon death of husband from one-half of joint assets, in computing inheritance tax. *Id.*

§ 47-1607. Life and future estates—Payment of tax—Lien.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

ARTICLE II—ESTATE TAX

§ 47-1608. Imposition of tax—Additional levy on transfers.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

ARTICLE III—GENERAL

§ 47-1618. Administration — Rules — Testimony—Production of books and records.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1620. Enforcement.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1621. Failure to file return—False return—Penalty.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1623. Release of lien.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1625. Bureau of Internal Revenue to supply information to Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1628. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1630. Compromise and settlement of taxes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 17.—FINANCIAL INSTITUTION, GUARANTY COMPANY, AND PUBLIC UTILITY TAXES

Sec.

47-1711. Declaration and payment of estimated tax.

§ 47-1701. Banks, gas, electric-lighting, and telephone companies.

Each national bank as the trustee for its stockholders, through its president or cashier, and all other incorporated banks and trust companies in the District of Columbia, through their presidents or cashiers, and all gas, electric lighting, and telephone companies, through their proper officers, shall make affidavit to the board of personal-tax appraisers on or before the 1st day of August each year as to the amount of its or their gross earnings or gross receipts, as the case may be, for the preceding year ending the 30th day of June, and each national bank and all other incorporated banks and trust companies respectively shall pay to the collector of taxes of the District of Columbia per annum 6 percent on such gross earnings and each gas company, electric lighting company, and telephone company shall pay to the collector of taxes of the District of Columbia per annum 6 per centum on such gross receipts, from the sale of public utility commodities and services within the District of Columbia. And in addition thereto the real estate owned by each national or other incorporated bank, and each trust, gas, electric lighting, and telephone company in the District of Columbia shall be taxed as other real estate in said District. Each gas, electric lighting, and telephone company shall pay, in addition to the taxes herein mentioned, the franchise tax imposed by subchapter II of chapter 15 of this title, and the tax imposed upon stock in trade of dealers in general merchandise under section 47-1207. (July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 5; July 26, 1939, 53 Stat. 1107, ch. 367, title IV, § 2(a); May 18, 1954, 68 Stat. 118, ch. 218, title XIV, § 1401; July 24, 1956, 70 Stat. 599, ch. 669, § 8(a); Oct. 21, 1972, Pub. L. 92-518, title III, § 303(a), 86 Stat. 1016; Oct. 21, 1975, D.C. Law 1-23, title V, § 501(a) (1), 22 DCR 2105.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, increased the gross receipts tax from 5 to 6 per centum.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 801(c) of act Oct. 21, 1975, D.C. Law 1-23, provided "The amendment made by section 501 [amending §§ 47-1701 to 47-1704] shall apply with respect to gross receipts or gross earnings for the year ending June 30, 1976, and for each succeeding year ending on the thirtieth day of June. The amendments made by section 501(b) [subsec. (b) of sec. 501 was added by sec. 2 of act Nov. 1, 1975, D.C. Law 1-30, 22 DCR 2545, and is classified to § 47-1711] shall take effect on the first day of the first month after the day this act becomes law according to the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

REPORT ON TAXATION OF CERTAIN FINANCIAL INSTITUTIONS, ASSETS, AND INSURANCE COMPANIES

Section 901, title IX, of act June 15, 1976, D.C. Law 1-70, provided:

"(a) The Mayor shall, within six months after the effective date of this section, submit to the Committee on

Finance and Revenue of the Council and to the District of Columbia Auditor, a report analyzing the appropriateness of the level and the manner of taxation of certain financial institutions, assets and insurance companies. The financial institutions, assets and insurance companies analyzed shall include, but not be limited to national banks, incorporated banks, trust companies, credit unions, guaranty, bonding and title companies, savings banks without capital stock, savings and loan associations, incorporated savings banks, building associations, private banks or incorporated bankers, note brokers, life insurance companies, life insurance benefits, mutual insurance companies, industrial sick benefit companies, and workman's compensation.

"(b) The report shall include detailed statements and supporting data relating to (1) whether the present rates and manner of taxation are appropriate, (2) how the levels of taxation and tax burdens on the enumerated entities and assets compare with the tax levels and tax burdens of (A) other District entities, and (B) other financial institutions and insurance companies in the Washington, D.C. metropolitan area and elsewhere in the nation, (3) how the various tax levels and tax burdens of the enumerated entities and assets compare with each other, and (4) the impact of changing the method of determining the tax liability of the enumerated entities and assets from a gross earnings or gross receipts method to a net income method, noting specifically how smaller or recently established entities would be effected by such a change in comparison to larger, longer established entities.

"(c) The report shall include (1) a design or designs of a net income tax, including rate levels and revenue estimates, for financial institutions and insurance companies, with justifications and (2) a bill amending the code of laws for the District to effect any changes in the present law deemed necessary as a result of the information compiled pursuant to section 801(b) of this act [§ 47-1551 note]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-1580.

§ 47-1702. Bonding, title, guaranty and fidelity companies.

All companies, incorporated or otherwise, who guarantee the fidelity of any individual or individuals, such as bonding companies, and all companies who furnish abstracts of titles to real property, or who insure real estate titles, shall pay to the collector of taxes of the District of Columbia three per centum of their gross receipts in the District of Columbia. (July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 6; Apr. 28, 1904, 33 Stat. 564, ch. 1815; Oct. 21, 1975, D.C. Law 1-23, title V, § 501(a) (2), 22 DCR 2105.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, increased the gross receipts tax from one and one-half per centum to three per centum.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(c) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1701.

§ 47-1703. Savings banks.

Savings banks having no capital stock and paying interest to their depositors shall, through their president or cashier, make affidavit to the board of personal-tax appraisers on or before the 1st day of August in each year as to the amount of their surplus and undivided profits, and shall pay to the collector of taxes of the District of Columbia a sum equal to one and one-half per centum on the amount

of their surplus and undivided profits on the 30th day of June preceding.

Incorporated savings banks paying interest to their depositors shall, through their president or cashier, make report under oath to the board of personal-tax appraisers on or before the 1st day of August in each year as to the amount of their gross earnings, less the amount paid as interest to their depositors for the preceding year ending June 30th, and shall pay thereon to the collector of taxes of the District of Columbia six per centum per annum. (July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 7; Apr. 28, 1904, 33 Stat. 564, ch. 1815; Oct. 21, 1975, D.C. Law 1-23, title V, § 501(a) (3), 22 DCR 2105.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, increased the gross earnings tax on incorporated savings banks from four to six per centum.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(c) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1701.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-1580.

§ 47-1704. Building associations.

Building associations in the District of Columbia shall pay to the collector of taxes of the District of Columbia two per centum per annum on their entire gross earnings for the preceding year ending June 30th. (July 1, 1902, 32 Stat. 620, ch. 1352, § 6, par. 9; Apr. 28, 1904, 33 Stat. 564, ch. 1815; Oct. 21, 1975, D.C. Law 1-23, title V, § 501(a) (4), 22 DCR 2105; June 15, 1976, D.C. Law 1-70, title XIII, § 1301, 23 DCR 565.)

AMENDMENTS

1976—Act June 15, 1976, D.C. Law 1-70, decreased the gross earnings tax from three to two per centum.

1975—Act Oct. 21, 1975, D.C. Law 1-23, increased the gross earnings tax from two to three per centum.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1405 of act June 15, 1976, D.C. Law 1-70, provided: "The amendment [to this section] made by Title XIII shall take effect with respect to gross earnings for the year ending June 30, 1977, and for each succeeding year ending on the thirtieth day of June."

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(c) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1701.

§ 47-1711. Declaration and payment of estimated tax.

Every bank, trust company, and building association, all gas, electric lighting and telephone companies, and all bonding, title, guaranty and fidelity companies, subject to the provisions of Section 501 (a) of the Revenue Act of 1975, shall make and file a declaration of estimated tax at such time or times and under such conditions, and shall make payments of such tax in such amounts and at such times and under such conditions as the Mayor shall, by rule, prescribe. Such payments shall not be in excess of the amount by which said tax was increased by provisions of this act. (Oct. 21, 1975, D.C. Law 1-23, title V, § 501(b), added Nov. 1, 1975, D.C. Law 1-30, § 2, 22 DCR 2545.)

REFERENCE IN TEXT

The "Revenue Act of 1975" and "this act", referred to in text, is act Oct. 21, 1975, D.C. Law 1-23, 22 DCR 2091. Section 501(a) of that Act amended §§ 47-1701 to 47-1704.

EFFECTIVE DATE

Section 3 of act Nov. 1, 1975, D.C. Law 1-30 provided that "This act [enacting § 47-1711] shall take effect upon becoming law by operation of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

See, also, sec. 801(c) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1701.

SHORT TITLE

The first section of act Nov. 1 1975, D.C. Law 1-30, provided "That this act [enacting § 47-1711] may be cited as the 'District of Columbia Revenue Act of 1975'."

Chapter 18.—INSURANCE COMPANIES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 47-1580.

§ 47-1801. Licenses—Fee—Term.

CROSS REFERENCE

Tax exemption of D.C. Insurance Guaranty Association, see § 35-1813.

§ 47-1803. Prosecutions.

All prosecutions for violations of this title shall be in the Superior Court of the District of Columbia by the corporation counsel of the District of Columbia or any of his assistants. (Aug. 17, 1937, 50 Stat. 675, ch. 690, title II, § 3; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

REFERENCE IN TEXT

This title, referred to in the text, is title II of the District of Columbia Revenue Act of 1937, Aug. 17, 1937, ch. 690, 50 Stat. 675, which enacted this chapter and amended § 35-105.

CODIFICATION

Section is set out in this supplement to correct translations therein.

§ 47-1806. Rates on insurance companies—Exceptions—Definitions—Marine insurance excluded.

(a) All such companies, including companies which issue annuity contracts, shall also pay to the District of Columbia, for each calendar year, a sum of money as taxes equal to 2 percent of their policy and membership fees and net premium receipts or consideration received in such calendar year on all insurance and annuity contracts on risks in the District of Columbia. Such tax shall be in lieu of all other taxes except (1) taxes upon real estate and (2) fees and charges provided for by the insurance laws of the District including amendments made to such laws by this title.

Net premium receipts or consideration received means gross premiums or consideration received less the sum of the following:

1. Premiums received for reinsurance assumed and premiums or consideration returned on policies or contracts canceled or not taken.

2. Dividends paid in cash or used by the policyholders in payment of renewal premiums.

Nothing contained in this section or in sections 47-1801 or 47-1807 shall apply with respect to marine insurance written within the said District and reported, taxed, and licensed under the provisions of chapter 11 of title 35.

(b) (1) The tax imposed by subsection (a) of this section shall, for each calendar year prior to calen-

dar year 1977, be paid before the first day of March of the next succeeding calendar year.

(2) Except as provided in subsection (b) (3) of this section, the tax imposed for calendar year 1977 and for each calendar year thereafter shall be paid in three (3) installments on or before the first day of the months of May, July and September of the calendar year in which the income to be taxed is received. Each installment shall be an amount equal to at least 25 percent of the total tax liability determined for the preceding calendar year. In accordance with rules prescribed by the Mayor, each company shall determine its total tax liability for each calendar year and pay the remainder, if any, on or before the first day of March following the close of each calendar year. Overpayments of tax may be refunded to the company or credited to the company's next installment payment, at the election of the company.

(3) The installment payment provision of subsection (b) (2) shall not apply in the case of any company having a tax liability for the preceding calendar year less than two thousand dollars (\$2,000). In such cases the tax shall be paid on or before the first day of March following the close of the calendar year.

(c) The certificate of authority of any company may be revoked for failure to pay the tax required by this title. (Aug. 17, 1937, 50 Stat. 676, ch. 690, title II, § 6; May 16, 1938, 52 Stat. 358, ch. 223, § 2; Apr. 19, 1977, D.C. Law 1-124, title X, § 1000, 23 DCR 8749; Sept. 23, 1977, D.C. Law 2-19, § 3, 24 DCR 3338.)

REFERENCE IN TEXT

This title, referred to in subsecs. (a) and (c), is title II of the District of Columbia Revenue Act of 1937, Aug. 17, 1937, ch. 690, 50 Stat. 675, which enacted this chapter and amended § 35-105.

AMENDMENTS

1977—Act Sept. 23, 1977, D.C. Law 2-19, enacted a general amendment of this section which was substantially identical to the general amendment of this section by act Apr. 19, 1977, D.C. Law 1-124.

Act Apr. 19, 1977, D.C. Law 1-124, amended section generally. For prior provisions, see the 1973 edition of the Code.

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of section, see sec. 2 of the Emergency Collection of Insurance Fees and Premium Taxes Act of 1977 (D.C. Act 2-15, Mar. 28, 1977, 23 DCR 8177), the Second Emergency Collection of Insurance Fees and Premium Taxes Act of 1977 (D.C. Act 2-41, May 24, 1977, 23 DCR 9938), and the Third Emergency Collection of Insurance Fees and Premium Taxes Act of 1977 (D.C. Act 2-73, Aug. 11, 1977, 24 DCR 1781).

EFFECTIVE DATES OF 1977 AMENDMENTS

For act Sept. 23, 1977, D.C. Law 2-19, see section 4 of that act set out as a note under § 47-1557b.

For act Apr. 19, 1977, D.C. Law 1-124, see section 1101 of that act set out as a note under § 47-1557a.

§ 47-1808. Exemption of nonprofit relief associations.

Nothing contained in this title shall apply to any relief association, not conducted for profit, composed solely of officers and enlisted men of the United States Army, Navy, or Air Force, or solely of employees of any other branch of the United States Government service or solely of employees of the District of Columbia government, or solely of employees of any individual, company, firm, or corpora-

tion or to any fraternal organization which issues contracts of insurance exclusively to its own members. (Aug. 17, 1937, 50 Stat. 676, ch. 690, title II, § 8.)

REFERENCE IN TEXT

This title, referred to in the text, is title II of the District of Columbia Revenue Act of 1937, Aug. 17, 1937, ch. 690, 50 Stat. 675, which enacted this chapter and amended § 35-105.

CODIFICATION

Section is set out in this supplement to correct translations therein.

Chapter 19.—MOTOR FUEL TAX

Sec.

47-1901. Rate—Deposit into General Fund.

47-1901c. Repealed.

47-1918. Street paving—Deposit of revenues into General Fund.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 40-103, 47-504, 47-2605.

§ 47-1901. Rate—Deposit into General Fund.

A tax of 10 cents per gallon on all motor-vehicle fuels within the District of Columbia, sold or otherwise disposed of by an importer, or used by him in a motor vehicle operated for hire or for commercial purposes, shall be levied, collected, and paid in the manner hereinafter provided.

All proceeds of the taxes imposed under sections 47-1901 to 47-1916, and all moneys collected from fees charged for the registration and titling of motor vehicles, including fees charged for the issuance of permits to operate motor vehicles, shall be deposited in the General Fund of the District of Columbia as established by the Revenue Funds Availability Act of 1975. (Apr. 23, 1924, 43 Stat. 106, ch. 131, § 1; Aug. 17, 1937, 50 Stat. 676, ch. 690, title III, § 1; June 4, 1952, 66 Stat. 100, ch. 366, § 1; May 18, 1954, 68 Stat. 117, ch. 218, title XI, § 1101, Sept. 30, 1966, 80 Stat. 858, Pub. L. 89-610, title VIII, § 801; Dec. 15, 1971, Pub. L. 92-196, title III, § 301(a), 85 Stat. 653; Oct. 21, 1975, D.C. Law 1-23, title II, § 201, formerly § 201(a), 22 DCR 2096, as redesignated Jan. 22, 1976, D.C. Law 1-42, § 7(c), 22 DCR 6317; Jan. 22, 1976, D.C. Law 1-42, § 3(a), 22 DCR 6311.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

The General Fund of the District of Columbia, referred to in text, was established by section 9 of the Revenue Funds Availability Act of 1975 (D.C. Law 1-42, Jan. 22, 1976) which is classified to § 47-130c.

AMENDMENTS

1976—Section 3(a) of act Jan. 22, 1976, D.C. Law 1-42, amended second paragraph of section generally. For prior provisions, see the 1973 edition of the Code.

Section 7(c) of such act amended § 201(a) of act Oct. 21, 1975, D.C. Law 1-23, cited as a source credit, by redesignating it as § 201.

1975—Act Oct. 21, 1975, D.C. Law 1-23, increased the motor vehicle fuel tax from eight to ten cents per gallon.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 10 of act Jan. 22, 1976, D.C. Law 1-42, set out as a note under § 47-130c.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(a) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 40-103.

REPORT ON DIFFERENTIAL TAX RATES

Section 202 of act Oct. 21, 1975, D.C. Law 1-23, provided: "The Mayor of the District of Columbia shall submit to the Council of the District of Columbia, by January 1, 1976, a thorough, documented study outlining the advisability of differential tax rates on leaded and unleaded gasoline, and weighing positive and negative health, environmental and income-class impacts of such a differential tax policy."

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1443b, 5-316, 40-202, 40-809, 47-1902, 47-1903, 47-1910, 47-1911, 47-1913, 47-1915, 47-1916.

§ 47-1901c. Repealed. Jan. 22, 1976, D.C. Law 1-42, § 7 (a), 22 DCR 6317.

Section, act Oct. 21, 1975, D.C. Law 1-23, title II, § 201(b), 22 DCR 2096, provided for the deposit into the Metrobus Fund of a portion of the proceeds from the motor vehicle fuel tax.

EFFECTIVE DATE OF REPEAL

See sec. 10 of act Jan. 22, 1976, D.C. Law 1-42, set out as a note under § 47-130c.

§ 47-1902. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1903. Importers—License—Application for—Contents—Fee—Bond—Issuance—Revocation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1907. Importer's records of transactions subject to inspection of assessor and collector.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1912. Tax on fuel sold by United States agency in the District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1916. District of Columbia Council to make necessary regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

§ 47-1918. Street paving—Deposit of revenues into General Fund.

All moneys derived from assessments for paving and repaving roadways under provisions of existing law shall be paid into the General Fund of the District of Columbia as established by the Revenue Funds Availability Act of 1975. (June 7, 1924, 43 Stat. 550, ch. 302; Jan. 22, 1976, D.C. Law 1-42, § 3(b), 22 DCR 6311.)

REFERENCE IN TEXT

The General Fund of the District of Columbia, referred to in text, was established by section 9 of the Revenue Funds Availability Act of 1975 (D.C. Law 1-42, Jan. 22, 1976) which is classified to § 47-130c.

AMENDMENT

1976—Act Jan. 22, 1976, D.C. Law 1-42, amended section by striking out "arising from the expenditure of the fund created by the tax on motor-vehicle fuels, shall be paid into the Treasury of the United States and be credited to and constitute a part of said fund and shall thereafter be available for appropriation in the same manner as the proceeds of the tax on motor-vehicle fuels.", and inserting in lieu thereof "shall be paid into the General Fund of the District of Columbia as established by the Revenue Funds Availability Act of 1975."

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 10 of act Jan. 22, 1976, D.C. Law 1-42, set out as a note under § 47-130c

§ 47-1919. Continuation of uncompleted projects at end of fiscal year.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 20.—DOG TAX

§ 47-2001. Dog tax.

(a) Except as provided in subsection (b) of this section, there shall be levied a tax of eight dollars (\$8) per annum upon each dog owned or kept in the District of Columbia; said tax to be collected as other taxes in the District of Columbia are or may be collected.

(b) In the case of a dog sold by the poundmaster to a person other than the owner of the dog, the tax imposed by subsection (a) of this section shall be three dollars (\$3) for the first year, and eight dollars (\$8) for each year thereafter. (June 19, 1878, 20 Stat. 173, ch. 323, § 1; July 5, 1945, 59 Stat. 409, ch. 267, § 1; Sept. 14, 1976, D.C. Law 1-82, title I, § 103, 23 DCR 2461; Oct. 7, 1977, D.C. Law 2-26, § 2 (a), 24 DCR 3719.)

AMENDMENTS

1977—Act Oct. 7, 1977, D.C. Law 2-26, amended section generally.

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section by substituting "\$8" for "\$3".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 103 of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 62) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1824).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 3 of act Oct. 7, 1977, D.C. Law 2-26, provided: "This act [amending §§ 47-2001 and 47-2003] shall take effect pursuant to section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

SHORT TITLE

The first section of act Oct. 7, 1977, D.C. Law 2-26, provided "That this act [amending §§ 47-2001 and 47-2003] may be cited as the 'Poundmaster Fee Act of 1977'."

§ 47-2003. Impounding of dogs found at large.

The poundmaster of the District of Columbia shall, during the entire year, seize all dogs found running at large, and shall impound the same; and if within forty-eight hours the same are not redeemed by the owners thereof by the payment of five dollars (\$5) they shall be sold or destroyed, as the poundmaster may deem advisable; and if sold to a person other than the owner of such dog for other than medical research, by the payment of a fee of five dollars (\$5), and if sold for medical research purposes, by the payment of a fee of twenty-five dollars (\$25); and any sale made by virtue hereof shall be deemed valid to all intents and purposes in all courts of the District of Columbia: *Provided*, That no owner, keeper, or purchaser, shall be permitted to redeem any dog seized and impounded as aforesaid, nor shall the Poundmaster deliver any dog to an owner, keeper, or purchaser, unless such owner, keeper, or purchaser shall first satisfy the Poundmaster that he has obtained for such dog the tax tag provided for in section 47-2002, and if at such time there shall be in force a proclamation of the Mayor requiring dogs to be vaccinated against rabies, such owner, keeper, or purchaser shall also satisfy the Poundmaster that such dog has been vaccinated against rabies in accordance with such proclamation (June 19, 1878, 20 Stat. 173, ch. 323, § 3; June 30, 1902, 32 Stat. 547, ch. 1332; July 5, 1945, 59 Stat. 409, ch. 267, § 2; Sept. 13, 1961, 75 Stat. 498, Pub. L. 87-227, § 2(1); Oct. 7, 1977, D.C. Law 2-26, § 2(b), 24 DCR 3719.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1977—Act Oct. 7, 1977, D.C. Law 2-26, amended section by substituting "five dollars (\$5)" for "two dollars" and by inserting "and if sold to a person other than the owner of such dog for other than medical research, by the payment of a fee of five dollars (\$5), and if sold for medical research purposes, by the payment of a fee of twenty-five dollars (\$25);".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 3 of act Oct. 7, 1977, D.C. Law 2-26, set out as a note under § 47-2001.

Chapter 21.—PRIVATE EMPLOYMENT AGENCY LICENSES

§ 47-2101. Employment agencies—License required—Definitions.

It shall be unlawful for any person to open, keep, operate, maintain, or carry on any private employment agency without first having obtained a license from the District of Columbia so to do. The fee for such license shall be \$500 per annum. Any license may be denied, revoked, or suspended for cause by the Mayor of the District of Columbia. A person whose application for a license is denied, or whose license is revoked or suspended by the Mayor may obtain a review of the action of the Mayor in the District of Columbia Court of Appeals in the manner provided by the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510).

* * * * *

(As amended Sept. 14, 1976, D.C. Law 1-82, title I § 104(a), 23 DCR 2461.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended provision preceding subsec. (a) by substituting "\$500" for "\$100".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(a) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 62) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1824).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2102. Bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2103. Registers.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2107. Inspection.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2111. Character of employer—Fraud.

No such licensed person shall send, or cause to be sent, any person as a servant or inmate or performer to enter any place of bad repute, house of ill fame, or assignation house, or to any house or place of amusement kept for immoral purposes, or place resorted to for the purpose of prostitution, or gambling house, the character of which such licensed person could have ascertained upon reasonable inquiry. No such licensed person shall knowingly permit any person of bad character, prostitutes, gamblers, intoxicated persons, or procurers, to frequent such agency. No such person shall procure or offer to procure help or employment in rooms or on premises where intoxicating liquors are sold to be consumed on the premises, whether or not dues or a fee or privilege is exacted, charged, or received directly or indirectly: *Provided*, That it shall be unlawful for employment agents or agencies to send applicants for employment to employers other than those who have applied to such agents or agencies for help or labor. For the violation of any of the foregoing provisions of this section the penalty shall be a fine of not more than two hundred dollars and in default in payment thereof by imprisonment in the workhouse for a period of not more than one year, or both, at the discretion of the court. No such licensed person shall publish or cause to be published any false or fraudulent or misleading notice or advertisement. All advertisements of such employment agency by means of cards, circulars, or signs, and in newspapers and other publications, and all letter heads, receipts, and blanks shall contain the name and address of such employment agency, and no such licensed person shall give any false information, or make any false promise or false representation concerning employment to any applicant who shall register for employment or help. (June 19, 1906, 34 Stat. 308, ch. 3438, § 10; Oct. 1, 1976, D.C. Law 1-87, § 42, 23 DCR 2544.)

AMENDMENT

1976—Act Oct. 1, 1976, D.C. Law 1-87, amended first sentence of section by substituting "any person as a servant" for "any female as a servant".

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 43 of act Oct. 1, 1976, D.C. Law 1-87, set out as a note under § 1-511.

Chapter 22.—PERMITS AND FEES

SUBCHAPTER I.—PUBLIC AUCTION PERMITS

- Sec.
- 47-2201. Public auction—Auction of merchandise without permit prohibited.
 - 47-2202. Application for permit—Fee—Information to be furnished.
 - 47-2203. Personal effects, furniture, personal livestock may be sold without permit.
 - 47-2204. Suspension of license for violations.
 - 47-2205. Auction of jewelry, plated wares, prohibited after certain hour.
 - 47-2206. Misrepresenting merchandise—Prosecution for.
 - 47-2207. Prosecution for violation to be in Superior Court.
 - 47-2208. Construction.

SUBCHAPTER II.—MISCELLANEOUS

- 47-2211. Riparian permits.
- 47-2212. Electrical fees.

Sec.

- 47-2213. District of Columbia General Hospital rates.
- 47-2214. District of Columbia Village rates.
- 47-2215. Glenn Dale Hospital rates.
- 47-2215a. Denial of medical or mental health services for inability to pay prohibited.
- 47-2215b. Adjustment of medical or mental health services rates by Mayor.
- 47-2216. Public space permits.

SUBCHAPTER I.—PUBLIC AUCTION PERMITS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 47-2309.

§ 47-2201. Public auction—Auction of merchandise without permit prohibited.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2202. Application for permit—Fee—Information to be furnished.

Every such permit shall be issued for a definite period of time not exceeding twelve months from its date of issue, and the date and hour of its expiration shall be stated in the permit, and before such permit shall be issued the applicant therefor shall pay to the District of Columbia, through its collector of taxes, such fee as the Mayor may deem sufficient to reimburse the District of Columbia for the work and expense of issuing the permit and gathering information concerning the applicant and his goods as the said Mayor may deem prudent and best for the protection of the public, but which fee shall not exceed the sum of \$150. The application for the said permit shall be by verified petition, stating the name of the applicant, residence, street, and number of the proposed place of selling, and shall set forth in detail the goods to be sold and what statements or representations are to be made or advertised as to the same, and the length of time for which the permit is desired; and, if previously engaged in a like or similar business, to designate all the places where the same was conducted, and shall furnish to said Mayor such further evidence as shall be deemed necessary to establish the truth of the statements made in the said petition. (Sept. 8, 1916, 39 Stat. 846, ch. 473, § 2; Sept. 14, 1976, D.C. Law 1-82, title I, § 106, 23 DCR 2461.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section by substituting "\$150" for "\$50".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 106 of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 73) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1835).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2204. Suspension of license for violations.

The Mayor of the District of Columbia is hereby vested with authority to temporarily suspend the operation of the license herein provided for whenever he may believe that this subchapter, or any part thereof, or regulations made in pursuance thereof, are about to be or are being violated, and he shall thereupon forthwith institute the appropriate proceeding in the Superior Court of the District of Columbia in accordance with this subchapter, and in the event that the said violation results in a conviction, then and in that event the license shall be and become null and void, but in the event that the said proceeding shall terminate in favor of the defendant, then and in that event the suspension of said license shall be at an end, and the license shall thereupon be restored and be in full force and effect. (Sept. 8, 1916, 39 Stat. 847, ch. 473, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section is set out in this supplement to reflect the redesignation of sections 47-2201 to 47-2208 as subchapter I of this chapter.

§ 47-2206. Misrepresenting merchandise—Prosecution for.

Any person selling or offering for sale any property under the provisions of this subchapter shall, in describing the same, be truthful with respect to the character, quality, kind, and description of the same and which, for the purpose hereof, shall be considered as warranties, and any breach of the same shall be punishable by prosecution in the Superior Court of the District of Columbia, as hereinbefore set forth. (Sept. 8, 1916, 39 Stat. 847, ch. 473, § 6; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

CODIFICATION

Section is set out in this supplement to reflect the redesignation of sections 47-2201 to 47-2208 as subchapter I of this chapter.

§ 47-2207. Prosecution for violation to be in Superior Court.

All prosecutions under this subchapter shall be in the Superior Court of the District of Columbia upon information by the corporation counsel or one of his assistants. Any person violating any of the provisions of this subchapter shall, upon conviction thereof, be punished by a fine of not less than \$10 nor more than \$200 or imprisonment of not more than sixty days or both, in the discretion of the court.

(Sept. 8, 1916, 39 Stat. 847, ch. 473, § 7; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

CODIFICATION

Section is set out in this supplement to reflect the redesignation of sections 47-2201 to 47-2208 as subchapter I of this chapter.

§ 47-2208. Construction.

Nothing in this subchapter shall be construed to excuse or release any person, firm or corporation, or property from the payment of any occupational or property tax, or any other tax imposed or levied by law. Neither shall anything herein be construed to obviate the application of any fraudulent or false advertisement statute of the District of Columbia to any person who may violate the same; nor shall anything herein be construed to prevent any prosecution for fraud, deceit, or larceny by trick; nor to in any way estop or hinder any remedy at law or in equity, or the right to cancel or estop any unconscionable bargain or fraudulent transaction. (Sept. 8, 1916, 39 Stat. 847, ch. 473, § 8.)

CODIFICATION

Section is set out in this supplement to reflect the redesignation of sections 47-2201 to 47-2208 as subchapter I of this chapter.

SUBCHAPTER II.—MISCELLANEOUS

§ 47-2211. Riparian permits.

The schedule of fees to be charged by the District of Columbia for the issuance of riparian permits is hereby established as set out below in the Riparian Permits Schedule. (Sept. 14, 1976, D.C. Law 1-82, title II, § 201, 23 DCR 2461.)

RIPARIAN PERMITS SCHEDULE

Fees required by the Rules and Regulations for the Government of Riparian Rights and Water Privileges in the District of Columbia.

Fees for permits to fill or dredge, construct, reconstruct or repair any structure shall be as follows:

	<i>Fee</i>
Work costing up to \$500.....	\$ 9.00
Work costing from \$501 to \$1,000.....	14.00
Each additional \$1,000 of increased cost.....	14.00

Refunds: A refund of permit fee shall be made as follows:

- When no work has been done under authority of permit the fee in excess of the cost of inspection to verify no work having been done, based on \$10 per inspector hour, the cost of any engineering examination time previously devoted to approval of plans, based on \$15 per hour, plus \$14 administrative costs of "issuance and refund", shall be refunded..... 14.00
- When work authorized by permit has been only partially done and when the District is satisfied that no more work will be done under the permit, the fee in excess of the cost of any engineering plans examination based on \$15 per hour, cost of inspections costs based on \$10 per hour, plus \$14 administrative costs of "issuance and refund" shall be refunded..... 14.00
- Provided:* That request for refund shall be made within six months from date of issuance and the permit and receipt are returned to the Permit Branch.

Penalty: The penalty for a permit to abate notice of doing work without a permit shall be 50 percent of the fee.

RIPIARIAN PERMITS SCHEDULE—Continued

Waiver of permit fees: No permit fee shall be charged when supported by evidence indicating that the applicant is under contract or subcontract to perform the following:

- (1) Work done exclusively for the District of Columbia.
- (2) Work done under contract for the District.

CODIFICATION

"As set out below in the Riparian Permits Schedule" has been substituted for "as set forth in the attached Riparian Permits Schedule" in the interests of clarity.

EMERGENCY ACT AMENDMENTS

1976—For temporary provisions relating to the fees for riparian permits, see sec. 201 of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 76) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1838).

EFFECTIVE DATE

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2212. Electrical fees.

The schedule of fees to be charged by the District of Columbia for the inspection of electrical equipment and for the issuance of permits to perform electrical services is hereby established as set out below in the Electrical Fee Schedule. (Sept. 14, 1976, D.C. Law 1-82, title III, § 301, 23 DCR 2461.)

ELECTRICAL FEE SCHEDULE

GROUP 1. WIRING ONLY

	<i>Fee</i>
Outlets—each 10.....	\$5.00
Outlet means and includes receptacle, switch and fixture outlet	

GROUP 2. FIXTURES AND LAMP HOLDERS

Each 10	2.00
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GROUP 3. ELECTRIC DISCHARGE SIGNS

1st 500 va.....	9.00
Each additional 500 va.....	5.00

GROUP 4. HEATING EQUIPMENT

Baseboard or spaceheaters	
1st 10 KW—per each KW.....	2.00
Each additional KW.....	1.25
Unit heaters, furnaces-motors not included	
1st	11.00
Each additional.....	5.00
Controls only—each.....	7.00
For residential appliances—See Miscellaneous	
For units with motors—add appropriate motor from Group 6.	

GROUP 5. COMMERCIAL HEATING AND COOKING APPLIANCES
OTHER THAN GROUP 4

First 1-8 KW.....	9.00
Each additional.....	5.00
First-over 8 KW.....	11.00
Each additional.....	5.00

GROUP 6. MOTORS AND GENERATORS

Less than ¼ H.P.	Apply Group 2
¼ H.P. to 1 H.P.	9.00
Each additional.....	5.00
Over 1 H.P. to 5 H.P.	14.00
Each additional.....	5.50
Over 5 H.P. to 10 H.P.	22.00
Each additional.....	9.00
Over 10 H.P. to 20 H.P.	27.00
Each additional.....	11.00
Over 20 H.P. to 30 H.P.	35.00
Each additional.....	16.00
Over 30 H.P. to 50 H.P.	42.00
Each additional	18.00

ELECTRICAL FEE SCHEDULE—Continued

GROUP G. MOTORS AND GENERATORS—continued

Over 50 H.P. to 75 H.P.	51.00
Each additional.....	22.00
Over 75 H.P.	58.00
Each additional.....	27.00

For installation of more than one motor, the initial fee shall be the largest motor plus the additional fee for the smaller.

Example: Two 15 H.P. motors and two 3 H.P. motors.

1st 15 H.P. motor.....	\$27.00
2nd 15 H.P. motor.....	11.00
1st 3 H.P. motor.....	14.00
2nd 3 H.P. motor.....	5.50

GROUP 7. SERVICE

Piped house connection.....	5.00
Each additional.....	2.00
Pole line on private property.....	5.00
Each additional.....	2.00
Conductors, including pole.....	7.00
Each additional.....	2.00
Service conductors—each.....	5.00

GROUP 8. SERVICE AND METER EQUIPMENT

0 to 200 amperes.....	11.00
Each additional.....	5.00
201 to 400 amperes.....	16.00
Each additional.....	9.00
401 to 800 amperes.....	31.00
Each additional.....	16.00
Over 800 amperes.....	47.00
Each additional.....	22.00

Relocation, replacement or original installation, including meter connection facilities. For installation of more than one service equipment, the initial fee shall be for the largest service equipment plus the additional fee for the smaller.

Example: Two 400 amperes and two 200 amperes.

1st 400 amperes.....	\$16.00
2nd 400 amperes.....	9.00
1st 200 amperes.....	11.00
2nd 200 amperes.....	5.00

GROUP 9. TRANSFORMERS

1 to 10 KVA.....	9.00
Each additional.....	5.00
11 to 75 KVA.....	14.00
Each additional.....	7.00
76 to 200 KVA.....	18.00
Each additional.....	9.00
Over 200 KVA.....	27.00
Each additional.....	14.00
Vault	47.00
Each additional.....	22.00

For installation of more than one transformer, the initial fee shall be the largest transformer plus the fee for the smaller.

Example: Two 200 KVA transformers and two 75 KVA transformers.

1st 200 KVA transformer.....	\$18.00
2nd 200 KVA transformer.....	9.00
1st 75 KVA transformer.....	14.00
2nd 75 KVA transformer.....	7.00

GROUP 10. THEATRES OR OTHER PLACES OF
PUBLIC ASSEMBLY

Spotlights	
Arc	\$9.00
Each additional.....	5.00
Incandescent	5.00
Each additional.....	2.00
Portable or temporary arc.....	7.00
Each additional.....	5.00
Portable or temporary incandescent.....	5.00
Each additional.....	2.00

ELECTRICAL FEE SCHEDULE—Continued

GROUP 10. THEATRES OR OTHER PLACES OF
PUBLIC ASSEMBLY—continued

Motion picture machine	
Permanent	22.00
Each additional	11.00
Portable	14.00
Each additional	7.00
Slide projector	11.00
Each additional	7.00
Amplifier	9.00
Each additional	5.00
Dimmers (over 1 KW)	7.00
Each additional	5.00
Portable switchboard	9.00
Each additional	5.00
Portable T.V. installation	
1st portable T.V. receiver	8.00
Each additional receiver	4.00
Portable or temporary incandescent lamps (other than spotlights)	
1 to 25 lights	7.00
26 to 50 lights	10.00
51 to 100 lights	14.00
Each additional 100 lights	4.00

GROUP 11. TEMPORARY INSTALLATIONS

Decorations, Lawn fetes, etc.	
1 to 25 lights—1st 90 days	9.00
Each additional 90 days	5.00
26 to 50 lights—1st 90 days	14.00
Each additional 90 days	7.00
51 to 100 lights—1st 90 days	18.00
Each additional 90 days	9.00
Each additional 100 lights—1st 90 days	5.00
Each additional 90 days	2.00
Use of current on wiring, apparatus and fixtures for use pending completion of installation—	
1st 90 days	18.00
Each additional 90 days	9.00
Circuses and Carnivals	
1st 50 KW	47.00
Each additional 100 KW	47.00
Exhibitions, etc.	
1st 3,000 sq ft	20.00
Each additional 1,000 sq ft	11.00

GROUP 12. RADIO AND TELEVISION EQUIPMENT

Transmitting Station—First	27.00
Each additional	14.00
Receiving Station	
Receiving Station Receiving Station Antenna and Ground Connection Device for Receivers—1st	5.00
Each additional 10	5.00
Centralized Speaker Station—1st 10	5.00
Each additional 10	5.00
Centralized Receiver Amplifier	9.00
Each additional	9.00
Closed Circuit Television Camera	
1st Camera	7.00
Each additional Camera	5.00

GROUP 13. MISCELLANEOUS

Arc Vapor Lamps—first	7.00
Each additional	5.00
Battery Chargers	10.00
Each additional	5.00
Electric Ranges (Residential)	5.00
Each additional	1.25
Clothes Dryer (Residential)	5.00
Each additional	1.25
Garbage Disposal (Residential)	5.00
Each additional	2.00
X-Ray Machines	\$9.00
Each additional	5.00
Dishwasher (Residential)	5.00
Each additional	2.00
Hot Water Heater (Residential)	5.00
Each additional	2.00
Fire Alarm Station and Bell	Apply Group 1

ELECTRICAL FEE SCHEDULE—Continued

GROUP 13. MISCELLANEOUS—continued

Electric Signs—Incandescent	Apply Group 2
Festoon Lighting	Apply Group 2
Air Conditioner—Central System	
Not over 5 tons (Residential) First	22.00
2nd to 25th	each 7.50
Above 25	each 5.00
Rectifier	11.00
Each additional	5.00
Welders	11.00
Each additional	5.00
Minimum fee	\$5.00
Portable equipment—on circuits 20 amperes or less	no fee
Electric furnaces (residential)	
1st	11.00
2nd	9.00
Over 25, each	5.00
Electric cranes for construction work	50.00
Replacement of feeder conductors: per feeder (old work) 1st	5.00
Each additional	2.00
Panel board replacement: 1st panel board (old work)	5.00
Each additional	2.00
Installation of empty conduits: Per floor	5.00
Duplicates—Preliminary and final certificates of performance or correction of records	5.00
Quarterly permits—The fee for quarterly permits to install circuits, fixtures and receptacles shall be in accordance with the work done, in no case less than \$20 payable at the time the permit is issued	20.00
Defect reinspection fee	10.00
When the applicant receives a written notice of defects found during the original inspection and the applicant or his agent reports the defects have been corrected, and upon inspection of the defect, noted originally, it is revealed that the defects have not been fully corrected, a charge of \$10 will be made for each inspection thereafter	10.00

NOTE

Where application is made for a permit to cover an electrical installation, or alterations previously made, for which a permit has not been issued, there shall be a service charge of 50 percent of the regular fee with a minimum of \$10 addition to the regular fee. No service charge shall be made for emergency repair work if a permit is applied for at once.

REFUNDS

A refund of permit fees shall be made as follows:

- When no work has been done under authority of a permit, the fee in excess of the costs of inspection to verify no work having been done, based on \$10 per inspector hour, the cost of any engineering examination time previously devoted to approval of plans, based on \$15 per hour, plus \$14 administrative costs of "issuance and refund", shall be refunded. 14.00
- When work authorized by permit has been only partially done and when the District is satisfied that no more work will be done under the permit, the fee in excess of the cost of any engineering plans examination based on \$15 per hour, cost of inspections made, based on \$10 per hour, plus \$14 administrative costs of "issuance and refund", shall be refunded. 14.00
- Provided: That the request for refund shall be made within six months from the date of issuance and the permit and receipt are returned to the Permit Branch.

PENALTY

The penalty for a permit to abate notice of doing work without a permit shall be 50 percent of the fee.

ELECTRICAL FEE SCHEDULE—Continued

WAIVER OF PERMIT FEES

No permit fee shall be charged when supported by evidence indicating that the applicant is under contract or subcontract to perform the following:

- (1) Work done exclusively for the District of Columbia.
- (2) Work done under contract for the District of Columbia.
- (3) Work done exclusively for agencies of the United States Government.

CODIFICATION

"As set out below in the Electrical Fee Schedule" has been substituted for "as set forth in the attached Electrical Fee Schedule" in the interests of clarity.

EMERGENCY ACT AMENDMENTS

1976—For temporary provisions relating to the Electrical Fee Schedule, see sec. 301 of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 78) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1840).

EFFECTIVE DATE

See section 801 of the act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2213. District of Columbia General Hospital rates.

(a) The per diem rates to be charged for inpatient services at the District of Columbia General Hospital shall be as follows:

Medical	\$215.00
Surgical	216.00
Pediatrics	278.00
Obstetrics	370.00
Crippled children	232.00
Gynecology	130.00

(b) The rates to be charged for emergency room services, clinic abortion, and hemodialysis treatment services at the District of Columbia General Hospital shall be as follows:

Emergency room	\$53.50 per visit
Clinic abortion	360.00 per abortion
Hemodialysis treatment ..	316.00 per treatment

(c) The rates to be charged for mental health, mental retardation clinic, and home psychiatry services rendered to patients shall be as follows:

- (1) For mental health services:
 - (A) Inpatients
 - (B) Daypatients
 - (C) Outpatients
- (2) For mental retardation clinic services:
 - (A) Day patients
 - (B) Outpatients

- (3) For home psychiatry services:
 - \$19.00 per home visit.

(Sept. 14, 1976, D.C. Law 1-82, title IV, § 401, 23 DCR 2461; Sept. 28, 1977, D.C. Law 2-24, § 2(a), 24 DCR 3343.)

AMENDMENT

1977—Act Sept. 28, 1977, D.C. Law 2-24, amended section generally.

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of section, see sec. 2 of the Revised Health Fees Act of 1976 (D.C. Act 1-218, Jan. 14, 1977, 23 DCR 5886), sec. 2 of the Revised Health Fees Emergency Act of 1977 (D.C. Act 2-31, Apr. 14, 1977, 23 DCR 8393), and sec. 2(a) of the Second Revised Health Fees Emergency Act of 1977 (D.C. Act 2-58, July 13, 1977, 24 DCR 910).

1976—For temporary provisions relating to the rates for District of Columbia General Hospital, see sec. 401 of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 85) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1847).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 5 of act Sept. 28, 1977, D.C. Law 2-24, provided: "This act [enacting §§ 47-2215a and 47-2215b and amending §§ 32-322 and 47-2213 to 47-2215] shall become effective as provided in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

EFFECTIVE DATE

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

SHORT TITLE

The first section of act Sept. 28, 1977, D.C. Law 2-24, provided "That this act [enacting §§ 47-2215a and 47-2215b and amending §§ 32-322 and 47-2213 to 47-2215] may be cited as the 'Health Services Rates Act of 1977'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-2215a, 47-2215b.

§ 47-2214. District of Columbia Village rates.

(a) The per diem rate to be charged for skilled care patients at District of Columbia Village shall be \$82.50.

(b) The per diem rate to be charged for intermediate care patients at District of Columbia Village shall be \$56.00. (Sept. 14, 1976, D.C. Law 1-82, title IV, § 402, 23 DCR 2461; Sept. 28, 1977, D.C. Law 2-24, § 2(b), 24 DCR 3343.)

AMENDMENT

1977—Act Sept. 28, 1977, D.C. Law 2-24, amended subsec. (a) by substituting "skilled" and "82.50" for "skill" and "57.00", respectively, and subsec. (b) by substituting "56.00" for "36.00".

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of section, see sec. 3 of the Revised Health Fees Act of 1976 (D.C. Act 1-218, Jan. 14, 1977, 23 DCR 5887), sec. 3 of the Revised Health Fees Emergency Act of 1977 (D.C. Act 2-31, Apr. 14, 1977, 23 DCR 8394), and sec. 2(b) of the Second Revised Health Fees Emergency Act of 1977 (D.C. Act 2-58, July 13, 1977, 24 DCR 911).

1976—For temporary provisions relating to the rates for District of Columbia Village, see sec. 402 of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 86) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1848).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 5 of act Sept. 28, 1977, D.C. Law 2-24, set out as a note under § 47-2213.

EFFECTIVE DATE

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-2215a, 47-2215b.

§ 47-2215. Glenn Dale Hospital rates.

The per diem rate to be charged patients for medical care and service at Glenn Dale Hospital shall be \$75.50. (Sept. 14, 1976, D.C. Law 1-82, title IV, § 403, 23 DCR 2461; Sept. 28, 1977, D.C. Law 2-24, § 2(c), 24 DCR 3343.)

AMENDMENT

1977—Act Sept. 28, 1977, D.C. Law 2-24, amended section by substituting "for medical care and service at

Glenn Dale Hospital" and "75.50" for "at Glenn Dale Hospital for medical care and service" and "54.00", respectively.

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of section, see sec. 4 of the Revised Health Fees Act of 1976 (D.C. Act 1-218, Jan. 14, 1977, 23 DCR 5888), sec. 4 of the Revised Health Fees Emergency Act of 1977 (D.C. Act 2-31, Apr. 14, 1977, 23 DCR 8395), and sec. 2(c) of the Second Revised Health Fees Emergency Act of 1977 (D.C. Act 2-58, July 13, 1977, 24 DCR 912).

1976—For temporary provisions relating to the rates for Glenn Dale Hospital, see sec. 403 of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 86) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1848).

EFFECTIVE DATE OF 1977 AMENDMENT

See section 5 of act Sept. 28, 1977, D.C. Law 2-24, set out as a note under § 47-2213.

EFFECTIVE DATE

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-2215a, 47-2215b.

§ 47-2215a. Denial of medical or mental health services for inability to pay prohibited.

No person shall be denied the services enumerated in sections 47-2213 to 47-2215a because of his or her inability to pay for those services. (Sept. 14, 1976, D.C. Law 1-82, title IV, § 404, as added Sept. 28, 1977, D.C. Law 2-24, § 2(d), 24 DCR 3343.)

EFFECTIVE DATE

See section 5 of act Sept. 28, 1977, D.C. Law 2-24, set out as a note under § 47-2213.

§ 47-2215b. Adjustment of medical or mental health services rates by Mayor.

The Mayor of the District of Columbia is hereby authorized to adjust, from time to time, the rates to be charged for the medical care and mental health services specified in sections 47-2213 to 47-2215a except that the Mayor's authority to adjust the rates to be charged for medical care at the outpatient clinic at District of Columbia General Hospital shall terminate on the date that the D.C. General Hospital Commission holds its first meeting pursuant to the provisions of sections 32-1311 and 32-1316(b). Notice of any change in the rates to be charged for the medical care and mental health services specified in sections 47-2213 to 47-2215a shall be filed with the Council of the District of Columbia at least thirty (30) days prior to their effective date. (Sept. 28, 1977, D.C. Law 2-24, § 3, 24 DCR 3343.)

EFFECTIVE DATE

See section 5 of act Sept. 28, 1977, D.C. Law 2-24, set out as a note under § 47-2213.

§ 47-2216. Public space permits.

The fees to be charged by the District of Columbia for the issuance of public space permits for underground excavations, constructing manholes, connecting sewers, conduits or mains are hereby established as set out below in the Public Space Permit Fee Schedule. (Sept. 14, 1976, D.C. Law 1-82, title VI, § 601, 23 DCR 2461.)

PUBLIC SPACE PERMIT FEE SCHEDULE

UNDERGROUND EXCAVATIONS

	Fee
Fuel oil, etc.	
Fuel oil, gasoline and solvent fill pipes-----	\$ 51.00
Fuel oil tanks without curb fills, or residential tanks with curb fills-----	205.00
Nonresidential tanks with curb fills-----	216.00
Replacement or repair of fill pipes and repairs of tanks -----	51.00
Replacement of tanks-----	132.00

MANHOLES

(Except transformer), and valves. For one house connection and one associated necessary manhole when no other work is included in permit. For constructing a single manhole or gas valve without laying conduit of main. For rebuilding a manhole, including any change in the size, shape, depth, or location of conduit made necessary by the work on the manhole. If a manhole is reduced in size, the conduit may be extended to the new wall, or altered slightly in location or depth to conform to the new manhole location without additional charge-----		31.00
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SEWER CONNECTIONS

All sewer connections except those to trunk sewers, when part of another job-----	18.00
Sewer connections to trunk sewers, when part of another job-----	51.00
All sewer connections except those to trunk sewers, when not included with other work----	29.00
Sewer connections to trunk sewers, when not included with other work-----	63.00

CONDUIT OR MAIN

Conduit and manholes, or main and valves-----	63.00
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CODIFICATION

"As set out below in the Public Space Permit Fee Schedule" has been substituted for "as set forth in the attached Public Space Permit Fee Schedule" in the interests of clarity.

EMERGENCY ACT AMENDMENTS

1976—For temporary provisions relating to the fees for public space permits, see sec. 601 of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 93) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1855).

EFFECTIVE DATE

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

Chapter 23.—GENERAL LICENSE LAW

Sec.

47-2305. Establishment of licensing periods by Mayor—Prorating for late application.

47-2314. Gasoline, kerosene, oils, fireworks, and explosives.

47-2327. Commission merchants in food—Bakeries—Bottling, candy-manufacturing, and ice cream manufacturing establishments—Groceries—Markets—Delicatessens—Restaurants—Private clubs—Wholesale fish dealers—Dairies.

47-2344. Council of the District of Columbia may regulate, modify, or eliminate license requirements.

47-2344a. Undertakers' licenses—Qualifications—Examination—License without examination—Authority of Mayor and Council—Appropriations—Definitions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1-852, 25-111, 40-105, 40-903, 43-907.

§ 47-2301. Licenses required for business or profession—Application—Transfer of license—Signing and sealing.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Defense to suit for possession

A landlord's violation of law in failing to procure required licenses is not to be treated any differently than a violation of law in failing to meet the minimum standards of habitability; in neither case does a violation arising after the lease term has commenced void the contract, and in neither case does the failure to comply with statutory requirements deprive the landlord of his right to sue for possession for nonpayment of rent. *G. Curry et al. v. Dunbar House, Inc.* (D.C. App. 1976, 362 A. 2d 686).

§ 47-2302. Compliance with fire escape laws and regulations required before license is issued.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2303. Theater licenses—Revocation for failure to comply with regulations for decency.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2305. Establishment of licensing periods by Mayor—Prorating for late application.

The Mayor of the District of Columbia is authorized to fix and change from time to time the period for which any license authorized under this act may be issued. Licenses issued at any time after the beginning of the license years shall date from the 1st day of the month in which the license was issued and end on the last day of the license year above prescribed, and payment shall be made of the proportionate amount of the annual license fee or tax: *Provided*, That where the license fee is \$5 or less the fee shall not be prorated: *And provided further*, That no fee or tax shall be prorated to an amount less than \$5. (July 1, 1902, 32 Stat. 623, ch. 1352, § 7, par. 5; July 1, 1932, 47 Stat. 551, ch. 366; Oct. 26, 1977, D.C. Law 2-27, § 3, 24 DCR 3720.)

REFERENCE IN TEXT

This act, referred to in the text, is Act July 1, 1902, 32 Stat. 590, ch. 1352. For classification to the Code, see the Parallel Reference Tables. The reference was probably intended to be "this section" meaning section 7 of that Act which is classified to this chapter and chapter 21 of this title.

AMENDMENT

1977—Act Oct. 26, 1977, D.C. Law 2-27, amended the first sentence of the section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1977 AMENDMENT

See section 4 of act Oct. 26, 1977, D.C. Law 2-27, set out as a note under § 25-114.

§ 47-2308. Druggists, apothecaries, and patent-medicine sellers.

Apothecaries or druggists shall pay a license fee of \$47 per annum. Every person who sells patent

medicines, or manufactures, compounds, sells, or dispenses medicines by prescription or otherwise from a located place of business shall be regarded as an apothecary or druggist. (July 1, 1902, 32 Stat. 623, ch. 1352, § 7, par. 8; July 1, 1932, 47 Stat. 551, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 104 (b), 23 DCR 2461.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section by substituting "\$47" for "\$12".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(b) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 62) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1824).

SHORT TITLE

The first section of act Sept. 14, 1976, D.C. Law 1-82, provided "That this act [for classification of act see Tables] may be cited as the 'License Fees and Charges Act of 1976'."

SEVERABILITY AND SAVINGS PROVISIONS OF D.C. LAW 1-82

Section 802 of act Sept. 14, 1976, D.C. Law 1-82, title VIII, provided:

"(a) If any provision of this act, including any amendment made by this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act, including the remaining amendments, and the application of such provisions to other persons or circumstances shall not be affected thereby.

"(b) The repeal or amendment by this act of any provision of law shall not affect any act done or any right accrued or accruing under such provision of law before the effective date of this act, or any suit or proceeding had or commenced before the effective date of this act, but all such rights and liabilities under such law shall continue, and may be enforced in the same manner and to the same extent, as if such repeal or amendment had not been made.

"(c) All offenses committed, and all penalties incurred, prior to the effective date of this act, under any provision of law hereby repealed or amended, may be prosecuted and punished in the same manner and with the same effect as if this act had not been enacted."

REPEAL OF RULES AND REGULATIONS INCONSISTENT WITH D.C. LAW 1-82

Section 803 of act Sept. 14, 1976, D.C. Law 1-82, title VIII, provided: "Notwithstanding any other provision of law or rule of law, the fees and rates of charges established by this act, including the amendments made by this act, shall be the fees and rates of charges for the licenses and activities or services indicated in this act (including such amendments) until changed by act of the Council. Any regulation, executive order, or other rule purporting to establish a different such fee or rate of change is hereby repealed."

EFFECTIVE DATE OF 1976 AMENDMENT

Section 801 of act Sept. 14, 1976, D.C. Law 1-82, title VIII, provided: "This act [for classification of act see Tables], including the amendments made by this act, shall become effective at the end of the 30 day period of Congressional review provided for acts of the Council in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

§ 47-2309. Auctioneers—Penalty for failure to account.

Auctioneers shall pay a license fee of \$222 per annum. No license shall issue hereunder without the approval of the major and superintendent of police. If any licensed auctioneer, his agent or employee, shall convert to his own use in the District of Columbia any goods, wares, merchandise, or personal property of any description, or the proceeds of the

same, and shall fail to pay over the avails or proceeds from the sale thereof, less his proper charges, within five days after receiving the money or its equivalent from the purchaser or purchasers of said goods, wares, merchandise, or personal property of any description, and after demand made therefor by the person entitled to receive the same, or his or her duly authorized agent, he shall be deemed guilty of a misdemeanor, and upon information and conviction in the Superior Court of the District of Columbia shall be fined not more than \$1,000 or be imprisoned not exceeding six months, or both, in the discretion of the court. Nothing herein contained shall be construed to repeal or alter the provisions of subchapter I of chapter 22 of this title. (July 1, 1902, 32 Stat. 623, ch. 1352, § 7, par 9; July 1, 1932, 47 Stat. 552, ch. 366; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570; Sept. 14, 1976, D.C. Law 1-82, title I, § 104(c), 23 DCR 2461.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section by substituting “§222” for “§5”.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(c) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 63) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1825).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2310. Barber shops and beauty parlors.

Owners or managers of barber shops, beauty parlors, beauty salons, vanity shops, or shingle shops, by whatsoever name called, where hair cutting, hair-dressing, hair dyeing, manicuring, and kindred acts are practiced shall pay a license fee of \$30 per annum. In addition, any person who independently leases, rents, or is otherwise authorized to occupy a barber shop chair or a beauty shop booth from the owner of any such shop or establishment shall pay a license fee of \$30 per annum for each such chair or booth so leased, rented or otherwise occupied. (July 1, 1902, 32 Stat. 624, ch. 1352, § 7, par. 10; July 1, 1932, 47 Stat. 552, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 104(d), 23 DCR 2461.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section generally. For prior provisions, see the 1973 edition of the Code.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(d) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 63) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1825).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2311. Massage establishments—Turkish, Russian, or medicated baths.

Owners or managers of massage establishments and Turkish, Russian, or medicated baths shall pay a license fee of \$300 per annum. No license shall be

issued under this section without the approval of the major and superintendent of police. It shall be unlawful for any female to give or administer massage treatment or any bath to any person of the male sex, or for any person of the male sex to give or administer massage treatment or any bath to any person of the female sex, in any establishment licensed under this section. Any person violating the provisions of this section shall, upon conviction, be punished as hereinafter provided in this chapter; and, in addition to such penalty, it shall be the duty of the Mayor of the District of Columbia to revoke the license of the owner or manager of the establishment wherein the provisions of this section shall have been violated. (July 1, 1902, 32 Stat. 624, ch. 1352, § 7, par. 11; July 1, 1932, 47 Stat. 552, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 104(e), 23 DCR 2461.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section by substituting “§300” for “§5”.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(e) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 63) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1825).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

NOTES TO DECISIONS

Constitutionality

Since issues presented to the Court of Appeals in suit for declaratory judgment and injunctive relief challenging constitutionality of this section proscribing cross sexual massages in licensed establishments are the same as had been presented to the United States Supreme Court in actions which were dismissed for want of substantial federal question, the Supreme Court decisions are binding and dispose of the issues presented on the merits. *M. J. Cullinane et al. v. Geisha House, Inc.* (D.C. App. 1976, 354 A. 2d 515; cert. denied 96 S. Ct. 3234, 428 U.S. 923).

§ 47-2312. Public baths.

Owners or managers of establishments where public baths are supplied to transients shall pay a license fee of \$152 per annum, (July 1, 1902, 32 Stat. 624, ch. 1352, § 7, par. 12; July 1, 1932, 47 Stat. 552, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 104 (f), 23 DCR 2461.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section by substituting “\$152” for “\$5”.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(f) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 63) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1825).

EFFECTIVE DATE OF 1976 AMENDMENT

See Section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2314. Gasoline, kerosene, oils, fireworks, and explosives.

(a) Owners or managers of establishments where gasoline or oils of like grade are sold shall pay a license fee of \$17 per annum for each pump used in dispensing said gasoline or oils.

(b) Owners or managers of establishments where kerosene, oils, or gasoline of like grade are stored underground shall pay a license fee of \$80 per annum, and where such like grade kerosene, oils, or gasoline are stored in above-ground tanks the license fee shall be \$94 per annum.

(c) Owners or managers of establishments where kerosene or¹ like grade is kept for sale shall pay a license fee of \$19 per annum, and where oil or grease of like grade is kept for sale, the license fee shall be \$30 per annum, and where coal is kept for sale, the license fee shall be \$94 per annum, and where kerosene, gasoline, or oil is sold through a metering device, the license fee shall be \$64 per annum.

(d) Owners or managers of establishments where fireworks are stored or are kept for sale at wholesale or at both wholesale and retail shall pay a license fee of \$760. Owners or managers of establishments where fireworks are kept for sale at retail shall pay a license fee of \$100.

(e) Owners or managers of establishments where explosives of any kind, including ammunition but excluding fireworks, are stored or are kept for sale at wholesale or at both wholesale and retail shall pay a license fee of \$760. Owners or managers of establishments where explosives of any kind, including ammunition but excluding fireworks, are kept for sale at retail shall pay a license fee of \$47.

(f) No license shall be issued under this section without the approval of the Fire Marshal of the District of Columbia. (July 1, 1902, 32 Stat. 624, ch. 1352, § 7, par. 14; July 1, 1932, 47 Stat. 552, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 104(g), 23 DCR 2461.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section generally. For prior provisions, see the 1973 edition of the Code.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(g) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 63) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1825).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

CROSS REFERENCE

Registration of intent to sell motor vehicle fuels, see § 10-211.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10-211.

§ 47-2315. Pyroxylin.

Owners or managers of establishments where pyroxylin is kept or stored for painting or spraying shall pay a license fee of \$50 per annum. No license shall issue hereunder without the approval of the fire marshall of the District of Columbia. (July 1,

1902, 32 Stat. 624, ch. 1352, § 7, par. 15; July 1, 1932, 47 Stat. 552, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 104(h), 23 DCR 2461.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section by substituting "\$50" for "\$5".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(h) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 65) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1827).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2317. Laundries—Dry cleaning and dyeing establishments.

(a) Owners or managers of laundries operated other than by hand power shall pay a license fee of \$94 per annum.

(b) Owners or managers of laundries operated by hand power shall pay a license fee of \$30 per annum.

(c) Owners or managers of dry cleaning or dyeing establishments shall pay a license fee of \$111 per annum. (July 1, 1902, 32 Stat. 625, ch. 1352, § 7, par. 17; July 1, 1932, 37 Stat. 553, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 104(i), 23 DCR 2461.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended subsec. (a) by substituting "\$94" for "\$18"; subsec. (b) by substituting "\$30" for "\$5"; and subsec. (c) by substituting "\$111" for "\$5".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(i) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 65) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1827).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2318. Mattresses—Manufacture or renovation.

(a) Persons engaged in the business of manufacturing or renovating mattresses shall pay a license fee of \$238 per annum.

(b) Owners or managers of establishments where mattresses are stored, sold, or kept for sale, shall pay a license fee of \$17 per annum.

(c) Within the meaning of this section, "mattress" shall be deemed to include "any quilt, comfort, pad, pillow, cushion, or bag stuffed with hair, down, feathers, wool, cotton, excelsior, jute, or any other soft material and designed for use for sleeping or reclining purposes." (July 1, 1902, 32 Stat. 625, ch. 1352, § 7, par. 18; July 1, 1932, 47 Stat. 553, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 104(j), 23 DCR 2461.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended subsec. (a) by substituting "\$238" for "\$75" and subsec. (b) by substituting "\$17" for "\$10".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(j) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 66) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1828).

¹ So in original. Probably should be "of".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2319. Slot machines.

Proprietors of slot weighing machines, or slot machines used for dispensing foodstuffs or refreshments of any kind, shall pay a license fee of \$8 per annum for each such machine. (July 1, 1902, 32 Stat. 625, ch. 1352, § 7, par. 19; July 1, 1932, 47 Stat. 553, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 104(k), 23 DCR 2461.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section by substituting “\$8” for “\$2”.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(k) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 66) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1828).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2320. Theaters, moving pictures, skating rinks, dances, exhibitions, lectures, entertainments—Assignment of police and firemen and additional fees based thereon.

(a) Owners or managers of theaters in which moving pictures are displayed, for profit or gain, shall pay a license fee of \$415 per annum.

(b) Owners or managers of buildings in which skating rinks, fairs, carnivals, balls, dances, exhibitions, lectures, or entertainments of any description including theatrical or dramatic performances of any kind are conducted, for profit or gain, shall pay a license fee of \$50 per annum: *Provided*, That for entertainments, concerts, or performances of any kind where the proceeds are intended for church or charitable purposes, and where no rental is charged, no license shall be required: *Provided further*, That when, in the opinion of the Major and Superintendent of Police and the Chief Engineer of the Fire Department of the District of Columbia, or either of them, it is necessary to post policemen or firemen, or both, at, on, and about the licensed premises for the protection of the public safety, in addition to the license fee provided for above, such owners or managers shall pay a further monthly permit fee, to be determined monthly by the said Major and Superintendent and Chief Engineer, or either of them, based upon a reasonable estimate of the number of hours to be spent by policemen and firemen at, on, and about the licensed premises, this fee to be payable in advance on the first day of the month for which the permit is sought. Policemen and firemen so assigned shall be charged for by the hour at the basic daily wage rate of policemen and firemen so assigned in effect the first day of the month for which the permit is sought. (July 1, 1902, 32 Stat. 625, ch. 1352, § 7, par. 20; July 1, 1932, 47 Stat. 553, ch. 366; June 29, 1948, 62 Stat. 1109, ch. 735, §§ 1, 2; Sept. 14, 1976, D.C. Law 1-82, title I, § 104(l), 23 DCR 2461.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section by (1) repealing subsec. (a); (2) redesignating subsec. (b) as subsec. (a) and substituting “\$415” for

“\$30”; and (3) redesignating subsec. (c) as subsec. (b), substituting “\$50” for “\$8”, and inserting “including theatrical or dramatic performances of any kind” immediately following “or entertainments of any description”.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(l) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 66) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1828).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2321. Bowling alleys—Billiard and pool tables—Games.

Owners or managers of establishments where bowling alleys, billiard or pool tables, or any table, alley, or board upon which legitimate games are played, shall, when they are operated or conducted for public use, or for profit or gain, pay a license tax of \$39 per annum for each such alley, board, or table. No license shall issue under this section without the approval of the major and superintendent of police: *Provided*, That in case of refusal of said major and superintendent to approve said license, or upon written protest of a majority or more of the property owners or residents of the block in which it is proposed to grant such license, an appeal may be taken to the Mayor of the District of Columbia, whose decision shall be final. All establishments licensed under this section shall be closed during the entire twenty-four hours of each and every Sunday and between the hours of one o'clock antemeridian and eight o'clock antemeridian on the secular days of the week: *Provided, however*, That bowling-alley establishments licensed under this section shall be closed at midnight on Saturday night and shall remain closed until 2 o'clock postmeridian. (July 1, 1902, 32 Stat. 625, ch. 1352, § 7, par. 21; July 1, 1932, 47 Stat. 553, ch. 366; Apr. 14, 1937, 50 Stat. 63, ch. 77; Sept. 14, 1976, D.C. Law 1-82, title I, § 104(m), 23 DCR 2461.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section by substituting “\$39” for “\$12”.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(m) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 67) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1829).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2322. Shooting galleries.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2323. Baseball—Football—Athletic exhibitions—Amusement parks.

(a) Owners or managers of grounds used for baseball, football, or other athletic exhibitions to which an admission fee is charged, directly or indirectly, shall pay a license fee of \$17 per annum.

When, in the opinion of the Major and Superintendent of Police and Chief Engineer of the Fire Department of the District of Columbia, or either of them, it is necessary to post policemen or firemen, or both, at, on, and about the licensed premises for the protection of the public safety, in addition to the license fee provided for above, such owners or managers shall pay a further monthly permit fee, to be determined monthly by the said Major and Superintendent and Chief Engineer, or either of them, based upon a reasonable estimate of the number of hours to be spent by policemen and firemen, or either of them, at, on, and about the licensed premises, such fee to be payable in advance on the first day of the month for which the permit is sought. Policemen and firemen so assigned shall be charged for by the hour at the basic hourly wage rate of the policemen and firemen so assigned in effect on the first day of the month for which the permit is sought.

(b) Owners or managers of grounds used for amusement parks, to which an admission is charged, directly or indirectly, other than those used for athletic exhibitions, shall pay a license fee of \$208 per annum. Annual licenses issued under this section shall date from April 1 in each year. (July 1, 1902, 32 Stat. 625, ch. 1352, § 7, par. 23; July 1, 1932, 47 Stat. 554, ch. 366; June 29, 1948, 62 Stat. 1109, ch. 735, § 3; Sept. 14, 1976, D.C. Law 1-82, title I, § 104(n), 23 DCR 2461.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended subsec. (a) by substituting "\$17" for "\$5" and subsec. (b) by substituting "\$208" for "\$65".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(n) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 67) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1829).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2324. Swimming pools.

Owners or managers of swimming pools, indoor or outdoor, shall pay a license fee of \$319 per annum. (July 1, 1902, 32 Stat. 625, ch. 1352, § 7, par. 24; July 1, 1932, 47 Stat. 554, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 104(o), 23 DCR 2461.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section by substituting "\$319" for "\$15".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(o) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 67), and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1829).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2325. Circuses.

Proprietors or owners of a circus transported by railroad into the District of Columbia shall pay a license fee of \$19.00 per day for each car load of circus equipment, and proprietors or owners of any circus transported by wagons or motor-trucks into the District of Columbia shall pay a license tax of \$14.00 per day for each motor-truck load or wagon load of circus equipment, but not to exceed \$875.00 per day. (July 1, 1902, 32 Stat. 626, ch. 1352, § 7, par. 25; July 1, 1932, 47 Stat. 554, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 104(p), 23 DCR 2461.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section generally. For prior provisions, see the 1973 edition of the Code.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(p) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 67) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1829).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2326. Carnivals and fairs.

Owners or managers of carnivals or fairs, by whatsoever name called, conducted for profit or gain, and not held in any building or structure licensed under this chapter, shall pay a license fee of \$158 per day. (July 1, 1902, 32 Stat. 626, ch. 1352, § 7, par. 26; July 1, 1932, 47 Stat. 554, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 104(q), 23 DCR 2461.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section by substituting "\$158" for "\$35".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(q) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 68) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1830).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2327. Commission merchants in food—Bakeries—Bottling, candy-manufacturing, and ice cream manufacturing establishments—Groceries—Markets—Delicatessens—Restaurants—Private clubs—Wholesale fish dealers—Dairies.

(a) Commission merchants dealing in food or food products shall pay a license fee of \$645 per annum.

(b) Owners or managers of bakeries, bottling establishments, candy-manufacturing establishments, grocery stores, marine products or fish sold at retail, meat shops, and market stands handling food or food products shall pay a license fee of \$111 per annum: *Provided*, That if any licensee hereunder shall conduct upon the same premises more than one of the callings herein listed, no additional fee shall be required.

(c) Owners or managers of delicatessens, ice cream parlors, soda fountains, or soft-drink establishments shall pay a license fee of \$133 per annum: *Provided*, That if any licensee hereunder shall conduct upon the same premises more than one of the callings herein listed, or listed in subsection (b), no additional fee shall be required.

(d) Owners or managers of ice cream manufacturing establishments shall pay a license fee of \$1050 per annum: *Provided*, That if any licensee hereunder shall conduct upon the same premises more than one of the callings listed in subsections (b) and (c) herein, no additional fee shall be required.

(e) (1) Owners or managers of restaurants or private clubs shall pay a license fee based upon seating capacity as follows:

(A) 0-10 seats-----	\$133 per annum
(B) 11-50 seats-----	\$166 per annum
(C) 51-100 seats-----	\$199 per annum
(D) 101 seats and over-----	\$232 per annum.

Within the meaning of this subsection a restaurant shall be any place where food or refreshments are served to transient customers to be eaten on the premises where sold.

(2) Licenses to operate restaurants or cafeterias in the District of Columbia Public Schools shall be issued at no charge to the Board of Education.

(3) If any licensee hereunder shall conduct upon the same premises more than one of the callings listed in subsections (b) and (c) herein, no additional fee shall be required.

(f) Wholesale dealers in fish or other marine products shall pay a license fee of \$429 per annum.

(g) Owners or managers of dairies shall pay a license fee of \$3,300 per annum.

(h) All dealers in food or food products not listed herein, or elsewhere in this chapter shall pay a license fee of \$111 per annum. (July 1, 1902, 32 Stat. 626, ch. 1352, § 7, par. 27; July 1, 1932, 47 Stat. 554, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 104 (r), 23 DCR 2461.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section generally. For prior provisions, see the 1973 edition of the Code.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(r) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 68) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1830).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2328. Classification of buildings containing living quarters for licenses—Fees—Buildings exempt from license requirement.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-2202.

NOTES TO DECISIONS

Constitutionality

Limiting of housing licensing regulations to buildings containing more than two units is not an unconstitutional deprivation of any right to equal protection under the due process clause of the Fifth Amendment, nor is such limitation arbitrary or unreasonable. *T. R. Holmes, Jr. v. District of Columbia Board of Appeals and Review* (D.C. App. 1976, 351 A. 2d 518).

Defense to suit for possession

A landlord's violation of law in failing to procure required licenses is not to be treated any differently than a violation of law in failing to meet the minimum standards of habitability; in neither case does a violation arising after the lease term has commenced void the contract, and in neither case does the failure to comply with statutory requirements deprive the landlord of his right to sue for possession for nonpayment of rent. *G. Curry et al. v. Dunbar House, Inc.* (D.C. App. 1976, 362 A. 2d 686).

Due process

Where petitioner, whose application for renewal of his license to operate an apartment house was denied by the business licenses and permits division of the Department of Economic Development, had been conducting a going business under license, property rights had attached and the Fifth Amendment to the Constitution entitles him to a due process hearing in regard to non-renewal of his license, even though the licensing regulation itself does not make a hearing a prerequisite to non-renewal. *T. R. Holmes, Jr. v. District of Columbia Board of Appeals and Review* (D.C. App. 1976, 351 A. 2d 518).

Where petitioner, whose application for renewal of his license to operate an apartment house had been denied by the business licenses and permits division of the Department of Economic Development, availed himself of the right to appeal such decision to the Board of Appeals and Review and where petitioner was given a full evidentiary hearing which accorded with the requirements of both procedural and substantive due process, petitioner received his due process rights even though he was not provided a hearing prior to revocation of his license. *Id.*

Stay of orders

The Board of Appeals and Review has the power to order a stay pending final judgment and should stay an order denying an application for renewal of a license to operate an apartment house if requested to do so by a petitioner so that a due process hearing may take place. *T. R. Holmes, Jr. v. District of Columbia Board of Appeals and Review* (D.C. App. 1976, 351 A. 2d 518).

Violations of regulations

Where housing code violations had a substantially detrimental effect on the health and safety of the tenants of petitioner's apartment building, denial of petitioner's license renewal application was justified, particularly in light of the cumulative effect of the numerous violations. *T. R. Holmes, Jr. v. District of Columbia Board of Appeals and Review* (D.C. App. 1976, 351 A. 2d 518).

§ 47-2331. Vehicles for hire—Hackers' licenses—Identification tags on vehicles—Sightseeing vehicles for school children, occasional purposes—Ambulances, private vehicles for funeral purposes—Issuance of licenses—Payment of fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TAXI SERVICE STUDY

Section 27 of Act Oct. 26, 1973, Pub. L. 93-140, 87 Stat. 509, provided:

"(a) Notwithstanding any other provision of law, the Public Service Commission of the District of Columbia is authorized and directed to conduct a study of the adequacy of service and regulation of the taxicab industry

in the District of Columbia. The study shall include the feasibility of allowing the installation of meters in taxicabs in the District of Columbia.

"(b) Within six months following the date of enactment of this Act, the Public Service Commission shall transmit the final report of the results of such investigation and study, including its finding and recommendations, to the Commissioner of the District of Columbia and the District of Columbia Council, and the District of Columbia government shall within ninety days consider the same, and transmit its recommendations and the final report of the Public Service Commission to the Congress."

NOTES TO DECISIONS

Moral character of applicant

Where applicant for taxicab driver's license had completed two years' probation and been released from court supervision before filing his application for the license, denial of a license cannot be premised on the District of Columbia motor vehicle regulation which provides that an applicant shall not be considered of good moral character if he is on parole or probation at the time the license application is filed. *A. Richards v. District of Columbia Hackers' License Appeal Board* (D.C. App. 1976, 357 A. 2d 439).

Term "sentence" in District of Columbia motor vehicle regulation pertaining to licensing of taxicab drivers which states that an applicant shall not be considered of good moral character if he has, within the three years immediately preceding the filing of the application been convicted of, or during such period served any part of a "sentence" for certain enumerated offenses means time spent in prison confinement and does not encompass time spent on probation or parole. *Id.*

Regulations—Validity

Where regulation governing taxicab drivers was validly enacted, properly published in District of Columbia register and accessible to driver, it would not be declared invalid because of inadvertent omission in its compilation resulting from typographical error. *E. J. Pillis v. District of Columbia Hackers' License Appeal Board* (D.C. App. 1976, 366 A. 2d 1094; cert. denied 97 S. Ct. 1566, 430 U.S. 937).

Suspension or revocation of hacker's license

Substantial evidence supported order of District of Columbia Hackers' License Appeal Board suspending taxicab driver's license for three months on findings that he refused to pick up fare, drove away from hotel while doorman had his hand on taxicab door handle, and was rude. *E. J. Pillis v. District of Columbia Hackers' License Appeal Board* (D.C. App. 1976, 366 A. 2d 1094; cert. denied 97 S. Ct. 1566, 430 U.S. 937).

— Evidence

In proceedings for suspension of taxicab driver's license, Hackers' License Appeal Board acted properly in refusing driver's proffer of evidence to impeach credibility of hotel doorman, since such evidence, to effect that doorman was engaged in "kickback" scheme with other taxi drivers, was not relevant to charges against driver of refusing to transport passenger and driving improperly. *E. J. Pillis v. District of Columbia Hackers' License Appeal Board* (D.C. App. 1976, 366 A. 2d 1094; cert. denied 97 S. Ct. 1566, 430 U.S. 937).

— Proceedings

In proceeding resulting in suspension of taxicab driver's license, fact that driver was read complaint in his file instead of being allowed himself to review such file did not prejudice him. *E. J. Pillis v. District of Columbia Hackers' License Appeal Board* (D.C. App. 1976, 366 A. 2d 1094; cert. denied 97 S. Ct. 1566, 430 U.S. 937).

Where question of whether hotel doorman was involved in kickback scheme with cab drivers was correctly held by Hackers' License Appeal Board to be irrelevant to proceedings in which taxicab driver's license was suspended, fact that acting chairman of Board was officer of cab company whose drivers were allegedly involved in such kickback scheme does not show clear conflict of interest. *Id.*

§ 47-2332. Rental or leasing of motor vehicle without driver.

The owners or managers of establishments where automobiles or other motor vehicles are kept for rent or lease without a driver shall pay a license fee of \$300 per annum for each such establishment: *Provided*, That nothing in this section shall be so construed as to exempt such owners or managers from paying additional license taxes required by this chapter. (July 1, 1902, 32 Stat. 626, ch. 1352, § 7, par. 32; July 1, 1932, 47 Stat. 557, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 104(s), 23 DCR 2461.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section by substituting "\$300" for "\$5".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(s) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 70) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1832).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2334. Repairing of motor vehicles.

Owners or managers of establishments where motor vehicles of any description are washed, cleaned, greased, oiled, or repaired, for profit or gain, shall pay a license fee of \$30 per annum. (July 1, 1902, 32 Stat. 627, ch. 1352, § 7, par. 34; July 1, 1932, 47 Stat. 557, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 104(t), 23 DCR 2461.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section by substituting "\$30" for "\$5".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(t) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 70) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1832).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2335. Livery stables.

Owners or managers of livery stables shall pay a license fee of \$54 per annum: *Provided*, That nothing in this section shall be so construed as to exempt such owners or managers from paying additional license taxes required by this chapter. (July 1, 1902, 32 Stat. 627, ch. 1352, § 7, par. 35; July 1, 1932, 47 Stat. 557, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 104(u), 23 DCR 2461.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section by substituting "\$54" for "\$5".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(u) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 70) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1832).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2336. Sales on streets or public places.

No person shall sell any article, merchandise, or food or anything whatever, excepting newspapers sold at large and not from a fixed location, upon the public streets, or from public space in the District of Columbia, without a license first having been obtained under this section. Persons so licensed shall be considered as vendors and shall be designated as either Class A, Class B, or Class C whether selling from a fixed location, on foot from house to house, or from a vehicle of any description, and shall pay a license fee per annum as follows:

- (1) Persons who vend food, whether from any public space or door to door (Class A) ----- \$25.
- (2) Persons who vend any article or merchandise other than food from public space, but not from door to door (Class B) ----- \$15.
- (3) Any person who vends any article of merchandise other than food from door to door (Class C) ----- \$50.

Every vendor so licensed shall be furnished with a badge corresponding to the number of his license, which badge shall be worn conspicuously whenever transacting business, and where sales are made from a vehicle such vendor shall be provided with a metal plate containing a number similar to the number of his license, which plate shall be conspicuously attached to the vehicle at all times when such vendor is transacting business: *Provided*, That no license shall be required of any person bringing to and selling at the several markets produce of his own raising: *And provided further*, that any person under eighteen years of age shall be exempt from obtaining a license if such person is the holder of a valid work permit or street trade badge issued by the District of Columbia Board of Education, or if such person is the holder of a similar permit issued by another jurisdiction. The Council of the District of Columbia is hereby authorized and empowered to enforce necessary regulations governing the conduct upon the public streets and public spaces of vendors licensed hereunder, including the power to locate the places where licensed vendors on the public streets and public spaces shall stand, and to change them as often as the public interests require. (July 1, 1902, 32 Stat. 627, ch. 1352, § 7, par. 36; July 1, 1932, 47 Stat. 557, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 104(aa), 23 DCR 2461.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section generally. For prior provisions, see the 1973 edition of the Code.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(aa) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 71) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1833).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

NOTES TO DECISIONS

Newspaper vendors

Where evidence showed no clear pattern of police harassment likely to be continued and where in light of administrative directive concerning vendors' licensing statute it did not appear likely that police would continue to attempt to prevent underground newspaper vendors from selling newspapers from stacks upon sidewalk, injunctive relief was properly refused. *Washington Free Community, Inc., et al. v. J. V. Wilson, Chief of Police, et al.* (1973, 484 F. 2d 1078, 157 U.S. App. D.C. 360; aff'g 334 F. Supp. 77).

§ 47-2337. Solicitors.

Solicitors shall pay a license fee of \$158 per annum. Any person who goes from house to house, or place to place, within the District of Columbia, selling or taking orders for or offering to sell or take orders for goods, wares, merchandise, or any article or thing of value for future delivery, or for services to be performed in the future or for the making, manufacturing, or repairing of any article or thing whatsoever for future delivery, and requiring or accepting a deposit for such future delivery or service, shall be deemed to be a "solicitor," within the meaning of this section: *Provided, however*, That this definition shall not apply to persons selling goods, wares, merchandise, or any article or thing of value for resale to retailers in that commodity. Any person desiring a solicitor's license shall make application to the Mayor of the District of Columbia or his designated agent on forms to be provided for that purpose, stating the name of the applicant, the name and address of the person whom he represents, the class and kind of goods offered for sale, or the kind of service to be performed. Such application shall be accompanied by a bond in the penal sum of five hundred dollars, running to the District of Columbia, conditioned upon the making of final delivery of the goods ordered, or services to be performed, in accordance with the terms of such order, or failing therein, that the advance payment on such order be refunded. Any person aggrieved by the action of any such solicitor shall have the right of action on the bond for the recovery of money, or damages, or both. All orders taken by licensed solicitors shall be in writing in duplicate, stating the terms thereof and the amount paid in advance, and one copy shall be given to the purchaser. (July 1, 1902, 32 Stat. 627, ch. 1352, § 7, par. 37; July 1, 1932, 47 Stat. 557, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 104(v), 23 DCR 2461.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section by substituting "\$158" for "five dollars".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(v) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 70) and

the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1832).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2338. Guides.

No person shall, for hire, guide or escort any person through or about the District of Columbia, or any part thereof, unless he shall have first secured a license so to do. The fee for each such license shall be \$28 per annum. No license shall be issued hereunder without the approval of the major and superintendent of police. The Council of the District of Columbia is authorized and empowered to make reasonable regulations for the examination of all applicants for such licenses and for the government and conduct of persons licensed hereunder, including the power to require said persons to wear a badge while engaged in their calling. (July 1, 1902, 32 Stat. 627, ch. 1352, § 7, par. 38; July 1, 1932, 47 Stat. 558, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 104 (w), 23 DCR 2461.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section by substituting "\$28" for "\$10".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(w) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 70) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1832).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

NOTES TO DECISIONS

Exemption—Tour service

Secretary of Interior has exclusive authority to regulate interpretive tour service operated under contract with Department of Interior, and service therefor is immune from enforcement of District of Columbia licensing and registration requirements. *District of Columbia et al. v. Landmark Services, Inc.* (1976, 416 F. Supp. 559).

§ 47-2339. Secondhand dealers—Classification—Licensing—Stolen property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2340. Dealers in dangerous weapons.

Dealers in dangerous or deadly weapons shall pay a license tax of \$300 per annum. No license shall issue hereunder without the approval of the major and superintendent of police, and the Council of the District of Columbia is authorized and empowered to make and promulgate regulations for the conduct of the business of persons licensed hereunder, including the power to require a record to be kept

of all sales of deadly or dangerous weapons, to prescribe a form therefor, and to require reports of all such sales to the major and superintendent of police at such time as the Council may deem advisable. (July 1, 1902, 32 Stat. 628, ch. 1352, § 7, par. 40; July 1, 1932, 47 Stat. 558, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 104(x), 23 DCR 2461.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section by substituting "\$300" for "\$50".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(x) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 70) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1833).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2341. Private detectives.

(a) Private detectives, or detective agencies, by whatsoever name called, shall pay a license tax of \$158 per annum: *Provided*, That no license shall be issued under this section without the approval of the major and superintendent of police.

* * * * *

(July 1, 1902, 32 Stat. 628, ch. 1352, § 7, par. 41; July 1, 1932, 47 Stat. 559, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 104(y), 23 DCR 2461.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended subsec. (a) by substituting "\$158" for "\$100".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(y) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 71) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1833).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2342. Fortune telling.

Mediums, clairvoyants, soothsayers, fortune tellers, palmists, or phrenologists, by whatsoever name called, conducting business for profit or gain, directly or indirectly, shall pay a license tax of \$550 per annum. No license shall be issued hereunder without the approval of the major and superintendent of police, nor shall any license be issued hereunder to any person not an actual resident of the District of Columbia for two years next preceeding his date of application: *Provided*, That no license shall be required of persons pretending to tell for-

tunes or practice palmistry, phrenology, or any of the callings herein listed, in a regular licensed theater, or as a part of any play, exhibition, fair, or show presented or offered in aid of any benevolent, charitable, or educational purpose: *And provided further*, That no license shall be required of any ordained priest or minister, or accredited representative of any such priest or minister, the fees for whose ministrations are not the private property of such ordained priest, minister, or accredited representative of such priest or minister. (July 1, 1902, 32 Stat. 628, ch. 1352, § 7, par. 43; July 1, 1932, 47 Stat. 562, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 104(z), 23 DCR 2461.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section by substituting "\$550" for "\$250".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 104(z) of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 71) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1833).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2344. Council of the District of Columbia may regulate, modify, or eliminate license requirements.

The District of Columbia Council¹ is authorized and empowered when in its discretion such is deemed advisable, to require a license of other businesses or callings not listed in this chapter or chapter 21 of this title and which, in its judgement, require inspection, supervision, regulation, or any other activity or expenditure by any municipal agencies; and the Council of the District of Columbia is further authorized and empowered to fix the license fee therefor in such amount as, in its judgment, will be not less than the cost to the District of Columbia of such inspection, supervision, regulation, or other activity or expenditure. The Council is further authorized and empowered in its discretion to modify any of the provisions of this chapter or chapter 21 of this title so far as eliminating therefrom any business or calling in this chapter or chapter 21 of this title required to be licensed, and the Council is further authorized and empowered in its discretion to raise or lower the amount of the license fee provided in this chapter or chapter 21 of this title, when in its judgment such increase or decrease is warranted. (July 1, 1902, 32 Stat. 628, ch. 1352, § 7, par. 45; July 1, 1932, 47 Stat. 562, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 108, 23 DCR 2461.)

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended section generally. For prior provisions, see the 1973 edition of the Code.

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 108 of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 74) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1836).

¹ So in original. Probably should be "Council of the District of Columbia".

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

NOTES TO DECISIONS

Solid waste disposal

As the business of disposing of solid waste is not a business or calling otherwise listed in licensing statutes, the District of Columbia may fix a license fee for the disposal of such wastes in such amount as will be commensurate with the cost to the District of regulating the disposal of such wastes, but any fee would be illegal to the extent that the revenue therefrom exceeded applicable costs. *Metropolitan D.C. Refuse Haulers Association et al. v. W. E. Washington, Commissioner et al.* (1973, 479 F. 2d 1191, 156 U.S. App. D.C. 208; aff'g 360 F. Supp. 281).

Where licenses issued for collection and transportation of solid wastes in or through the District of Columbia did not cover disposal of solid wastes in the District, separate disposal fee of \$5 per ton was a "license fee" authorized by statute, to the extent that the revenue therefrom was commensurate with the costs of supervision and regulation. *Id.*

§ 47-2344a. Undertakers' licenses—Qualifications—Examination—License without examination—Authority of Mayor and Council—Appropriations—Definitions.

(a) On and after ninety days from August 1, 1974, no person shall, in the District of Columbia, discharge any of the duties of an undertaker, unless there has been issued to him by the Mayor of the District of Columbia a license therefore in full force and effect. The fees for the application for, issuance of, and renewal of licenses are hereby established as follows:

- (1) Application fee for examination for license as an undertaker or apprentice..... \$5;
- (2) Original license fee for undertakers and apprentices \$5;
- (3) Fee for the issuance of courtesy cards to undertakers from other jurisdictions for the privilege of performing their occupation in the District of Columbia \$25;
- (4) Annual renewal fee for licenses for undertakers \$25;
- if the request for renewal is late, an additional fee of \$5;
- (5) Annual renewal fee for licenses for apprentices \$15;
- if the renewal is late, an additional fee of... \$5; and
- (6) Fee for certifying records..... \$10.

All of the above fees, including the examination fee in subsection (b), shall be paid to the District of Columbia Treasurer; and licenses shall be issued at the time and in the manner provided in section 47-2305.

(b) An applicant for a license shall submit proof satisfactory to the Mayor, on such forms as the Mayor may prescribe, that he is not less than eighteen years of age, a citizen of the United States, of good moral character; that he is a graduate of a recognized high school or educational equivalent; that he is a graduate of a school or college of embalming, whose course of instruction is not less than nine months, comprising not less than eight hundred and forty hours of study, and that he has had not less than two years' practical experience in the business or profession. Such applicant shall be examined theoretically and practically in anatomy, embalming, embalming fluids, sanitation, disinfection, the care

and preparation of dead human bodies for burial and the shipment of same, laws and regulations pertaining to communicable diseases, and such other subjects as the Council of the District of Columbia deems appropriate and proper.

An examination of applicants for a license shall be held not less frequently than once each year at such time and place as the Mayor shall determine; notice of such examination shall be given at least thirty days prior to the date set therefor.

The examination fee for applicants who desire to become undertakers shall be \$10. In lieu of examination, an applicant may be licensed as an undertaker in the District of Columbia if so licensed in another State or Territory where the qualifications prescribed by such other licensing jurisdiction at the time of such licensing were at least equal to those prescribed in the District of Columbia at the date of application for a District of Columbia license, and where such State or Territory accepts in like manner the licensing of undertakers of the District of Columbia.

(d) The Mayor, and the Council of the District of Columbia with respect to promulgating and altering rules and regulations under paragraph (6),¹ are hereby authorized:

(3) To employ, and provide for necessary travel, in accordance with chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters], such additional employees as may be necessary and to make such expenditures as may be necessary for the proper enforcement of the provisions of this section and the rules and regulations promulgated by authority thereof. There is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States to the credit of the District of Columbia not otherwise appropriated, funds to carry out the provisions of this section.

(4) To promulgate and enforce, and from time to time to alter, such rules and regulations, not inconsistent with the provisions of this section, as the Council deems necessary, for the proper execution and enforcement of the provisions of this section.

(5) To designate as their agent for the purpose of carrying out the provisions of this section, the Director of Public Health.

(e) * * *

(As amended Oct. 8, 1975, D.C. Law 1-20, § 7(b) (2), 23 DCR 1811; Feb. 26, 1976, D.C. Law 1-50, § 2, 22 DCR 5127; July 22, 1976, D.C. Law 1-75, § 3(j), 23 DCR 1179; Sept. 14, 1976, D.C. Law 1-82, title V, § 501, 23 DCR 2461.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1976—Subsec. (a). Act Sept. 14, 1976, D.C. Law 1-82, amended subsec. (a) generally. For prior provisions, see the 1973 edition of the Code.

Subsec. (b). Such act amended subsec. (b) by substituting "Mayor" for "Commissioner" and by adding the third paragraph.

Act July 22, 1976, D.C. Law 1-75, amended subsec. (b) by substituting "eighteen" for "twenty-one".

Subsec. (d). Act Sept. 14, 1976, D.C. Law 1-82, amended provision preceding par. (1) by substituting "the Mayor, and the Council of the District of Columbia" for "the Commissioner, and the District of Columbia Council"; repealed pars. (3) and (4); and redesignated pars. (5), (6), and (7) as pars. (3), (4), and (5), respectively.

Act Feb. 26, 1976, D.C. Law 1-50, amended subsec. (d) by striking out par. (3) (B) and redesignating par. (3) (A) as (3).

1975—Act Oct. 8, 1975, D.C. Law 1-20, amended subsec. (d) (3) by designating existing provisions as subpar. (A), and by adding subpar. (B).

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section; see sec. 501 of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 87) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1849).

1975—For temporary repeal of subsec. (d) (3) (A), see sec. 2 of the Emergency District of Columbia Boxing and Wrestling Commission act Amendment act (D.C. Act 1-66, Nov. 10, 1975, 22 DCR 2607).

EFFECTIVE DATES OF 1976 AMENDMENTS

For act Sept. 14, 1976, D.C. Law 1-82, see sec. 801 of such act set out as a note under § 47-2308.

For act July 22, 1976, D.C. Law 1-75, see sec. 8 of such act set out as a note under § 21-101.

For act Feb. 26, 1976, D.C. Law 1-50, see sec. 4 of such act set out as a note under § 2-1231.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment effective Oct. 8, 1975, see sec. 11 of D.C. Law 1-20, set out as a note under section 2-1231.

§ 47-2345. Promulgation of regulations authorized—Suspension or revocation of licenses—Bonding of licensees authorized to collect moneys—Exemptions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Due process

Where petitioner, whose application for renewal of his license to operate an apartment house was denied by the business licenses and permits division of the Department of Economic Development, had been conducting a going business under license, property rights had attached and the Fifth Amendment to the Constitution entitles him to a due process hearing in regard to nonrenewal of his license, even though the licensing regulation itself does not make a hearing a prerequisite to nonrenewal. *T. R. Holmes, Jr. v. District of Columbia Board of Appeals and Review* (D.C. App. 1976, 351 A. 2d 518).

Where petitioner, whose application for renewal of his license to operate an apartment house had been denied by the business licenses and permits division of the Department of Economic Development, availed himself of the right to appeal such decision to the Board of Appeals and Review and where petitioner was given a full evidentiary hearing which accorded with the requirements of both procedural and substantive due process, petitioner received his due process rights even though he was not provided a hearing prior to revocation of his license. *Id.*

¹ So in original. Probably should be "(4)".

Regulations—Validity

Where regulation governing taxicab drivers was validly enacted, properly published in District of Columbia register and accessible to driver, it would not be declared invalid because of inadvertent omission in its compilation resulting from typographical error. *E. J. Pillis v. District of Columbia Hackers' License Appeal Board* (D.C. App. 1976, 366 A. 2d 1904; cert. denied 97 S. Ct. 1566, 430 U.S. 937).

—Violations

Where housing code violations had a substantially detrimental effect on the health and safety of the tenants of petitioner's apartment building, denial of petitioner's license renewal application was justified, particularly in light of the cumulative effect of the numerous violations. *T. R. Holmes, Jr. v. District of Columbia Board of Appeals and Review* (D.C. App. 1976, 351 A.2d 518).

Stay of orders

The Board of Appeals and Review has the power to order a stay pending final judgment and should stay an order denying an application for renewal of a license to operate an apartment house if requested to do so by a petitioner so that a due process hearing may take place. *T. R. Holmes, Jr. v. District of Columbia Board of Appeals and Review* (D.C. App. 1976, 351 A. 2d 518).

Suspension or revocation of hacker's license

Substantial evidence supported order of District of Columbia Hackers' License Appeal Board suspending taxicab driver's license for three months on findings that he refused to pick up fare, drove away from hotel while doorman had his hand on taxicab door handle, and was rude. *E. J. Pillis v. District of Columbia Hackers' License Appeal Board* (D.C. App. 1976, 366 A. 2d 1904; cert. denied 97 S. Ct. 1566, 430 U.S. 937).

—Evidence

In proceedings for suspension of taxicab driver's license, Hackers' License Appeal Board acted properly in refusing driver's proffer of evidence to impeach credibility of hotel doorman, since such evidence, to effect that doorman was engaged in "kickback" scheme with other taxi drivers, was not relevant to charges against driver of refusing to transport passenger and driving improperly. *E. J. Pillis v. District of Columbia Hackers' License Appeal Board* (D.C. App. 1976, 366 A. 2d 1904; cert. denied 97 S. Ct. 1566, 430 U.S. 937).

—Proceedings

In proceeding resulting in suspension of taxicab driver's license, fact that driver was read complaint in his file instead of being allowed himself to review such file did not prejudice him. *E. J. Pillis v. District of Columbia Hackers' License Appeal Board* (D.C. App. 1976, 366 A. 2d 1904; cert. denied 97 S. Ct. 1566, 430 U.S. 937).

Where question of whether hotel doorman was involved in kickback scheme with cab drivers was correctly held by Hackers' License Appeal Board to be irrelevant to proceedings in which taxicab driver's license was suspended, fact that acting chairman of Board was officer of cab company whose drivers were allegedly involved in such kickback scheme does not show clear conflict of interest. *Id.*

§ 47-2346. Prosecutions.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2347. Penalties.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS**Constitutionality**

Since issues presented to the Court of Appeals in suit for declaratory judgment and injunctive relief challenging constitutionality of section 47-2311 proscribing cross sexual massages in licensed establishments are the same as had been presented to the United States Supreme Court in actions which were dismissed for want of substantial federal question, the Supreme Court decisions are binding and dispose of the issues presented on the merits. *M. J. Cullinane et al. v. Geisha House, Inc.* (D.C. App. 1976, 354 A.2d 515; cert. denied 96 S. Ct. 3234, 428 U.S. 923).

§ 47-2350. Refund of erroneously-paid fees.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 24.—SUPERIOR COURT, TAX DIVISION**§ 47-2401. Tax appeals—Definitions.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2402. Retirement of Judge of District of Columbia Tax Court.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2403. Appeal from assessment—Hearing and decision.**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 40-603-1, 45-734, 47-646, 47-710, 47-712, 47-716, 47-801e, 47-1215, 47-1531, 47-1534, 47-1593, 47-2405, 47-2413, 47-2618.

NOTES TO DECISIONS**Attorney fees, recovery from District**

The fact that successful taxpayer-litigants against District of Columbia prevented the collection of illegally imposed taxes, rather than required their refund after collection, could not, in principle, defeat their recovery of attorney fees as successful litigants; thus, the common fund or common benefit exception to general American rule which, in absence of statutory authorization, prohibits an award of attorney fees to a successful litigant, could be applied on basis of tax savings realized by affected taxpayers and trial court could exercise jurisdiction over District of Columbia to require collection of appropriate fees from the benefited taxpayers, unless such course of action is otherwise prohibited or unwarranted. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1977, 381 A. 2d 578).

Construction

Requirement of timely filing of petition contesting assessment of real property taxes is jurisdictional requirement which cannot be waived by failure to assert six-month limitation period as affirmative defense in answer to petition. *National Graduate University v. District of Columbia* (D.C. App. 1975, 346 A. 2d 740).

Evidence

Refusal to exclude evidence of asking prices for hotel property in year prior to tax year at issue was error in

proceeding on petition challenging real property tax assessment; however, such evidentiary error was harmless in view of other testimony and District had presented other credible evidence on which trial court could have based finding that value of the property exceeded the owner's asking price, had it been so persuaded. *District of Columbia v. Burlington Apartment House Company* (D.C. App. 1977, 375 A.2d 1052).

Sales used by property owner to support its estimated valuation were competent evidence in proceeding challenging property tax assessment so long as they did not result from foreclosure or other legal compulsion; motivation and circumstances of the sales went to the weight of the evidence, and not to its admissibility. *Id.*

Exhaustion of administrative remedy

Subject matter jurisdiction of Superior Court to grant refund for taxes illegally or erroneously assessed and voluntarily paid does not attach unless taxpayer has made a complaint to Board of Equalization and Review. *District of Columbia et al. v. A. H. Keyes, Jr., et al.* (D.C. App. 1976, 362 A.2d 729; cert. denied 97 S. Ct. 1651, 430 U.S. 968).

In case wherein taxpayers, who did not appeal within permitted time to Board of Equalization and Review, seek refund of portion of taxes paid due to change in level of assessment from 55% to 60% of estimated value as part of "stairstep" approach to achieve phased increase in debasement factor for single-family residential properties, equitable intervention is not justified on theory that District officials' concealment of "stairstep" plan prevented taxpayers from pursuing administrative remedies, in light of fact that other taxpayers were able to discover "stairstep" plan while pursuing administrative remedies. *Id.*

Where taxing officials did not disclose change in assessment levels until after time for administrative review of District of Columbia tax assessments had passed, affected real property owners were not barred from seeking injunctive relief by their failure to exhaust administrative remedies. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A.2d 848).

Injunctions

Where real property owners who had not sought administrative review of District of Columbia tax assessments were excused from so doing because of lack of knowledge that debasement factor had been raised, those property owners who had sought administrative review of assessments would not be required to wait statutory period and pay tax before applying for relief by injunction. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A.2d 848).

— Compliance

Where previous judgment of trial court required real property tax assessment of all single-family property at 55%, trial court did not err in rejecting District of Columbia's method of computation which was designed to comply with such judgment and which resulted in average level of assessment of 55.00772%, in ordering that District recompute assessed value, correct tax roll and reissue supplementary tax bills or refunds within 90 days using method suggested by trial court which was designed to reach greater mathematical exactitude in computation of real property taxes, and in declining to view as de minimis differences in amounts of real property taxes between methods of computation. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1975, 348 A.2d 305).

Payment of tax

Superior Court of the District of Columbia did not have jurisdiction to hear appeal from tax assessment where taxpayer had paid only the first installment on its taxes at the time it filed appeal, even though taxpayer paid the second installment before superior court dismissed the appeal and before the time had expired for the filing of the petition. *George Hyman Construction Co. et al. v. District of Columbia* (D.C. App. 1974, 315 A.2d 175).

Since taxpayer's allegation that taxes imposed on building which was completed in second half of the year should have been imposed only for the second half and should not have been imposed under statute providing for annual assessment was an attack on the propriety of the annual assessment, taxpayer's attack was on entire assessment, even though taxpayer recognized validity of assessment

for the second half, and Superior Court was without jurisdiction to hear the appeal where taxpayer had paid only the first installment of the tax. *Id.*

Where taxpayer pursued statutory remedy provided for appeals of tax assessments, taxpayer was required to comply with the statutory requirements, including requirement that tax be paid prior to initiation of the appeal, even though taxpayer was arguing that the assessment was void and not merely excessive. *Id.*

Judicial review of income tax assessment did not lie in District of Columbia until disputed tax, together with interest and penalties, had been paid. *C. O. Perry, Sr. et al. v. District of Columbia* (D.C. App. 1974, 314 A.2d 766; cert. denied 95 S. Ct. 63, 419 U.S. 836).

Refunds

Trial court erred in directing District to refund property tax overpayment within ten days of its order; the requisite finality is defined by sections 47-1016, 47-2404 and 47-2407 and is not satisfied by mere lapse of ten days after entry of trial court's order. *District of Columbia v. Burlington Apartment House Company* (D.C. App. 1977, 375 A.2d 1052).

Taxes, which are illegally or erroneously assessed and voluntarily paid, cannot be refunded, absent an authorizing statute. *District of Columbia et al. v. A. H. Keyes, Jr., et al.* (D.C. App. 1976, 362 A.2d 729; cert. denied 97 S. Ct. 1651, 430 U.S. 968).

Even if it were appropriate to apply principles of equity in uncertified class action, in which taxpayers seek refund of \$1.1 million to \$1.6 million in taxes paid due to certain change in level of assessment and in which taxpayers allege that District's treatment of the tax matter in question is not characterized by candor or adherence to principles of good fiscal management, award of such refunds on equitable principles is not justified, in that adverse impact of refunds on citizenry outweighs economic interest of plaintiff taxpayers. *Id.*

Tax Court's authority

Fact that property owner, which specifically challenged 1973 real property tax assessment, did not amend the petition specifically to include the 1974 assessment, which was received prior to hearing on the 1973 assessment and which was a mere duplicate of the challenged assessment, did not deprive trial court of power to grant relief as to the 1974 assessment since the trial court is not limited in granting relief to that which a party formally has requested; in any event, taxpayer contested the entire valuation process and not merely a single tax payment. *District of Columbia v. Burlington Apartment House Company* (D.C. App. 1977, 375 A.2d 1052).

A final judgment of the Superior Court on the lawful assessment of a particular property must be treated in the same manner as an equalized assessment from the Board of Equalization and Review, that is, it becomes the basis for taxation until a subsequent reassessment has been made according to law; once the Superior Court has jurisdiction over valuation, such jurisdiction is coextensive with the existence of the valuation itself. *Id.*

Time to appeal

Specifically exempt educational institutions are excused from making written application for tax exempt status; any real estate acquired by such institutions is considered to be exempt ab initio so long as it is used for educational purposes and that presumption justifies allowing institutions to administratively appeal disputed assessments before litigating them in court; and usual six-month limitations period to petition court is tolled for duration of administrative consideration. *Trustees of the Nineteenth Street Baptist Church etc. v. District of Columbia* (D.C. App. 1977, 378 A.2d 661).

Complaint of church trustees who disputed liability for assessed real estate taxes against previously exempt property was barred by limitations, where petition protesting assessment was filed more than six months after mailing of assessment. *Id.*

Petition contesting assessment of personal property taxes was properly dismissed for lack of jurisdiction where it was not filed within six months after taxpayer received notice of assessment. *M. E. Donahue v. District of Columbia* (D.C. App. 1977, 368 A.2d 1147).

Requirement that petition contesting assessment of real property be filed within six months "after payment of the tax" applies to tax exempt property, and such six-month period runs from date of assessment. *National Graduate University v. District of Columbia* (D.C. App. 1975, 346 A.2d 740).

§ 47-2404. Review by court—Decision of Superior Court, when final—Modification or reversal.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-603-1, 45-734, 47-646, 47-710 to 47-112, 47-716, 47-801e, 47-1215, 47-1531, 47-1534, 47-1593, 47-2405, 47-2413, 47-2618.

NOTES TO DECISIONS

Attorney fees, recovery from District

The fact that successful taxpayer-litigants against District of Columbia prevented the collection of illegally imposed taxes, rather than required their refund after collection, could not, in principle, defeat their recovery of attorney fees as successful litigants; thus, the common fund or common benefit exception to general American rule which, in absence of statutory authorization, prohibits an award of attorney fees to a successful litigant, could be applied on basis of tax savings realized by affected taxpayers and trial court could exercise jurisdiction over District of Columbia to require collection of appropriate fees from the benefited taxpayers, unless such course of action is otherwise prohibited or unwarranted. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1977, 381 A.2d 578).

Exhaustion of administrative remedy

Subject matter jurisdiction of Superior Court to grant refund for taxes illegally or erroneously assessed and voluntarily paid does not attach unless taxpayer has made a complaint to Board of Equalization and Review. *District of Columbia et al. v. A. H. Keyes, Jr., et al.* (D.C. App. 1976, 362 A. 2d 729; cert. denied 97 S. Ct. 1651, 430 U.S. 968).

In case wherein taxpayers, who did not appeal within permitted time to Board of Equalization and Review, seek refund of portion of taxes paid due to change in level of assessment from 55% to 60% of estimated value as part of "stairstep" approach to achieve phased increase in debasement factor for single-family residential properties, equitable intervention is not justified on theory that District officials' concealment of "stairstep" plan prevented taxpayers from pursuing administrative remedies, in light of fact that other taxpayers were able to discover "stairstep" plan while pursuing administrative remedies. *Id.*

Where taxing officials did not disclose change in assessment levels until after time for administrative review of District of Columbia tax assessments had passed, affected real property owners were not barred from seeking injunctive relief by their failure to exhaust administrative remedies. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A. 2d 848).

Injunctions

Where real property owners who had not sought administrative review of District of Columbia tax assessments were excused from so doing because of lack of knowledge that debasement factor had been raised, those property owners who had sought administrative review of assessments would not be required to wait statutory period and pay tax before applying for relief by injunction. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A. 2d 848).

— Compliance

Where previous judgment of trial court required real property tax assessment of all single-family property at 55%, trial court did not err in rejecting District of Columbia's method of computation which was designed to comply with such judgment and which resulted in average level of assessment of 55.00772%, in ordering that District recompute assessed value, correct tax roll and reissue supplementary tax bills or refunds within 90 days using method suggested by trial court which was designed to reach greater mathematical exactitude in computation of real property taxes, and in declining to view as de minimis differences in amounts of real property taxes

between the methods of computation. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1975, 348 A.2d 305).

Refunds

Trial court erred in directing District to refund property tax overpayment within ten days of its order; the requisite finality is defined by this section and sections 47-1016 and 47-2407 and is not satisfied by mere lapse of ten days after entry of trial court's order. *District of Columbia v. Burlington Apartment House Company* (D.C. App. 1977, 375 A.2d 1052).

Taxes, which are illegally or erroneously assessed and voluntarily paid, cannot be refunded, absent an authorizing statute. *District of Columbia et al. v. A. H. Keyes, Jr., et al.* (D.C. App. 1976, 362 A. 2d 729; cert. denied 97 S. Ct. 1651, 430 U.S. 968).

Even if it were appropriate to apply principles of equity in uncertified class action, in which taxpayers seek refund of \$1.1 million to \$1.6 million in taxes paid due to certain change in level of assessment and in which taxpayers allege that District's treatment of the tax matter in question is not characterized by candor or adherence to principles of good fiscal management, award of such refunds on equitable principles is not justified, in that adverse impact of refunds on citizenry outweighs economic interest of plaintiff taxpayers *Id.*

§ 47-2405. Appeals of real estate assessments.

(1) Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(g), 88 Stat. 1065; Jan. 3, 1975, Pub. L. 93-635, § 9, 88 Stat. 2177.

(2) Any person aggrieved by any assessment or valuation made in pursuance of section 47-710 may, within six months after October 15 of the year in which said valuation or assessment is made, appeal from such assessment or valuation in the same manner and to the same extent as provided in sections 47-2403 and 47-2404: *Provided, however,* That if the taxpayer shall be notified in writing not later than September 1 of a particular year of the valuation of the real estate valued in accordance with section 47-710, such taxpayer shall first make a complaint to the Board of Equalization and Review respecting such assessment as herein provided.

(3) Any person aggrieved by any assessment made in pursuance of section 47-711 may, within six months after April 15 of the year in which such assessment is made, appeal from such assessment in the same manner and to the same extent as provided in sections 47-2403 and 47-2404: *Provided, however,* That if the taxpayer shall be notified in writing not later than March 1 of a particular year of the valuation of the real estate valued in accordance with section 47-711, such taxpayer shall first make a complaint to the Board of Equalization and Review respecting such assessment as herein provided.

(4) Any person aggrieved by any reassessment made in pursuance of section 47-712, may within six months after notice of said reassessment, appeal from said reassessment in the same manner and to the same extent as provided in sections 47-2403 and 47-2404.

(5) Any person aggrieved by a reassessment or redistribution made pursuant to section 47-716, may within six months after notice of such reassessment or redistribution, appeal from such reassessment or redistribution in the same manner and to the same extent as provided in sections 47-2403 and 47-2404. (Aug. 17, 1937, ch. 690, title IX, § 5, as added May 16, 1938, 52 Stat. 372, ch. 223, § 8, and amended July 26, 1939, 53 Stat. 1109, ch. 367, title IV, § 5(b); July 10, 1952, 66 Stat. 544, ch. 649, § 3(c); July 29, 1970,

Pub. L. 91-358, title I, § 161(a) (5), 84 Stat. 580; Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(g), 88 Stat. 1065; Jan. 3, 1975, Pub. L. 93-635, § 9, 88 Stat. 2177.)

CODIFICATION

The five paragraphs of this section comprise, respectively, the last sentences of subsecs. (a), (b), (c), (d), and (e) of section 5 of the act Aug. 17, 1939, title IX. Such section 5 is classified in its entirety as follows: subsection (a) to sections 47-708 and 47-709; subsection (b) to section 47-710; subsection (c) to section 47-711; subsection (d) to section 47-712, and subsection (e) to section 47-716.

AMENDMENTS

1975—Act Jan. 3, 1975, Pub. L. 93-635, again repealed the first paragraph of this section, which was based on the last sentence of subsec. (a) of section 5 of Act Aug. 17, 1939. For further details, see following paragraph.

1974—Section 474(g) of Act Sept. 3, 1974, Pub. L. 93-407, repealed the first paragraph of this section, which was based on the last sentence of subsec. (a) of section 5 of Act Aug. 17, 1939. It read as follows:

"Any person aggrieved by any assessment, equalization, or valuation made pursuant to sections 47-708 and 47-709, may within six months after October 1 of the year in which such assessment, equalization, or valuation is made, appeal from such assessment, equalization, or valuation in the same manner and to same extent as provided in sections 47-2403 and 47-2404: *Provided, however,* That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided, except that, in case of increase of valuation of real property over that for the immediately preceding year, where no notice in writing of such increase of valuation is given the taxpayer prior to March 1 of the particular year, no such complaint shall be required for appeal."

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that the repeal of the first paragraph of this section is effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621. Section 9 of Act Jan. 3, 1975, Pub. L. 93-635, also provided in part that the repeal is effective June 30, 1975.

CROSS REFERENCE

Composition and functions of Board of Equalization and Review, see § 47-646.

NOTES TO DECISIONS

Attorney fees, recovery from District

The fact that successful taxpayer-litigants against District of Columbia prevented the collection of illegally imposed taxes, rather than required their refund after collection, could not, in principle, defeat their recovery of attorney fees as successful litigants; thus, the common fund or common benefit exception to general American rule which, in absence of statutory authorization, prohibits an award of attorney fees to a successful litigant, could be applied on basis of tax savings realized by affected taxpayers and trial court could exercise jurisdiction over District of Columbia to require collection of appropriate fees from the benefited taxpayers, unless such course of action is otherwise prohibited or unwarranted. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1977, 381 A.2d 578).

Exhaustion of administrative remedy

Subject matter jurisdiction of Superior Court to grant refund for taxes illegally or erroneously assessed and voluntarily paid does not attach unless taxpayer has made a complaint to Board of Equalization and Review. *District of Columbia et al. v. A. H. Keyes, Jr., et al.* (D.C. App. 1976, 362 A. 2d 729; cert. denied 97 S. Ct. 1651, 430 U.S. 968).

In case wherein taxpayers, who did not appeal within permitted time to Board of Equalization and Review, seek refund of portion of taxes paid due to change in level of assessment from 55% to 60% of estimated value as part of "stairstep" approach to achieve phased increase in debase-ment factor for single-family residential properties,

equitable intervention is not justified on theory that District officials' concealment of "stairstep" plan prevented taxpayers from pursuing administrative remedies, in light of fact that other taxpayers were able to discover "stairstep" plan while pursuing administrative remedies. *Id.*

Where taxing officials did not disclose change in assessment levels until after time for administrative review of District of Columbia tax assessments had passed, affected real property owners were not barred from seeking injunctive relief by their failure to exhaust administrative remedies. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A. 2d 848).

Injunctions

Where real property owners who had not sought administrative review of District of Columbia tax assessments were excused from so doing because of lack of knowledge that debase-ment factor had been raised, those property owners who had sought administrative review of assessments would not be required to wait statutory period and pay tax before applying for relief by injunction. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A. 2d 848).

— Compliance

Where previous judgment of trial court required real property tax assessment of all single-family property at 55%, trial court did not err in rejecting District of Columbia's method of computation which was designed to comply with such judgment and which resulted in average level of assessment of 55.00772%, in ordering that District recompute assessed value, correct tax roll and reissue supplementary tax bills or refunds within 90 days using method suggested by trial court which was designed to reach greater mathematical exactitude in computation of real property taxes, and in declining to view as de minimis differences in amounts of real property taxes between the methods of computation. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1975, 348 A.2d 305).

Refunds

Taxes, which are illegally or erroneously assessed and voluntarily paid, cannot be refunded, absent an authorizing statute. *District of Columbia et al. v. A. H. Keyes, Jr., et al.* (D.C. App. 1976, 362 A. 2d 729; cert. denied 97 S. Ct. 1651, 430 U.S. 968).

Even if it were appropriate to apply principles of equity in uncertified class action, in which taxpayers seek refund of \$1.1 million to \$1.6 million in taxes paid due to certain change in level of assessment and in which taxpayers allege that District's treatment of the tax matter in question is not characterized by candor or adherence to principles of good fiscal management, award of such refunds on equitable principles is not justified, in that adverse impact of refunds on citizenry outweighs economic interest of plaintiff taxpayers. *Id.*

§ 47-2407. Refund of erroneous collections.

NOTES TO DECISIONS

Exhaustion of administrative remedy

Subject matter jurisdiction of Superior Court to grant refund for taxes illegally or erroneously assessed and voluntarily paid does not attach unless taxpayer has made a complaint to Board of Equalization and Review. *District of Columbia et al. v. A. H. Keyes, Jr., et al.* (D.C. App. 1976, 362 A. 2d 729; cert. denied 97 S. Ct. 1651, 430 U.S. 968).

In case wherein taxpayers, who did not appeal within permitted time to Board of Equalization and Review, seek refund of portion of taxes paid due to change in level of assessment from 55% to 60% of estimated value as part of "stairstep" approach to achieve phased increase in debase-ment factor for single-family residential properties, equitable intervention is not justified on theory that District officials' concealment of "stairstep" plan prevented taxpayers from pursuing administrative remedies, in light of fact that other taxpayers were able to discover "stairstep" plan while pursuing administrative remedies. *Id.*

Refunds

Taxes, which are illegally or erroneously assessed and voluntarily paid, cannot be refunded, absent an authorizing statute. *District of Columbia et al. v. A. H. Keyes, Jr., et al.* (D.C. App. 1976, 362 A. 2d 729; cert. denied 97 S. Ct. 1651, 430 U.S. 968).

Even if it were appropriate to apply principles of equity in uncertified class action, in which taxpayers seek refund of \$1.1 million to \$1.6 million in taxes paid due to certain change in level of assessment and in which taxpayers allege that District's treatment of the tax matter in question is not characterized by candor or adherence to principles of good fiscal management, award of such refunds on equitable principles is not justified, in that adverse impact of refunds on citizenry outweighs economic interest of plaintiff taxpayers. *Id.*

Where previous judgment of trial court required real property tax assessment of all single-family property at 55%, trial court did not err in rejecting District of Columbia's method of computation which was designed to comply with such judgment and which resulted in average level of assessment of 55.00772%, in ordering that District recompute assessed value, correct tax roll and reissue supplementary tax bills or refunds within 90 days using method suggested by trial court which was designed to reach greater mathematical exactitude in computation of real property taxes, and in declining to view as de minimis differences in amounts of real property taxes between the methods of computation. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1975, 348 A. 2d 305).

Time limits

Trial court erred in directing District to refund property tax overpayment within ten days of its order; the requisite finality is defined by this section and sections 47-1016 and 47-2404 and is not satisfied by mere lapse of ten days after entry of trial court's order. *District of Columbia v. Burlington Apartment House Company* (D.C. App. 1977, 375 A.2d 1052).

§ 47-2410. Certain suits forbidden.

NOTES TO DECISIONS

Exhaustion of administrative remedy

Subject matter jurisdiction of Superior Court to grant refund for taxes illegally or erroneously assessed and voluntarily paid does not attach unless taxpayer has made a complaint to Board of Equalization and Review. *District of Columbia et al. v. A. H. Keyes, Jr., et al.* (D.C. App. 1976, 362 A. 2d 729; cert. denied 97 S. Ct. 1651, 430 U.S. 968).

In case wherein taxpayers, who did not appeal within permitted time to Board of Equalization and Review, seek refund of portion of taxes paid due to change in level of assessment from 55% to 60% of estimated value as part of "stairstep" approach to achieve phased increase in debasement factor for single-family residential properties, equitable intervention is not justified on theory that District officials' concealment of "stairstep" plan prevented taxpayers from pursuing administrative remedies, in light of fact that other taxpayers were able to discover "stairstep" plan while pursuing administrative remedies. *Id.*

Where taxing officials did not disclose change in assessment levels until after time for administrative review of District of Columbia tax assessments had passed, affected real property owners were not barred from seeking injunctive relief by their failure to exhaust administrative remedies. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A. 2d 848).

Injunctions

Where real property owners who had not sought administrative review of District of Columbia tax assessments were excused from so doing because of lack of knowledge that debasement factor had been raised, those property owners who had sought administrative review of assessments would not be required to wait statutory period and pay tax before applying for relief by injunction. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A. 2d 848).

— Compliance

Where previous judgment of trial court required real property tax assessment of all single-family property at 55%, trial court did not err in rejecting District of Columbia's method of computation which was designed to comply with such judgment and which resulted in average level of assessment of 55.00772%, in ordering that District recompute assessed value, correct tax roll and reissue supplementary tax bills or refunds within 90 days

using method suggested by trial court which was designed to reach greater mathematical exactitude in computation of real property taxes, and in declining to view as de minimis differences in amounts of real property taxes between the methods of computation. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1975, 348 A.2d 305).

Jurisdiction

Where facts of case were so exceptional and extraordinary as to merit equitable relief, court had jurisdiction to enjoin tax authorities from using unequal levels of assessment of estimated market value of single-family dwellings for purposes of ascertaining District of Columbia real estate tax to be imposed on such dwellings despite provisions of this section stating that no suit might be filed to enjoin assessment of any tax. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A. 2d 848).

Refunds

Taxes, which are illegally or erroneously assessed and voluntarily paid, cannot be refunded, absent an authorizing statute. *District of Columbia et al. v. A. H. Keyes, Jr., et al.* (D.C. App. 1976, 362 A. 2d 729; cert. denied 97 S. Ct. 1651, 430 U.S. 968).

Even if it were appropriate to apply principles of equity in uncertified class action, in which taxpayers seek refund of \$1.1 million to \$1.6 million in taxes paid due to certain change in level of assessment and in which taxpayers allege that District's treatment of the tax matter in question is not characterized by candor or adherence to principles of good fiscal management, award of such refunds on equitable principles is not justified, in that adverse impact of refunds on citizenry outweighs economic interest of plaintiff taxpayers. *Id.*

§ 47-2412. Reference by Commissioner to the Superior Court.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2413. Overpayments—Refund—Appeal.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45-735.

Chapter 25.—MISCELLANEOUS PROVISIONS

Sec.

47-2501c. Annual Federal payment—Duties of Mayor and Council—Submittal of request to President.
47-2501d. Same—Appropriation authorization.

§ 47-2501. Authorization for advance of funds by Secretary of Treasury.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REIMBURSABLE APPROPRIATIONS

Section 722 of title VII of the District of Columbia Self-Government and Governmental Reorganization Act [approved Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 821] provided:

"(a) The Secretary of the Treasury is authorized to advance to the District of Columbia the sum of \$750,000,

out of any money in the Treasury not otherwise appropriated, for use (1) in paying the expenses of the Board of Elections (including compensation of the members thereof), and (2) in otherwise carrying into effect the provisions of this Act.

"(b) The full amount expended out of the money advanced pursuant to this section shall be reimbursed to the United States, without interest, during the second fiscal year which begins after the effective date of title IV [Jan. 2, 1975], from the general fund of the District."

CROSS REFERENCE

Deposit of advance in General Fund, see § 47-130c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-228.

§ 47-2501a. Annual payment by the United States—Appropriations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-2501a-1.

§ 47-2501c. Annual Federal payment—Duties of Mayor and Council—Submittal of request to President.

(a) It shall be the duty of the Mayor in preparing an annual budget for the government of the District to develop meaningful intercity expenditure and revenue comparisons based on data supplied by the Bureau of the Census, and to identify elements of cost and benefits to the District which result from the unusual role of the District as the Nation's Capital. The results of the studies conducted by the Mayor under this subsection shall be made available to the Council and to the Federal Office of Management and Budget for their use in reviewing and revising the Mayor's request with respect to the level of the appropriation for the annual Federal payment to the District. Such Federal payment should operate to encourage efforts on the part of the government of the District to maintain and increase its level of revenues and to seek such efficiencies and economies in the management of its programs as are possible.

(b) The Mayor, in studying and identifying the costs and benefits to the District brought about by its role as the Nation's Capital, should to the extent feasible, among other elements, consider—

(1) revenues unobtainable because of the relative lack of taxable commercial and industrial property;

(2) revenues unobtainable because of the relative lack of taxable business income;

(3) potential revenues that would be realized if exemptions from District taxes were eliminated;

(4) net costs, if any, after considering other compensation for tax base deficiencies and direct and indirect taxes paid, of providing services to tax-exempt nonprofit organizations and corporate offices doing business only with the Federal Government;

(5) recurring and nonrecurring costs of unreimbursed services to the Federal Government;

(6) other expenditure requirements placed on the District by the Federal Government which are unique to the District;

(7) benefits of Federal grants-in-aid relative to aid given other States and local governments;

(8) recurring and nonrecurring costs of unreimbursed services rendered the District by the Federal Government; and

(9) relative tax burden on District residents compared to that of residents in other jurisdictions in the Washington, District of Columbia, metropolitan area and in other cities of comparable size.

(c) The Mayor shall submit his request, with respect to the amount of an annual Federal payment, to the Council. The Council shall by act approve, disapprove, or modify the Mayor's request. After the action of the Council, the Mayor shall, by December 1 of each calendar year, in accordance with the provisions in the Budget and Accounting Act, 1921 (31 U.S.C. 2), submit such request to the President for submission to the Congress. Each request regarding an annual Federal payment shall be submitted to the President seven months prior to the beginning of the fiscal year for which such request is made and shall include a request for an annual Federal payment for the next following fiscal year. (Dec. 24, 1973, Pub. L. 93-198, title V, § 501, 87 Stat. 812.)

EFFECTIVE DATE

Section 771(a) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided: "Titles I and V, and parts A and G, and section 722 of title VII shall take effect on the date of enactment of this Act."

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

CROSS REFERENCES

Duties of Mayor,

Financial affairs of District, see § 47-226.

Generally, see § 1-162.

Submission of annual budget, see § 47-221.

§ 47-2501d. Same—Appropriation authorization.

Notwithstanding any other provision of law, there is authorized to be appropriated as the annual Federal payment to the District of Columbia for the fiscal year ending June 30, 1975, the sum of \$230,000,000; for the fiscal year ending June 30, 1976, the sum of \$254,000,000; for the fiscal year ending June 30, 1977, the sum of \$280,000,000; for the fiscal year ending June 30, 1978, and for each fiscal year thereafter, the sum of \$300,000,000. For the period July 1, 1976, through September 30, 1976, there is authorized to be appropriated a Federal payment of \$70,000,000. (Dec. 24, 1973, Pub. L. 93-198, title V, § 502, 87 Stat. 813; Aug. 29, 1974, Pub. L. 93-395, § 1(7), 88 Stat. 793.)

AMENDMENT

1974—Act Aug. 29, 1974, Pub. L. 93-395, added the second sentence relating to a Federal payment for the period July 1 through Sept. 30, 1976.

EFFECTIVE DATE

See note under § 47-2501c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-130c.

§ 47-2502. Regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2504. Divulging of information obtained from Bureau of Internal Revenue unlawful—Penalties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 26.—GROSS SALES TAX

Sec.

47-2604. Vendor to collect tax.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 47-504, 47-2413, 47-2701, 47-2706, 47-2712.

§ 47-2601. Definitions.

* * * *

14. (a) "Retail sale" and "sale at retail" mean the sale in any quantity or quantities of any tangible personal property or service taxable under the terms of this chapter. Said term shall mean all sales of tangible personal property to any person for any purpose other than those in which the purpose of the purchaser is to resell the property so transferred in the form in which the same is, or is to be, received by him, or to use or incorporate the property so transferred as a material or part of other tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining. For the purpose of the tax imposed by this chapter, these terms shall include but shall not be limited to the following:

(1) Food or drink served, prepared for immediate consumption, or sold, in or by, restaurants, lunch counters, cafeterias, hotels, snack bars, caterers, boarding houses, carryout shops and other like places of business, and food or drink sold ready for immediate consumption from carts, and motor vehicles or any other form of vehicle. Hot or cold sandwiches are considered prepared foods.

* * * *

(4) Repealed. Oct. 21, 1975, D.C. Law 1-23, title III, § 301(3), 22 DCR 2098.

* * * *

(7) Repealed. Oct. 21, 1975, D.C. Law 1-23, title III, § 301(3), 22 DCR 2098.

(8) The sale of or charges for admission to public events, except live performances of ballet, dance, or choral performances, concerts (instrumental and vocal), plays (with and without music), operas and readings and exhibitions of paintings, sculpture, photography, graphic and craft arts, but including movies, circuses, burlesque shows, sporting events, and performances or exhibitions of any other type or nature: *Provided*, That any casual or isolated sale of or charge for admission made by a semipublic institution not regularly engaged in asking such sales or charges shall not be considered a retail sale or sale at retail.

* * * *

(11) The rental of textiles to commercial users, the essential part of such rental includes the recurring service of laundering or cleaning thereof.

(12) The sale of or charge for the service of parking, storing or keeping motor vehicles or trailers, except that

(A) where a sale or charge for the service described in this paragraph is made to a District resident who is a tenant in an apartment house or the owner of a condominium unit or a cooperative unit in which he or she resides and the motor vehicle or trailer of the tenant or owner is parked, stored or kept on the same premises on which the tenant or owner has his or her place of residence, except as otherwise provided in this subsection the sale or charge is exempt from the tax imposed by this paragraph. The exemption shall not extend to a tenant or owner whose motor vehicle or trailer is used for commercial purposes or whose occupancy of the building is for commercial purposes; or

(B) (1) where the sale or charge for the service is made to a District resident who possesses and shows to those providing the service a parking sales tax exemption card issued and signed by the Mayor or his or her duly authorized representative pursuant to subparagraph (C), the sale or charge is exempt from the tax imposed by this paragraph.

(2) This exemption shall extend only to those District residents using the service for the purpose of keeping their vehicles or trailers near their place of residence and shall not extend to a resident whose motor vehicle or trailer is used for commercial purposes, as ascertained by the Mayor or his or her duly authorized representative.

(C) Upon application by a District resident, the Mayor shall issue to him or her a parking sales tax exemption card, *Provided*, That the resident

(1) possesses a District motor vehicle or trailer registration certificate and identification tag for the motor vehicle or trailer to be parked, if so required by section 40-102(a);

(2) has registered the vehicle or trailer to a residential address in the District, if a registration certificate is required by section 40-102(a), which address is located within one-half mile of the address of the business or operation providing the service; and

(3) provides the Mayor the name and address of the business or operation to provide the service.

(D) The parking sales tax exemption card shall state the name and address of the person to whom it is issued, the name and address of the business or operation to provide the service, and any other information, including a photograph, deemed necessary by the Mayor.

(E) For the purpose of this paragraph

(1) "motor vehicle" means any vehicle propelled by an internal-combustion engine or by electricity or steam, except road rollers, farm tractors, and vehicles propelled only upon stationary rails or tracks; and

(2) "trailer" means a vehicle without motor power intended or used for carrying property

or persons and drawn or intended to be drawn by a motor vehicle, whether such vehicle without motor power carries the weight of the property or persons wholly on its own structure or whether a part of such weight rests upon or is carried by a motor vehicle.

(b) The term "retail sale" and "sale at retail" shall not include the following:

(1) (A) Sales of transportation and communication services.

(B) Repealed. Oct. 21, 1975, D.C. Law 1-23, title III, § 301(5), 22 DCR 2099.

* * * * *

(5) Food or drink sold in the same form, condition, quantities and packaging as is commonly sold in grocery type food stores, except when sold by businesses as described in paragraph 14(a)(1).

* * * * *

(As amended Sept. 3, 1974, Pub. L. 93-407, title IV, § 473, 88 Stat. 1064; Jan. 3, 1975, Pub. L. 93-635, § 8(b), 88 Stat. 2177; Oct. 21, 1975, D.C. Law 1-23, title III, § 301(1)-(6), 22 DCR 2097; Apr. 9, 1976, D.C. Law 1-61, § 2, 22 DCR 5893; June 24, 1977, D.C. Law 2-11, § 2, 24 DCR 1773.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Par. 14. (a)(8), being amended generally by title IV of Act Sept. 3, 1974, is therefore subject to the definitions and regulations provisions of such title IV, as set out in §§ 47-622 and 47-661.

AMENDMENTS

1977—Act June 24, 1977, D.C. Law 2-11, amended par. 14(a)(2) generally.

1976—Act Apr. 9, 1976, D.C. Law 1-61, amended par. 14(a)(12) by adding the exception relating to the sale or charges made for the service of parking, storing, or keeping motor vehicles or trailers made to tenants of an apartment house or owners of a condominium unit or a cooperative unit.

1975—Section 301 of act Oct. 21, 1975, D.C. Law 1-23, amended par. 14 as follows:

- (1) Amended par. 14(a)(1) generally.
- (2) Added par. 14(a)(12).
- (3) Repealed par. 14(a)(4) and (7).
- (4) Amended par. 14(a)(11) generally.
- (5) Amended par. 14(b)(1)(A) by striking out "other than sales of local telephone service"; and repealed par. 14(b)(1)(B).
- (6) Added par. 14(b)(5).

Section 8(b) of Act Jan. 3, 1975, Pub. L. 93-635, made a technical amendment to the 1974 amendatory act (sec. 473 of Pub. L. 93-407) without making change in the text of the section. Section 8(e) of such Act made this amendment effective on and after Sept. 3, 1974.

1974—Section 473 of Act Sept. 3, 1974, Pub. L. 93-407 amended par. 14(a)(8) generally. Prior to amendment, it read:

"(8) The sale of or charges for admission to public events, including movies, musical performances, exhibitions, circuses, sporting events, and other shows or performances of any type or nature, except that any casual or isolated sale of or charge for admission made by a semipublic institution not regularly engaged in making such sales or charges shall not be considered a retail sale or sale at retail."

EMERGENCY ACT AMENDMENTS

1977—For temporary amendment of subsec. 14(a)(12), see sec. 2 of the Emergency Residential Parking Tax Exemption Act of 1977 (D.C. Act 2-4, Feb. 15, 1977, 23 DCR 6961).

1976—For temporary repeal of secs. 301 (3) and (5) and 801(j) of D.C. Law 1-23, see sec. 2 of the Second Emergency Revenue Act of 1976 Amendment (D.C. Act 1-122, May 21, 1976, 22 DCR 6627).

For temporary amendment of subsec. 14(a)(12), see sec. 2 of the Second Emergency Third Amendment to the Revenue act of 1975 Act (D.C. Act 1-99, Mar. 24, 1976, 22 DCR 5319).

1975—For temporary amendment of subsec. 14(a)(12), see sec. 2 of the Emergency Third Amendment to the Revenue Act of 1975 Act (D.C. Act 1-80, Dec. 19, 1975, 22 DCR 3379).

REPEALS

Paragraphs (3) and (5) of section 301 of D.C. Law 1-23, cited as a credit to this section, were repealed by D.C. Law 1-70, June 15, 1976, title IV, §§ 401, 402.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 4 of act June 24, 1977, D.C. Law 2-11, provided: "This act [amending § 47-2601] shall take effect as provided for acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147 (c)]."

EFFECTIVE DATES OF 1976 AMENDMENTS

Section 1403 of act June 15, 1976, D.C. Law 1-70, provided: "The amendments made by Titles IV and V and by sections 1002 and 1003 of Title X [for classification of amendments see Tables] shall take effect on the first day of the first month following the date of enactment of this Act, if the date of enactment falls between the first day and the fifteenth day, inclusive, of a month; but such amendment shall take effect on the first day of the first month more than thirty days after such date of enactment, if the date of enactment falls between the sixteenth day and the thirty-first day, inclusive, of a month.

Section 6 of act Apr. 9, 1976, D.C. Law 1-61, provided: "This act [amending this section] shall take effect as provided for acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

EFFECTIVE DATE OF 1975 AMENDMENTS

Sec. 801(i) of act Oct. 21, 1975, D.C. Law 1-23, provided:

"(i) Section 301, with the exception of subsections (3), (5) and (9) of that section, [amending §§ 47-2601, par. 14(a)(1), (11), (12), (b)(5), 47-2602, 47-2604, 47-2605(o)] shall take effect on the first day of the first month which begins more than 30 days after the effective date of this Act."

Sec. 801(j) of act Oct. 21, 1975, D.C. Law 1-23, providing for a June 1, 1976, effective date of subsecs. 301 (3), (5), and (9) of such act [amending §§ 47-2601, pars. 14(a)(4), (7), (b)(1), 47-2605 (1)], was repealed by sec. 406 of act June 15, 1976, D.C. Law 1-70, title IV, 23 DCR 541.

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 47-621.

SHORT TITLES

The first section of act June 24, 1977, D.C. Law 2-11, provided "That this act [amending § 47-2601] may be cited as the 'Residential Parking Tax Exemption Act of 1977'."

The first section of act Apr. 6, 1977, D.C. Law 1-101, provided "That this act [amending § 47-2605] may be cited as the 'Home Delivery Food Tax Act'."

The first section of act Apr. 9, 1976, D.C. Law 1-61, provided "That this act [amending this section] may be cited as the 'Third Amendment to the Revenue Act of 1975 Act'."

PROMULGATION OF REGULATIONS TO IMPLEMENT D.C. LAW 2-11

Section 3 of act June 24, 1977, D.C. Law 2-11, provided: "The Mayor of the District of Columbia is authorized to

make rules and regulations, consistent with the provisions of this act, as may be necessary and proper to carry out the provisions of this act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-2602, 47-2605, 47-2701, 47-2702.

NOTES TO DECISIONS

Mandamus

Mandamus is not the proper remedy for seeking to compel District of Columbia officials to collect taxes from suburban banks on bank credit card business conducted in the District and from large multistate corporations that had not filed or paid taxes on business done within the District, and to adopt procedures to discover, audit, assess, and collect gross sales taxes, where there was no allegation of specific instances in which defendants had failed to assess and collect taxes and where statutes referred to did not set forth any specific procedures for discovery, audit, assessment or collection of the taxes in question. *N. M. Debevoise v. K. Back et al.* (D.C. App. 1976, 359 A.2d 279).

—Standing of taxpayer

District of Columbia taxpayer lacks standing to maintain suit seeking to compel Director of Department of Finance and Revenue and the Mayor to collect taxes from suburban banks on bank credit card business conducted in the District and from large multistate corporations that had not filed or paid taxes on business done in the District, where taxpayer suggests only that her tax bills might be reduced or her municipal services improved if defendants are required to proceed in the manner requested by her. *N. M. Debevoise v. K. Back et al.* (D.C. App. 1976, 359 A.2d 279).

§ 47-2602. Imposition of tax.

A tax is imposed upon all vendors for the privilege of selling at retail certain tangible personal property and for the privilege of selling certain selected services (defined as "retail sale" and "sale at retail" in this chapter). The rate of such tax shall be 5 percent of the gross receipts from the sale of or charges for such tangible personal property and services, except that—

(1) the rate of tax shall be 12 percent of the gross receipts from the sale of or charges for the service of parking or storing of motor vehicles or trailers, except the service of parking or storing of motor vehicles or trailers on a parking lot owned or operated by the Washington Metropolitan Area Transit Authority and located adjacent to a Washington Metropolitan Area Transit Authority passenger stop or station;

(2) the rate of tax shall be 8 percent of the gross receipts from the sale of or charges for—

(A) any room or rooms, lodgings, or accommodations furnished to a transient by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients; and

(B) food or drink served, prepared for immediate consumption, or sold as described in paragraph 14(a)(1) of section 47-2601; and

(C) spirituous or malt liquors, beer and wine sold for consumption on the premises where sold;

(3) the rate of tax shall be 6 percent of the gross receipts from the sale of spirituous or malt liquors, beer and wine sold for consumption off the premises where sold; and

(4) the rate of tax shall be 2 percent of the gross receipts from the sale of food or drink as described

in paragraph 14(a)(1) of section 47-2601 when sold from a vending machine.

(As amended Oct. 21, 1975, D.C. Law 1-23, title III, § 301(7), 22 DCR 2099; June 15, 1976, D.C. Law 1-70, title IV, § 408, 23 DCR 541.)

AMENDMENTS

1976—Act June 15, 1976, D.C. Law 1-70, amended section generally.

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended section generally.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 1403 of act June 15, 1976, D.C. Law 1-70, set out as a note under § 47-2601.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(1) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-2601.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1443b, 47-2705.

§ 47-2604. Vendor to collect tax.

For the purpose of collecting his reimbursement as provided in section 47-2603 insofar as it can be done and yet eliminate the fractions of a cent, the vendor shall add to the sales price and collect from the purchaser such amounts as may be prescribed by the Council of the District of Columbia to carry out the purposes of this section. (May 27, 1949, 63 Stat. 115, ch. 146, title I, § 126; Oct. 21, 1975, D.C. Law 1-23, title III, § 301(8), 22 DCR 2100.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended section generally.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(1) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-2601.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

§ 47-2605. Exemptions.

Gross receipts from the following sales shall be exempt from the tax imposed by this chapter:

* * * * *

(l) Sales of natural or artificial gas and electricity.

* * * * *

(o) Sales of medicines, pharmaceuticals, and drugs whether or not made on prescriptions of duly licensed physicians and surgeons and general and special practitioners of the healing art.

* * * * *

(s) Sales of food or drink as defined in paragraph 7 of section 47-2601, sold as described in paragraph 14(a)(1) of section 47-2601, and delivered, both without profit, by a non-profit private volunteer organization to persons who are confined to their homes due to age, illness, handicap, or infirmity: *Provided, however,* That such sales shall not be exempt unless such organization has received from the District a certificate of exemption as a semi-public institution. (As amended Oct. 21, 1975, D.C. Law 1-23, title III, § 301(9), (10), 22 DCR 2101; Apr. 6, 1977, D.C. Law 1-101, § 2, 23 DCR 8731.)

AMENDMENTS

1977—Act Apr. 6, 1977, D.C. Law 1-101, amended section by adding par. (s).

1975—Oct. 21, 1975, D.C. Law 1-23, amended subsec. (l) generally, and amended subsec. (o) by inserting "whether or not" after "drugs".

EMERGENCY ACT AMENDMENT

1976—For temporary repeal of sec. 301(9) of D.C. Law 1-23, see sec. 2 of the Second Emergency Revenue Act of 1976 Amendment (D.C. Act 1-122, May 21, 1976, 22 DCR 6627).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 3 of act Apr. 6, 1977, D.C. Law 1-101, provided: "This act [amending this section] shall take effect at the end of the 30 day provided for Congressional review of acts of the Council of the District of Columbia under subsection (c) of section 602 of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(i) and (j) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-2601.

REPEALS

Paragraph (9) of section 301 of D.C. Law 1-23, cited as a source credit to this section, was repealed by D.C. Law 1-70, June 15, 1976, title IV, § 403.

§ 47-2617. Refunds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2618. Appeals.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2620. Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

§ 47-2621. Additional powers.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2624. Penalties and interest.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2625. Failure to file return.

(a) Any person required to file a return or report or perform any act under the provisions of this chapter who shall fail or neglect to file such return or report or perform such act within the time required shall, upon conviction thereof, be fined not more than \$1,000 or imprisoned for not more than six months, or both, for each and every failure or neglect. The penalty provided herein shall be in addition to the other penalties provided in this chapter.

* * * * *

(As amended Apr. 19, 1977, D.C. Law 1-124, title VI, § 601, 23 DCR 8749.)

AMENDMENT

1977—Act Apr. 19, 1977, D.C. Law 1-124, amended subsec. (a) by substituting "\$1,000 or imprisoned for not more than six months, or both," for "\$300".

EFFECTIVE DATE OF 1977 AMENDMENT

See section 1101 of act Apr. 19, 1977, D.C. Law 1-124, set out as a note under § 47-1557a.

§ 47-2628. Notices—How given.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

Chapter 27.—COMPENSATING-USE TAX

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 47-504, 47-2413, 47-2601.

§ 47-2701. Definitions.

1. (a) "Retail sale", "sale at retail", and "sold at retail" means all sales in any quantity or quantities of tangible personal property, whether made within or without the District, and services, to any person for the purpose of use, storage, or consumption, within the District, taxable under the terms of this chapter. These terms shall mean all sales of tangible personal property to any person for any purpose other than those in which the purpose of the purchaser is to resell the property so transferred in the form in which the same is, or is to be, received by him, or to use or incorporate the property so transferred as a material or part of other tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining. For the purpose of the tax imposed by this chapter, these terms shall include, but shall not be limited to, the following:

* * * * *

(2) Repealed. Oct. 21, 1975, D.C. Law 1-23, title III, § 302(3), 22 DCR 2102.

* * * * *

(5) The sale of any meals, food or drink, or other like tangible personal property for a consideration as described in paragraph 14(a)(1) of section 47-2601.

* * * * *

(9) The rental of textiles to commercial users, the essential part of which rental includes recurring service of laundering or cleaning thereof.

(b) The terms "retail sale", "sale at retail", and "sold at retail" shall not include the following:

(1) Sales of transportation and communication services.

* * * * *

(As amended Oct. 21, 1975, D.C. Law 1-23, title III, § 302(1), (3)-(5), 22 DCR 2101-2103.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended par. 1 as follows:

- (1) Repealed par. 1(a)(2).
- (2) Amended par. 1(a)(5) by inserting "as described in paragraph 14(a)(1) of section 47-2601" immediately after "consideration".
- (3) Amended par. 1(a)(9) generally.
- (4) Amended par. 1(b)(1) by striking out "other than sales of local telephone services".

EMERGENCY ACT AMENDMENT

1976—For temporary repeal of secs. 302(3) and (5) and 801(l) of D.C. Law 1-23, see sec. 2 of the Second Emergency Revenue Act of 1976 Amendment (D.C. Act 1-122, May 21, 1976, 22 DCR 6627).

EFFECTIVE DATE OF 1975 AMENDMENTS

Sec. 801(k) of act Oct. 21, 1975, D.C. Law 1-23, provided: "(k) Section 302, with the exception of subsections (3) and (5) of that section, [amending §§ 47-2701, par. 1(a)(5), (9), 47-2702] shall take effect on the first day of the first month which begins more than 30 days after the effective date of this Act."

Sec. 801(l) of act Oct. 21, 1975, D.C. Law 1-23, providing for a June 1, 1976, effective date of subsecs. 302(3) and (5) of such act [amending § 47-2701, pars. 1(a)(2), (b)(1)], was repealed by sec. 407 of act June 15, 1976, D.C. Law 1-70, title IV, 23 DCR 541.

REPEALS

Paragraph (3) and (5) of section 302 of D.C. Law 1-23, cited as a source credit to this section, were repealed by D.C. Law 1-70, June 15, 1976, title IV, §§ 404, 405.

NOTES TO DECISIONS

Mandamus

Mandamus is not the proper remedy for seeking to compel District of Columbia officials to collect taxes from suburban banks on bank credit card business conducted in the District and from large multistate corporations that had not filed or paid taxes on business done within the District, and to adopt procedures to discover, audit, assess, and collect gross sales taxes, where there was no allegation of specific instances in which defendants had failed to assess and collect taxes and where statutes referred to did not set forth any specific procedures for discovery, audit, assessment or collection of the taxes in question. *N. M. Debevoise v. K. Back et al.* (D.C. App. 1976, 359 A. 2d 279).

— Standing of taxpayer

District of Columbia taxpayer lacks standing to maintain suit seeking to compel Director of Department of Finance and Revenue and the Mayor to collect taxes from suburban banks on bank credit card business conducted in the District and from large multistate corporations that had not filed or paid taxes on business done in the District, where taxpayer suggests only that her tax bills might be reduced or her municipal services improved if defendants are required to proceed in the manner requested by her. *N. M. Debevoise v. K. Back et al.* (D.C. App. 1976, 359 A. 2d 279).

§ 47-2702. Imposition of tax.

There is hereby imposed and there shall be paid by every vendor engaging in business in the District and by every purchaser a tax on the use, storage,

or consumption of any tangible personal property and services sold or purchased at retail sale. The rate of tax imposed by this section shall be 5 percent of the sales price of such tangible personal property and services, except that—

(1) the rate of tax shall be 12 percent of the gross receipts from the sale of or charges for the service of parking or storing of motor vehicles or trailers, except the service of parking or storing of motor vehicles or trailers on a parking lot owned or operated by the Washington Metropolitan Area Transit Authority and located adjacent to a Washington Metropolitan Area Transit Authority passenger stop or station;

(2) the rate of tax shall be 8 percent of the gross receipts from the sale of or charges for—

(A) any room or rooms, lodgings, or accommodations, furnished to transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients; and

(B) food or drink served, prepared for immediate consumption, or sold as described in paragraph 14(a)(1) of section 47-2601; and

(C) spirituous or malt liquors, beer and wine sold for consumption on the premises where sold;

(3) the rate of tax shall be 6 percent of the gross receipts from the sale of spirituous or malt liquors, beer and wine sold for consumption off the premises where sold; and

(4) the rate of tax shall be 2 percent of the gross receipts from the sale of food or drink as described in paragraph 14(a)(1) of section 47-2601 when sold from a vending machine.

(As amended Oct. 21, 1975, D.C. Law 1-23, title III, § 302(2), 22 DCR 2101; June 15, 1976, D.C. Law 1-70, title IV, § 409, 23 DCR 544.)

AMENDMENTS

1976—Act June 15, 1976, D.C. Law 1-70, amended section generally.

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended section generally.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 1403 of act June 15, 1976, D.C. Law 1-70, set out as a note under § 47-2601.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(k) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-2701.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

§ 47-2708. Surety bonds may be required.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2711. Monthly returns to be filed—Content and form—Payment of tax.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 28.—CIGARETTE TAX

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 47-504.

§ 47-2801. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2802. Imposition of tax.

(a) There shall be levied, collected, and paid on all cigarettes sold in the District by licensed wholesalers, licensed retailers, or by licensed vending-machine operators, to consumers, a tax at the rate of 13 cents on each twenty cigarettes or fractional part thereof, such tax to be levied, collected, and paid once only on cigarettes sold as aforesaid.

* * * * *

(As amended Oct. 21, 1975, D.C. Law 1-23, title IV, § 401(a), 22 DCR 2103; June 15, 1976, D.C. Law 1-70, title V, § 501, 23 DCR 546.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1976—Act June 15, 1976, D.C. Law 1-70, provided for the amendment of section by substituting "13" for "10". Although "10" appeared in subssecs. (a) and (i), the amendment has been executed only to subsec. (a) as the probable intent of the Council.

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended subsec. (a) by increasing the tax from 6 to 10 cents.

EFFECTIVE DATE OF 1976 AMENDMENT

See sec. 1403 of act June 15, 1976, D.C. Law 1-70, set out as a note under § 47-2601.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 801(b) of act Oct. 21, 1975, D.C. Law 1-23, provided: "The amendment [to § 47-2802] made by section 401 shall apply with respect to cigarette tax stamps sold on and after the first day of the first month which begins more than thirty days after the day this act becomes law according to the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

APPLICABILITY OF 1976 AMENDMENT TO STOCK HELD PRIOR TO EFFECTIVE DATE; STATEMENTS; RECORDS OF INVENTORIES; PUNISHMENT FOR VIOLATIONS

Section 502 of act June 15, 1976, D.C. Law 1-70, provided:

"(a) In the case of cigarette tax stamps purchased prior to the effective date of this title [amending this section] and held on the effective date of this title (affixed to a cigarette package or otherwise) by a wholesaler, retailer, or vending machine operator licensed under the District of Columbia Cigarette Tax Act, such licensee shall pay to the Mayor (in accordance with subsection (b) of this section) an amount equal to the difference between the amount of tax represented by such tax stamps on the date of their purchase and the amount of tax which an equal number of cigarette tax stamps would represent if purchased on the effective date of this title.

"(b) Within twenty days after the effective date of this title, each person licensed under the District of Columbia Cigarette Tax Act (1) shall file with the Mayor, on a form to be prescribed by the Mayor, an affirmed statement showing the number of cigarette tax stamps held by him as of the beginning of the day of the effective date of this title, or if such day is a Sunday, as of the beginning of the immediately following weekday, and (2) shall pay to the Mayor the amount specified in subsection (a) of this section.

"(c) Each licensee shall keep and preserve for the twelve month period immediately following the effective date of this title the inventories and other records which form the basis for the information furnished to the Mayor under subsection (b) of this section.

"(d) For the purposes of this section, a tax stamp shall be considered to be held by a wholesaler, retailer, or vending machine operator if title thereto has passed to such wholesaler, retailer, or vending machine operator (whether or not delivery to him has been made) and if title to such stamp has not at any time been transferred to any person other than such wholesaler, retailer, or vending machine operator.

"(e) A violation of the provisions of subsection (a), (b) or (c) of this section shall be punishable as provided in section 611 of the District of Columbia Cigarette Tax Act (D.C. Code, sec. 47-2810)."

APPLICABILITY OF 1975 AMENDMENT TO STOCK HELD PRIOR TO EFFECTIVE DATE; STATEMENTS; RECORDS OF INVENTORIES; PUNISHMENT FOR VIOLATIONS

Section 401(b) of act Oct. 21, 1975, D.C. Law 1-23, provided:

"(b) (1) In the case of cigarette tax stamps which have been purchased prior to the effective date of the amendment and which on such date are held (affixed to a cigarette package or otherwise) by a wholesaler, retailer, or vending machine operator, licensed under the District of Columbia Cigarette Tax Act, such licensee shall pay to the Mayor (in accordance with paragraph (2) of this subsection) an amount equal to the difference between the amount of tax represented by such tax stamps on the date of their purchase and the amount of tax which an equal number of cigarette tax stamps would represent if purchased on the effective date of the amendment.

"(2) Within twenty days after the effective date of such amendment, each such licensee (A) shall file with the Mayor an affirmed statement (on a form to be prescribed by the Mayor) showing the number of such cigarette tax stamps held by him as of the beginning of the day after the effective date of this amendment, or if such day is a Sunday, as of the beginning of the following day and (B) shall pay to the Mayor the amount specified in paragraph (1) of this subsection.

"(3) Each such licensee shall keep and preserve for the twelve-month period immediately following the effective date of such amendment the inventories and other records made which form the basis for the information furnished to the Mayor on the statement required to be filed under this subsection.

"(4) For purposes of this subsection, a tax stamp shall be considered as held by a wholesaler, retailer, or vending machine operator if title thereto has passed to such wholesaler, retailer, or operator (whether or not delivery to him has been made) and if title to such stamp has not at any time been transferred to any person other than such wholesaler, retailer, or operator.

"(5) A violation of the provisions of paragraph (1), (2), or (3) of this subsection shall be punishable as provided in section 611 of the District of Columbia Cigarette Tax Act (D.C. Code, sec. 47-2810)."

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

§ 47-2805. Types of licenses.

Licenses shall be of three kinds, namely:

A. RETAILER'S LICENSE.—Such a license shall authorize the holder thereof to keep for sale and to sell cigarettes to consumers, from the place therein designated and to deliver such cigarettes to consumers in original packages: *Provided*, That ciga-

rettes may be sold in number less than the number contained in the original package if such sales be permitted by regulations approved by the Council of the District of Columbia. A separate license shall be required for each such place or establishment. Such a license shall not authorize the licensee to sell to other licensees for resale.

The annual fee for such license shall be \$15 for each retail establishment.

B. VENDING MACHINE OPERATOR'S LICENSE.—Such a license shall authorize the holder thereof to sell or offer to sell cigarettes from or by means of vending machines located in the place or places described therein. The Council may by regulation require that a separate license be obtained for each machine or may permit a blanket license for one or more machines and may also prescribe that evidence of licensing of such machines be attached to each such machine by means of markers, stickers, or otherwise. The annual fee for such a license shall be \$15 for each and every such machine.

C. WHOLESALE'S LICENSE.—(1) Such a license shall authorize the holder thereof to manufacture or to purchase or otherwise to acquire and to sell cigarettes in original packages to any person holding a license under this chapter as wholesaler, retailer, or vending-machine operator, or to consumers.

(2) Such a licensee may at his election purchase from the Collector of Taxes and affix to original packages stamps denoting payment of the tax imposed by this chapter and, upon delivery to a vendee licensed under this chapter, of such original packages with such stamps properly affixed may add to the selling price of such cigarettes an amount equal to the face value of such stamps and collect such amount from such vendee. If a wholesaler licensed hereunder shall sell cigarettes to consumers, it shall be the duty of such wholesaler prior to the sale and delivery of such cigarettes to affix to the original packages the stamp or stamps denoting the payment of the tax imposed by this chapter.

(3) A license as wholesaler shall authorize the holder thereof to manufacture at and to sell cigarettes from the place or places in the District therein designated. The Council is empowered in its discretion to authorize, by regulation and upon such terms and conditions as it may require, the issuance of such a license for a place outside the District. A separate license shall be required for each such place within or without the District.

The annual fee for each such license shall be \$50. (May 27, 1949, 63 Stat. 138, ch. 146, title VI, § 606; Sept. 14, 1976, D.C. Law 1-82, title I, § 105, 23 DCR 2461.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended pars. A and B by substituting "\$15" for "fixed by the Council at a rate not to exceed \$5" and par. C(3) by striking "fixed by the Council at a rate not to exceed" immediately preceding "\$50".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 105 of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 73) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1835).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-2806. Period of licenses—Suspensions and revocations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2808. Administration—Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

§ 47-2809. Personnel and expenses authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2811. Redemption of cigarette or alcoholic-beverage tax stamps.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 29.—ADMISSION TO LICENSED PLACES—POSTING OF PRICE SCALE

§ 47-2901. Distinction because of race or color unlawful in licensed places of amusement—Payment of admissions—Penalty.

CROSS REFERENCE

Public accommodations, discriminatory practices prohibited, see § 6-2241.

§ 47-2902. Licensed hotels, restaurants and like establishments may not refuse admittance and service to orderly persons or exclude them because of race or color—Penalty.

CROSS REFERENCE

Public accommodations, discriminatory practices prohibited, see § 6-2241.

NOTES TO DECISIONS

Breach of contract

When restaurant patron was ordered to leave for being shoeless, her license to be on premises was revoked, whether legally or illegally, and she had no right to remain, even though restaurant had served patron food

and received payment for it, and, her remedy, if any, was a civil action for breach of contract. *S. M. Feldt v. Marriott Corporation* (D.C. App. 1974, 322 A. 2d 913).

Common law

In the absence of constitutional or statutory rights, common-law rule that restaurant owner has right to arbitrarily refuse service to any guest still controls. *S. M. Feldt v. Marriott Corporation* (D.C. App. 1974, 322 A. 2d 913).

Dress requirements

Statutory requirement that a restaurant must serve any quiet or orderly person does not prevent a restaurant from having reasonable requirements as to dress of its customers, such as a requirement that all male customers wear coats and ties or that all customers wear shoes. *S. M. Feldt v. Marriott Corporation* (D.C. App. 1974, 322 A.2d 913).

§ 47-2907. Keepers or proprietors of restaurants, hotels, barber shops, bathing houses, ice-cream saloons, and soda fountains required to serve well-behaved persons.

CROSS REFERENCE

Public accommodations, discriminatory practices prohibited, see § 6-2241.

Chapter 30.—CLOSING-OUT SALES

§ 47-3002. Closing-out sales prohibited without a license—Application for license to be in writing—License fee—Bond—Records—Penalty.

* * * * *

(b) If the Mayor shall be satisfied from said application that the proposed sale is of the character which the applicant desires to advertise and conduct, the Mayor shall issue a license, upon the payment of a fee of \$277 therefor, together with a bond, payable to the District of Columbia in the penal sum of \$1,000, conditioned upon compliance with this chapter, to the applicant authorizing him to advertise and conduct a sale of the particular kind mentioned in the application. Any merchant who shall have been been conducting a business in the same location where the sale is to be held for a period of not less than one year, prior to the date of holding such

sale shall be exempted from the payment of the fee and the filing of the bond herein provided.

* * * * *

(As amended Sept. 14, 1976, D.C. Law 1-82, title I, § 107, 23 DCR 2461.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1976—Act Sept. 14, 1976, D.C. Law 1-82, amended subsec. (b) by substituting "\$277" for "\$100".

EMERGENCY ACT AMENDMENTS

1976—For temporary amendment of section, see sec. 107 of the License Fees and Charges Emergency Act of 1976 (D.C. Act 1-127, June 1, 1976, 23 DCR 73) and the Second License Fees and Charges Emergency Act of 1976 (D.C. Act 1-150, Aug. 26, 1976, 23 DCR 1835).

EFFECTIVE DATE OF 1976 AMENDMENT

See section 801 of act Sept. 14, 1976, D.C. Law 1-82, set out as a note under § 47-2308.

§ 47-3009. Regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-3010. Preservation of authority—Delegation of functions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 49.—COMPILATION AND CONSTRUCTION OF CODE

Chap. Sec.
4. Law Revision Commission..... 49-401

Chapter 1.—GENERAL PROVISIONS

Sec.
49-112. District of Columbia Code—Preparation and publication—Printing.

§ 49-111. Disposition of compilation of laws affecting District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 49-112. District of Columbia Code—Preparation and publication—Printing.

(a) After publication by the Law Revision Counsel of the fifth annual cumulative supplement to the 1973 edition of the District of Columbia Code, new editions of the District of Columbia Code (and annual cumulative supplements thereto) shall be prepared and published under the direction of the Council of the District of Columbia and shall set forth the general and permanent laws relating to or in force in the District of Columbia, whether enacted by the Congress or by the Council of the District of Columbia, except such laws as are of application in the District of Columbia by reason of being laws of the United States general and permanent in nature.

(b) After completion of the printing of the fifth annual cumulative supplement to the 1973 edition of the District of Columbia Code, the Public Printer shall, as the Council of the District of Columbia may request, either—

(1) furnish to the Council of the District of Columbia, on such terms as the Public Printer (in consultation with the Joint Committee on Printing) deems appropriate, the type used in preparing the 1973 edition of the District of Columbia Code and the fifth annual cumulative supplement to such edition; or

(2) make such arrangements with the Council of the District of Columbia as the Public Printer (in the consultation with the Joint Committee on Printing) deems appropriate for the printing by the Government Printing Office of future editions of the District of Columbia Code, and annual cumulative supplements thereto, prepared under the direction of the Council of the District of Columbia.

(Aug. 14, 1976, Pub. L. 94-386, § 2, 90 Stat. 1170.)

CODIFICATION

Section is also set out as a note under 2 U.S.C. 285b.

CROSS REFERENCES

District of Columbia Statutes at Large, see § 1-1603.

Law Revision Counsel to prepare and publish D.C. Code through publication of fifth annual cumulative supplement to 1973 edition, see 2 U.S.C. 285b.

Municipal Code, see § 1-1602.
Publication and codification of acts of Council becoming law as it directs, see § 1-144.

Chapter 2.—RULES OF CONSTRUCTION

§§ 49-202 to 49-206.

CROSS REFERENCE

Rules of construction for acts and resolutions of Council of District, see §§ 1-146a to 1-146c.

Chapter 3.—LAWS REMAINING IN FORCE

§ 49-301. Common law, principles of equity and admiralty, and Acts of Congress to remain in force.

CROSS REFERENCE

Common law rules relating to age of majority superseded, see § 21-101 note.

NOTES TO DECISIONS

Decisions of Maryland courts

The United States Court of Appeals for the District of Columbia is not bound to follow decisions of courts of Maryland, particularly if they were handed down subsequent to the organization of the District of Columbia. *L. Blair v. The Prudential Insurance Co. of America* (1972, 472 F. 2d 1356, 153 U.S. App. D.C. 281).

Jury nullification

In prosecution under statute [§ 9-123] making it unlawful for any person or group of persons wilfully and knowingly to obstruct or impede passage through or within any capitol building, court did not err in refusing to give requested instruction, essence of which was jury nullification and would have made jurors judges of the law as well as facts. *A. J. Arshack v. United States* (D.C. App. 1974, 321 A. 2d 845).

Chapter 4.—LAW REVISION COMMISSION

Sec.
49-401. Establishment of Commission—Composition—Terms of office—Administrative provisions.
49-402. Duties of Commission.
49-403. Reports—Termination of Commission.
49-404. Omitted.
49-405. Appropriations.

§ 49-401. Establishment of Commission—Composition—Terms of office—Administrative provisions.

(a) There is established in the District of Columbia a District of Columbia Law Revision Commission (hereafter in this chapter referred to as the "Commission") which shall consist of nineteen members appointed as follows:

(1) Two members shall be appointed by the President of the United States.

(2) One member shall be appointed by the Speaker of the House of Representatives.

(3) One member shall be appointed by the President pro tempore of the Senate.

(4) One member shall be appointed by the minority leader of the House of Representatives.

(5) One member shall be appointed by the minority leader of the Senate.

(6) Three members shall be appointed by the Mayor of the District of Columbia, one of whom shall be a nonlawyer, and one of whom shall be a

member of the law faculty of a law school in the District of Columbia.

(7) Three members shall be appointed by the Council of the District of Columbia, one of whom shall be a nonlawyer, and one of whom shall be a member of the law faculty of a law school in the District of Columbia *Provided That*, any appointment made by the Chairman of the District of Columbia Council which fits the foregoing criteria shall remain in effect and shall count as one of the three appointments provided for by this item.

(8) Three members shall be appointed by the Joint Committee on Judicial Administration in the District of Columbia *Provided That*, any appointment or appointments made by said Joint Committee before July 15, 1975 shall remain in effect and shall count as one or more of the appointments provided for by this item.

(9) One member shall be appointed by the District of Columbia Corporation Counsel.

(10) Two members shall be appointed by the Board of Governors of the District of Columbia unified bar.

(11) One member shall be appointed by the Director of the District of Columbia Public Defender Service.

(b) No person may be appointed as a member of the Commission unless he is a citizen of the United States. At least eight persons appointed to the Commission shall be bona fide residents of the District of Columbia who have maintained an actual place of abode in the District of Columbia for at least the ninety days immediately prior to their appointments as such members. The remaining persons appointed as members of the Commission shall be residents of the National Capital Region, as defined in the Act of June 6, 1924 (D.C. Code, sec. 1-1001 et seq.) (establishing the National Capital Planning Commission), who have maintained an actual place of abode in the National Capital Region for at least ninety days immediately prior to their appointments as such members.

(c) Members of the Commission shall serve for four-year terms and may be reappointed.

(d) The Chairman of the Commission shall be selected by the members of the Commission from among their number.

(e) Each appointment of members of the Commission shall be made, without regard to political party affiliation, on the basis of the ability of that person to perform his duties with the Commission.

(f) Appointments made to fill vacancies on the Commission shall be made in the same manner, and on the same basis, as original appointments to the Commission are made. A member appointed to fill a vacancy shall serve until the expiration of the term of the member whose vacancy he was appointed to fill.

(g) Members and the Chairman of the Commission shall be entitled to receive \$100 for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Commission, except no member or Chairman shall receive more than \$5,000 for the performance of such duties during any twelve-month period.

(h) While away from their homes or regular places of business in the performance of the duties of the Commission, members, including the Chairman, of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

(i) The Commission may appoint and fix the compensation of such personnel as it deems advisable. Such personnel shall be appointed without regard to the provisions of title 5 of the United States Code, governing appointments in the competitive service. The Commission may appoint a Director. Such appointment shall be made without regard to the provisions of title 5 of the United States Code, governing appointments in the competitive service. The Director shall serve at the pleasure of the Commission and shall be entitled to receive compensation at the maximum rate as may be established from time to time for grade 16 of the General Schedule in section 5332 of title 5 of the United States Code. The Commission may also appoint a General Counsel without regard to the provisions of title 5 of the United States Code governing appointments in the competitive service, to serve at the pleasure of the Commission. The General Counsel shall be entitled to receive compensation at the same rate as the Director and shall be responsible solely to the Commission.

Persons appointed to the staff of the Commission shall be appointed solely on the basis of their ability to perform the duties of the Commission without regard to political party affiliation. Employees of the Commission shall be regarded as employees of the District of Columbia Government.

(j) The Commission, acting through its Chairman, may request from any department, agency, or instrumentality of the executive branch of the Federal and District governments, including independent agencies, any information for carrying out the purposes of this chapter; and each department, agency, instrumentality, and independent agency is authorized and directed, to the extent permitted by law, to furnish to the Commission the requested information.

(k) The Commission may enter into contracts with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

(l) The Commission may establish such advisory groups, committees, and subcommittees, consisting of members or nonmembers, as it deems necessary and appropriate to carry out the purposes of this chapter. (Aug. 21, 1974, Pub. L. 93-379, § 2, 88 Stat. 480; Nov. 1, 1975, D.C. Law 1-29, § 2, 22 DCR 2541; Dec. 31, 1975, Pub. L. 94-191, § 2, 89 Stat. 1098.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCES IN TEXT

The "National Capital region", referred to in subsec. (b), is defined in § 1-1001(b).

Section 5703 of title 5 of the United States Code, referred to in subsec. (h), was amended generally by Pub. L. 94-22, § 4, May 19, 1975, 89 Stat. 85, and as so amended does not contain a subsec. (b).

AMENDMENTS

1975—Subsec. (l). Act Dec. 31, 1975, Pub. L. 94-181, eliminated requirement that staff personnel be appointed in the competitive service, and provided for the appointment and compensation of a Director and General Counsel.

Subsec. (a). Act Nov. 1, 1975, D.C. Law 1-29, increased the membership of the Commission from fifteen to nineteen, amended pars. (7) and (8) generally, and added par. (11).

EFFECTIVE DATE OF 1975 AMENDMENT BY D.C. LAW 1-29

Section 3 of act Nov. 1, 1975, D.C. Law 1-29, provided that "This act [amending § 49-401] shall take effect upon becoming law by operation of section 602 of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147]."

SHORT TITLES

The first section of act Nov. 1, 1975, D.C. Law 1-29, provided: "That this act [amending § 49-401] may be cited as the 'District of Columbia Law Revision Commission Expansion Act'."

The first section of Act Aug. 21, 1974, Pub. L. 93-379, provided: "That this Act [enacting this chapter and amending § 1-1507] may be cited as 'the District of Columbia Law Revision Commission Act'."

§ 49-402. Duties of Commission.

(a) It shall be the duty of the Commission to—

(1) examine the common law and statutes relating to the District of Columbia, the ordinances, regulations, resolutions, and acts of the Council of the District of Columbia, and all relevant judicial decisions for the purpose of discovering defects and anachronisms in the law relating to the District of Columbia and recommending needed reforms;

(2) receive and consider proposed changes in the law recommended by the American Law Institute, the Conference of Commissioners on Uniform State Laws, any bar association or other learned bodies;

(3) receive and consider suggestions from judges, justices, public officials, lawyers, and the public generally as to defects and anachronisms in the law relating to the District of Columbia; and

(4) recommend, from time to time, to the Congress, and where appropriate to the Mayor of the District of Columbia and to the Council of the District of Columbia, such changes in the law relating to the District of Columbia as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law relating to the District of Columbia, both civil and criminal, into harmony with modern conditions.

In carrying out its duties under this chapter, the Commission shall give special consideration to the examination of the common law and statutes relating to the criminal law in the District of Columbia, and all relevant judicial decisions, for the purpose of discovering defects and anachronisms in the law relating to the criminal law in the District of Columbia and recommending needed reforms.

(b) In addition to those duties of the Commission specified in subsection (a), the Commission shall prepare and recommend proposed uniform rules of

practice, including rules relating to the conduct of hearings, for administrative agencies of the District of Columbia, including both independent and subordinate agencies, which conduct on-the-record hearings. The Commission shall also make a study of the District of Columbia Administrative Procedure Act [D.C. Code, secs. 1-1501 et seq.] for the purpose of preparing a manual, including relevant legislative history and legal precedents, for the guidance of the respective administrative agencies. (Aug. 21, 1974, Pub. L. 93-379, § 3, 88 Stat. 482.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 49-403.

§ 49-403. Reports—Termination of Commission.

(a) The Commission shall make an annual report of its proceedings to the President, to the Congress, to the Mayor of the District of Columbia, and to the Council of the District of Columbia by March 31 of each year. All reports of the Commission to the Congress, including reports made under section 49-402 (a) (4), shall be filed with the Clerk of the House of Representatives and the Secretary of the Senate, and where appropriate, include drafts of proposed bills to carry out any of its recommendations.

(b) Upon the filing of the Commission's annual report at the end of the fourth full calendar year after the date that funds are first appropriated to the Commission, the Commission shall cease to exist, unless extended by Congress. (Aug. 21, 1974, Pub. L. 93-379, § 4, 88 Stat. 483.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 49-404. Omitted.

Section, Act Aug. 21, 1974, Pub. L. 93-379, § 5(b), 88 Stat. 483, provided for the public distribution of the Municipal Code established by section 1-1507(d). Act Oct. 8, 1975, D.C. Law 1-19, title II, § 203, 22 DCR 2058, repealed section 1-1507(d) and the distribution of the Municipal Code is now covered by section 1-1602(d).

§ 49-405. Appropriations.

For the purpose of carrying out this chapter, there are authorized to be appropriated, out of moneys in the Treasury credited to the District of Columbia and not otherwise appropriated, such amounts as may be necessary to carry out the purpose of this chapter. (Aug. 21, 1974, Pub. L. 93-379, § 6, 88 Stat. 483.)

CODIFICATION

The words "and section 1-1507(d)" which appeared in the text twice were omitted as obsolete. Section 1-1507(d) was repealed by Act Oct. 8, 1975, D.C. Law 1-19, title II, § 203, 22 DCR 2058.

Parallel Reference Tables

TABLE 4A.—ACTS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA

Date	D.C. Law	Title	Section	D.C. Code Supp.	Date	D.C. Law	Title	Section	D.C. Code Supp.
1975					1975				
May 13	1-1		1	5-426.	Oct. 10	1-21		1	1-171a note.
	1-1		2, 3	5-426 note.		1-21		2	1-171a.
	1-2		1(1)	46-303.		1-21		3	1-171a-1.
	1-2		1(2)	46-307(g) (7).		1-21		4	1-171b.
	1-2		2, 2	46-303 note.		1-21		5	1-171c.
May 22	1-3		1	5-901 note.		1-21		6	1-171d.
	1-3		2(1)	5-902.		1-21		7(a)	1-1161.
	1-3		2(2)	5-904, 906, 911, 913, 914, 915, 916, 921, 922.		1-21		7(b)	1-1162.
						1-21		7(c)	1-1182.
	1-3		2(3)	5-921.		1-21		8	1-171e.
	1-3		3	5-902 note.		1-21		9	1-171f.
	1-4		101-104	7-908 note.		1-21		10	1-171g.
	1-5		1	3-215.		1-21		11	1-171h.
	1-5		2	3-215 note.		1-21		12	1-171a note.
June 20	1-6		1	45-1623.		1-21		13	1-171i.
	1-6		2	45-1623 note.		1-21		14	1-171j.
	1-7		101-105	Special.		1-21		15	1-171k.
	1-8		1-3	Special.		1-21		16	1-171l.
July 17	1-9		1-3	Special.	Oct 21	1-22		1	31-1901 note.
July 25	1-10		1-3	Special.		1-22		2	31-1901.
Aug. 1	1-11		101	28-2701 note.		1-22		3	31-1902.
	1-11		102	28-2701 note.		1-22		4	31-1903.
	1-11		103	28-2701.		1-22		5	31-1904.
	1-11		104	28-2701 note.		1-22		6	31-1905.
Sept. 9	1-12		1	31-1701 note.		1-22		7	31-1906.
	1-12		2	31-1701 note.		1-22		8	31-1901 note.
	1-12		3(a), (b)	31-1711.		1-23		1	47-1551 note.
	1-12		3(c)	31-1717.		1-23		101	40-103.
	1-12		3(d)	31-1701 note.		1-23	I	102(a)	40-603.
	1-12		4	31-1711 note.		1-23	I	102(b)	40-603-3 Rep.
Sept. 23	1-13		1-6	Special.		1-23	I	103	1-1443b Rep.
	1-14		1	31-1103 note.		1-23	I	104(a)	40-103 note.
	1-14		2	31-1103.		1-23	II	104(b)	40-603 note.
	1-14		3	31-1103 note.		1-23	II	201(a)	47-1901.
	1-15		1	31-120 note.		1-23	II	201(b)	47-1901c Rep.
	1-15		2	31-120 Rep.		1-23	II	202	47-1901 note.
	1-15		3	31-120 note.		1-23	III	203	45-723.
	1-16		1	1-1161 note.		1-23	III	301(1)-(6)	47-2601.
	1-16		2	1-1161.		1-23	III	301(7)	47-2602.
	1-16		3	1-1161 note.		1-23	III	301(8)	47-2604.
	1-17		1	1-146a note.		1-23	III	301(9), (10)	47-2605.
	1-17		2	1-146a.		1-23	III	302(1)	47-2701.
	1-17		3	1-146b.		1-23	III	302(2)	47-2702.
	1-17		4	1-146c.		1-23	IV	302(3)-(5)	47-2701.
	1-17		5	1-146a note.		1-23	IV	401(a)	47-2802.
	1-18		1	44-216 note.		1-23	IV	401(b)	47-2802 note.
	1-18		2	44-216.		1-23	V	501(a) (1)	47-1701.
	1-18		3	44-217.		1-23	V	501(a) (2)	47-1702.
	1-18		4	44-218.		1-23	V	501(a) (3)	47-1703.
	1-18		5	44-216 note.		1-23	V	501(a) (4)	47-1704.
	1-18		6	44-216 note.		1-23	VI	601(1), (2)	47-1551c.
Oct. 8	1-19	I	101	1-1501 note.		1-23	VI	601(3)	47-1554.
	1-19	I	102(a)	1-1501.		1-23	VI	601(4)	47-1557a.
	1-19	I	102(b)-(q)	1-1502.		1-23	VI	601(5), (6)	47-1557b.
	1-19	I	102(r), (s)	1-1503.		1-23	VI	601(7)	47-1564a.
	1-19	I	102(t)-(x)	1-1504.		1-23	VI	601(8)	47-1567a.
	1-19	I	102(y)	1-1505.		1-23	VI	601(9)	47-1567b.
	1-19	I	102(z)-(bb)	1-1506.		1-23	VI	601(10)	47-1567e Rep.
	1-19	I	102(cc)-(ee)	1-1507.		1-23	VI	602	47-1551 note.
	1-19	I	102(ff)	1-1508.		1-23	VI	603	47-1571a.
	1-19	I	102(gg)-(kk)	1-1509.		1-23	VI	604	47-1574b.
	1-19	I	102(ll)	1-1510.		1-23	VI	605	47-1574.
	1-19	I	103(a)	1-1501 note.		1-23	VI	606	47-1589a, 1589c, 1589d.
	1-19	I	103(b)	1-1507 note.		1-23	VI	607	47-1589.
	1-19	I	104	1-1501 note.		1-23	VI	608	47-1586f-1.
	1-19	II	201	1-1601 note.		1-23	VI	609	47-1551c.
	1-19	II	202	1-1601.		1-23	VII	701(a)	43-1520d.
	1-19	II	203	1-1507(d) Rep.		1-23	VII	701(b)	43-1605a.
	1-19	II	204	1-1602.		1-23	VII	701(c)	43-1504a, 1605b.
	1-19	II	205	1-1603.		1-23	VII	702	43-1520d, 1605a notes.
	1-19	II	206	1-1604.		1-23	VII	703	43-1504b.
	1-19	II	207	1-1605.		1-23	VII	704	34-1520d note.
	1-19	II	208	1-1601 note.		1-23	VII	705	43-1520d note.
	1-20		1	2-1231 note.		1-23	VIII	706	43-1520c.
	1-20		2	2-1231.		1-23	VIII	801(a)	40-103 note.
	1-20		3	2-1232.		1-23	VIII	801(b)	47-2802 note.
	1-20		4	2-1233.		1-23	VIII	801(c)	47-1701 note.
	1-20		5	2-1234.		1-23	VIII	801(d)	47-1551c note.
	1-20		6	2-1235.		1-23	VIII	801(e)	43-1504a note.
	1-20		7	2-1236.		1-23	VIII	801(f)	40-103 note.
	1-20		7(b) (2)	47-2344a.		1-23	VIII	801(g)	47-1551c note.
	1-20		8	2-1237.		1-23	VIII	801(h)	47-1586f-1 note.
	1-20		9	2-1238.		1-23	VIII	801(i)	47-2601 note.
	1-20		10	2-1239.		1-23	VIII	801(j)	47-2601 note Rep.
	1-20		11	2-1231 note.		1-23	VIII	801(k)	47-2701 note.
						1-23	VIII	801(l)	47-2701 note Rep.

TABLE 4A.—ACTS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA—Continued

Date	D.C. Law	Title	Section	D.C. Code Supp.	Date	D.C. Law	Title	Section	D.C. Code Supp.
1975					1975				
Oct. 21.....	1-23	VIII	802	47-1551 note.	Dec. 16.....	1-37		1	1-1101 note.
Oct. 29.....	1-24		1	6-1701 note.		1-37		2(1), (2)	1-1105.
	1-24	I	101	6-1701.		1-37		2(3)-(5)	1-1107.
	1-24	II	201	6-1702.		1-37		2(6), (7)	1-1109.
	1-24	III	301	6-1711.		1-37		2(8)	1-1114.
	1-24	III	302	6-1712.		1-37		3	1-1114 note.
	1-24	III	303	6-1713.		1-38		1	1-1105b note.
	1-24	III	304	6-1714.		1-38		2	1-1105b note.
	1-24	III	305	6-1715.		1-38		3	1-1105b. note.
	1-24	III	306	6-1716.		1-38		4	1-1105.
	1-24	IV	401	6-1721.		1-38		5	1-1105b note.
	1-24	IV	402	6-1722.		1-38		6	1-1105b note.
	1-24	IV	403	6-1723.		1-38		7	1-1105b note.
	1-24	IV	404	6-1724.		1-39		1	5-1001 note.
	1-24	IV	405	6-1725.		1-39		2	5-1001.
	1-24	IV	406	6-1726.		1-39		3	5-1002.
	1-24	IV	407	6-1727.		1-39		4	5-1003.
	1-24	IV	408	6-1728.		1-39		5	5-1004.
	1-24	IV	409	6-1729.		1-39		6	5-1005.
	1-24	IV	410	6-1730.		1-39		7	5-1006.
	1-24	IV	411	6-1701 note.		1-39		8	5-1007.
	1-24	V	501	6-1701 note.		1-39		9	5-1001 note
Oct. 30.....	1-25		1	16-308 note.	Dec. 20.....	1-40		1-3	Special.
	1-25		2	16-308.		1-41		1-11	47-241 note
	1-25		3	16-308 note.					
	1-26		1	31-1109 note.	1976				
	1-26		2(a)(1)	31-110 Rep.	Jan. 22.....				
	1-26		2(a)(2)	31-115 Rep.		1-42		1	47-130c note.
	1-26		2(b)(1)	31-1110 Rep.		1-42		2	47-130c note.
	1-26		2(b)(2)	31-1111 Rep.		1-42		3(a)	47-1901.
	1-26		2(b)(3)	31-1112 Rep.		1-42		3(b)	47-1918.
	1-26		2(b)(4)	31-1113 Rep.		1-42		3(c)	40-808.
	1-26		3	31-1109.		1-42		3(d)	43-1523.
	1-26		4	31-1109 note.		1-42		3(e)	43-1524.
	1-27		1	1-171 note.		1-42		3(f)(1)	43-1602 Rep.
	1-27		2(a)	1-171.		1-42		3(f)(2)	43-1603.
	1-27		2(b)	T.1, ch.1A analysis.		1-42		3(f)(3)	43-1604.
	1-27		3(a), (b)	1-1161.		1-42		3(f)(4)	43-1605.
	1-27		3(c)	1-1162.		1-42		3(f)(5)	43-1609.
	1-27		3(d)	1-1182.		1-42		3(f)(6)	43-1614.
Nov. 1.....	1-27		4	1-171 to 171e., 171g, 1180,		1-42		3(f)(7)	43-1616 note.
	1-28			1602.		1-42		4(a), (b)	43-1621.
	1-29		5	1-171 note.		1-42		4(c)	43-1622.
	1-29			Special.		1-42		4(d)	43-1623.
	1-29		1	49-401 note.		1-42		5(a)	25-111a Rep.
	1-30		2	49-401.		1-42		5(b)	24-535.
	1-30		3	49-401 note.		1-42		6	40-103.
	1-30		1	47-1711 note.		1-42		7(a)	1-1443b Rep., 40-603-3 Rep.,
	1-31		2	47-1711.		1-42			47-1901c Rep.
	1-31		3	47-1711 note.				7(b)	40-603.
	1-31		1	47-1557b note.		1-42		7(c)	47-1901.
	1-32		2	47-1557b.		1-42		7(d)	40-103 note.
	1-32		3	47-1557b note.		1-42		8	43-1614, 47-130c note.
	1-32		1	36-419 note.		1-42		9	47-130c.
	1-32		2(a)	36-408 note.		1-42		10	47-130c note.
	1-32		2(b), (c)	36-402.	Jan. 23.....	1-43		1	29-1101 note.
	1-33		3	36-403.		1-43		2	29-1121.
	1-33		4	36-402 note.		1-43		3	29-1121 note.
	1-33	I	1	45-1631 note.		1-44		1	47-1557b note.
	1-33	I	101	45-1631.	Feb. 3.....	1-44		2	47-1557b.
	1-33	I	102	45-1632.		1-44		3	47-1557b.
	1-33	II	103	45-1633.		1-44		4	47-1574c.
	1-33	II	104	45-1634.		1-44		5	47-1557b note.
	1-33	II	201	45-1641.	Feb. 17.....	1-45		1	1-1101 note.
	1-33	II	202	45-1642.		1-45		2	1-1105.
	1-33	II	203	45-1643.		1-45		3	1-1105 note.
	1-33	II	204	45-1644.	Feb. 19.....	1-46		1	35-712 note.
	1-33	II	205	45-1645.		1-46		2	35-712.
	1-33	II	206	45-1646.		1-47		3	35-712 note.
	1-33	II	207	45-1647.		1-47		1	31-691 note.
	1-33	II	208	45-1648.		1-47		2	31-694.
	1-33	II	209	45-1649.		1-47		3	31-694 note.
	1-33	II	210	45-1650.	Feb. 20.....	1-48		1-6	Special.
	1-33	II	211	45-1651.		1-49		1	40-102a note.
	1-33	II	212	45-1652.		1-49		2	40-102a.
	1-33	II	213	45-1653.		1-49		3	40-102a note.
	1-33	III	214	45-1654.	Feb. 26.....	1-50		1	2-1231 note.
	1-33	III	215	45-1655.		1-50		2	47-2344a.
	1-33	IV	301	45-1661.		1-50		3	2-1231, 1232, 1235 to 1238,
	1-33	IV	302	45-1662.		1-50		4	2-1231 note.
	1-33	IV	401	45-1671.	Mar. 12.....	1-51		1	24-251 note.
	1-33	IV	402	45-1672.		1-51		2	24-251.
	1-33	IV	403	45-1673.		1-51		3	24-252.
	1-34		404	45-1631 note.		1-51		4	24-253.
	1-34		405	45-1674.		1-51		5	24-251 note.
	1-34		1	46-327 note.		1-52		1	47-621 note.
	1-34		2	46-327 note.		1-52		2	47-646.
	1-34		3	46-327.		1-52		3	47-646 note.
	1-34		4	46-310.		1-53		1	31-635 note.
	1-35		5	46-327 note.		1-53		2	31-635.
	1-36		6	46-327 note.		1-53		3	31-635 note.
	1-36		1-3	Special.		1-54		1-4	Special.
	1-36		1	31-1701 note.	Mar. 19.....	1-55		1-11	Special.
	1-36		2	31-1701 note.		1-56		1-3	Special.
	1-36		3	31-1702.	Mar. 26.....	1-57		1	47-621 note.
	1-36		4	31-1711 to 1720.		1-57		2	47-651.
	1-36		4	31-1721.		1-57		3	47-651 note.
	1-36		5	31-1731 to 1736.		1-58		1	1-171i note.
	1-36		6	31-1701 note.					

TABLE 4A.—ACTS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA—Continued

Date	D.C. Law	Title	Section	D.C. Code Supp.	Date	D.C. Law	Title	Section	D.C. Code Supp.
1976					1976				
Mar. 26	1-58	-----	2	1-171i to 171l.	June 15	1-70	VI	602	43-1605a.
	1-58	-----	3	1-171i note.		1-70	VI	603	43-1520d note.
	1-59	-----	1	1-921 note.		1-70	VI	604	43-1520d note.
	1-59	-----	2	1-921.		1-70	VI	605	43-1520d note.
	1-59	-----	3	1-925.		1-70	VI	606	43-412.
	1-59	-----	3	1-921 note.		1-70	VII	701	47-226 note.
Apr. 9	1-60	-----	1-3	Special.		1-70	VII	702	47-226 note.
	1-61	-----	1	47-2601 note.		1-70	VII	703	47-226 note.
	1-61	-----	2	47-2601.		1-70	VIII	801	47-1551 note.
	1-61	-----	3-5	Special.		1-70	IX	901	47-1701 note.
	1-61	-----	6	47-2601 note.		1-70	X	1001-1003	Special.
Apr. 15	1-62	-----	1	28-3817 note.		1-70	XI	1101	47-1557b.
	1-62	-----	2(a)	28-3817.		1-70	XI	1102	47-1564.
	1-62	-----	2(b)	T. 28, ch. 38 analysis.		1-70	XII	1201	47-1567b.
	1-62	-----	3	28-3817 note.		1-70	XIII	1301	47-1704.
May 6	1-63	-----	1	1-320a note.		1-70	XIV	1401	40-103 note.
	1-63	-----	2	1-320a.		1-70	XIV	1402	47-1209 note.
	1-63	-----	3	1-320b.		1-70	XIV	1403	47-2601 note.
	1-63	-----	4	1-320c.		1-70	XIV	1404	47-1557b note.
	1-63	-----	5	1-320d.		1-70	XIV	1405	47-1704 note.
	1-63	-----	6	1-320e.		1-70	XV	1501	47-1551 note.
	1-63	-----	7	1-320f.		1-70	XV	1502	47-1551 note.
	1-63	-----	8	1-320g.	June 19	1-71	-----	1	29-801 note.
	1-63	-----	9	1-320h.		1-71	-----	2	29-801 note.
	1-63	-----	10	1-320a note.		1-71	-----	3	29-801 note.
May 26	1-64	-----	1	5-1101 note.		1-71	-----	4	29-801 note.
	1-64	-----	2	5-1101.		1-71	-----	5	29-801 note.
	1-64	-----	3	5-1102.		1-72	-----	1	1-171m note.
	1-64	-----	4	5-1103.		1-72	-----	2	1-171m.
	1-64	-----	5	5-1104.		1-72	-----	3	1-171n.
	1-64	-----	6	5-1105.		1-72	-----	4	1-171o.
June 8	1-64	-----	7	5-1101 note.		1-72	-----	5	1-171p.
	1-65	-----	1	1-141a note.		1-72	-----	6	1-171q.
	1-65	-----	2	1-141a.		1-72	-----	7	1-171r.
	1-65	-----	3	1-141b.		1-72	-----	8	1-171r.
	1-65	-----	4	1-141c.		1-72	-----	9	1-171m note.
	1-65	-----	5	1-141a note.		1-73	-----	1	4-823 note.
June 9	1-66	-----	1	2-1231 note.		1-73	-----	2(1)	4-823.
	1-66	-----	2	2-1234.		1-73	-----	2(3)	4-828.
	1-66	-----	3	2-1234 note.		1-73	-----	3	4-823 note.
June 11	1-67	-----	1	1-1431-1a note.		1-73	-----	4	4-823 note.
	1-67	-----	2	1-1431 note, 1431-1a.		1-73	-----	5	4-823 note.
	1-67	-----	3	1-1431-1a.		1-73	-----	6	4-823 note.
June 15	1-68	-----	1	36-201 note.	July 1	1-74	-----	1-4	Special.
	1-68	-----	2(1)	36-201.	July 22	1-75	-----	1	21-101 note.
	1-68	-----	2(2)	36-202.		1-75	-----	2	21-101 note.
	1-68	-----	2(3)	36-203.		1-75	-----	3(a)	2-404.
	1-68	-----	2(4)	36-204.		1-75	-----	3(b)	2-511.
	1-68	-----	2(5)	36-205.		1-75	-----	3(c)	2-602.
	1-68	-----	2(6)	36-206 Rep.		1-75	-----	3(d)	2-705.
	1-68	-----	2(7)	36-207 Rep.		1-75	-----	3(e)	2-915.
	1-68	-----	2(8)	36-207a.		1-75	-----	3(f)	2-1020.
	1-68	-----	2(9)	36-208.		1-75	-----	3(g)	2-1403.
	1-68	-----	2(10)	36-209.		1-75	-----	3(h)	2-1503.
	1-68	-----	2(11)	36-210.		1-75	-----	3(i)	2-1808.
	1-68	-----	2(12)	36-211.		1-75	-----	3(j)	47-2344a.
	1-68	-----	2(13)	36-212.		1-75	-----	3(k)-(q)	Special.
	1-68	-----	2(14)	36-213 Rep.		1-75	-----	3(r)	2-601.
	1-68	-----	2(15)	36-214.		1-75	-----	3(s)	45-1404.
	1-68	-----	2(16)	36-215.		1-75	-----	4(a)	18-102.
	1-68	-----	2(17)	36-216.		1-75	-----	4(b)	20-1908.
	1-68	-----	2(18)	36-217.		1-75	-----	4(c)	21-158.
	1-68	-----	2(19)	36-218 Rep.		1-75	-----	4(d)	21-104.
	1-68	-----	2(20)	36-219.		1-75	-----	4(e)	21-106.
	1-68	-----	2(21)	36-220.		1-75	-----	4(f)	21-301.
	1-68	-----	2(22)	36-221.		1-75	-----	4(g)	21-304.
	1-68	-----	2(23)	36-222.		1-75	-----	4(h)	20-352 Rep.
	1-68	-----	2(24)	36-223.		1-75	-----	4(i)	45-608.
	1-68	-----	2(25)	36-224.		1-75	-----	4(j)	45-927.
	1-68	-----	2(26)	36-225 Rep.		1-75	-----	5(a)	30-111.
	1-68	-----	2(27)	36-228.		1-75	-----	5(b)	30-201.
	1-68	-----	2(28)	36-226.		1-75	-----	5(c)	30-203 Rep.
	1-68	-----	2(29)	36-227.		1-75	-----	5(d)	30-103.
	1-68	-----	2(30)	36-201 note.		1-75	-----	5(e)	16-304.
	1-68	-----	3	36-201 note.		1-75	-----	5(f)	31-309.
	1-69	-----	1	11-2608 note.		1-75	-----	6	28: 1-1.03.
	1-69	-----	2	11-2608.		1-75	-----	7	21-101 note.
	1-69	-----	3	11-2608 note.		1-75	-----	8	21-101 note.
	1-70	-----	I	47-1551 note.		1-76	-----	1	28 App
	1-70	I	101	40-103.		1-76	-----	2	28 App
	1-70	II	201	40-603.		1-76	-----	3	28 App
	1-70	III	301	47-1209.		1-76	-----	4	28 App
	1-70	III	302(a)	47-632.		1-76	-----	5	28 App
	1-70	III	302(b)	47-633.		1-76	-----	6	28 App
	1-70	III	303	47-632a.		1-76	-----	7	28 App
	1-70	III	304	47-632b.		1-76	-----	8	28 App
	1-70	III	305	47-631, 632, 633 to 636.		1-76	-----	9	28 App
	1-70	IV	401	47-2601.		1-76	-----	10	28 App
	1-70	IV	402	47-2601.	July 27	1-77	-----	1	47-1571a note.
	1-70	IV	403	47-2605.		1-77	-----	2	47-1571a.
	1-70	IV	404	47-2701.		1-77	-----	3	47-1574b.
	1-70	IV	405	47-2701.		1-77	-----	4	47-1571a note.
	1-70	IV	406	47-2601 note Rep.		1-77	-----	5	47-1571a note.
	1-70	IV	407	47-2701 note Rep.	Aug. 5	1-78	-----	1-3	Special.
	1-70	IV	408	47-2602.	Sept. 2	1-79	-----	1	1-1101 note.
	1-70	IV	409	47-2702.		1-79	I	101	1-1101 note.
	1-70	V	501	47-2802.		1-79	I	102(1)	1-1102
	1-70	V	502	47-2802 note.		1-79	I	102(2)	1-1103
	1-70	VI	601	43-1520.		1-79	I	102(3), (4)	1-1104.

TABLE 4A.—ACTS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA—Continued

Date	D.C. Law	Title	Section	D.C. Code Supp.	Date	D.C. Law	Title	Section	D.C. Code Supp.
1976					1976				
Sept. 2...	1-79	I	102(5), (6)	1-1105.	Sept. 14...	1-82	VII	704	29-936.
	1-79	I	102(7)-(12)	1-1108.		1-82	VII	705	29-936.
	1-79	I	103	1-1102 note.		1-82	VIII	801	47-2308 note.
	1-79	II	201	1-1121 note.		1-82	VIII	802	47-2308 note.
	1-79	II	202	1-1181.		1-82	VIII	803	47-2308 note.
	1-79	II	203	1-1182.		1-83	-----	1	6-1701 note.
	1-79	II	204	1-1181 note.		1-83	-----	2	6-1713.
	1-79	III	301	1-1121 note.		1-83	-----	3	6-1730.
	1-79	III	302	1-1171 to 1177.		1-83	-----	4	6-1713 note.
	1-79	III	303	1-1171 note.	Sept. 18...	1-84	-----	1-3	Special.
	1-79	IV	401	1-1105c note.	Sept. 24...	1-85	-----	1	6-1801 note.
	1-79	IV	402	1-1105c.		1-85	-----	2	6-1801.
	1-79	IV	403	1-1105c.		1-85	I	101	6-1802.
	1-79	IV	404	1-1105c note.		1-85	II	201	6-1811.
	1-79	V	501	1-1101 note.		1-85	II	202	6-1812.
	1-79	V	502	1-1105.		1-85	II	203	6-1813.
	1-79	V	503	1-1105.		1-85	II	204	6-1814.
	1-79	V	504	1-1110.		1-85	II	205	6-1815.
	1-79	V	505	1-1105 note.		1-85	II	206	6-1816.
	1-79	VI	601	1-1101 note.		1-85	II	207	6-1817.
	1-79	VI	602	1-1102.		1-85	II	208	6-1818.
	1-79	VI	603	1-1102 note.		1-85	II	209	6-1819.
	1-79	VII	701	1-1121 note.		1-85	II	210	6-1820.
	1-79	VII	702	1-1162.		1-85	II	211	6-1821.
	1-79	VIII	801	1-1155 Rep.		1-85	III	301	6-1831.
	1-79	VIII	802	1-1161.		1-85	IV	401	6-1841.
	1-79	VIII	803	1-1131.		1-85	IV	402	6-1842.
	1-79	VIII	804	47-1567f.		1-85	IV	403	6-1843.
	1-79	VIII	805	1-1192.		1-85	IV	404	6-1844.
	1-79	VIII	806	1-1121.		1-85	IV	405	6-1845.
	1-79	VIII	807	1-1121 note.		1-85	IV	406	6-1846.
	1-79	VIII	808	1-1121 note.		1-85	IV	407	6-1847.
	1-80	-----	1-5	Special.		1-85	IV	408	6-1848.
Sept. 10...	1-81	-----	1	33-801 note.		1-85	IV	409	6-1849.
	1-81	-----	2	33-801.		1-85	V	501	6-1851.
	1-81	I	101	33-811.		1-85	V	502	6-1852.
	1-81	I	102	33-812.		1-85	VI	601	6-1861.
	1-81	I	103	33-813.		1-85	VII	701	6-1871.
	1-81	I	104	33-814.		1-85	VII	702	6-1872.
	1-81	I	105	33-815.		1-85	VII	703	6-1873.
	1-81	I	106	33-816.		1-85	VII	704	6-1874.
	1-81	II	201	33-821.		1-85	VII	705	6-1875.
	1-81	III	301	33-831.		1-85	VII	706	6-1876.
	1-81	III	302	33-832.		1-85	VII	707	6-1877.
	1-81	III	303	33-833.		1-85	VII	708	6-1801 note.
	1-81	III	304	33-834.		1-85	VII	709	6-1878.
	1-81	III	305	33-835.		1-85	VII	710	6-1879.
	1-81	IV	401	33-841.		1-85	VII	711	6-1880.
	1-81	IV	402	33-842.		1-85	VII	712	6-1801 note.
	1-81	IV	403	33-843.	Sept. 29...	1-86	-----	I	6-1901 note.
	1-81	IV	404	33-801 note.		1-86	I	101	6-1901.
Sept. 14...	1-82	-----	1	47-2308 note.		1-86	II	201	6-1902.
	1-82	I	101(a)	2-2005.		1-86	III	301	6-1911.
	1-82	I	101(b)	2-2006.		1-86	III	302	6-1912.
	1-82	I	102	1-232.		1-86	III	303	6-1913.
	1-82	I	103	47-2001.		1-86	III	304	6-1914.
	1-82	I	104(a)	47-2101.		1-86	III	305	6-1901 note.
	1-82	I	104(b)	47-2308.		1-86	III	306	6-1901 note.
	1-82	I	104(c)	47-2309.		1-86	IV	401	6-1921.
	1-82	I	104(d)	47-2310.		1-86	IV	402	6-1922.
	1-82	I	104(e)	47-2311.		1-86	IV	403	6-1923.
	1-82	I	104(f)	47-2312.		1-86	IV	404	6-1924.
	1-82	I	104(g)	47-2314.		1-86	IV	405	6-1925.
	1-82	I	104(h)	47-2315.		1-86	IV	406	6-1926.
	1-82	I	104(i)	47-2317.		1-86	IV	407	6-1927.
	1-82	I	104(j)	47-2318.		1-86	IV	408	6-1928.
	1-82	I	104(k)	47-2319.		1-86	IV	409	6-1929.
	1-82	I	104(l)	47-2320.		1-86	IV	410	6-1930.
	1-82	I	104(m)	47-2321.		1-86	V	501	6-1941.
	1-82	I	104(n)	47-2323.		1-86	VI	601	6-1901 note.
	1-82	I	104(o)	47-2324.	Oct. 1....	1-87	-----	1	1-511 note.
	1-82	I	104(p)	47-2325.		1-87	-----	2	1-511.
	1-82	I	104(q)	47-2326.		1-87	-----	3	2-113.
	1-82	I	104(r)	47-2327.		1-87	-----	4(a)	2-401, 402, 404, 407, 410, 422, 423, 424, 428, 429 Omitted, 430, 452, 453, 455, 457, 458 Omitted, 461, 464.
	1-82	I	104(s)	47-2332.		1-87	-----	4(b)(1)	2-428.
	1-82	I	104(t)	47-2334.		1-87	-----	4(b)(2)	2-462.
	1-82	I	104(u)	47-2335.		1-87	-----	4(c)(1)	2-411 Rep.
	1-82	I	104(v)	47-2337.		1-87	-----	4(c)(2)	2-421.
	1-82	I	104(w)	47-2338.		1-87	-----	4(c)(3)	2-451.
	1-82	I	104(x)	47-2340.		1-87	-----	5	3-110.
	1-82	I	104(y)	47-2341.		1-87	-----	6	3-126.
	1-82	I	104(z)	47-2342.		1-87	-----	7	4-116 Rep. 117 Rep. 118 Rep.
	1-82	I	104(aa)	47-2336.		1-87	-----	8(a)	4-521.
	1-82	I	105	47-2805.		1-87	-----	8(b)	Note prec. 4-501.
	1-82	I	106	47-2202.		1-87	-----	9	4-523.
	1-82	I	107	47-3002.		1-87	-----	10	6-301.
	1-82	I	108	47-2344.		1-87	-----	11	15-502.
	1-82	II	201	47-2211.		1-87	-----	12	16-304.
	1-82	III	301	47-2212.		1-87	-----	13	16-577.
	1-82	IV	401	47-2213.		1-87	-----	14	16-911.
	1-82	IV	402	47-2214.		1-87	-----	15	16-912.
	1-82	IV	403	47-2215.		1-87	-----	16(a)	16-913.
	1-82	IV	404	47-2215a.		1-87	-----	16(b)	T. 16, ch. 9 analysis.
	1-82	V	501	47-2344a.		1-87	-----	17	16-914.
	1-82	V	502	2-1023.		1-87	-----	18(a)	16-915.
	1-82	V	503	2-1405.		1-87	-----	18(b)	16-915; T. 16, ch. 9 analysis.
	1-82	VI	601	47-2216.		1-87	-----	19(a)-(c)	16-916.
	1-82	VII	701	29-936.		1-87	-----		
	1-82	VII	702	29-936.		1-87	-----		
	1-82	VII	703	29-936.		1-87	-----		

TABLE 4A.—ACTS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA—Continued

Date	D.C. Law	Title	Section	D.C. Code Supp.	Date	D.C. Law	Title	Section	D.C. Code Supp.
1976					1977				
Oct. 1.....	1-87	-----	19(d)	T. 16, ch. 9 analysis.	Mar. 29....	1-89	III	311	5-1251.
	1-87	-----	20(a)	16-2341.		1-89	III	312	5-1252.
	1-87	-----	20(b)	16-2342.		1-89	III	313	5-1253.
	1-87	-----	20(c)	16-2343.		1-89	III	314	5-1254.
	1-87	-----	20(d)	16-2345.		1-89	III	315	5-1255.
	1-87	-----	20(e)	16-2346.		1-89	IV	401	5-1261.
	1-87	-----	20(f)	16-2347.		1-89	IV	402	5-1262.
	1-87	-----	20(g)	16-2348.		1-89	IV	403	5-1263.
	1-87	-----	20(h)	Prec. 16-2341.		1-89	IV	404	5-1264.
	1-87	-----	20(i)	T. 16, ch. 23 analysis.		1-89	IV	405	5-1265.
	1-87	-----	21	16-2701.		1-89	IV	406	5-1266.
	1-87	-----	22(a)	19-316.		1-89	IV	407	5-1267.
	1-87	-----	22(b)	T. 19, ch. 3 analysis.		1-89	IV	408	5-1268.
	1-87	-----	22(c)	19-316.		1-89	IV	410	5-1269.
	1-87	-----	23	20-1708 Rep.		1-89	IV	411	5-1270.
	1-87	-----	24(a)	20-1906.		1-89	IV	412	5-1272.
	1-87	-----	24(b)	T. 20, ch. 19 analysis.		1-89	IV	413	5-1273.
	1-87	-----	25	20-2301.		1-89	IV	414	5-1274.
	1-87	-----	26(a)	20-2310.		1-89	IV	415	5-1275.
	1-87	-----	26(b)	T. 20, ch. 23 analysis.		1-89	IV	416	5-1276.
	1-87	-----	27	21-102.		1-89	IV	417	5-1277.
	1-87	-----	28	21-107.		1-89	IV	418	5-1278.
	1-87	-----	29(a)	21-109.		1-89	IV	419	5-1201 note.
	1-87	-----	29(b)	T. 21, ch. 1 analysis.		1-89	IV	420(1), (2)	45-1653.
	1-87	-----	30(a)	21-113.		1-89	IV	420(3)	45-1662.
	1-87	-----	30(b)	T. 21, ch. 1 analysis.		1-89	V	501	5-1281.
	1-87	-----	31(a)(1)	Prec. 21-181.		1-89	V	502	5-1282.
	1-87	-----	31(a)(2)	21-181.		1-89	V	511	5-1291.
	1-87	-----	31(a)(3)	21-181.		1-89	V	512	5-1292.
	1-87	-----	31(a)(4)	21-182.		1-89	V	513	5-1293.
	1-87	-----	31(b)	T. 21, ch. 1 analysis.		1-89	V	514	5-1294.
	1-87	-----	32	30-111.		1-89	V	515	4-1295.
	1-87	-----	33(a)	30-201.		1-89	V	516	5-732b.
	1-87	-----	33(b)	30-202 to 215 Rep.		1-89	V	517	5-1296.
	1-87	-----	33(c)	19-107a, 30-216.		1-89	V	518	5-1297.
	1-87	-----	33(d)	T. 30, ch. 2 analysis.		1-90	I	31	31-1501 note.
	1-87	-----	34	30-320.		1-90	-----	2(1), (2)	31-1501, 1501 note.
	1-87	-----	35	32-101 to 104 Rep.		1-90	-----	2(3)	31-1511.
	1-87	-----	36	36-301 to 309a Rep.		1-90	-----	2(4)	31-1535.
	1-87	-----	37(a)	36-310.		1-90	-----	2(5)	31-1542, 1542 note.
	1-87	-----	37(b)	T. 36, ch. 3 analysis.		1-90	-----	3	31-1501 note.
	1-87	-----	38	36-311.		1-90	-----	4	31-1501 note.
	1-87	-----	39	41-324.		1-91	-----	1-3	Special.
	1-87	-----	40	45-913 Rep.		1-92	-----	1-8	3-203 note.
	1-87	-----	41	45-1301.		1-93	-----	1	6-2001 note.
	1-87	-----	42	47-2111.		1-93	-----	2	6-2001.
	1-87	-----	43	1-511 note.		1-93	-----	3	6-2002.
						1-93	-----	4	6-2003.
						1-93	-----	5	6-2004.
						1-93	-----	6	6-2005.
						1-93	-----	7	6-2006.
						1-93	-----	8	6-2007.
						1-93	-----	9	6-2008.
						1-93	-----	10	6-2009.
						1-93	-----	11	6-2010.
						1-93	-----	12	6-2011.
						1-94	-----	13	6-2001 note.
						1-95	-----	1-3	Special.
						1-95	-----	1	1-851 note.
						1-95	-----	2	1-851.
						1-95	-----	3	1-852.
						1-95	-----	4	1-853.
						1-95	-----	5	1-854.
						1-95	-----	6	1-855.
						1-95	-----	7	1-856.
						1-95	-----	8	1-857.
						1-95	-----	9	1-858.
						1-95	-----	10	1-859.
						1-95	-----	11(a)	1-804a.
						1-95	-----	11(b)	1-805.
						1-95	-----	11(c)	1-808.
						1-95	-----	12	1-860.
						1-95	-----	13	1-861.
						1-95	-----	14	1-851 note.
						1-96	-----	1	1-1501 note.
						1-96	-----	2	1-1521 to 1529.
						1-96	-----	3(a)	1-1501 to 1503, 1504 to 1510, 1501 note.
						1-96	-----	3(b)	Prec. 1-1501.
						1-96	-----	3(c)	1-1501 to 1503, 1504 to 1510, 1501 note.
						1-96	-----	3(d)	1-1502.
						1-96	-----	3(e)	1-1505.
						1-96	-----	4	1-1504 note.
						1-96	-----	5	1-1521 note.
						1-97	-----	1	1-1351 note.
						1-97	-----	2	1-1351.
						1-97	-----	3	1-1352.
						1-97	-----	4	1-1353.
						1-97	-----	5	1-1354.
						1-97	-----	6	1-1355.
						1-97	-----	7	1-1351 note.
						1-98	-----	1	6-401 note.
						1-98	-----	2	6-405.
						1-98	-----	3	6-405 note.
						1-98	-----	4	6-405 note.
						1-99	-----	1	31-1701 note.
						1-99	-----	2(a)	31-1715.
1975									
Sept. 23...	1-88	-----	1-3	Special.					
1977									
Mar. 29....	1-89	-----	1	5-1201 note.					
	1-89	I	101	5-1201.					
	1-89	I	102	5-1202.					
	1-89	I	103	5-1203.					
	1-89	I	104	5-1204.					
	1-89	I	105	5-1205.					
	1-89	I	106	5-1206.					
	1-89	II	201	5-1211.					
	1-89	II	202	5-1212.					
	1-89	II	203	5-1213.					
	1-89	II	204	5-1214.					
	1-89	II	205	5-1215.					
	1-89	II	206	5-1216.					
	1-89	II	207	5-1217.					
	1-89	II	208	5-1218.					
	1-89	II	209	5-1219.					
	1-89	II	210	5-1220.					
	1-89	II	211	5-1221.					
	1-89	II	212	5-1222.					
	1-89	II	213	5-1223.					
	1-89	II	214	5-1224.					
	1-89	II	215	5-1225.					
	1-89	II	216	5-1226.					
	1-89	II	217	5-1227.					
	1-89	II	218	5-1228.					
	1-89	II	219	5-1229.					
	1-89	II	220	5-1230.					
	1-89	II	221	5-1231.					
	1-89	II	222	5-1232.					
	1-89	II	223	5-1233.					
	1-89	II	224	5-1234.					
	1-89	II	225	5-1235.					
	1-89	II	226	5-1236.					
	1-89	II	227	5-1237.					
	1-89	II	228	5-1238.					
	1-89	II	229	5-1239.					
	1-89	III	301	5-1241.					
	1-89	III	302	5-1242.					
	1-89	III	303	5-1243.					
	1-89	III	304	5-1244.					
	1-89	III	305	5-1245.					
	1-89	III	306	5-1246.					
	1-89	III	307	5-1247.					
	1-89	III	308	5-1248.					
	1-89	III	309	5-1249.					
	1-89	III	310	5-1250.					
					Apr. 6.....	1-99	-----	2(a)	31-1715.

TABLE 4A.—ACTS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA—Continued

Date	D.C. Law	Title	Section	D.C. Code Supp.	Date	D.C. Law	Title	Section	D.C. Code Supp.
1977					1977				
Apr. 6	1-99		2(b)	31-1711.	Apr. 7	1-111		2	4-401.
	1-99		3	31-1711 note.		1-111		3	4-401 note.
	1-100		1	1-320a note.		1-112		1	40-101 note.
	1-100		2	1-320h.		1-112		2	40-102.
	1-100		3	1-320h note.		1-112		3	40-102 note.
	1-101		1	47-2601 note.		1-113		1	2-1701 note.
	1-101		2	47-2605.		1-113		2(1)	2-1706.
	1-101		3	47-2605 note.		1-113		2(2)	2-1708.
	1-102		1	25-102 note.		1-113		3	2-1724.
	1-102	2(a), (b)		25-111.		1-113		4	2-1701 note.
	1-102	2(c)		Special.		1-113		5	2-1706 note.
	1-102		3	25-111 note.		1-114		1	33-801 note.
	1-103		1	32-1201 note.		1-114		2	33-801.
	1-103		2	32-1201.		1-114		3(a)	33-811, 813, 815.
	1-103		3	32-1202.		1-114		3(b)	33-813, 814.
	1-103		4	32-1203.		1-114		3(c)	33-812.
	1-103		5	32-1204.		1-114		3(d)	33-814.
	1-103		6	32-1205.		1-114		4(a)	33-831, 832, 833.
	1-103		7	32-1206.		1-114		4(b)	33-835.
	1-103		8	32-1207.		1-114		5	33-801 note.
	1-103		9	32-1208.		1-114		6	33-801 note.
	1-103		10	32-1209.		1-115		1	1-1601 note.
	1-103		11	32-1201 note.		1-115		2	1-1602.
	1-104		1	31-2001 note.		1-115		3	1-1602 note.
	1-104		101	31-2001.		1-116		1-3	Special.
	1-104		201	31-2002.		1-117		1	16 App.
	1-104		3	31-2003.		1-117		2	16 App.
	1-104		4	31-2004.		1-117		3	16 App.
	1-104		5	31-2005.		1-117		4	16 App.
	1-104		6(a) (1)	29-415.		1-117		5	16 App.
	1-104		6(a) (2)	29-416.		1-117		6	16 App.
	1-104		6(a) (3)	29-417.		1-117		7	16 App.
	1-104		6(a) (4)	29-418.		1-117		8	16 App.
	1-104		6(b)-(e)	2-2006.		1-117		9	16 App.
	1-104		7	31-2007.		1-117		10	16 App.
	1-104		8	31-2008.		1-117		11	16 App.
	1-104		9	31-2001 note.		1-117		12	16 App.
	1-105		1-3	Special.		1-117		13	16 App.
	1-106		1	2-139 note.		1-117		14	16 App.
	1-106		2(a)	2-103.		1-117		15	16 App.
	1-106		2(b)	2-141 Rep.		1-117		16	16 App.
	1-106		2(c)	Special.		1-117		17	16 App.
	1-106		3	2-105.		1-117		18	16 App.
	1-106		4(a)	2-104.		1-117		19	16 App.
	1-106		4(b)	2-108.		1-117		20	16 App.
	1-106		4(c)	2-119.		1-117		21	16 App.
	1-106		4(d)	2-121.		1-118		1	1-1701 note.
	1-106		4(e)	2-121a.		1-118		2	1-1702.
	1-106		4(f)	2-120, 121, 121a, 122, 133.		1-118		3	1-1703.
	1-106		5	2-122a.		1-118		4	1-1704.
	1-106		6(a)	2-123.		1-118		5	1-1705.
	1-106		6(b)	2-118.		1-118		6	1-1706.
	1-106		7	2-130.		1-118		7	1-1707.
	1-106		8	32-305a.		1-118		8	1-1708.
	1-106		9	2-103 note.		1-118		9	1-1709.
	1-106		10	2-140 note.		1-118		10	1-1710.
	1-107		1	16-901 note.		1-118		11	1-1710.
Apr. 7	1-107		101	16-902.		1-118		12	1-1701 note.
	1-107	I	102	16-904.		1-119		1-3	Special.
	1-107	I	103(a)	16-905.	Apr. 19	1-120		1	1-1501 note.
	1-107	I	103(b)	16-905; T. 16, ch. 9 analysis.		1-120		2	1-1504.
	1-107	I	104(a)	16-907.		1-120		3	1-1711.
	1-107	I	104(b)	16-907; T. 16, ch. 9 analysis.		1-120		4	1-1711 note.
	1-107	I	105(a)	16-908.		1-121		1-4	Special.
	1-107	I	105(b)	16-908; T. 16, ch. 9 analysis.		1-122		1	45-1631 note.
	1-107	I	106(a)	16-909.		1-122		2(a)	45-1631.
	1-107	I	106(b)	16-909; T. 16, ch. 9 analysis.		1-122		2(b),(c)	45-1632.
	1-107	I	107	16-910.		1-122		2(d)	45-1633.
	1-107	I	108	16-911.		1-122		2(e)-(g)	45-1642.
	1-107	I	109	16-914.		1-122		2(h)	45-1644.
	1-107	I	110(a)	16-918.		1-122		2(i)	45-1652.
	1-107	I	110(b)	16-918; T. 16, ch. 9 analysis.		1-122		2(j)-(l)	45-1653.
	1-107	I	111(a)	16-923.		1-122		2(m)	45-1643.
	1-107	I	111(b)	T. 16, ch. 9 analysis.		1-122		2(n)	45-1644.
	1-107	I	112(a), (b)	16-2345.		1-122		2(o)	45-1634.
	1-107	I	112(c)	16-2345; T. 16, ch. 23 analysis.		1-123		3	45-1631 note.
	1-107	I	113(a)	30-110.		1-123		1	10-201 note.
	1-107	I	113(b)	30-116 Rep.		1-123		2	10-201.
	1-107	I	114	30-320.		1-123	I	3-101	10-211.
	1-107	I	115	21-104.		1-123	I	3-102	10-212.
	1-107	II	201	13-340.		1-123	I	3-103	10-213.
	1-107	II	202(a)	15-712.		1-123	I	3-104	10-214.
	1-107	II	202(b)	15-712; T. 15, ch. 7 analysis.		1-123	I	3-105	10-215.
	1-107	III	301	16-902 note.		1-123	II	4-201	10-221.
	1-108		1-3	3-201 note.		1-123	II	4-202	10-222.
	1-109		1	1-244 note.		1-123	II	4-203	10-223.
	1-109		2	1-244.		1-123	II	4-204	10-224.
	1-109		3	7-106, 112.		1-123	II	4-205	10-225.
	1-109		3(2)	7-107 Rep.		1-123	III	4-206	10-226.
	1-109		4	1-244 note.		1-123	III	4-207	10-227.
	1-109		5	1-244 note.		1-123	IV	5-301	10-231.
	1-109		6	1-244 note.		1-123	IV	6-401	10-241.
	1-110		1	40-101 note.		1-123	IV	6-402	10-242.
	1-110		2	Special.		1-124		6-403	10-201 note.
	1-110		3	40-201.		1-124	I	1	47-1551 note.
	1-110		4	40-301.		1-124	I	101	40-103.
	1-110		5	40-103.		1-124	I	102	40-603.
	1-110		6	Special.		1-124	I	103	Special.
	1-110		7	40-103 note.		1-124	I	104	Special.
	1-111		1	4-401 note.		1-124	II	201-202	Special.
						1-124	III	301(a)	47-1209.
						1-124	III	301(b)	47-1209 note.

TABLE 4A.—ACTS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA—Continued

Date	D.C. Law	Title	Section	D.C. Code Supp.	Date	D.C. Law	Title	Section	D.C. Code Supp.
1977					1977				
Apr. 19-----	1-124	IV	401(a)	47-1557a.	Apr. 26-----	1-133	II	201(a)	40-602.
	1-124	IV	401(b)	47-1557b.		1-133	II	201(b)	40-301.
	1-124	IV	401(c)	47-1564a.		1-133	III	301	40-102.
	1-124	IV	401(d)(1)	47-1567d.		1-133	IV	401	40-463.
	1-124	IV	401(d)(2)	47-1567g.		1-133	IV	402	40-603.
	1-124	IV	401(e)	47-1589e.		1-133	V	501	40-102 note.
	1-124	IV	401(f)	47-1591.	May 13-----	1-134		1	32-1301 note.
	1-124	V	501	Special.		1-134	I	101	32-1301.
	1-124	V	502	4-416.		1-134	I	102	32-1302.
	1-124	VI	601	47-2625.		1-134	II	201	32-1311.
	1-124	VII	701	47-1105.		1-134	II	202	32-1312.
	1-124	VIII	801	Special.		1-134	II	203	32-1313.
	1-124	IX	901	43-1541 note.		1-134	II	204	32-1314.
	1-124	IX	902	1-162a.		1-134	II	205	32-1315.
	1-124	IX	903	43-1520d note.		1-134	II	206	32-1316.
	1-124	IX	904	47-1551 note.		1-134	II	207	32-1317.
	1-124	IX	905	47-1551 note.		1-134	II	208	32-1318.
	1-124	X	1000	47-1806, 35-105.		1-134	II	209	32-1319.
	1-124	XI	1101	47-1557a note.		1-134	II	210	32-1320.
Apr. 23-----	1-125		1-4	Special.		1-134	II	211	32-1321.
	1-126		1	1-1101 note.		1-134	II	212	32-1322.
	1-126	I	101	6-1930.		1-134	II	213	32-1323.
	1-126	I	102(a)	1-1182.		1-134	II	214	32-1324.
	1-126	I	102(b)	1-1181.		1-134	III	301	32-1331.
	1-126	I	102(c)	1-1182.		1-134	III	302	32-1332.
	1-126	I	102(d)	1-1162.		1-134	III	303	32-1333.
	1-126	I	103(a)	1-1104.		1-134	III	304	32-1334.
	1-126	I	103(b)	1-1105.		1-134	III	305	32-1335.
	1-126	I	104	1-1161.		1-134	III	306	32-1336.
	1-126	II	201	1-1110.		1-134	IV	401	32-1341.
	1-126	III	301(a),(b)	1-1102.		1-134	IV	402	32-1342.
	1-126	III	301(c)-(f)	1-1105.		1-134	IV	403	32-1343.
	1-126	III	301(g)-(i)	1-1107.		1-134	V	501	32-1351.
	1-126	III	301(j)	1-1108.		1-134	V	502	32-1352.
	1-126	III	302(a)	1-1156.		1-134	V	503	32-1353.
	1-126	III	302(b)-(i)	1-1171.		1-134	V	504	32-1354.
	1-126	III	302(j)	1-1173.		1-134	V	505	42-1355.
	1-126	III	302(k)	1-1174.		1-134	V	506	32-1356.
	1-126	III	302(l)-(p)	1-1175.		1-134	V	507	32-1357.
	1-126	III	302(q)	1-1176.		1-134	V	508	32-1301 note.
	1-126	III	302(r),(s)	1-1177.	May 18-----	2-1		1	31-1501.
	1-126	III	302(t)	1-1191.		2-1		2(a)	31-1501, 1501 note.
	1-126	III	303	1-1105 note.		2-1		2(b)	31-1542, 1542 note.
	1-126	IV	401	1-1101 note.		2-1		3	31-1501 note.
	1-126	IV	402	1-1103, 1104, 1105, 1105c, 1107 to 1110, 1114, 1115, 1121, 1132, 1135, 1139, 1153, 1161, 1171, 1173 to 1177, 1181, 1182, 1192.		2-1		4	31-1501 note.
						2-1		5	31-1501 note.
	1-126	IV	403	47-1567f note.	June 11-----	2-2		1-8	Special.
	1-126	IV	404	1-1102 note.		2-3		1-7	Special.
	1-127		1	44-301 note.		2-4		1-7	Special.
	1-127		2	44-308.		2-5		1-7	Special.
	1-127		3	44-308 note.		2-6		1-8	Special.
	1-128		1	5-501 note.		2-7		1-3	Special.
	1-128		2	6-902.		2-8		1	28 App., 1 note.
	1-128		3	5-504.		2-8		2	28 App., 4 note.
	1-128		4	5-506.		2-8		3	Special.
	1-128		5	5-504 note.		2-8		4(a)	28 App., 4.
	1-129		1	5-324 note.		2-8		4(b)	28 App., 6.
	1-129		2	5-324.		2-8		5	28 App., 4 note.
	1-129		3	5-325.	June 15-----	2-9		6	28 App., 4 note.
	1-129		4	5-326.		2-9		1	32-322 note.
	1-129		5	5-327.		2-9		2	32-322.
	1-129		6	5-324 note.		2-9		3	32-322 note.
	1-130		1	24-481 note.		2-10		4	32-322 note.
	1-130		2	24-481.		2-10		1	3-201 note.
	1-130		3	24-482.		2-10		2(a)	3-210.
	1-130		4	24-483.	June 24-----	2-11		3	3-210 note.
	1-130		5	24-484.		2-11		1	47-2601 note.
	1-130		6	24-485.		2-11		2	47-2601.
	1-130		7	24-486.		2-11		3	47-2601 note.
	1-130		8	24-487.		2-11		4	47-2601 note.
	1-130		9	24-488.	June 28-----	2-12		1	1-215a note.
	1-130		10	24-481 note.		2-12		2	1-215a.
Apr. 26-----	1-131		1	3-301 note.		2-12		3	1-215b.
	1-131		2	3-301.		2-12		4	1-215c.
	1-131		3	3-302.		2-12		5	1-215d.
	1-131		4	3-303.		2-12		6(a)	1-215 Rep.
	1-131		5	3-304.		2-12		6(b)	3-119 Rep.
	1-131		6	3-305.		2-12		6(c)	6-1203.
	1-131		7	3-306.		2-12		6(d)	8-132 Rep.
	1-131		8	3-307.		2-12		6(e)	31-802 Rep.
	1-131		9	3-308.		2-12		6(f)	32-1006 Rep.
	1-131		10	3-309.		2-12		6(g)	32-327 Rep., 328 Rep., 329 Rep.
	1-131		11	3-310.		2-12		6(h)	3-221 Rep.
	1-131		12	3-311.		2-12		6(i)	1-1152.
	1-131		13	3-312.		2-12		6(j)	1-1105.
	1-131		14	3-313.		2-12		6(k)	1-215a note.
	1-131		15	3-314.		2-12		7	1-215c note.
	1-131		16	3-315.		2-12		8	1-215e.
	1-131		17	3-316.		2-12		9	1-215a note.
	1-131		18	3-301 note.	July 12-----	2-13		1	1-314b note.
	1-131		19	3-301 note.		2-13		2	28-2701.
	1-132		1-5	Special.		2-13		3	1-314b.
	1-133		1	40-601 note.		2-13		4	1-314b note.
	1-133	I	101	40-420.	July 26-----	2-14		1	1-323 note.
	1-133	I	102	40-302.		2-14		2	1-323.
	1-133	I	103	40-302.		2-14		3	1-323 note.
	1-133	I	104	40-302.	Sept. 20-----	2-15		1-5	1-125 note.
	1-133	I	105	Special.		2-16		1	1-171a note.
						2-16		2(a)	1-171a.

TABLE 4A.—ACTS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA—Continued

Date	D. C. Law	Title	Section	D. C. Code Supp.	Date	D. C. Law	Tit'e	Section	D. C. Code Supp.
1977					1977				
Sept. 20	2-16		2(b)	1-171e.	Oct. 26	2-27		2	25-114.
	2-16		3	1-171a note.		2-27		3	47-2305.
Sept. 21	2-17		1	1-720 note.		2-27		4	25-114 note.
	2-17		2-5	Special.		2-28		1	9-502 note.
	2-17		6	1-720 Rep., 723 Rep.		2-28		2	9-502.
	2-17		7	Special.		2-28		3	9-503.
	2-17		8	1-720 note.		2-28		4	9-502 note.
Sept. 23	2-18		1-5	Special.		2-29		1-5	Special.
	2-19		1	47-1551 note.		2-30		1	1-171i note.
	2-19		2	47-1557b.		2-30		2(a),(b)	1-171i.
	2-19		3	47-1806.		2-30		2(c)	1-171i.
	2-19		4	47-1557b note.		2-30		3	1-171i note.
	2-20		1	47-331 note.		2-31		1	6-1942 note.
	2-20		2	47-331.		2-31		2	6-1942.
	2-20		3	47-332.		2-31		3	6-1943.
	2-20		4	47-333.		2-31		4	6-1944.
	2-20		5	47-334.		2-31		5	6-1945.
	2-20		6	47-335.		2-31		6	6-1946.
	2-20		7	47-331 note.		2-31		7	6-1942 note.
	2-21		1-3	Special.		2-32		1	47-271 note.
	2-22		1	6-2101 note.		2-32		2	47-271.
	2-22		102	6-2101.		2-32		3	47-272.
	2-22	I	103(a)	Special.		2-32		4	47-273.
	2-22	I	103(b)	2-161.		2-32		5	47-274.
	2-22	I	103(c)	2-162.		2-32		6	47-275.
	2-22	I	103(d)	2-163.		2-32		7	47-276.
	2-22	I	103(e)	2-164.		2-32		8	47-277.
	2-22	I	103(f)	2-165.		2-32		9	47-278.
	2-22	I	103(g)	2-167.		2-32		10	47-279.
	2-22	I	104	6-2102.		2-32		11	47-280.
	2-22	I	105	6-2103.		2-32		12	47-271 note.
	2-22	I	106	6-2104.		2-33		1	28 App., § 51.
	2-22	I	107	6-2105.		2-33		2	28 App., § 52.
	2-22	I	108	6-2106.		2-33		3	28 App., § 53.
	2-22	I	109	6-2107.		2-33		4	28 App., § 54.
	2-22	I	110(a)	16-2301.		2-33		5	28 App., § 55.
	2-22	I	110(b)	16-2305.		2-33		6	28 App., § 56.
	2-22	I	110(c)	16-2309.		2-33		7	28 App., § 57.
	2-22	I	110(d)	16-2311.		2-33		8	28 App., § 58.
	2-22	I	110(e)	16-2316.		2-33		9	28 App., § 59.
	2-22	I	110(f)	16-2319.	Oct. 27	2-34		1	45-1631 note.
	2-22	I	110(g)	16-2331.		2-34		2	45-1634.
	2-22	I	110(h)	16-2332.		2-34		3	45-1634 note.
	2-22	II	201	6-2111.		2-35	I-VII		Special.
	2-22	II	202	6-2112.		2-36		I-5	Special.
	2-22	II	203	6-2113.	Nov. 3	2-37		1	2-1741 note.
	2-22	II	204	6-2114.		2-37		2	2-1741.
	2-22	II	205	6-2115.		2-37		3	2-1742.
	2-22	II	206	6-2116.		2-37		4	2-1743.
	2-22	II	207	6-2117.		2-37		5	2-1744.
	2-22	II	208	6-2118.		2-37		6	2-1741 note.
	2-22	II	209	6-2119.	Dec. 13	2-38		1	6-2201 note.
	2-22	II	210	6-2111 note.		2-38	I	101	6-2201.
	2-22	III	301	6-2131.		2-38	I	102	6-2202.
	2-22	III	302	6-2132.		2-38	I	103	6-2203.
	2-22	III	303	6-2133.		2-38	I	104	6-2204.
	2-22	III	304	6-2134.		2-38	II	201	6-2211.
	2-22	III	305	6-2135.		2-38	II	211	6-2221.
	2-22	IV	401	16-2301 note.		2-38	II	212	6-2222.
	2-22	IV	402(a)	16-2304; T. 16, ch. 23 analysis.		2-38	II	213	6-2223.
	2-22	IV	402(b)	16-2304.		2-38	II	221	6-2231.
	2-22	IV	403	16-2310.		2-38	II	222	6-2232.
	2-22	IV	404	16-2313.		2-38	II	223	6-2233.
	2-22	IV	405	16-2315.		2-38	II	224	6-2234.
	2-22	IV	406	16-2319.		2-38	II	231	6-2241.
	2-22	IV	407	16-2320.		2-38	II	241	6-2251.
	2-22	IV	408(a)	16-2323 to 16-2338.		2-38	II	242	6-2252.
	2-22	IV	408(b)	16-2323.		2-38	II	251	6-2261.
	2-22	IV	409	16-2326.		2-38	II	252	6-2262.
	2-22	IV	410	16-2351 to 16-2365.		2-38	II	253	6-2263.
	2-22	IV	411	6-2101 note.		2-38	II	261	6-2271.
Sept. 28	2-23		1	45-308 note.		2-38	II	262	6-2272.
	2-23		2	Special.		2-38	II	263	6-2273.
	2-23		3	45-308.		2-38	II	264	6-2274.
	2-23		4	Special.		2-38	II	265	6-2275.
	2-23		5	45-308 note.		2-38	II	266	6-2276.
	2-23		6	Special.		2-38	II	267	6-2277.
	2-23		7	45-308 note.		2-38	II	268	6-2278.
	2-24		1	47-2213 note.		2-38	III	301	6-2281.
	2-24		2(a)	47-2213.		2-38	III	302	6-2282.
	2-24		2(b)	47-2214.		2-38	III	303	6-2283.
	2-24		2(c)	47-2215.		2-38	III	304	6-2284.
	2-24		2(d)	47-2215a.		2-38	III	305	6-2285.
	2-24		3	47-2215b.		2-38	III	306	6-2286.
	2-24		4	32-322.		2-38	III	307	6-2287.
	2-24		5	47-2213 note.		2-38	III	308	6-2288.
	2-25		1	2-139 note.		2-38	III	309	6-2289.
	2-25		2	2-142.		2-38	III	310	6-2290.
	2-25		3	Special.		2-38	III	311	6-2291.
	2-25		4	1-921.		2-38	III	312	6-2292.
	2-25		5	33-409.		2-38	III	313	6-2293.
	2-25		6	2-142 note.		2-38	III	314	6-2294.
Oct. 7	2-26		1	47-2001 note.		2-38	III	315	6-2295.
	2-26		2(a)	47-2001.		2-38	III	316	6-2296.
	2-26		2(b)	47-2003.		2-38	III	317	6-2297.
	2-26		3	47-2001 note.		2-38	III	318	6-2201 note.
Oct. 26	2-27		1	25-102 note.		2-38	III	319	6-2201 note.

TABLE 6.—REVISED STATUTES OF THE DISTRICT OF COLUMBIA

	R.S.D.C.	D.C. Code
	274 281 282 306 310	31-1102 Rep. 31-1110 Rep. 1-1111 Rep. 31-1112 Rep. 31-1113 Rep.

TABLE 7.—STATUTES AT LARGE

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1881				
Mur. 3...	460	134	1	47-301 Rep.
VOLUME 22				
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VOLUME 23				
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1888				
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1883				
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	340	694	3	4-118 Rep.
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	554	1095	3	32-103 Rep.
	554	1095	4	32-104 Rep.
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	283	287	3	47-702 Rep.
	283	287	4	47-704 Rep.
	283	287	6	47-705 Rep.
	283	287	7	47-706 Rep.
	283	287	8	47-707 Rep.
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1896				
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	666	571	1	47-602 Rep.
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1902				
June 30...	531	1329		19-107a.
July 1...	616	1352	5	47-713 Rep., 802 Rep.
	617	1352	6(1)	47-604 Rep., 605 Rep., 1201, 1203.
VOLUME 33				
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1904				
Feb. 16...	14	159	1	7-107 Rep.
Apr. 26...	307	1602	2	1-720 Rep.
	307	1602	4	1-723 Rep.
VOLUME 34				
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1906				
June 20...	317	3446	3	31-105, 108, 110 Rep., 111.
	320	3446	7	31-115 Rep.
1907				
Feb. 9...		913	12	2-411 Rep.
Mar. 2...	1141	2510	1	31-1103 Rep.
VOLUME 36				
Date	Page	Chapter	Section	D.C. Code Supp.
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1913				
Mar. 4...		150	8(91A)	43-205 note.
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1914				
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	291	28	2	36-302 Rep.
	291	28	3	36-303 Rep.
	291	28	4	36-304 Rep.
	291	28	5	36-305 Rep.
	291	28	6	36-306 Rep.
	291	28	7	36-307 Rep.
	292	28	8	36-308 Rep.
	292	28	9	36-309 Rep.
		28	10	36-309a Rep.
1915				
Mar. 4...	1190	165	2	31-802 Rep.

TABLE 7.—STATUTES AT LARGE—Continued

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1917				
Mar. 3...	1019	-----	1	8-132 Rep.

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1924				
June 6...	-----	270	6	1-1006 Rep.
7...	557	302	1	31-1115 note.
1925				
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Mar. 3...	1232	477	1	31-1115 note.

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1926				
May 10...	432	276	1	31-1115 note.
May 28...	676	419	-----	30-208 Rep.
July 3...	832	759	1	47-604 Rep., 605 Rep., 1201.
	833	759	3	47-711 note.
	833	759	4	47-713 Rep., 1202.
	834	759	10	47-702 Rep., 706 Rep.
Dec. 15...	921	8	3	43-205 note.
1927				
Mar. 2...	1314	271	1	31-1115 note.

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1928				
Feb. 7...	59	30	-----	1-230a.
May 17...	-----	612	3	36-503.
	-----	612	4	36-501 note.
May 21...	650	659	1	40-501a, 504 notes.
	662	659	1	31-1115 note.
May 29...	-----	908	6	36-206 Rep., 36-207a.
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	-----	908	12	36-214.
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	-----	908	24	36-226.
	-----	908	25	36-225 Rep., 36-227.
	-----	908	26	36-201 note.
1929				
Feb. 25...	1267	314	1	40-501a, 504 notes.
	1278	314	1	31-1115 note.
Feb. 27...	-----	352	26A	2-122a.
	-----	352	50	2-141 Rep.
Mar. 2...	1522	540	12	2-411 Rep.

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1930				
July 3...	955	848	1	40-501a, 504 notes.
	968	848	1	31-1115 note.
1931				
Feb. 23...	1382	282	1	40-501a, 504 notes.
	1393	282	1	31-1115 note.

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1932				
June 29...	348 360	308 308	1 1	40-501a, 504 notes. 31-1115 note.

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1933				
June 16...	226 235	93 93	1 1	40-501a, 504 note. 31-1115 note.
1934				
June 4...	851 859	389 389	1 1	40-501a, 504 note. 31-1115 note.

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Date	Page	Chapter	Section	D.C. Code Supp.
1935				
June 14...	345 346 355	241 241 241	1 1 1	40-501a note. 40-504 note. 31-1115 note.
Aug. 28...	-----	794	28	46-327.
1936				
June 23...	1859 1869	726 726	1 1	40-501a, 504 note. 31-1115 note.

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Date	Page	Chapter	Title	Section	D.C. Code Supp.
1937					
June 29...	364 369	403 403	-----	1 1	40-501a, 504 note. 31-1115 note.
Aug. 17...	-----	690	IX	5(a)	47-708 Rep., 709 Rep.

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1938				
Apr. 4....	162 168	62 62	1 1	40-501a, 504 notes. 31-1115 notes.
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	505	271	-----	1	40-504 note.
	510	271	-----	1	31-1115 note.
	517	271	-----	1	33-322 note.
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June 27.....	429	452	-----	1	40-501a, 504 notes.
	433	452	-----	1	31-1115 note.
	439	452	-----	1	33-322 note.
Sept. 26.....	759	564	-----	1	45-1605 Rep.
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June 1.....	93	109	-----	-----	36-301 Rep.
July 1.....	318	184	-----	1	40-501a, 504 notes.
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June 23.....	518	300	-----	1	33-322 note.
	524	300	-----	1	40-501a, 504 notes.
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1945					
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Apr. 29.....	205	243	-----	1	45-1601 Rep.
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	206	243	-----	4	45-1609 note Rep.
June 19.....	546	555	-----	1	33-322 note.
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	49	73	-----	6	45-1610 Rep.
	49	73	-----	7	45-1601 note Rep.
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June 29.....	312	279	-----	1	33-322 note.
	316	279	-----	1	40-501a, 504 notes.
Aug. 2.....	491	383	-----	6	47-213 Omitted.

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	782	93-198	II	203(b)	1-1002(e).		817	93-198	VII	713	1-131 note.
	782	93-198	II	203(c)(1)	1-1004(a).		818	93-198	VII	714	1-133.
	782	93-198	II	203(c)(2)	1-1004(a).		818	93-198	VII	715	1-131 note.
	782	93-198	II	203(c)(3)	1-1004(a), (c) Rep.				VII	716	1-131 note.
	782	93-198	II	203(d)(1)	1-1005(c).				VII	717(a)	1-101(b), 102(b).
	782	93-198	II	203(d)(2)	1-1005(c).				VII	717(b)	1-128.
	782	93-198	II	203(e)	1-1006 Rep.				VII	717(c)	1-101 note.
	782	93-198	II	203(f)	1-1007.				VII	718	11 App.
	783	93-198	II	203(g)	1-1008(a).				VII	719	31-101 note.
	783	93-198	II	204(a)	36-701(a); 29 U.S.C. 49 note.				VII	721	1-1105 note.
	783	93-198	II	204(b)	36-701(b).				(Part C)		
	783	93-198	II	204(c)	29 U.S.C. 49b.				VII	722	1-1113, 47-2501 notes.
	783	93-198	II	204(d)	36-125a.				VII	723	9-220, 47-241 notes.
	783	93-198	II	204(e)	36-504; 5 U.S.C. 8101 note.				VII	724	1-1101 note.
	784	93-198	II	204(f)	36-701 note.				VII	731	1-826; 31 U.S.C. 685a.
	784	93-198	II	204(g)	29 U.S.C. 50.				(Part D)		
	784	93-198	III	301	1-123.		821	93-198	VII	732	1-828.
	784	93-198	III	302	1-124.		821	93-198	VII	733	1-1104a.
	784	93-198	III	303	1-125.		822	93-198	VII	734	1-322; 5 U.S.C. 3320 note.
	785	93-198	IV	401	1-141.				VII	735	31 U.S.C. 1261(c).
	786	93-198	(Part A)						VII	736	47-120-1; 31 U.S.C. 61.
	787	93-198	IV	402	1-142.				VII	737(a)	1-827.
	787	93-198	IV	403	1-143.				(b)		
	787	93-198	IV	404	1-144.				737(c)		
	788	93-198	IV	411	1-145.				VII	738	1-213c.
	788	93-198	IV	412	1-146.				VII	739	1-171.
	789	93-198	IV	413	1-148.				VII	739(a)-	9-146; 40 U.S.C. 136.
	789	93-198	IV	421	1-161.				(c)		
	790	93-198	(Part B)						VII	739(d)	39-603.
	792	93-198	IV	422	1-162.				VII	739(e)-	9-146; 40 U.S.C. 136.
	792	93-198	IV	423	1-163.				(g)(2)		
	792	93-198	IV	431	11 App.						

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1973						1974					
Dec. 24....	828	93-198	VII	739(g)	9-118 note; 40 U.S.C. 193a note.	Aug. 14....	462	93-376	V	503	1-1173.
	829	93-198	VII	739(g)	9-126; 40 U.S.C. 212a.		463	93-376	V	504	1-1174.
	829	93-198	VII	739(g)	9-131; 40 U.S.C. 212b.		463	93-376	V	505	1-1175.
	829	93-198	VII	739(g)	9-118; 40 U.S.C. 193a.		463	93-376	V	506	1-1176.
	830	93-198	VII	740	4-101a.		464	93-376	V	507	1-1177.
	831	93-198	VII	741	Rep., P.L. 93-268, § 4(c).		464	93-376	V	508	1-1178 Rep.
	831	93-198	VII	742	1-1503a.		464	93-376	V	509	1-1179 Rep.
	832	93-198	VII	743(a)	9-220.		465	93-376	V	510	1-1180 Rep.
	832	93-198	VII	743(b)	43-1540 Rep.		465	93-376	VI	601	1-1181.
	832	93-198	VII	743(c)	43-1612, 1613, 1615 to 1617 Rep.		467	93-376	VI	602	1-1182.
	832	93-198	VII	743(d)	7-133 Rep.		470	93-376	VII	701	1-1191.
	832	93-198	VII	743(f)	9-220 note.		470	93-376	VII	702(a)	47-1567f.
	832	93-198	VII	751(1)	1-1101.		470	93-376	VII	702(b)	47-1567f Sec. Analysis.
	832	93-198	(Part E)	751(2)	1-1102.		470	93-376	VII	703	1-1192.
	833	93-198	VII	751(3)	1-1108.		471	93-376	VII	704	1-1121 note.
	834	93-198	VII	751(4)	1-1110.		471	93-376	VII	705	1-1121 note.
	835	93-198	VII	751(5)	1-1110.		471	93-376	VII	706(a)	1-1113.
	835	93-198	VII	751(6)	1-1110.		471	93-376	VII	706(b)	1-1104.
	835	93-198	VII	751(7)	1-1110.		471	93-376	VII	706(c)	1-1113 note.
	835	93-198	VII	751(8)	1-1115.		472	93-376	VII	707	1-1193.
	835	93-198	VII	751(9)	1-1115.		472	93-376	VII	708	1-1121 note.
	835	93-198	VII	751(10)	1-1105a.		480	93-379		1	49-401 note.
	836	93-198	VII	752	1-128.		480	93-379		2	49-401.
	836	93-198	(Part F)	761			482	93-379		3	49-402.
	835	93-198	VII	771	1-121 note.		483	93-379		4	49-403.
	835	93-198	(Part G)				483	93-379		5(a)	1-1507.
Dec. 29....	936	93-223		I	36-404(b).		483	93-379		5(b)	49-404.
	945	93-229		1(a)	28-3309.		483	93-379		6	49-405.
	945	93-229		1(b)	T. 28, ch. 33 analysis.		752	93-388		1	35-1901 note.
1974							752	93-388		2	35-1901.
Jan. 2.....	1057	93-241		1(a)(1)	3-114.		753	93-388		3	35-1902.
	1058	93-241		1(a)(2)	3-115.		753	93-388		4	35-1903.
	1060	93-241		1(b)	3-117.		757	93-388		5	35-1904.
	1061	93-241		2(a)	16-307(b)(1)(D).		759	93-388		6	35-1905.
	1061	93-241		2(b)	16-309(b).		760	93-388		7	35-1906.
	1061	93-241		3	3-114 note.		761	93-388		8	35-1907.
							761	93-388		9	35-1908.
							761	93-388		10	35-1909.
							762	93-388		11	35-1910.
							762	93-388		12	35-1911.
							762	93-388		13	35-1912.
							762	93-388		14	35-1913.
							763	93-388		15	35-1914.
							763	93-388		16	35-1915.
							763	93-388		17	35-1901 note.
							763	93-389			31-922.
							793	93-395		1(1)	36-701 note.
							793	93-395		1(2)	1-141.
							793	93-395		1(3)	47-101.
							793	93-395		1(4)	47-242.
							793	93-395		1(5)	47-245.
							793	93-395		1(6)	47-246.
							793	93-395		1(7)	47-2501d.
							793	93-395		1(8)	1-121 note.
							794	93-395		2	5-928a.
							794	93-395		3(a)	1-1110.
							794	93-395		3(b)	1-1110 note.
							827	93-405		5	7-701 note.
							827	93-405		8	3-204 note.
							828	93-405		10	40-501a note.
							828	93-405		13	1-216 note.
							1036	93-407	I	101(a)(1)	4-823.
							1036	93-407	I	101(a)(2)	4-825.
							1036	93-407	I	101(a)(3)	4-825.
							1036	93-407	I	101(a)(4)	4-827.
							1037	93-407	I	101(a)(5)	4-828.
							1037	93-407	I	101(a)(6)	4-828.
							1037	93-407	I	101(a)(7)	4-828.
							1037	93-407	I	101(a)(8)	4-832.
							1037	93-407	I	101(a)(9)	4-832.
							1037	93-407	I	101(b)	4-823 note.
							1038	93-407	I	102	4-808.
							1038	93-407	I	103	4-823 note.
							1038	93-407	I	104	4-823 note.
							1038	93-407	I	111	4-838.
							1039	93-407	I	112	4-839.
							1040	93-407	I	121(a)	4-521.
							1040	93-407	I	121(b)(1)	4-526 to 4-528.
							1040	93-407	I	121(b)(2)	4-527, 4-528.
							1040	93-407	I	121(b)(3)	4-528.
							1040	93-407	I	121(b)(4)	4-531.
							1040	93-407	I	121(b)(5)	4-531.
							1040	93-407	I	121(c)	4-527.
							1041	93-407	I	121(d)(1)	4-521.
							1041	93-407	I	121(d)(2)	4-521 note.
							1041	93-407	I	122	4-533a.
							1041	93-407	I	123	4-533.
							1041	93-407	I	124	4-521 note.
							1042	93-407	II	201	31-1501 note.
							1042	93-407	II	202(1)	31-1501.
							1045	93-407	II	202(2)	31-1501.
							1049	93-407	II	202(3)(4)	31-1512.
							1049	93-407	II	203	31-1501a.
							1049	93-407	II	204	31-1513.
							1050	93-407	II	205(a)	31-1511.
							1050	93-407	II	205(b)(c)	31-1511 note.
							1050	93-407	III	301	31-725.
							1050	93-407	III	302	31-725 note.
							1051	93-407	IV	401	47-621 note.

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	1052	93-407	IV	411	47-631.
	1052	93-407	IV	412	47-632.
	1052	93-407	IV	413	47-633.
	1053	93-407	IV	414	47-634.
	1053	93-407	IV	415	47-635.
	1053	93-407	IV	416	47-636.
	1053	93-407	IV	421	47-641.
	1054	93-407	IV	422	47-642.
	1054	93-407	IV	423	47-643.
	1054	93-407	IV	424	47-644.
	1055	93-407	IV	425	47-645.
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	1056	93-407	IV	427	47-647.
	1057	93-407	IV	428	47-648.
	1057	93-407	IV	429	47-649.
	1057	93-407	IV	430	47-650.
	1057	93-407	IV	431	47-651.
	1058	93-407	IV	432	47-652.
	1058	93-407	IV	433	47-653.
	1058	93-407	IV	434	47-654.
	1058	93-407	IV	435	47-655.
	1059	93-407	IV	436	47-656.
	1059	93-407	IV	437	47-657.
	1059	93-407	IV	438	47-658.
	1060	93-407	IV	441	47-801a.
	1060	93-407	IV	442	47-801-1.
	1060	93-407	IV	451	47-1567g.
	1064	93-407	IV	461	47-632 note.
	1064	93-407	IV	471	47-501.
	1064	93-407	IV	472	47-504 note.
	1064	93-407	IV	473	47-2601.
	1065	93-407	IV	474(a)	47-501a Rep.
	1065	93-407	IV	474(b)	47-301 Rep.
	1065	93-407	IV	474(c)	47-602 Rep.
	1065	93-407	IV	474(d)	47-603 Rep.
	1065	93-407	IV	474(e)	47-605 Rep., 713 Rep.
	1065	93-407	IV	474(f)	47-604, 701, 702, 704 to 707 Rep.
	1065	93-407	IV	474(g)	47-708 Rep., 709, 2405.
	1065	93-407	IV	474(h)	47-703 Rep.
	1065	93-407	IV	475	47-621 note.
	1065	93-407	IV	476	47-621 note.
	1065	93-407	IV	477	47-661.
	1065	93-407	IV	478	47-621 note.
	1066	93-407	V	501	47-621 note.
	1089	93-412		1	11-2601 note.
	1090	93-412		2	11-2601 to 11-2609.
	1093	93-412		4	11-2601 note.
Oct. 5	1203	93-433	IV	402	11-301 note.
Oct. 26	1423	93-471	I	101	31-1701 note.
	1423	93-471	I	102	31-1701.
	1424	93-471	I	103	31-1702.
	1424	93-471	II	201	31-1711.
	1425	93-471	II	202	31-1712.
	1425	93-471	II	203	31-1713.
	1426	93-471	II	204	31-1714.
	1426	93-471	II	205	31-1715.
	1427	93-471	II	206	31-1716.
	1428	93-471	II	207	31-1717.
	1428	93-471	II	208	31-1718.
	1429	93-471	II	(a)-(d)	7 U.S.C. 361a.
	1429	93-471	II	208(e)	31-1719.
		93-471	II	209	31-1720.
	1429	93-471	III	301	31-1721.
	1429	93-471	IV	401	31-1731.
	1429	93-471	IV	402	31-1732.
	1429	93-471	IV	403	31-1733.
	1430	93-471	IV	404	31-1734.
	1430	93-471	IV	405	31-1735.
	1430	93-471	IV	406	31-1736.
	1430	93-471	IV	407	31-1701 note.
	1455	93-481		4(a)	23-591 Rep.
	1455	93-481		4(b)	23-521(f).
	1455	93-481		4(c)	23-522(c).
	1456	93-481		4(d)	23-524(a).
	1456	93-481		4(e)	23-561(b)(1).
Dec. 7	1612	93-515	I	101	31-1801.
	1615	93-515	I	102	31-1802.
	1615	93-515	I	103	31-1803.
	1615	93-515	I	104	31-1804.
	1615	93-515	II	201	2-481 note.
	1615	93-515	II	202(1)	2-492.
	1615	93-515	II	202(2)	2-492.
	1615	93-515	II	202(3)	2-493.
	1616	93-515	II	202(4)	2-494.
	1616	93-515	II	202(5)	2-487.
	1616	93-515	II	203	2-492 note.
	1617	93-515	III	301(1)	46-303.
	1617	93-515	III	301(2)	46-312.
	1617	93-515	III	302	46-303 note.

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	1975	93-614		1	43-205.
	1976	93-614		2	43-412.
	1977	93-614		3	43-205a.
Jan. 3	2173	93-635		1	4-823.
	2174	93-635		2	4-828.
	2175	93-635		3(a)	4-823 note.
	2175	93-635		3(b), (c)	4-521 note.
	2175	93-635		3(d)	4-823 note.
	2175	93-635		4	31-1501.
	2175	93-635		5	31-1501.
	2176	93-635		6(a)(1)	47-633.
	2176	93-635		6(a)(2)	47-633 note.
	2176	93-635		6(b)	47-633.
	2176	93-536		6(c), (d)	47-641.
	2176	93-635		6(e)	47-642.
	2176	93-635		6(f), (g)	47-646.
	2176	93-635		6(h)	47-633 note.
	2176	93-635		7(a)(1)	47-1567g.
	2176	93-635		7(a)(2)	47-1567g note.
	2176	93-635		7(b)(1)	47-1567g.
	2176	93-635		7(b)(2)	Special.
	2176	93-635		7(b)(3)	47-1567g note.
	2176	93-635		7(c)-(e)	47-1567g.
	2176	93-635		7(f)	47-1567g note.
	2177	93-635		8(a)	47-801a.
	2177	93-635		8(b)	47-2601.
	2177	93-635		8(c)	47-301.
	2177	93-635		8(d)	47-661.
	2177	93-635		8(e)	47-661 note.
	2177	93-635		9	47-708, 709, 713 Rep., 2405.
	2177	93-635		10(a)	4-526.
	2177	93-635		10(b)	4-526 note.
	2177	93-635		11	31-1542.
	2177	93-635		12	1-1151.
	2177	93-635		13	1-1105.
	2178	93-635		14(a)	11-156.
	2178	93-635		14(b)	11-181.
	2178	93-635		15(a), (b)	47-651.
	2178	93-635		15(c)	47-652.
	2178	93-635		15(d)	47-653.
	2178	93-635		15(e)	47-654.
	2178	93-635		16	23-591 Rep.
	2178	93-635		17	43-201.
	2179	93-635		18	4-823 note.
	2179	93-635		19	4-533a.

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1975					
July 25	284	94-59	III		9-126a note.
	286	94-59	III		31-121 note.
Oct. 21	633	94-121	IV	402	11-301 note.
Dec. 31	1098	94-191		1	11-708.
	1098	94-191		2	49-401.
	1102	94-193		1(a)	11-744.
	1102	94-193		1(b)	T. 11, ch. 7 analysis.

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1976					
Apr. 21	375	94-273		2(16)	47-110.
	379	94-273		21	1-1013.
June 4	672	94-306		1	1-1431c(a).
	672	94-306		1(1)-(4)	1-1431 note.
	674	94-306		2	1-1431c(b).
	674	94-306		3(a)	11-924.
	674	94-306		3(b)	T.11, ch.9 analysis.
	675	94-306		4	1-1431-1.
	675	94-306		5	1-1431c note.
	682	94-308			31-922.
June 30	789	94-333			47-241 note.
	791	94-333		6	7-701 note.
	791	94-333		8	3-204 note.
	791	94-333		10	40-501a note.
	791	94-333		13	1-216 note.
Aug. 14	1170	94-386		2	49-112.

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1976						1977					
Sept. 4	1205	94-399	-----	1-3	47-101 note.	Aug. 2	415	95-85	II	-----	1-1446 note.
	1208	94-399	-----	4	47-120-2.	Aug. 5	670	95-94	I	-----	9-126a.
	1209	94-399	-----	5-7	47-101 note.		671	95-94	I	-----	31-121.
Sept. 7	1220	94-402	-----		1-147.		684	95-94	IV	410	40-603c.
Oct. 1	1450	94-440	III	301	9-126a.	Oct. 6	1093	95-122		1(1)	43-1541.
	1451	94-440	III	301	31-121.		1093	95-122		1(2)	43-1611.
	1493	94-446	I	101	47-241 note.	Oct. 13	1155	95-131		1	9-220, 47-241 notes.
	1494	94-446	I	107	7-701 note.		1155	95-131		2	47-226.
	1494	94-446	I	109	3-204 note.		1155	95-131		3	11 App.
	1494	94-446	I	111	40-501a note.		1156	95-131		4(1)	43-1540.
	1495	94-446	I	114	1-216 note.		1156	95-131		4(2)	9-220 note.
Oct. 12	2132	94-482	I	127(a)	1-265.		1156	95-131		4(3)	43-1623 Rep.
Oct. 17	2479	94-526	-----		22-2204.	Nov. 14	1362	95-175	-----		9-126 note.
	2493	94-533	-----	1	4-833 note.	Nov. 15	1383	95-185	-----	1	47-101.
	2493	94-533	-----	2	4-833.		1383	95-185	-----	2	2-1710.
	2494	94-533	-----	3	4-833 note.		1383	95-185	-----	3	2-1728.
	2494	94-533	-----	4	4-833 note.	Dec. 28	1612	95-218	-----		47-254.

TABLE 7A.—EXECUTIVE ORDERS

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Oct. 23, 1974.....	11815	9-146 note.

TABLE 7B.—DISTRICT OF COLUMBIA CODE SECTIONS ALSO CLASSIFIED TO UNITED STATES CODE

D.C. Code Section	U.S. Code		D.C. Code Section	U.S. Code		D.C. Code Section	U.S. Code		D.C. Code Section	U.S. Code	
	Title	Section		Title	Section		Title	Section		Title	Section
1-230a	21	130.	1-1407 Rep.	40	665 Rep.	8-144	40	81.	9-306	40	74c.
1-265	20	1086.	1-1408 Rep.	40	671 Rep.	8-145	40	82.	22-3111	40	101.
1-292	2	25 note.	1-1409 Rep.	40	651 note, Rep.	8-146	40	83.	22-3118	40	58.
1-322	5	3320 note.				8-148	40	84.	22-3414	See 4	3.
1-808	41	5.	1-1421	40	681.	8-152	40	85.	Rep.		
1-813	15	281.	1-1422 Rep.	40	682 Rep.	8-153	40	86.	22-3415	See 18	244.
1-815	40	276a to 276a-5.	1-1423 Rep.	40	683 Rep.	8-154	40	87.	Rep.		
(Omitted)			1-1424	40	684.	8-155	40	88.	24-613	42	260a.
1-826	31	685a.	1-1425	40	685.	8-156	40	89.	24-614	42	261a.
1-907	31	241(f).	1-1426	40	681 note.	8-157	40	90.	24-615	18 App.	-----
1-1001	40	71.	1-1433	40	672.	8-158	40	92.	24-701	18 App.	-----
1-1002	40	71a.	4-120	40	101.	8-159	40	92a.	24-702	18 App.	-----
1-1003	40	71b.	4-201	40	69.	8-161	40	94.	24-703	18 App.	-----
1-1004	40	71c.	4-206	40	70.	8-162	40	95.	24-704	18 App.	-----
1-1005	40	71d.	4-208	40	77.	8-163	40	96.	24-705	12	1773.
1-1006	40	71e.	5-204	40	67.	8-164	40	124.	26-519	12	1774.
1-1007	40	71f.	5-410	40	121.	8-165	40	125.	26-520	12	1775.
1-1008	40	71g.	6-732a	42	4629.	8-166	40	126.	26-521	12	1773 note
1-1009	40	71h.	6-904	7	167.	8-167	40	127.	26-522	20	124-129.
1-1010	40	71i.	6-905	7	163, 164.	9-101	40	107.	32-317 note.	24	202.
1-1011	40	72.				9-102	40	108.	32-401	24	203.
1-1012	40	73.	7-502	40	63.	9-105	40	193.	32-402	24	169.
1-1013	40	74.	7-507	40	61.	9-118	40	193a.	32-403	24	201.
1-1201	36	721.	7-511	40	62.	9-118a	40	214.	32-405	24	204.
1-1202	36	722.	7-620	40	65.	9-118b	40	214a.	32-406	24	168a.
1-1203	36	723.	7-1201	40	53a.	9-119	40	193b.	32-406a	24	211a.
1-1204	36	724.	7-1209	40	66.	9-120	40	193c.	32-407	24	181.
1-1205	36	725.	7-1413	33	484 note.	9-121	40	193d.	32-408	24	182.
1-1206 Rep.	36	726 Rep., see 10 U.S.C. 2543.	7-1501	33	567b.	9-122	40	193e.	32-409	24	183.
			7-1502	40	567b-1.	9-123	40	193f.	32-410	24	184.
			8-103	40	72a.	9-124	40	193g.	32-411	5	8101 note.
			8-105	40	72b.	9-125	40	193h.	36-504	29	49 note.
1-1207	36	727.	8-108	40	75.	9-126	40	212a.	36-701(a)	40	484-1.
1-1208	36	728.	8-109	40	76.	9-126 note	40	212a note.	37-109	40	60a.
1-1209	36	729.	8-110	40	60.	9-127	40	193i.	40-604	40	57.
1-1210 Rep.	See 5	6103.	8-111	40	93.	9-128	40	193j.	43-1536	40	55.
1-1211	36	730.	8-115	40	122.	9-129	40	193k.	43-1537	40	56.
1-1301	40	131.	8-116	40	123.	9-130	40	193l.	43-1538	48	1663.
1-1302	40	132.	8-126	40	97.	9-131	40	212b.	45-405	48	742.
1-1303	40	133.	8-127	40	78.	9-132	40	193m.	45-406	48	1508.
1-1304	40	134.	8-128	40	98.	9-146	40	136.	45-1501	31	725a.
1-1305	40	135.	8-129	40	99.	9-203 Rep.	40	33 Rep.	47-110	31	61.
1-1401 Rep.	40	651 Rep.	8-130	40	100.	9-301	40	72c.	47-120-1	31	26.
1-1402 Rep.	40	652 Rep.	8-133	20	68.	9-302	40	72d.	47-211		
1-1403 Rep.	40	661 Rep.	8-134	40	84.	9-303	40	72e.	note.		
1-1404 Rep.	40	662 Rep.	8-135	40	79.	9-304	40	74a.	47-1710	12	42.
1-1405 Rep.	40	663 Rep.	8-143	40	80.	9-305	40	74b.	49-112	2	285b note.

TABLE 7C.—UNITED STATES CODE SECTIONS ALSO CLASSIFIED TO DISTRICT OF COLUMBIA CODE

U.S. Code		D.C. Code Section	U.S. Code		D.C. Code Section	U.S. Code		D.C. Code Section	U.S. Code		D.C. Code Section
Title	Section		Title	Section		Title	Section		Title	Section	
2	25 note...	1-292.	36	726 Rep., See 10 U.S.C. 2543.	1-1206 Rep.	40	78	8-127.	40	193i	9-127.
2	285b note.	49-112.				40	79	8-135.	40	193j	9-128.
5	3320 note.	1-322.				40	80	8-143.	40	193k	9-129.
5	8101 note.	36-504.				40	81	8-144.	40	193l	9-130.
7	163	6-905.	36	727	1-1207.	40	82	8-145.	40	193m	9-132.
7	164	6-905.	36	728	1-1208.	40	83	8-146.	40	212a	9-126.
7	167	6-904.	36	729	1-1209.	40	84	8-148.	40	212a note.	9-126 note.
12	42	47-1710.	36	730	1-1211.	40	85	8-152.	40	212b	9-131.
12	1773	26-519.	40	33 Rep.	9-203 Rep.	40	86	8-153.	40	214	9-118a
12	1773 note.	26-522.	40	53a	7-1201.	40	87	8-154.	40	214a	9-118b.
12	1774	26-520.	40	55	43-1537.	40	88	8-155.	40	276a to 276a-5.	1-815.
12	1775	26-521.	40	56	43-1538.	40	89	8-156.	40	484 note.	Omitted.
15	281	1-813.	40	57	43-1536.	40	90	8-157.	40	484-1	7-1413.
18 App.		24-701.	40	58	22-3118.	40	92	8-158.	40	651 Rep.	37-109.
18 App.		24-702.	40	60	8-110.	40	92a	8-159.	40		1-1401.
18 App.		24-703.	40	60a	40-604.	40	93	8-111.	40	651 note.	Rep.
18 App.		24-704.	40	61	7-507.	40	94	8-161.	40	651 note.	1-1409
18 App.		24-705.	40	62	7-511.	40	95	8-162.	40	652 Rep.	Rep.
20	84	8-134.	40	63	7-502.	40	96	8-163.	40	652 Rep.	1-1402
20	124-129	32-317 note.	40	65	7-620.	40	97	8-126.	40	661 Rep.	Rep.
20	1086	1-265.	40	66	7-1209.	40	98	8-128.	40	661 Rep.	1-1403
21	130	1-230a.	40	67	5-204.	40	99	8-129.	40	662 Rep.	Rep.
24	168a	32-406a.	40	68	8-133.	40	100	8-130.	40	662 Rep.	1-1404
24	169	32-403.	40	69	4-201.	40	101	4-120.	40	663 Rep.	Rep.
24	181	32-408.	40	70	4-206.			22-3111.	40	663 Rep.	1-1405
24	182	32-409.	40	71	1-1001.	40	107	9-101.	40	664 Rep.	Rep.
24	183	32-410.	40	71a	1-1002.	40	108	9-102.	40	664 Rep.	1-1406
24	184	32-411.	40	71b	1-1003.	40	121	5-410.	40	665 Rep.	Rep.
24	201	32-405.	40	71c	1-1004.	40	122	8-115.	40	665 Rep.	1-1407
24	202	32-401.	40	71d	1-1005.	40	123	8-116.	40	671 Rep.	Rep.
24	203	32-402.	40	71e	1-1006.	40	124	8-164.	40	671 Rep.	1-1408
24	204	32-406.	40	71f	1-1007.	40	125	8-165.	40	672	Rep.
24	211a	32-407.	40	71g	1-1008.	40	126	8-166.	40	672	1-1433
29	49 note.	36-701 (a).	40	71h	1-1009.	40	127	8-167.	40	681	1-1421.
31	26	47-211 note.	40	71i	1-1010.	40	131	1-1301.	40	681 note	1-1426.
31	61	47-120-1.	40	72	1-1011.	40	132	1-1302.	40	682 Rep.	1-1422
31	241(f)	1-907.	40	72a	8-103.	40	133	1-1303.	40	683 Rep.	Rep.
31	685a	1-826.	40	72b	8-105.	40	134	1-1304.	40	683 Rep.	1-1423
31	725a	47-110.	40	72c	9-301.	40	135	1-1305.	40	684	Rep.
33	567b	7-1501.	40	72d	9-302.	40	136	9-146.	40	685	1-1424.
33	567b-1	7-1502.	40	72e	9-303.	40	137	9-105.	40	685	1-1425.
36	721	1-1201.	40	73	1-1012.	40	193a	9-118.	41	5	1-808.
36	722	1-1202.	40	74	1-1013.	40	193b	9-119.	42	257	24-613.
36	723	1-1203.	40	74a	9-304.	40	193c	9-120.	42	260a	24-614.
36	724	1-1204.	40	74b	9-305.	40	193d	9-121.	42	261a	24-615.
36	725	1-1205.	40	74c	9-306.	40	193e	9-122.	42	4629	5-732a.
			40	75	8-108.	40	193f	9-123.	48	742	45-406.
			40	76	8-109.	40	193g	9-124.	48	1508	45-1501.
			40	77	4-208.	40	193h	9-125.	48	1663	45-405.

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1267	494	19-107a.
	586g	29-420
		Omitted.
1373	1151	30-207 Rep.
1373	1152	30-205 Rep.
1374	1153	30-204 Rep.
1374	1155	30-208 Rep.
1374	1156	30-209 Rep.
1375	1157	30-203 Rep.
1375	1161	30-212 Rep.
1375	1162	30-213 Rep.
1375	1163	30-214 Rep.
1375	1164	30-215 Rep.
1376	1166	30-210 Rep.
1376	1169	45-913 Rep.
1376	1170	30-202 Rep.
1376	1171	30-206 Rep.
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- District of Columbia Public Assistance Regulation Revising the Definition of Certain Terms of the Financial and Medical Assistance Programs (3-201 note)**
 Apr. 7, 1977, D.C. Law 1-108, 23 DCR 8738.
- District of Columbia Public Postsecondary Education Reorganization Act (31-1701 et seq.)**
 Oct. 26, 1974, Pub. L. 93-471, 88 Stat. 1423.
 Sept. 9, 1975, D.C. Law 1-12, § 3, 22 DCR 1806.
 Nov. 1, 1975, D.C. Law 1-36, §§ 3-5, 22 DCR 2908.
 Apr. 6, 1977, D.C. Law 1-99, § 2, 23 DCR 8729.
- District of Columbia Public Postsecondary Education Reorganization Act Amendments (See Tables)**
 Nov. 1, 1975, D.C. Law 1-36, 22 DCR 2908.
- District of Columbia Real Property Tax Revision Act of 1974 (47-621 et seq.)**
 Sept. 3, 1974, Pub. L. 93-407, title IV, 88 Stat. 1051.
 Jan. 3, 1975, Pub. L. 93-635, §§ 6, 8(d), 15, 88 Stat. 2176.
 Mar. 12, 1976, D.C. Law 1-52, § 2, 22 DCR 5130.
 Mar. 26, 1976, D.C. Law 1-57, § 2, 22 DCR 5471.
 June 15, 1976, D.C. Law 1-70, title III, §§ 302, 305, 23 DCR 538, 540.
- District of Columbia Rent Control Act of 1973 (45-1621 et seq.)**
 Nov. 21, 1973, Pub. L. 93-157, 87 Stat. 623.
 June 20, 1975, D.C. Law 1-6, § 1, 22 DCR 284.
- District of Columbia Rental Accommodations Act of 1975 (45-1631 et seq.)**
 Nov. 1, 1975, D.C. Law 1-33, 22 DCR 2490.
 Apr. 19, 1977, D.C. Law 1-122, § 2, 23 DCR 8748.
 Oct. 27, 1977, D.C. Law 2-34, § 2, 24 DCR 4055.
- District of Columbia Revenue Act of 1975 (47-1711)**
 Nov. 1, 1975, D.C. Law 1-30, 22 DCR 2545.
- District of Columbia Revenue Recovery Act of 1977 (47-331 et seq.)**
 Sept. 23, 1977, D.C. Law 2-20, 24 DCR 3339.
- District of Columbia Self-Government and Governmental Reorganization Act (See Tables and §1-121 note)**
 Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 774.
 Apr. 17, 1974, Pub. L. 93-268, §§ 3, 4(c), 88 Stat. 86.
 Apr. 24, 1974, Pub. L. 93-272, 88 Stat. 93.
 Aug. 29, 1974, Pub. L. 93-395, § 1, 88 Stat. 793.
 Jan. 3, 1975, Pub. L. 93-635, § 17, 88 Stat. 2178.
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 Sept. 7, 1976, Pub. L. 94-402, 90 Stat. 1220.
 Oct. 13, 1977, Pub. L. 95-131, 91 Stat. 1155.
 Nov. 15, 1977, Pub. L. 95-185, § 1, 91 Stat. 1383.
 Dec. 28, 1977, Pub. L. 95-218, 91 Stat. 1612.
- District of Columbia Stadium Act of 1957 (2-1720 et seq.)**
 July 28, 1958, Pub. L. 85-561, § 1, 72 Stat. 421.
 Sept. 23, 1959, Pub. L. 86-378, § 1, 73 Stat. 702.
 Apr. 7, 1977, D.C. Law 1-113, § 3, 23 DCR 8742.
- District of Columbia Teachers' Leave Act of 1949 (31-691 et seq.)**
 Oct. 13, 1949, ch. 686, 63 Stat. 842.
 Oct. 29, 1951, ch. 601, §§ 1-3, 65 Stat. 660.
 Aug. 5, 1953, ch. 319, § 1, 67 Stat. 362.
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 Dec. 18, 1967, Pub. L. 90-212, § 1, 81 Stat. 659.
 May 27, 1968, Pub. L. 90-319, § 5, 82 Stat. 140.
 Oct. 2, 1972, Pub. L. 92-454, § 3, 86 Stat. 760.
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- District of Columbia Teachers' Salary Act Amendments of 1976 (31-1501, 31-1511, 31-1535, 31-1542)**
 Mar. 29, 1977, D.C. Law 1-90, 23 DCR 9532b.
- District of Columbia Unemployment Compensation Act (46-301 et seq.)**
 Aug. 28, 1935, ch. 794, 49 Stat. 946.
 Feb. 13, 1936, ch. 68, 49 Stat. 1138.
 June 23, 1936, ch. 726, § 9, 49 Stat. 1888.
 June 25, 1938, ch. 680, § 14, 52 Stat. 1112.
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 Oct. 17, 1940, ch. 898, § 1, 54 Stat. 1204.
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July 10, 1952, ch. 649, §§ 2(b), 6, 66 Stat. 543, 547.
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 Feb. 3, 1976, D.C. Law 1-44, § 2, 22 DCR 6322.

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Dr. King's Birthday Act of 1977 (1-314b, 28-2701)

July 12, 1977, D.C. Law 2-13, 24 DCR 1443.

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Apr. 6, 1977, D.C. Law 1-104, 23 DCR 8734.

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Apr. 23, 1977, D.C. Law 1-126, 24 DCR 2372.

Elections Organization act of 1976 (1-1102 to 1-1104, 1-1105, 1-1108)

Sept. 2, 1976, D.C. Law 1-79, title I, 23 DCR 2050.

Employees' Garnishment Act of 1977 (1-323)

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Ethnic Reference Repeal Act (See Tables)

Oct. 30, 1975, D.C. Law 1-26, 22 DCR 2467.

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Sept. 24, 1976, D.C. Law 1-85, 23 DCR 2464.

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Apr. 21, 1976, Pub. L. 94-273, §§ 2(16), 21, 90 Stat. 375, 379.

Freedom of Information Act of 1976 (1-1501 et seq.)

Mar. 29, 1977, D.C. Law 1-96, 23 DCR 9532b.

General Accounting Office Act of 1974 (5-716)

Jan. 2, 1975, Pub. L. 93-604, title VI, § 605, 88 Stat. 1963.

General Legislative Procedures Act of 1975 (1-146a et seq.)

Sept. 23, 1975, D.C. Law 1-17, 22 DCR 1990.

General Public Assistance for Unemployables (G-U) Benefits Limitation Act of 1977 (3-210)

June 15, 1977, D.C. Law 2-10, 24 DCR 1216.

Healing Arts Practice Act, District of Columbia, 1928 (2-101 et seq.)

June 25, 1936, ch. 804, 49 Stat. 1921.
 Aug. 11, 1937, ch. 579, 50 Stat. 620.
 Aug. 11, 1939, ch. 718, 53 Stat. 1419.
 Sept. 26, 1942, ch. 562, §§ 1, 2, 56 Stat. 757, 758.
 Dec. 15, 1944, ch. 587, 58 Stat. 805.
 Apr. 20, 1948, ch. 216, §§ 1-4, 62 Stat. 174, 175.
 June 25, 1948, ch. 646, §§ 1, 32(b), 62 Stat. 909, 991.
 May 24, 1949, ch. 139, § 127, 63 Stat. 107.
 Aug. 1, 1950, ch. 513, § 1, 64 Stat. 393.
 June 22, 1954, ch. 338, § 1, 68 Stat. 269.
 Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048.
 Sept. 14, 1961, Pub. L. 87-248, §§ 1-3, 75 Stat. 518, 519.
 Dec. 23, 1963, Pub. L. 88-241, § 2, 77 Stat. 615.
 Nov. 8, 1965, Pub. L. 89-347, § 5, 79 Stat. 1308.
 Oct. 24, 1967, Pub. L. 90-115, § 1, 81 Stat. 336.
 July 29, 1970, Pub. L. 91-358, title I, §§ 155(c) (4), 157(a), 164(a) (1), (2), 84 Stat. 570, 574, 584.
 Oct. 1, 1976, D.C. Law 1-87, § 3, 23 DCR 2544.
 Apr. 6, 1977, D.C. Law 1-106, §§ 2-8, 23 DCR 8736.

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Apr. 6, 1977, D.C. Law 1-106, 23 DCR 8736.

Health Services Rates Act of 1977 (32-322, 47-2213 to 47-2215b)

Sept. 28, 1977, D.C. Law 2-24, 24 DCR 3343.

Health Spa Consumer Protection Act (28-3817)

Apr. 15, 1976, D.C. Law 1-62, 22 DCR 6044.

Hearing Aid Dealers and Consumers Act of 1977 (28 App. §§51 et seq.)

Oct. 26, 1977, D.C. Law 2-33, 24 DCR 3726.

Holding Company System Regulatory Act (35-1901 et seq.)

Aug. 24, 1974, Pub. L. 93-388, 88 Stat. 752.

Home Delivery Food Tax Act (47-2605)

Apr. 6, 1977, D.C. Law 1-101, 23 DCR 8731.

Horizontal Property Act Amendment Act of 1975 (5-902 et seq.)

May 22, 1975, D.C. Law 1-3, 21 DCR 3944.

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Mar. 29, 1977, D.C. Law 1-89, title I, § 101(c), 23 DCR 9532b.

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Dec. 13, 1977, D.C. Law 2-38, 24 DCR 6038.

Interstate Parole and Probation Compact Act (24-251 et seq.)

Mar. 12, 1976, D.C. Law 1-51, 22 DCR 5296.

Junior College Accreditation Amendment Act (31-120)

Sept. 23, 1975, D.C. Law 1-15, 22 DCR 1987.

King Birthday Act (28-2701)

Aug. 1, 1975, D.C. Law 1-11, 22 DCR 1803.

Legislative Privilege act of 1975 (1-141a et seq.)

June 8, 1976, D.C. Law 1-65, 22 DCR 7150.

License Fees and Charges Act of 1976 (See Tables)

Sept. 14, 1976, D.C. Law 1-82, 23 DCR 2461.
Sept. 28, 1977, D.C. Law 2-24, § 2, 24 DCR 3343.

Lobbying Amendments of 1976 (1-1171 et seq.)

Sept. 2, 1976, D.C. Law 1-79, title III, 23 DCR 2050.

Medical Employee Protection act of 1975 (1-921, 1-925)

Mar. 26, 1976, D.C. Law 1-59, 22 DCR 5473.

Metro Transit Police Force Act of 1975 (1-1431 note)

June 11, 1976, D.C. Law 1-67, 23 DCR 501.

Military Personnel and Civilian Employees' Claims Act of 1964 (1-907)

Aug. 31, 1964, Pub. L. 88-558, § 3(f), as added
Oct. 12, 1968, Pub. L. 90-561, 82 Stat. 998.

Minority Contracting Act of 1976 (1-851 et seq.)

Mar. 29, 1977, D.C. Law 1-95, 23 DCR 9532b.

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Apr. 7, 1977, D.C. Law 1-112, 23 DCR 8741.

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Apr. 7, 1977, D.C. Law 1-109, 23 DCR 8739.

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Sept. 23, 1977, D.C. Law 2-22, title IV, 24 DCR 3341.

1976 District of Columbia Armory Board Amendment Act (2-1706, 2-1708, 2-1724)

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Apr. 23, 1977, D.C. Law 1-128, 23 DCR 9692.

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Apr. 7, 1977, D.C. Law 1-118, 23 DCR 8746

Physical Therapists Practice Act (2-451 et seq.)

July 8, 1963, Pub. L. 88-60, §§ 1, 6, 77 Stat. 77, 78.
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Oct. 1, 1976, D.C. Law 1-87, § 4(a), (b) (2), (c) (3), 23 DCR 2544.

Poundmaster Fee Act of 1977 (47-2001, 47-2003)

Oct. 7, 1977, D.C. Law 2-26, 24 DCR 3719.

Practice of Psychology Act Amendments (2-487, 2-492 to 2-494)

Dec. 7, 1974, Pub. L. 93-515, title II, 88 Stat. 1615.

Pregnancy Discrimination Act of 1975 (46-310, 46-327)

Nov. 1, 1975, D.C. Law 1-34, 22 DCR 2553.

Prescription Drug Price Information Amendments (33-801, 33-811 to 33-815, 33-831 to 33-833, 33-835)

Apr. 7, 1977, D.C. Law 1-114, 23 DCR 8743.

Presidential Preference Primary Amendments of 1976 (1-1105, 1-1110)

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Prevention of Child Abuse and Neglect Act of 1977 (See Tables)

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Professional Engineers' Registration Act (2-1801 et seq.)

June 11, 1960, Pub. L. 86-507, § 1(41), 74 Stat. 202.

July 8, 1963, Pub. L. 88-60, § 1, 77 Stat. 77.

Aug. 30, 1964, Pub. L. 88-503, § 21, 78 Stat. 634.

July 29, 1970, Pub. L. 91-358, title I, § § 155(a), (c) (9), 164(n), 84 Stat. 570, 586.

July 22, 1976, D.C. Law 1-75, § 3(i), 23 DCR 1178.

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Oct. 27, 1977, D.C. Law 2-34, 24 DCR 4055.

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Apr. 23, 1977, D.C. Law 1-130, 23 DCR 9694.

- Retail Service Station Act of 1976 (10-201 et seq.)**
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- Revenue Funds Availability Act of 1975 (See Tables)**
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- Robert F. Kennedy Memorial Stadium and District of Columbia National Guard Armory Public Safety Act (2-1741 et seq.)**
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Mar. 12, 1976, D.C. Law 1-53, 22 DCR 5132.
- Soil Erosion and Sedimentation Control Act of 1977 (45-308)**
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Apr. 6, 1977, D.C. Law 1-102, 23 DCR 8732.
- Sunshine Act (1-1503a)**
Dec. 24, 1973, Pub. L. 93-198, title VII, § 742, 87 Stat. 831.
- Step-Parent Adoption Facilitation Act (16-308)**
Oct. 30, 1975, D.C. Law 1-25, 22 DCR 2465.
- Supplementary Neighborhood Commissions Act (1-171m et seq.)**
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- Taxicab Insurance Rate Approval Act (44-308)**
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- Third Amendment to the Revenue Act of 1975 Act (47-2601)**
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- Uniform Management of Institutional Funds Act (32-1201 et seq.)**
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PROPERTY OF
THE COUNCIL
OF THE
DISTRICT OF COLUMBIA

